



Monday, February 25, 2019

**STATEMENT OF ASSISTANT CHIEF FAUSTO B. PICHARDO
EXECUTIVE OFFICER, PATROL SERVICES BUREAU
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL
COMMITTEES ON PUBLIC SAFETY AND THE JUSTICE SYSTEM
COMMITTEE ROOM, CITY HALL
FEBRUARY 25, 2019**

Good morning Chair Richards, Chair Lancman, and Members of the Council. I am Assistant Chief Fausto Pichardo, the Executive Officer of the Patrol Services Bureau. I am joined here today by Deputy Chief Terri Tobin, Commanding Officer of the office of the Deputy Commissioner Collaborative Policing, and Oleg Chernyavsky, Executive Director of Legislative Affairs. On behalf of Police Commissioner James P. O'Neill, I am pleased to testify about the oversight topic of family separation in certain criminal cases, as well as the legislation being heard today.

The Department's commitment to fighting crime is born of a passion, first and foremost, to protect those who are vulnerable, those who cannot help or control their circumstances. It is this very commitment that has allowed the Department to leverage the City's historically low crime rates in furtherance of victim and vulnerable population centered initiatives. Initiatives such as the Crime Victim's Assistance Program which has placed crime victim advocates into every precinct and police service area across the city. These advocates aim to mitigate trauma in the aftermath of crime; give information to victims about the criminal justice process and support them as they go through the court system; help victims develop a safety plan to prevent repeat victimization; provide assistance to access needed services such as safe affordable housing, emergency NYCHA transfers, victim compensation, medical care, or public benefits; and link victims to other local service providers for additional and more specialized assistance.

Another example is our homeless outreach partnership with the Department of Homeless Services, which has officers across the city connecting with those living on our streets with the goal of transitioning the street homeless population into treatment programs, safe havens, drop-in centers, and shelters, particularly during the cold winter months. Likewise, the Child Trauma Response Team (CTRT), which began in 2016, is yet another example, and now encompasses ten precincts and PSAs in Manhattan, Queens, and the Bronx. The CTRT program involves follow-up home visits to residences that experience domestic violence incidents in which children were present, in order to offer traumatic stress treatment and other services to mitigate any traumatic effects an incident may have had on a vulnerable child. Additionally, and significant to the topic being heard today, the Department is in the process of instituting a child sensitive arrest policy, which began as a pilot program in one patrol borough in 2017 and is now being rolled out Department wide. While the Department has always trained its officers on practices that treated innocent children with sensitivity, this initiative is aimed at expanding the scope of these long standing practices and codifying them in Department procedures.

The Neighborhood Policing philosophy encourages collaborative problem solving, greater community engagement and outreach, building trust, as well as a shared responsibility and partnership with those we serve to drive crime down even further. In fact, enforcement activity in

the form of summonses and arrests has consistently declined since the beginning of this administration, all while crime continues to decrease. However, no matter our collective efforts towards a fairer criminal justice system, one that attempts to calibrate law enforcement action to the crime or condition being complained of, we cannot escape the harsh realities of life. There are those that commit serious crimes, such as acts of violence and domestic violence, and there are situations officers respond to where they no longer have the discretion to avoid arrest. In these cases the crime or actions of an arrestee dictate the response. While such situations pose many challenges, one of the most significant among them is when an arrestee has physical custody of an innocent child at the time of their arrest.

A long standing part of each officer's training is to not only know how to interact with and protect a child in such scenarios, but to also be cognizant of tell-tale signs of the presence of a child, as it may not always be readily apparent. To that end, the Department has incorporated props such as baby carriages, toys and other child specific items into its scenario based training exercises. For example, during the course of an exercise aimed at training officers on responding to a complaint of an assault at a home, a child specific item is randomly placed somewhere in the mock apartment. While an officer is evaluated on his or her tactical entry and movements in the apartment, interaction with the victim and alleged perpetrator, and recognition and safeguarding of evidence, among other things, an officer is also expected to spot the child specific item and make inquiries aimed at determining if a child is present and what actions will be required to further the best interests of the child.

Although current NYPD protocols and training include safeguards aimed at protecting innocent children when their parent or guardian is being arrested, we realized we could do more, we could do better. As Commissioner O'Neill has often said, in some areas the Department is very good, in some areas we are the best, but in all areas, we can do better. This is why, with respect to child sensitive arrest procedures, the Department has sought the input of respected stakeholders and has undertaken a significant revision of our procedures in these circumstances.

A comprehensive policy revision of this scope is not easy and cannot be done with the flip of a switch. The NYPD is the largest municipal police force in the nation comprising over 36,000 uniformed members patrolling a city of over 8.6 million. Significant changes to a policy such as this requires time for implementation on a smaller scale, analysis of such a pilot, revision based on lessons learned, and a significant training component. Anything short of this could potentially result in jeopardizing the very children we all aim to protect. This is why in 2017, the Department began a pilot program in Patrol Borough Brooklyn South which instituted child sensitive arrest protocols that largely mirrored the recommendations made by the International Association of Chiefs of Police and the Department of Justice.

Many of the recommendations were already being done as a matter of practice. For example, notifying a patrol supervisor about the presence of an innocent child, effecting the arrest in a tactically safe manner outside of the child's sight and hearing where possible, allowing the parent to reassure the child that he or she would be safe, identifying and locating a designated caregiver, identifying and securing any medication needed by the child, and encouraging the child to take a familiar object and any other items that might help the child's emotional wellbeing. But the pilot went further, we began notifying the Administration for Children's Services (ACS) of the child's

location when staying with a designated caregiver at a location other than the child's residence. We also instituted a program of enhanced training for both the domestic violence prevention officers and the domestic violence prevention sergeants. This enhanced training is necessary because, as a part of the pilot, designated caregivers will receive follow-up visits from the precinct's domestic violence prevention officer while the parent or guardian remains incarcerated.

In the rare circumstances where an appropriate caregiver cannot be identified or located, the officer will now transport the child to the precinct house or a Safe Horizon Child Advocacy Center (CAC) until he or she is picked up by a designated caregiver. CACs are comfortable, child-friendly locations staffed with teams of childcare experts designed to meet the child's needs by addressing their safety and tending to their physical and emotional wellbeing. As an additional safeguard, we've placed posters outside precinct holding cells with a picture of a child below the words "Did You Forget About Me?" This is done so that in the rare instance where a parent who was arrested was unwilling to, incapable of, or for any other reason, did not notify officers of the existence of a dependent child, and officers did not become aware on their own, a parent may be reminded to notify precinct personnel of such a fact.

Last August, the Department decided to implement child sensitive arrest procedures citywide modeled on the Brooklyn South pilot. We are currently in the process of training officers on the proper response to these situations and updating Department procedures.

I will now turn to **Intro. 1349**. As I have laid out in my testimony the Department is not only supportive of the goals of this bill, it has already piloted and undertaken Department-wide implementation of a child sensitive arrest procedure on its own initiative, with stakeholder input along the way. Although our procedure largely mirrors the requirements of the proposed legislation, it is important that operational and tactical protocols be established as a matter of Department policy and not dictated by law. A policy driven approach allows for those with proven experience in policing, as well as interested stakeholders, maximum flexibility in making necessary changes that not only address the best interests of children, but also the evolution of operational realities. Likewise, although the Department has already begun to train officers on child sensitive arrest procedures, dictating specific training in legislation may not envision evolutions in this field, and can have the unintended impact of delaying rollout due to the need to retrain officers pursuant to the requirements of the bill. Finally, although the Department has both unilaterally, and in collaboration with Council, made a significant amount of data available to the public, the reporting requirements in this bill raise multiple challenges. Namely, requiring the Department to report on data which is not in the Department's control, such as 311 and CCRB data, and data not currently captured by Department forms or systems. As always, we look forward to working with the bill sponsor to achieve the greater goal of transparency within the Department's capabilities.

The Department remains committed not only to the safety and welfare of affected children at the time of a caregiver's arrest, but also to our demonstrated and forward looking initiatives aimed at protecting and advocating for vulnerable populations.

Thank you for the opportunity to speak about this important issue and I look forward to answering any questions you may have.



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February 25, 2019

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STATEMENT TO CITY COUNCIL COMMITTEES ON PUBLIC SAFETY AND THE
JUSTICE SYSTEM OVERSIGHT HEARING**

An arrest of a parent can be extremely traumatic for the child, especially when the child is present. Arrest and incarceration can have other immediate medical, physical, and mental health impacts on the child. At the same time, police officers are often confronted with chaotic and violent situations when making arrests, which are further complicated when a child is present. Children's services often do not have the necessary resources to respond to these situations.

Across the nation, law enforcement and child welfare agencies are grappling with how to address this concern. Here in New York City, we have the most professional police force and have made great strides to improve the arrest and incarceration process. But, I would support any additional effort--whether training, policy, or a taskforce – that reduces the potential traumatic effects on children of arrested and incarcerated parents.

I look forward to working with the City Council and our law enforcement and criminal justice partners on this critical issue.



TESTIMONY OF:

Lisa Schreibersdorf, Executive Director
BROOKLYN DEFENDER SERVICES

Presented Before

The New York City Council Committees on Public Safety and the Justice System

Oversight Hearing on Family Separation in Criminal Cases

February 25, 2019

My name is Lisa Schreibersdorf and I am the Executive Director of Brooklyn Defender Services (BDS). BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, and social work support and advocacy in nearly 35,000 cases in Brooklyn every year. I thank the City Council Committees on Public Safety and the Justice System, and in particular Chair Richards and Chair Lancman, for the opportunity to testify on family separation in criminal cases, as well as Int. No. 1349 and Int. No. 806.

Recommendations

1. BDS applauds the spirit of Int. No. 1349, but implores the Council to remove provisions that may trigger more and earlier involvement by the Administration for Children's Services (ACS) in marginalized families' lives. These provisions undermine the spirit of the law. First and foremost, we believe custodial arrests of caretakers cause intergenerational harm and should be avoided whenever possible. When they do occur, parents, family members, and friends should be given the full opportunity to arrange for temporary care of children. If needed, community-based groups that provide direct support should fulfill the role of assisting children and families, not ACS.
2. BDS urges amendments to Int. No. 806. Any task force studying the obstacles faced by children of incarcerated parents should be chaired by impacted families and relevant service providers. Agency officials who have erected or maintained these barriers should not be relied upon to develop solutions.
3. Join with the New York Initiative for Children of Incarcerated Parents (NYCIP) in urging the State Legislature to pass a slate of bills to promote family bonds while a parent is in prison.
4. Require the New York City Department of Correction to implement policies to promote, rather than discourage, jail visiting by family members and other loved ones.

5. Urge greater restraint by prosecutors and judges with respect to the issuance of Orders of Protection, which can needlessly separate families and wreak havoc in their lives.
6. Support reform to the State Central Registry to end unnecessary and counterproductive barriers to employment for parents.

Background

In the wake of the outrage about the federal government's mandatory detention and family separation policy at the border, many observers rightly noted that this policy had ample precedent in the laws and practices of our criminal and child welfare legal systems. Arrests and incarceration of parents and children often occur without serious regard for family unity or well-being, and child removals, though purportedly intended to protect children from abuse or mistreatment, often do more harm than good. An opinion columnist for Bloomberg News went further, tracing this through line to "the U.S.'s long history of separating parents and children from the days of slavery and during Native American removal and extermination." The columnist concluded, "I don't mean to normalize the current treatment of immigrant families — I consider it a moral disgrace. What I am saying is that our treatment of outsiders is rarely an accident, and it so often mirrors how we have been treating each other all along."¹

The experiences of the people we represent exemplify this reality. Family separation occurs at many stages within the criminal legal system.

Racial Disparities in the Overbroad Child Welfare System

Importantly, as the Council seeks to address family separation in the criminal legal system, it must not exacerbate the problem by augmenting the role of the child welfare system whenever parents are arrested – a fundamentally inappropriate tool for supporting families and keeping them together. Racial disparities in the criminal legal system are well-documented and widely known, but it is important to understand that similar disparities exist in the child welfare system. For example, despite making up only 23% of New York City's child population, Black children represent over 52% of foster care placements.² Over 90% of our Family Defense Practice clients are charged with allegations of neglect, rather than abuse. Most of these neglect cases are poverty-related, such as poor housing conditions, lack of adequate day care or children not attending school. Racial inequity is the result of structural racism that is embedded in our historical, political, cultural, social, and economic systems and institutions. Understanding the intersections of race, racism, immigration status, and poverty is critical to challenging inequity in the child welfare system. We acknowledge that the Administration for Children's Services (ACS) is working to address the systemic issues that lead to disproportionality by creating a new office to address racial equity after creating a committee on this issue, yet progress remains to be seen.³

¹ Tyler Cowen, American Families Shouldn't Be Separated, Either, Bloomberg News, June 18, 2018 available at <https://www.bloomberg.com/opinion/articles/2018-06-18/family-separation-goes-beyond-trump-s-immigration-plan>.

² New York City Administration of Children's Services Community Snapshots, (2010, 2011, 2013); retrieved from: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml.

³ New York City Administration of Children's Services, Racial Equity & Cultural Competence Committee. available at <https://www1.nyc.gov/site/acs/about/racial-equity-cultural-competence.page>

In addition to the racial disparities, the overbreadth of the child welfare system impairs its function, causing a huge backlog of cases and undermining its own integrity, as parents recognize ACS as an invasive force in their communities rather than a true protector of children. For more on this subject, please refer to our testimony before the Council from November 27, 2018.⁴

Family Separation Upon Arrest

The NYPD makes countless arrests of parents in front of their children, sometimes violently, including for behaviors that do not warrant or benefit from police intervention. The arrest of Jazmine Headley, whom we represented, for sitting on the floor of a Human Resources Administration (HRA) office in Brooklyn when no seats were available was just one such case. Every time a child sees their parent handcuffed and forcibly moved can cause lasting trauma. Potentially worse, NYPD often notifies the Administration for Children's Services (ACS), which could trigger months of invasive surveillance and unnecessary child removals. Procedure No. 215-01 of the New York Police Department's (NYPD) Patrol Guide directs officers to obtain care for a dependent child under eighteen by inquiring whether a relative or friend will care for the child, and then notify ACS, but in our experience NYPD officers too often go straight to ACS. To clarify, NYPD may also remove a child from a parent on an emergency basis if they believe the child is at imminent risk of harm.⁵ Also, officers are required by state law to report instances of abuse, neglect, or maltreatment of children to the New York State Central Registry (SCR), which triggers an ACS investigation.⁶ (Int. No. 1349, under consideration today, would go beyond this requirement by involving ACS in all cases where even when there is no suspicion of imminent risk or harm to a child; this would be inappropriate and counterproductive, as we explain below.) Once a family is on ACS' radar, they may be separated indefinitely, pending an investigation and/or completion of a series of programs, or even permanently

It must be said again that the vast majority of children and families impacted by these policies and practices are Black and/or Latinx and people in poverty, thus exacerbating inequality in our society.

Family Separation at Arraignment

The risks of family separation increase at arraignment. As you know, prosecutors often seek- and judges may set- bail in an amount and form a parent cannot afford. Our criminal defense attorneys at BDS zealously argue for our clients to be released to care for their children, and judges may take a person's role as a primary caretaker into consideration, but in many cases parents are locked up for days, weeks, or months pre-trial. Visiting loved ones on Rikers Island is notoriously difficult and degrading, as we have testified before the Council in the past.⁷

⁴ Lauren Shapiro, BDS Testimony on Removals from Parents and Caretakers in Child Welfare Cases (2018), available at <http://bds.org/wp-content/uploads/BDS-City-Council-Testimony-on-Family-Separation-Final-1.pdf>.

⁵ NY Family Court Act § 1024

⁶ NY Social Services Law § 413

⁷ Kelsey DeAvila, BDS Testimony on Safety and Security in City Jails (2018), available at <http://bds.org/bds-testifies-before-nyc-council-committee-on-criminal-justice-oversight-hearing-on-safety-and-security-in-city-jails/>

Another, less widely understood cause of family separation is the issuance of Orders of Protection. At prosecutors' request, judges often issue these orders preventing family members from having any contact whatsoever, which can make a parent or child homeless, or force a child to stay with a relative who lives far from their school. Orders of Protection impacting young people may be subject to family court orders concerning custody and visitation, and our family defense attorneys are usually able to win modifications to allow one or more forms of contact, but separation for some duration remains common. Family Court Judges conduct evidentiary hearings and weigh the trauma of removing a child from their parent before ordering a removal. But Judges in Criminal Court have not been willing to afford parents and children the same due process protections even though Orders of Protection issued in Criminal Court have the same effect as removal orders issued in Family Court. In addition, many criminal cases do not co-occur with Family Court cases, and so if one parent gets arrested and is issued an Order of Protection subject to family court order, they would have to go to Family Court, open a whole new custody or visitation case that could, in some circumstances, trigger an ACS investigation, in order for them to have any access to their children.

These orders are common in cases involving allegations of drug sale and – incredibly – allegations of leaving children unattended. Without access to affordable childcare, many parents leave their children alone at home for short periods to buy baby formula, diapers, or other essentials. Residents in many shelters must walk down a hallway or to another floor to use the kitchen or take a shower. In these instances, police may respond to a complaint, for example from shelter staff, and arrest the parent for Endangering the Welfare of a Child. Following an arrest, parents are separated from their children for at least 24 hours, and often far longer, begging the question of why the City would think this is an effective tactic or positive use of resources. Compounding this problem, prosecutors regularly ask for and judges regularly grant Orders of Protection even when there is no allegation that the child was harmed.

Orders of Protection are issued almost invariably in cases involving allegations of domestic violence, even when all parties want the criminal case to be dismissed. Upon receipt of a Domestic Incident Report, police are required to make an arrest; rather than guess at which party in an intra-household fight is the “primary aggressor,” they often arrest two or more people. The underlying incidents range from an argument that has spiraled out of control and ended with a cellphone thrown across the room to dangerous acts of violence, but criminal courts rarely make this distinction in the issuance of Orders of Protection. Orders of Protection between parents that are issued without the parents' input can wreak havoc on parents' visitation and childcare arrangements, particularly when a working custodial parent is suddenly prevented from having any contact with the non-custodial parent whom she previously relied on for childcare. This is one way entanglement in the criminal legal system can do more harm than good for families in conflict.

Post-Conviction Family Separation

The New York Initiative for Children of Incarcerated Parents (NYCIP) estimates that approximately 80,000 children across the state have a parent in a state prison, and many others have a parent in a local jail. (The New York State Department of Correction and Community

Supervision (DOCCS) does not report this data.) The majority of New York City residents in state prison are incarcerated more than 200 miles from their homes.⁸ A free prison family visit bus program provided an invaluable link for families from 1973 until 2010, when it was eliminated due to budget cuts. In the following year, visits to NYS DOCCS facilities dropped by over 13,000.⁹ Free, reliable transportation made visiting possible for thousands of families before the state decided to allocate resources elsewhere.

The challenges of maintaining contact, whether through costly phone calls, in-person visits, or other means, combined with the obstacles to engaging in Family Court-ordered services as required by the law in order to maintain their parental rights, become insurmountable for many families.¹⁰ Although the law directs Family Courts to take into consideration a parent's incarceration in a termination of parental rights proceeding, in our experience Family Courts routinely terminate the parental rights of incarcerated parents serving significant upstate prison sentences under the pretext that a parent who cannot take custody of her child because of her incarceration has therefore "failed to plan" for the child's future. Even when a parent has put forward relatives who can care for the child while the parent is incarcerated, ACS and Family Courts frequently refuse to place the child with relatives for various reasons, including the relatives' ACS or conviction history or the fact that the relative resides out of state. Incarcerated parents may also lose their rights as a result of the obstacles they face in maintaining contact with their children and the foster care agencies tasked with their care. For parents whose sentences are shorter, DOCCS permits certain programming that can help a parent comply with court-ordered service plans and maintain legal custody of their children, but these programs often have long waitlists that may exceed a parent's prison sentence.

BDS proudly supports NYCIP and urges adoption of its legislative platform. This includes S.731 (Montgomery), which would require DOCCS to provide free transportation to prisons from New York City, Rochester, Syracuse, and Albany at least twice per month, and S.724 (Montgomery), which would require DOCCS to place people in suitable facilities closest to their children. We call on the Legislature to pass and the Governor to sign S.731 and S.724. We also urge that, as the Governor considers closing three state prisons in the near future, facilities' distance from the communities most incarcerated people call home be considered.¹¹ Visiting is an essential lifeline for incarcerated people; the emotional support and connections our clients receive from their families and loved ones is invaluable.

All that said, it is important to remember that the original purpose of a prison, or "penitentiary," was removal from the community to a place of isolation where, in theory, a person would be

⁸ DiZerega, M., Asif Uddin, F, & Tobias, L. (2012). New York State prison visiting bus: A public safety resource that benefits children and families. New York, New York: Vera Institute of Justice.

⁹ Michael Virtanen, *Advocates want free NY prison visitor bus back*, Troy Record, 2016, available online at <http://www.troyrecord.com/article/TR/20120806/NEWS/308069977>

¹⁰ While New York City, led by NYC Council Speaker Corey Johnson, enacted legislation requiring that phone calls be free for people in jail starting in May of this year, calls from New York State prisons continue to carry exorbitant rates.

¹¹ Robert Harding, *Cuomo Wants to Close Three NY Prisons*, The Auburn Citizen, Feb. 15, 2019, available at https://auburnpub.com/blogs/eye_on_ny/cuomo-wants-to-close-three-ny-prisons/article_40697c7b-171a-5543-9d32-fef5b220e327.html.

reformed. Incarceration is inherently inconsistent with maintaining family bonds. Decarceration is therefore essential to supporting families.

The Challenges of Family Unity Upon Re-Entry

Family unity and other support structures are extremely important for people returning to the community from prison. Thousands of people are released every year, many of whom immediately enter the shelter system. After suffering separation at any of the stages of involvement in the criminal legal system stated above, reuniting can be a challenge. Certainly, there are emotional complexities to navigate—from the trauma of seeing a loved one arrested to the stigma of incarceration. However, there are also statutory barriers erected by the government. People with criminal records may be denied tenancy with their families in public housing or other subsidized apartments. They face discrimination in professional licensing, employment and every other facet of community engagement, thus obstructing their ability to help support their families and make amends for past conduct. Parents listed in the SCR (which means an investigation into an allegation of child neglect or abuse resulted in “some credible evidence” which may or may not have resulted in a case against them, even if it was later dismissed in court) are denied countless employment opportunities simply because young people would be present on the job premises, and prohibiting from becoming foster or adoptive parents. (In 2018, 67,852 reports to the SCR and 58,118 investigations, with 31.8% meeting the “some credible evidence” standard.¹²) BDS, along with a new coalition led by impacted parents, urges state legislators and the Governor to reform the SCR to eliminate unnecessary barriers to success. Ultimately, many families overcome these barriers in spite of – not with help from – government policies and practices.

Int. No. 1349 (Dromm) - Requiring the police department to implement child sensitive arrest policies

BDS supports the development of child-sensitive arrest policies and applauds many provisions in this bill. However, we *implore* the Council to remove provisions that may trigger more and earlier involvement by ACS in marginalized families’ lives. In fact, we believe these provisions undermine the spirit of the law. While ACS caseworkers serve many roles, they are primarily an investigatory agency that separates families, rather than keeping them together. Our child protective services system has been termed the New Jane Crow for its mass punishment and control of low-income Black and Latinx families, and particularly mothers.¹³ Many of our Family Defense Practice clients report having more traumatic interactions with ACS than with NYPD. Where the arrest of a parent is not related to the child’s care and safety and there is no child abuse or neglect suspected, there is no need to contact ACS where a parent is given the opportunity to make a temporary plan for the child’s care. A parent knows best who the child’s extended family and community is and should be given the opportunity to find a trusted resource who can care for their child during the arrest. Allowing the parent to make the arrangement for

¹² NYC Admin. for Children's Services, Flash Monthly Indicator Report - January 2019 (2019), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2019/01.pdf>

¹³ Stephanie Clifford & Jessica Silver-Greenberg, Foster Care As Punishment: The New Reality of ‘Jane Crow’, The New York Times, June 21, 2017, available at <https://www.nytimes.com/2017/07/21/nyregion/foster-care-nyc-jane-crow.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer>

their child will help lessen the trauma to this child. Community-based groups that provide direct support should fulfill the role of assisting children and families during traumatic events like arrests, not ACS. As noted above, NYPD officers are already required by state law to report incidents of suspected child maltreatment to the state and ACS, and may remove a child if there is an imminent risk of harm to that child.¹⁴ **Involving ACS in every single arrest of a caregiver, including when the child is nowhere near the scene of the arrest, will only drive more families into the child welfare system, needlessly separating families and clogging Family Courts.** ACS is already overburdened by thousands of reports, most of which are ultimately unfounded, and should not be additionally tasked with investigating families where there is no suspicion of abuse or neglect. Given the massive dragnet of our criminal legal system, and the racial and economic disparities in who is targeted, there should be no presumption that a child is at risk due to a parent's arrest.

Int. No. 806 (Williams) - Creating an interagency task force to be charged with studying the obstacles faced by children of incarcerated parents, from arrest to reunification.

As noted above, BDS urges amendments to Int. No. 806. The bill calls for a task force studying the obstacles faced by children of incarcerated parents, chaired by the Commissioner of the Department of Correction, or their designee, and consisting of Commissioners or representatives from ACS and NYPD, as well as members with relevant expertise. This task force should be chaired by impacted families and relevant service providers. Agency officials who have erected or maintained these barriers should not be relied upon to steer the development of solutions.

BDS is grateful to the Committees on Public Safety and the Justice System for hosting this critical hearing and shining a spotlight this issue. Thank you for your time and consideration of our comments. We look forward to further discussing these and other issues that impact people we represent. If you have any questions, please feel free to reach out to Jared Chausow, our Senior Advocacy Specialist, at 718-254-0700 ext. 382 or jchausow@bds.org.

¹⁴ NY Social Services Law § 413

TESTIMONY

Oversight: Family Separation in Criminal Cases

The Council of the City of New York

Committee on Justice System
Committee on Public Safety

February 25, 2019

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The Legal Aid Society welcomes the opportunity to testify before the Committees on Justice System and Public Safety, respectively, regarding family separation in criminal cases, the importance of child sensitive arrest policies and procedures, and Int. No. 1349. We thank Chairs Lancman and Richards for holding this important and timely hearing.

The Legal Aid Society is the nation's oldest and largest not-for-profit legal services organization. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform. Through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City, the Society provides comprehensive legal services in all five boroughs of the City. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States.

The Legal Aid Society's Juvenile Rights Practice represents children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 34,000 children, including approximately 1,500 who were arrested and charged in Family Court with juvenile delinquency. The Society's Criminal Practice handled nearly 230,000 trial, appellate, and post-conviction cases for clients accused of criminal conduct. In addition to representing many thousands of children, youth, and adults each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

As evidenced by the horrific arrest of Jazmine Headley at the Brooklyn Human Resources Administration (HRA) building in December, all entities with authority to make arrests **must** implement child sensitive arrest policy and procedures. It is critical to safeguard the

thousands of predominantly Black American and Latinx children who experience the arrest of a caregiver every year in New York City. According to the New York City Criminal Justice Agency, at least 35,581 children lived with a parent who was arrested in 2017.¹ All of these children experienced the trauma of family separation as a result of their parent's arrest and likely a significant number have witnessed the arrest itself. Witnessing the arrest of a caregiver is a stressful and traumatic event that can have long lasting, harmful consequences for these children.² Because the manner in which children are treated by law enforcement and other agencies at the time of a caregiver's arrest can be so significant, The Legal Aid Society urges NYPD and all agencies with arrest authority to implement policies and procedures that protect children at the time of caregiver arrest and minimize the trauma associated with this stressful event.

While The Legal Aid Society supports the efforts of City Council, as reflected in Int. No. 1349, further action is needed. The arrest of Jazmine Headley was particularly appalling because not only was the arrest traumatic for the mother and child, but it was apparent that there was no justification for making *any* arrest at that moment. As a result, it is clear that this type of abuse of authority must be addressed. We call on the City Council to prohibit the NYPD and other actors authorized to make arrests from taking a person into custody, rather than issuing a summons or Desk Appearance Ticket, when the conduct at issue does not rise to the level of a misdemeanor offense. At a minimum, taking a person into custody for non-criminal conduct should not be permitted when the person has his or her children in their physical custody at the time of the alleged incident.

¹ While this data does not reveal how many of these children witnessed the arrest, it provides a sense of the reach of this issue. https://www.bronxdefenders.org/wp-content/uploads/2019/02/SafeguardingChildren_NYC_Feb4.pdf

² Anna T. Laszlo and others, *Leaving No Child Alone: A Training and Planning Guide for the Emergency Response to Children of Arrestees*, (Vienna, Virginia: Circle Solutions, Inc., and The American Bar Association Center on Children and the Law, May 1998), page 10.

Trauma of Arrest and Family Separation

It is not surprising that the arrest of a caregiver can have a significant negative impact on a child. Witnessing a police officer enter a child's home or handcuff and take a caregiver away can be a highly emotional, stressful and traumatic event in a child's life. Children may feel shock, fear, anxiety and/or anger. Children experiencing the arrest of a caregiver report feeling afraid of being abandoned or of being taken away as well. Children report experiencing feelings of worry for their caregiver's safety, guilt or a sense of responsibility for their caregiver's actions, and isolation when they are left with little to no information about what is happening to their caregiver.³ These myriad emotions can overwhelm a child, and such events may negatively impact a child's immediate and long-term emotional, mental, social and physical health.⁴ Research confirms that many children experience trauma when parents are arrested. Such trauma, according to U.S. Department of Justice (DOJ), may "create an 'adverse childhood experience' that increases the child's risk of negative outcomes in adulthood."⁵ As documented by the California Research Bureau, children suffer symptoms such as sleep disturbances, separation anxiety, irritability, and even more serious post-traumatic reactions.⁶ Other common reactions of children to trauma include hyper-vigilance, regression, withdrawal, blunted emotions, and distractibility.⁷

We know from our Family Court practice that separating children from their parent(s) is exceedingly traumatizing. As child welfare practitioners have known and social science research

³ Ann Adalist-Estrin, Director, National Resource Center for Children and Families of the Incarcerated, Children of Prisoners Library, Copyright FCN 2004.

⁴ See the Report of the Attorney General's National Task Force on Children Exposed to Violence (December 12, 2012), 29–35, <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf> (accessed March 7, 2014).

⁵ <https://www.bja.gov/funding/CAPTTA17.pdf>

⁶ See Ginny Puddefoot and Lisa Foster, Keeping Children Safe When Their Parents are Arrested: Local Approaches That Work (California Research Bureau, July 2007) and "Adverse Childhood Experiences (ACE) Study," Centers for Disease Control and Prevention, <http://www.cdc.gov/ace/findings.htm> (accessed March 7, 2014).

⁷ National Center for Children Exposed to Violence, A Commitment to Finding Solutions, page 3.

has shown for decades, the forcible separation of children from their parents can cause irreparable harm and bring lifelong consequences to the health and well-being of both the children and their parents.⁸ For these reasons, it is imperative that NYPD and all city agencies involved in the arrest of a caregiver have policies and supports in place that are trauma-informed and that build on best practices. These supports must include family engagement, empowerment and collaboration by the arresting entity at the time of an arrest.⁹

Disproportionate Impact on Black Children

Given firmly established racial and ethnic disparities in policing and arrest practices in New York City, Black and Latinx children are disproportionately impacted by caregiver arrests. We remain gravely concerned that NYPD policing and arrest practices overwhelmingly target people of color. For decades, due to over policing and historic and systemic racism, Black and Latinx people in New York City have been unfairly and vastly overrepresented in the justice system. Specifically, the vast majority of individuals processed through the juvenile and adult courts come from a small handful of New York City communities: Brownsville, East New York, Far Rockaway, South Bronx, Bedford-Stuyvesant and certain sections of the North Bronx.¹⁰ These neighborhoods also experience significant problems of poverty, inadequate services to meet high needs, low performing schools, higher than average prevalence of health and mental health issues and substandard housing stock. Much more must be done to augment and expand services in these communities to address racial inequities and the persistent needs.

⁸ See, e.g., American Psychological Assn, Parents and Caregivers are Essential to Children’s Healthy Development, available at <http://www.apa.org/pi/families/resources/parents-caregivers.aspx>; Sankaran, Vivek, Church, Christopher, “Easy Come, Easy Go: The Plight of Children Who Spend Less than 30 Days in Foster Care,” 19 U. Pa. J. L. Soc. Change 207 (2017).

⁹ Lang, Jason M., and Christopher T. Bory, “A Collaborative Model to Support Children Following a Caregiver’s Arrest: Responding to Children of Arrested Caregivers Together (REACT),” (New Britain, CT: Central Connecticut State University, Institute for Municipal and Regional Policy, September 2012), available at http://www.chdi.org/files/7914/1200/4697/children_of_incarcerated_parents.pdf, 13.

¹⁰ http://gothamist.com/2013/05/01/these_interactive_charts_show_you_w.php

NYPD data reveals that in 2017 alone there were 10,861 NYPD stop-and-frisks. Fifty-eight percent of those stops were of Black New Yorkers and 32% were Latinx New Yorkers.¹¹ Racial disparities are even more evident in arrests, particularly for certain categories of offenses. For example, ninety-three percent of the people arrested by the NYPD for marijuana possession in January-March of 2018 were Black and Latinx. Of the 4,081 arrests for criminal possession of marijuana, only 287 (7%) of those arrested were White people, compared to 2,006 (49%) Black people and 1,621 (40%) Latinx people.¹² These disparities are especially troubling considering that Black New Yorkers make up only 25.1% of the city's population.

Notably, following arrest, Black and Latinx families are more likely to suffer the trauma of separation. According to a report by the Vera Institute of Justice, Black and Latinx adults are more likely to be remanded while awaiting trial in New York County, even after controlling for the seriousness of charges and prior record, interfering with their familial responsibilities and their relationships with their children.¹³ Incarceration disrupts family life and further harms the children of arrested caregivers.

We urge the Council and the NYPD to improve the quality and increase the reach of NYPD's initiatives to improve policing and reduce disproportionate minority contact. Other police departments have worked with experts and non-profit organizations to address racial and ethnic disparities in policing, improve police - community interactions, reduce the number of confrontations, increase community support, and reduce the number of arrests. Specialized training, including training around child sensitive arrests, must address ways to reduce disproportionate minority contact.

¹¹ <https://www.nyclu.org/en/stop-and-frisk-data>

¹² <https://www.innocenceproject.org/racial-disparities-in-nyc-arrest-data-marijuana-possession/>

¹³ <https://www.ncjrs.gov/pdffiles1/nij/grants/247227.pdf>

Child Sensitive Protocols Must Extend to All Entities with Authority to Make Arrests

We have all been appalled by the horrific arrest of Jazmine Headley at the Brooklyn Human Resources Administration (HRA) building in December. Ms. Headley's arrest, as captured on video, involved several security guards at the Fort Greene Supplemental Nutrition Assistance Program (SNAP) and NYPD officers. After waiting for hours, Ms. Headley who had her one year old boy with her, sat down on the floor to rest while she waited. As reported in the media, Ms. Headley engaged in a verbal dispute with security guards after they insisted she stand while she waited.¹⁴ The NYPD arrived and officers forcibly ripped Ms. Headley's infant child from her arms while attempting to arrest her. On the video you can witness Ms. Headley plead for her son and the violent force it took to remove the child from her.

The circumstances following Ms. Headley's arrest truly shock the conscious; yet we hear stories from our clients on a regular basis about their negative experiences with bureaucratic offices and staff – agencies and people who are ostensibly supposed to assist New Yorkers at times of great need. For this reason, *all* entities with authority to make arrests **must** implement a child sensitive arrest policy and procedures. All city agencies and contracted entities with the power to conduct arrests can and must be required to implement a comprehensive policy to safeguard children of arrested parents and to train all officers on child-sensitive arrest protocols, to prevent the type of harm experienced by Ms. Headley and her infant son.

Int. No. 1349

While we are heartened by the Council's bill requirement that NYPD implement a child sensitive arrest policy and training, as described more fully below, we believe that the bill should be strengthened in several ways. At the outset, we urge the NYPD to review model policies and training guides when crafting their child sensitive arrest policy, including the "Children of

¹⁴ <https://abc7ny.com/society/officers-pry-1-year-old-from-moms-arms-during-arrest/4868592/>

Arrested Parents” policy of the San Francisco Police Department.¹⁵ Additionally, the International Association of the Chiefs of Police (IACP) model policy for “Safeguarding Children of Arrested Parents” outlines a detailed law enforcement protocol to safeguard children. The IACP implementation guide and training tools are available on the IACP website. Strategies for Youth has also produced a report on model practices for law enforcement agencies when arresting parents in the presence of children. New York should look to these resources, models and jurisdictions to guide their implementation of child sensitive arrest practices.

With regard to the Int. 1349, first, we recommend that the bill be amended to require NYPD to partner with a community based organization rather than the Administration for Children’s Services (ACS) to assist with arrests when a child bystander is present. The bill currently requires NYPD to establish cooperative agreements with ACS **or** a partner organization to assist in arrests where a child may be present. As part of the cooperative agreement, ACS or the partner organization would coordinate with NYPD in executing arrests where a child might be present, contact an alternative caregiver when the arrestee is unable, communicate with the child about why the caregiver was arrested when the arrestee is unable and assist after an arrest with the logistics of arranging alternate supervision of the child. This critical role should be filled by social workers trained in trauma informed practices who have relevant experience working with youth. Although ACS may seem like a good candidate for this role, we believe that a community-based organization would be better suited to connect with the families impacted by arrests.

There is a stigma associated with ACS involvement and many families - adults and children - may be hesitant to trust ACS workers or to feel comforted by their presence. Feelings of distrust would undermine the agency’s purpose in being present at the time of the arrest.

¹⁵ https://strategiesforyouth.org/sfysite/wp-content/uploads/2012/09/First_Do_No_Harm_Report.pdf, see p. 37.

Moreover, there is a very real fear that contact or exposure to ACS can lead unnecessarily to an open ACS case and foster care involvement. In addition, because of the disproportionate minority contact between the police and people of color, ACS involvement in arrests could serve to further perpetuate the disproportionate representation of people of color in the child welfare system.¹⁶ Having a non-governmental community-based organization fill this role would ameliorate these concerns and be a more comforting presence in highly traumatic moments.

Second, such policies should include a requirement that NYPD establish or enter into a cooperative agreement with an entity that can offer a safe, child friendly space for a child bystander to wait for an alternative caregiver, **if** the officer or partner organization cannot wait with the child at home. The bill currently requires that NYPD's policy allow an arrested caregiver a reasonable opportunity to make alternate arrangements for the care of a child bystander. When such arrangements are not possible, NYPD must provide the arrested caregiver the opportunity to provide NYPD or the partner organization with contact information for the preferred alternative caregiver. The bill should require that NYPD or partner organization wait with the child at home, if that is where the arrest took place, or to take the child to a comfortable, and safe space to await an alternate caregiver. The space should be child friendly and separate from a police precinct. One precinct in Brooklyn already has a similar pilot program - arresting officers in this precinct take children to a Child Advocacy Center when a caregiver is arrested and an alternate caregiver cannot be immediately located. Allowing the child to wait in a space designed to comfort rather than incarcerate is imperative to reduce trauma and assist in the care and protection of child bystanders.

¹⁶ Black children enter the child welfare system in numbers far greater than their proportion of the general population. While black children represent 24.3% of the city's youth, they make up over 55% of the population in foster care. https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.

Similarly, caregivers should be allowed to use their cell phones once in custody to contact their child directly about their arrest and about alternate care arrangements. As the IACP policy notes, “[m]any children are taught to never accept a call from an unknown number. Therefore, using a telephone in the booking location would most likely result in the child not answering. By allowing the arrestee to use his or her cellular telephone, the likelihood of speaking directly with the child is greatly increased. In addition, many individuals no longer memorize their phone numbers and only have them saved in their cellular phones, which they may rely on exclusively to make calls; and which will not accept the collect charges that are commonly associated with telephones in jail or holding facility settings.” The policy should also outline ways for officers to gather information on alternative caregivers if the arrested caregiver does not or cannot provide it.

Six of the nine policy requirements in the bill include the phrase “where practicable.” This language undermines the urgency and necessity of these requirements and, without a clear definition, allows for unfettered discretion by NYPD officers. For example, in paragraph b.5, the bill requires that NYPD “[w]here practicable, prior to being removed from their presence, provid[e] an arrested caregiver the opportunity to speak with a child bystander who is present.” An arrested caregiver should *always* be permitted to speak with their child absent “extraordinary circumstances,” such as a real and immediate physical threat to officer safety or the safety of others. Similarly, an arrested caregiver should always be permitted a reasonable opportunity to make alternative arrangements for the care of the child bystander (paragraph b.8). This opportunity should only be limited if “extraordinary circumstances” exist. The sections of the bill that cabin requirements with “where practicable” language must be strengthened to ensure that the purpose of the policy is not undermined.

Finally, we were pleased to see that the bill requires training of NYPD officers in several areas, including the use of developmentally appropriate language to communicate with a child during a caregiver’s arrest as well as child development and the effects of trauma. The U.S. Department of Justice (DOJ) supports such trainings and has noted their importance in order to “mitigate the potential of creating trauma associated with a parent’s arrest and/or other investigation actions carried out by law enforcement.”¹⁷ The training should be conducted by an external entity with experience training law enforcement about child development and child sensitive arrest practices. There are several organizations, including those funded by the DOJ,¹⁸ that focus on national technical assistance and outreach in child sensitive arrest practices.

The Need To Prohibit Taking Persons Into Custody For Non-Criminal Offenses

Jazmine Headley’s arrest is but one example of the type of abuse of authority that Black and Latinx people are subjected to with unconscionable frequency. There was no need for Ms. Headley to be taken into custody at that moment. While training in child sensitive arrest practices would have improved that encounter, it will not address the underlying problem. Because the NYPD and other actors authorized to make arrests are permitted to take people into custody for conduct that does not even rise to the level of a misdemeanor, they are empowered to create tremendous disruption, humiliation, and potential trauma in the life of a person even when minor misconduct is an issue. This awesome power invites the abuse of authority. We call on the City Council to prohibit the NYPD and other actors authorized to make arrests from taking a person into custody, rather than issuing a summons or Desk Appearance Ticket, when the conduct at issue does not rise to the level of a misdemeanor offense. At a minimum, taking a person into custody for non-criminal conduct should not be permitted when the person has his or her

¹⁷ <https://www.bja.gov/funding/CAPTTA17.pdf>

¹⁸ <https://www.bja.gov/funding/CAPTTA17.pdf>

children in their physical custody at the time of the alleged incident. Only this type of law that removes NYPD discretion to arrest for a violation would have prevented the horrifying arrest and separation of Jazmine Headley and her son several months ago.

* * * *

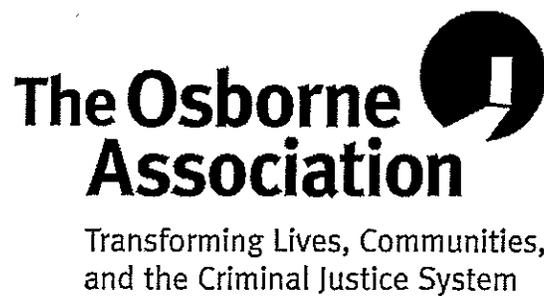
It is time for New York to step up and join the national movement toward child sensitive arrest practices and the training of law enforcement in child development and age appropriate communication during these stressful events. It is further time to ensure that the citizens of New York City are not subjected to the unnecessary humiliation and potential trauma of being taken into custody for conduct that does not even constitute a crime under New York State's laws. Thank you once again for the opportunity to testify regarding this important subject.

**Testimony of the Osborne Center for Justice Across Generations
at the Oversight Hearing of the City Council Committees on
Public Safety and the Justice System**

Family Separation in Criminal Cases

February 25, 2019

**Presented by
Tanya Krupat
Director, OCJAG
The Osborne Association**



Thank you for the opportunity to speak with you today and for the City Council's leadership in addressing the issues that Jazmine Headley's horrific arrest brought to light. My name is Tanya Krupat, Director of the Osborne Center for Justice Across Generations, the policy arm of the Osborne Association. A few years ago, Osborne launched its Policy Center to expand our justice reform and advocacy work, and to ensure that the lessons we learn from the 12,000 individuals we serve in our programs each year inform and shape the policies that deeply affect their and all of our lives.

Since 2007, when we launched our New York Initiative for Children of Incarcerated Parents, we have been deeply involved and leading efforts to safeguard children whose parents are involved with the criminal justice system, including from the moment a parent is arrested. Our work focuses on arrests where the parent is not physically harming the child or not harming the child in any way, such as the arrest of Jazmine Headley. For more than a decade we have been calling for efforts to safeguard children at the time of arrest, including written protocols, training, and data collection to monitor implementation and impact with the goal of preventing the kind of trauma that Ms. Headley and her infant son have now experienced.

Our sense of urgency around the need to minimize trauma to children at the time of a parent's arrest is informed by the very first right of the Children of Incarcerated Parents' Bill of Rights: "I have the right to be safe and informed at the time of my parent's arrest." Created in 2005 in partnership with young people whose parents had been arrested and incarcerated, these 8 rights provide us with a roadmap for reform. Since the voices of children and young people are often absent from our discussions about what is needed, I want to take a minute to read you the other 7 rights:

2. I have the right to be heard when decisions are made about me.
3. I have the right to be considered when decisions are made about my parent.
4. I have the right to be well-cared for in my parent's absence.
5. I have the right to speak with, see, and touch my parent.
6. I have the right to support as I face my parent's incarceration.
7. I have the right not to be judged, blamed or labeled because my parent is incarcerated.
8. I have the right to a lifelong relationship with my parent.¹

Our understanding of what is needed is also informed by the direct services we provide to children whose parents are incarcerated, all of whose parents were first arrested. We have heard directly from children about how they were devastated and scarred by witnessing their parent's arrest as well as their haunting memories as they rethink the trauma of that moment. Even years later, young people describe (as if it just happened) the experience of being right there but not

¹ These rights were developed by the San Francisco Partnership for Children of Incarcerated Parents (2005): www.sfcipp.org

being acknowledged or considered. In addition to the impact this has on their own sense of self and worth, it also affects their view of those in a uniform. Instead of associating safety and comfort with a uniformed authority, they associate fear, anger, and an abuse of power. This is not in children's best interest, nor is it in law enforcement's best interest. The Albany Police Department recognized this several years ago when they embraced implementing a child-sensitive arrest protocol as part of their strategic plan which included the goal of "winning back a generation" (building positive relationships between law enforcement and young people).

Interestingly, in 2008 (fully 11 years ago) when we conducted focus groups with parents who had been arrested, one of their biggest concerns was the fear that their child would not seek out help from a uniformed officer because of what they witnessed; if their child was ever lost or being followed, they *wanted* their child to go to an officer. Child-sensitive arrest protocols are a critical element of a larger plan to improve police- community relations, and they are essential to child well-being.

The good news is that there are concrete models out there for minimizing trauma to children when a parent is arrested. The International Association of Chiefs of Police issued a detailed model protocol in 2013, including an implementation guide. And, we successfully worked with the Albany Police Department to develop a written protocol, launch comprehensive training, and collect data. They also took the extra step to coordinate with schools to implement "Handle with Care," a model developed in West Virginia where law enforcement alert a school when a child has witnessed or experienced trauma and may be in need of extra care. Strategies for Youth is also an excellent organization and training resource for implementing child-sensitive arrest protocols.

While here in NYC, the NYPD has shared that they are piloting an effort in Brooklyn South precincts and they have issued booking room posters alerting parents that they can make extra phone calls to arrange care for their child(ren), we remain concerned about the extent of implementation and the pace at which progress is being made. To our knowledge, no citywide protocol is in place as we near 3 months since Ms. Headley's arrest, and over a year since their pilot was launched.

We support **Intro. 1349** with some amendments and revisions which are outlined in an edited version attached to my written testimony. Broadly, we caution against over-involving or defaulting to ACS unless there is suspicion of abuse or neglect, or the parent being arrested does not have anyone to designate to care for the child in which case, the parent should be offered the option of a voluntary placement. We also advise that whenever possible and in all warrant situations, information about children be shared in advance of the arrest so that necessary steps can be taken to minimize trauma to children. Finally, we hope that City Council will consider funding existing child/ family-serving programs or organizations that specialize in child mental

health and trauma to be available as a resource to NYPD, and to children and families after an arrest. Ideally, each City Councilmember would have funding to designate for this within her/ his district the way the Supporting Our Seniors funding is designed.

Lastly, my written testimony also includes a letter submitted a few weeks ago signed by more than 40 organizations, calling on the Mayor and City Council to take action immediately to safeguard children if and when a parent is arrested. This letter emphasizes the need for all City agencies and contracted entities with the authority to make arrests to have written protocols and substantive training to minimize trauma to children at the time of a parent's arrest. The Department of Correction, Probation, and other contracted entities all make arrests that include those made in front of children and of children's parents. While we do not have solid data on how many children are present at or affected by their parent's arrest, data from the Criminal Justice Agency (also attached) suggests tens of thousands of children each year, and a 2013 survey by the Division of Criminal Justice Services of currently incarcerated parents in NYS prisons found that,

“Thirty-three percent (158) of the 483 incarcerated parents reported that at least one of their children had been involved in their arrest in some way. Eighty-eight incarcerated parents (18%) reported that their child had witnessed their arrest, and 87 incarcerated parents had been handcuffed in front of their child. Forty-five incarcerated parents (9%) reported that law enforcement drew a weapon in front of their children.”²

We cannot wait any longer to take action: we owe it to NYC's children, to Ms. Headley and her infant son, and to arresting Officers who deserve the best guidance possible to address this absence of protocol and implementation now.

Thank you.

CONTACT:

Tanya Krupat, Director
Osborne Center for Justice Across Generations
tkrupat@osborneny.org

Attachments:

- February 2019 Letter to Mayor deBlasio
- CJA data 2017
- *Children of Incarcerated Parents' Bill of Rights*
- Strategies for Youth materials on child development

² DCJS (2013). *Children of Incarcerated Parents in New York State: A Data Analysis*.

Safeguarding Children at the Time of Arrest

February 1, 2019

Dear Mayor de Blasio,

We, a diverse group of human service providers, faith-based leaders, and advocates call on the leadership of New York City to immediately adopt a city-wide policy to safeguard children at the time of a parent's arrest and provide **all** arresting officers with substantive training to minimize trauma to children who are present during an arrest. NYC has a clearly articulated protocol in place when the parent is being arrested for harm to the child;¹ we call on NYC to have an equally detailed and comprehensive protocol when parents are arrested for non-child-related reasons.

It is clear from the incident on December 7, 2018, when responding officers forcibly ripped Jazmine Headley's infant son from her arms at a Brooklyn Human Resources Administration (HRA) building, that the officers were not equipped with the sensitivity and skills necessary to consider the needs and safety of Ms. Headley's son. Contrary to the response of the NYC Patrolmen's Benevolent Association President Patrick J. Lynch who stated, "The immediate rush to condemn these officers leaves their fellow cops wondering: when confronted with a similar impossible scenario, what do you want us to do?," there is a lot that the officers could have done differently (not to mention that this was hardly an "impossible scenario"). There are concrete steps to put into place immediately to ensure this never happens again. Children's well-being depends on these next steps, and officers' safety and welfare are maximized by implementing these steps as well.

The NYPD, HRA, and all city agencies and contracted entities with the power to conduct arrests can implement a comprehensive policy to safeguard children of arrested parents and begin training **all** officers immediately on child-sensitive arrest protocols. Existing resources and training curricula exist. For example, the International Association of the Chiefs of Police (IACP) model policy for "Safeguarding Children of Arrested Parents" published in 2014 outlines a detailed law enforcement protocol to safeguard children, and an implementation guide and training tools are available on the IACP website. Curricula on child-sensitive arrest practices should also be included in The New York Police Academy Basic Training curricula. As of 2016, all law enforcement officers in New York State, **except for the NYPD and the New York State Police**, receive training on how to safeguard children at the scene of arrest as part of the NYS Office of Public Safety's Basic Training.

Child-sensitive arrest protocols should minimally include the following whenever possible and appropriate:

- arresting the parent out of the child's sight;
- not handcuffing the parent in front of the child or using a siren;

¹ Instant Response Teams respond to cases involving severe abuse and/or maltreatment of a child and consist of personnel from ACS, NYPD, and the county District Attorney's office who work together to minimize trauma to children.

- allowing the parent access to their cell phone and extra phone calls to arrange care for the child;
- allowing the parent to comfort and explain to the child what is happening.

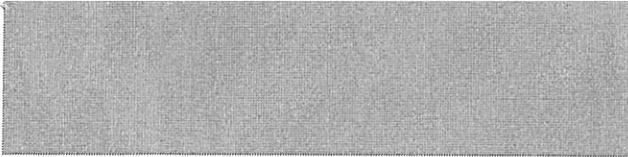
Arresting officers should ask all arrested individuals whether they are responsible for someone in need of alternative caregiving arrangements so that no child or vulnerable adult is left unattended and at risk. Written protocols should cover all arrest scenarios, including warrants that should be executed when children are least likely to be in the home. Monitoring implementation is critical to ensure that officers are following the protocol and to identify additional training needs. Law enforcement agencies should collect and report on data including how many children are present at the time of an arrest so that NYC can ensure supportive services are available to children.

It is critical to recognize and safeguard the thousands of children who experience the arrest of a parent every year in New York City. We know from data aggregated by the New York City Criminal Justice Agency that **at least 35,581 children lived with a parent who was arrested in 2017**. While we don't know how many children witnessed the arrest (this data remains unavailable), it is safe to say that far too many children experience this trauma.

We call on you and the leadership of our City to take these immediate steps to safeguard children.

Sincerely,

- | | |
|--|--|
| 1. Bronx Clergy Criminal Justice Roundtable | 21. Hindu Temple Society of North America |
| 2. Bronx Christian Fellowship | 22. JCCA |
| 3. CASES | 23. Lawyers for Children |
| 4. Center for Community Alternatives | 24. Legal Action Center |
| 5. Center for Family Representation | 25. Mott Haven Reformed Church |
| 6. Child Center of NY, Queens | 26. Mount Vernon Heights Congregational Church |
| 7. Children of Promise NYC | 27. New Hope Christian Fellowship Brooklyn |
| 8. Children's Defense Fund, New York | 28. New York Board of Rabbis |
| 9. Children's Haven | 29. New York Initiative for Children of Incarcerated Parents |
| 10. Citizens Committee for Children | 30. New York Zero to Three Network |
| 11. Community Connections for Youth | 31. Not on My Watch! Safe Haven Network |
| 12. Community Service Society | 32. NYS Council of Churches |
| 13. Concerned Clergy for Choice | 33. NYU Family Defense Clinic |
| 14. EAC Network | 34. Office of the Appellate Defender |
| 15. Empire State Progressives | 35. Sills Family Foundation |
| 16. Families, Fathers And Children | 36. St. James' Church, NYC |
| 17. Fortune Society | 37. The Osborne Association |
| 18. Gods Battalion of Prayer, Brooklyn | 38. TASC of the Capital District |
| 19. Graham Windham | 39. Youth Represent |
| 20. Greenburger Center for Social and Criminal Justice | |



40. We Got Us Now

41. Women & Justice Project

42. Women's Prison Association

Cc:

Speaker Corey Johnson, New York City Council

Commissioner James O'Neill, New York City Police Department

Commissioner Steve Banks, Human Resources Administration

Liz Glazer, Director of the Mayor's Office of Criminal Justice

Councilmember Stephen Levin, Chair, Committee on General Welfare, City Council

Councilmember Donovan Richards, Chair, Committee on Public Safety, City Council

Aubrey Fox
Executive Director

September 19, 2018

DEFENDANTS' FULL-TIME CARE AND FINANCIAL SUPPORT OF CHILDREN, 2017

Prepared by: New York City Criminal Justice Agency

Prepared for: The Osborne Association

In 2017, 5,069 defendants told CJA's pretrial associates that they provided full-time care to children, and 36,777 defendants reported that they provided financial support to over 74,000 children. Compared to 2016, defendants provided financial support to fewer children (77,471 in 2016 vs. 74,387 in 2017), while the percentages of defendants providing full-time care (4.1% in 2016 vs. 3.9% in 2017) and financial support (29% in 2016 vs. 30% in 2017) remained roughly the same.

CJA's pretrial associates collect this data as they complete an interview form prior to the defendant's arraignment. Although there is no script for the questions, defendants are asked to indicate if they are a full-time caregiver, whether they provide financial support to a child, and how many children they support.

This memo provides 2017 data on: 1) demographic characteristics of defendants providing full-time care to children, 2) full-time caregivers incarcerated after arraignment, 3) demographic characteristics of defendants providing financial support to children, 4) defendants providing both financial support and full-time to children, and 5) numbers of children receiving financial support from defendants. For defendants arrested multiple times during the year, data are based on the defendant's last arrest in 2017.

I. Demographic Characteristics of Defendants Providing Full-Time Care of Children

In 2017, about 4% (5,069) of defendants reported providing full-time care to at least one child.

As shown in the tables below, full-time care of children varied by demographic characteristics. Defendants in Manhattan were less likely to report full-time caregiving (2.0%) than those in other boroughs (Table 1, next page). Full-time caregiving was most common among Non-Hispanic Black (4.4%) defendants, and least common about Non-Hispanic White (2.5%) defendants (Table 2). Females were more likely to report full-time caregiving (Table 3). Defendants age 31-40 were the most likely age group to report full-time caregiving (Table 4).

Table 1: Full-Time Care of Children by Borough

	Borough of Arrest					Total, all boroughs
	Brooklyn	Manhattan	Queens	Staten Island	Bronx	
Number of Full-Time Caregivers	1,951	617	1,418	146	937	5,069
% Full-Time Caregivers	5.3%	2.0%	5.0%	2.8%	3.4%	3.9%
<i>(Number of Defendants)</i>	<i>(36,777)</i>	<i>(30,768)</i>	<i>(28,082)</i>	<i>(5,191)</i>	<i>(27,751)</i>	<i>(128,569)</i>

Table 2: Full-Time Care of Children by Ethnicity

	Ethnicity					Total
	Non-Hispanic White	Non-Hispanic Black	Hispanic	Asian	Non-Hispanic Other	
Number of Full-Time Caregivers	357	2,781	1,672	154	105	5,069
% Full-Time Caregivers	2.5%	4.4%	3.9%	2.7%	3.8%	3.9%
<i>(Number of Defendants)</i>	<i>(14,369)</i>	<i>(62,647)</i>	<i>(43,097)</i>	<i>(5,681)</i>	<i>(2,775)</i>	<i>(128,569)</i>

Table 3: Full-Time Care of Children by Gender

	Gender		
	Male	Female	Total
Number of Full-Time Caregivers	2,648	2,421	5,069
% Full-Time Caregivers	2.5%	10.8%	3.9%
<i>(Number of Defendants)</i>	<i>(106,129)</i>	<i>(22,440)</i>	<i>(128,569)</i>

Table 4: Full-Time Care of Children by Age

	Age						Total
	Under 20	21-30	31-40	41-50	51-60	61 and older	
Number of Full-Time Caregivers	180	2,033	1,820	793	216	27	5,069
% Full-Time Caregivers	1.2%	4.4%	5.8%	4.1%	1.6%	0.8%	3.9%
<i>(Number of Defendants)</i>	<i>(14,682)</i>	<i>(46,716)</i>	<i>(31,607)</i>	<i>(19,141)</i>	<i>(13,210)</i>	<i>(3,211)</i>	<i>(128,569)</i>

II. Full-Time Caregivers Incarcerated After Arraignment

After arraignment, 13.1% (662) of full-time caregivers were incarcerated, either because the defendant could not make bail (12.1%), the defendant was remanded without bail (0.6%), or a jail sentence was imposed (0.4%). For those who could not make bail, the median bail amount was \$3,002; the median bail did not vary considerably by demographic characteristics (data not shown).

Full-time caregivers in Manhattan (17.3%) were the most likely to be incarcerated after arraignment (Table 5). Incarceration after arraignment was most common among Non-Hispanic Black caregivers (14.4%), and least common among Non-Hispanic Other caregivers (4.8%; Table 6). Male caregivers were more likely than female caregivers (18.0% vs. 7.6%) to be incarcerated after arraignment (Table 7). There was no clear relationship between incarceration after arraignment and age (Table 8, next page).

Table 5: Incarcerated After Arraignment by Borough

	Borough of Arrest					Total, all boroughs
	Brooklyn	Manhattan	Queens	Staten Island	Bronx	
Incarcerated After Arraignment	238	107	193	24	100	662
% Full-Time Caregivers	12.2%	17.3%	13.6%	16.4%	10.7%	13.1%
<i>(Number of Defendants)</i>	<i>(1,951)</i>	<i>(617)</i>	<i>(1,418)</i>	<i>(146)</i>	<i>(937)</i>	<i>(5,069)</i>

Table 6: Incarcerated After Arraignment by Ethnicity

	Ethnicity					Total
	Non-Hispanic White	Non-Hispanic Black	Hispanic	Asian	Non-Hispanic Other	
Incarcerated After Arraignment	46	400	196	15	5	662
% Full-Time Caregivers	12.9%	14.4%	11.7%	9.7%	4.8%	13.1%
<i>(Number of Defendants)</i>	<i>(357)</i>	<i>(2,781)</i>	<i>(1,672)</i>	<i>(154)</i>	<i>(105)</i>	<i>(5,069)</i>

Table 7: Incarcerated After Arraignment by Gender

	Gender		Total
	Male	Female	
Incarcerated After Arraignment	477	185	662
% Full-Time Caregivers	18.0%	7.6%	13.1%
<i>(Number of Defendants)</i>	<i>(2,648)</i>	<i>(2,421)</i>	<i>(5,069)</i>

Table 8: Incarcerated After Arraignment by Age

	Age						Total
	Under 20	21-30	31-40	41-50	51-60	61 and older	
Incarcerated After Arraignment	23	272	227	100	35	5	662
% Full-Time Caregivers	12.8%	13.4%	12.5%	12.6%	16.2%	18.5%	13.1%
<i>(Number of Defendants)</i>	(180)	(2,033)	(1,819)	(793)	(216)	(27)	(5,069)

III. Demographic Characteristics of Defendants Providing Financial Support to Children

About 30% (38,724) of defendants reported providing financial support to children.

Defendants in Manhattan were less likely to report financial support than those in other boroughs (Table 9). Financial support of children was most common among Hispanic (33.4%) defendants, and least common among Non-Hispanic White (18.9%) defendants (Table 10, next page). Men and women were almost equally likely to report financial support of children (Table 11, next page). Defendants age 31-40 were the most likely age group to report financial support (Table 12, next page).

Table 9: Financial Support of Children by Borough

	Borough of Arrest					Total, all boroughs
	Brooklyn	Manhattan	Queens	Staten Island	Bronx	
Number of Defendants Providing Financial Support	11,744	7,188	9,116	1,363	9,313	38,724
% Defendants Providing Financial Support	31.9%	23.4%	32.5%	26.3%	33.6%	30.1%
<i>(Number of Defendants)</i>	(36,77)	(30,768)	(28,082)	(5,191)	(27,751)	(128,569)

Table 10: Financial Support of Children by Ethnicity

	Ethnicity					Total
	Non-Hispanic White	Non-Hispanic Black	Hispanic	Asian	Non-Hispanic Other	
Number of Defendants Providing Financial Support	2,721	19,641	14,401	1,187	774	38,724
% Defendants Providing Financial Support	18.9%	31.4%	33.4%	20.9%	27.9%	30.1%
<i>(Number of Defendants)</i>	(14,369)	(62,647)	(43,097)	(5,681)	(2,775)	(128,569)

Table 11: Financial Support of Children by Gender

	Gender		Total
	Male	Female	
Number of Defendants Providing Financial Support	31,892	6,832	38,724
% Defendants Providing Financial Support	30.1%	30.4%	30.1%
<i>(Number of Defendants)</i>	(106,129)	(22,440)	(128,569)

Table 12: Financial Support of Children by Age

	Age						Total
	Under 20	21-30	31-40	41-50	51-60	61 and older	
Number of Defendants Providing Financial Support	947	14,103	14,426	6,919	2,164	165	38,724
% Defendants Providing Financial Support	6.5%	30.2%	45.6%	36.1%	16.4%	5.1%	30.1%
<i>(Number of Defendants)</i>	(14,682)	(46,716)	(31,607)	(19,141)	(13,210)	(3,211)	(128,569)

IV. Defendants Providing Financial Support & Full-Time Care

About 87% (5,069) of defendants who provided full-time care to children also provided financial support to children (Table 13). Only 28% of those who did not provide full-time care to children provided financial support. Overall, about 3.4% (4,415) of all defendants provided both full-time care and financial support to children (percentage not shown in table).

Table 13: Financial Support of Children by Full-Time Care of Children

	Provides Full-Time Care for children		Total
	No	Yes	
Number of Defendants Providing Financial Support	34,309	4,415	38,724
% Defendants Providing Financial Support	27.8	87.1%	30.1%
<i>(Number of Defendants)</i>	<i>(123,500)</i>	<i>(5,069)</i>	<i>(128,569)</i>

V. Number of Children Financially Supported by Defendants

In 2017, defendants provided financial support to 74,387 children (Table 14, last row). 27,282 of these children were children ages 0 to 11 years old who lived with the defendant; an additional 8,299 were children ages 12-17 living with the defendant (see “Totals” row at bottom of Table 14). Defendants also provided financial support to many children who were not living with them, including 30,240 ages 0 to 11 years old and 8,566 ages 12-17. Table 14 provides detailed data on the numbers of children supported by defendants for each borough, broken down by sex, ethnicity and age of the defendant.

Table 14: Financial Support for Children by Borough, Sex, Ethnicity, and Age

Borough	total # of defendants	# defendants supporting children	# defendants supporting children as % of total defendants in borough	#children living with defendant ages newborn to 11	#children living with defendant ages 12 to 17	# children not living with defendant ages newborn to 11	# children not living with defendant ages 12 to 17
BROOKLYN	36,777	11,744	32%	8,065	2,794	8,813	3,138
Sex: male		9,537 (81.2%)		5,516	1,878	8,437	2,992
female		2,207 (18.8%)		2,549	916	376	146
Ethnicity: Black		7,606 (64.8%)		4,840	1,642	6,184	2,164
White		851 (7.2%)		696	291	405	170
Hispanic		2,928 (24.9%)		2,175	730	2,025	746
Asian		166 (1.4%)		171	52	82	34
Other		193 (1.6%)		183	79	117	24
Age: <20		270 (2.3%)		128	2	189	0
21-30		4,154 (35.4%)		2,921	133	3,635	104
31-40		4,403 (37.5%)		3,384	1,284	3,476	1,483
41-50		2,158 (18.4%)		1,273	996	1,213	1,136
51-60		709 (6.0%)		333	358	279	390
61+		50 (0.4%)		26	21	21	25
BRONX	27,751	9,313	34%	6,520	1,593	8,978	1,722
Sex: male		7,679 (82.5%)		4,403	1,053	8,591	1,643
female		1,634 (17.5%)		2,117	540	387	79
Ethnicity: Black		4,241 (45.5%)		2,715	647	4,446	882
White		238 (2.6%)		193	45	159	39
Hispanic		4,678		3,454	848	4,262	764

Borough	total # of defendants	# defendants supporting children	# defendants supporting children as % of total defendants in borough	#children living with defendant ages newborn to 11	#children living with defendant ages 12 to 17	# children not living with defendant ages newborn to 11	# children not living with defendant ages 12 to 17
		(50.2%)					
Asian		41 (0.4%)		46	18	21	5
Other		115 (1.2%)		162	35	90	32
Age: <20		281 (3.0%)		114	0	220	1
21-30		3,753 (40.3%)		2,564	111	3,723	73
31-40		3,293 (35.4%)		2,558	726	3,473	890
41-50		1,483 (15.9%)		1,024	538	1,292	588
51-60		469 (5.0%)		248	201	252	161
61+		34 (0.4%)		12	17	18	9
MANHATTAN	30,768	7,188	23%	4,598	1,275	5,628	1,660
Sex: male		5,921 (82.4%)		3,154	895	5,386	1,585
female		1,267 (17.6%)		1,444	380	242	75
Ethnicity: Black		3,438 (47.8%)		2,019	509	2,962	863
White		576 (8.0%)		466	149	301	119
Hispanic		2,906 (40.4%)		1,858	530	2,2464	632
Asian		94 (1.3%)		99	34	24	4
Other		174 (2.4%)		156	53	95	42
Age: <20		153 (2.1%)		76	0	104	0
21-30		2,630 (36.6%)		1,641	57	2,377	55
31-40		2,667 (37.1%)		1,844	553	2,207	802
41-50		1,318 (18.3%)		808	473	765	592
51-60		386 (5.4%)		204	173	170	188
61+		34 (0.5%)		25	19	5	23
QUEENS	28,082	9,116	32%	6,952	2,175	5,951	1,725
Sex: male		7,663 (84.1%)		5,280	1,619	5,707	1,625
female		1,453 (15.9%)		1,672	556	244	100
Ethnicity:		3,848		2,700	801	2,958	808

Borough	total # of defendants	# defendants supporting children	# defendants supporting children as % of total defendants in borough	#children living with defendant ages newborn to 11	#children living with defendant ages 12 to 17	# children not living with defendant ages newborn to 11	# children not living with defendant ages 12 to 17
Black		(42.2%)					
White		659 (7.2%)		453	198	319	133
Hispanic		3,476 (38.1%)		2,670	799	2,211	659
Asian		872 (9.6%)		854	283	360	80
Other		261 (2.9%)		275	94	103	45
Age: <20		207 (2.3%)		99	0	135	2
21-30		3,164 (34.7%)		2,273	76	2,531	57
31-40		3,525 (38.7%)		3,127	953	2,399	916
41-50		1,659 (18.2%)		1,171	798	700	577
51-60		520 (5.7%)		257	322	176	164
61+		41 (0.4%)		25	26	10	9
STATEN ISLAND	5,191	1,363	26%	1,147	462	870	321
Sex: male		1,092 (80.1%)		816	317	833	310
Female		271 (19.9%)		331	145	37	11
Ethnicity: Black		508 (37.3%)		399	144	402	124
White		397 (29.1%)		314	172	193	73
Hispanic		413 (30.3%)		372	133	254	111
Asian		14 (1.0%)		19	2	7	2
Other		31 (2.3%)		43	11	14	11
Age: <20		36 (2.6%)		12	0	34	0
21-30		402 (29.5%)		360	25	309	21
31-40		538 (39.5%)		549	172	353	131
41-50		301 (22.1%)		205	193	156	129
51-60		80 (5.9%)		21	67	17	38
61+		6 (0.4%)		0	5	1	2
Totals	128,569	38,724	30%	27,282	8,299	30,240	8,566
				Total # of children=	74,387		

How To Explain A Parent's Arrest To A Child

TODDLER—AGES 1 TO 4

CHILD'S PERCEPTION OF ARREST	WHAT TO SAY
<ul style="list-style-type: none">• Anxiety that parent will be hurt.• Fear of separation and loss of parent's protection.• Unable to psychologically separate harm to parent from harm to self.• Want to cling to parent to avoid separation. 	<ul style="list-style-type: none">• Acknowledge the importance of the parent to the child: <i>"I know you love your Mom/Dad."</i>• Speak slowly, in a low, comforting tone: <i>"I know you are scared, but no one is going to hurt you or your Mommy/Daddy."</i>
HOW CHILDREN MIGHT REACT & HOW YOU SHOULD RESPOND	WHEN ARREST IS RAID OR DV
<ul style="list-style-type: none">• Where possible, avoid use of force on parents in presence of child.• Anticipate that you may have to remove the child from the parent's arms. 	<p>RAID</p> <ul style="list-style-type: none">• Element of surprise may be necessary for effective law enforcement, but will escalate children's reactions.• Try to ascertain ahead of time if children are present. If possible have them removed to a safe place.

How To Explain A Parent's Arrest To A Child

PRESCHOOL—AGES 4 TO 5

CHILD'S PERCEPTION OF ARREST	WHAT TO SAY
<p>Fear of separation and loss of parent protection:</p> <ul style="list-style-type: none">• Unable to psychologically separate harm to parent from harm to self.• May cling to parent to avoid separation. <p>Very anxious that parent will be hurt:</p> <ul style="list-style-type: none">• May view a police officer as an action figure who can help, hurt, or take them away.• May believe his/her behavior or wishes caused a parent's arrest. 	<p>Speak to the child so that your eyes are level with the child's.</p> <p>Clarify basic facts in simple language:</p> <ul style="list-style-type: none">• Why the police are there.• What the police are going to do: <i>"I have to take your parent to the police station to talk about some things." "I've called your grandmother and she's on the way over to be with you."</i>• Reassure children it is not their fault.• Do not make promises you cannot keep (i.e. "I will come back to check on you" unless you know you will).
HOW CHILDREN MIGHT REACT & HOW YOU SHOULD RESPOND	WHEN ARREST IS RAID OR DV
<ul style="list-style-type: none">• Where possible, avoid use of force on parents in presence of child and avoid cuffing the parents in the presence of child.• Avoid pointing guns at child.• Try to distract the child.<ul style="list-style-type: none">– Offer a stuffed animal or a sweater/scarf of the parent to comfort the child.• Anticipate that if you do use force, the child's reaction will be extreme:<ul style="list-style-type: none">– Try to protect parent or hit officer.– Zone out or be non-reactive. 	<p>RAID</p> <ul style="list-style-type: none">• Element of surprise may be necessary for effective law enforcement, but will escalate children's reactions.• Try to ascertain ahead of time if children are present. If possible, have them removed to a safe place prior to raid. <p>DV</p> <ul style="list-style-type: none">• While you may perceive yourself as the rescuer of the abused parent, the child may only perceive you as someone using force as the abuser did and not see the difference.• If the child had any positive connection to the batterer parent, the child may view you as harming their batterer parent.

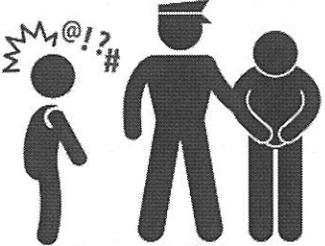
How To Explain A Parent's Arrest To A Child

SCHOOL AGE—AGES 6 TO 12

CHILD'S PERCEPTION OF ARREST	WHAT TO SAY
<ul style="list-style-type: none"> • Fear of separation and loss of parent protection. • Concerned with issues of right and wrong, fairness and justice. 	<ul style="list-style-type: none"> • Deal with child honestly, fairly, and calmly: <i>"I have to take your parent to the police station to talk about some things. We'll let you know when you can see your parent. In the meantime, I've called your grandmother and she is on her way here to be with you."</i> • Emphasize that the child did nothing wrong: <i>"You did nothing wrong. I know you love your parent. This is not your fault."</i> • If you don't know the answer to the child's question, tell them you don't know but will find out.
HOW CHILDREN MIGHT REACT & HOW YOU SHOULD RESPOND	WHEN ARREST IS RAID OR DV
<ul style="list-style-type: none"> • Where possible, avoid use of force on parents in presence of child and avoid cuffing the parents in the presence of child. • Avoid pointing guns at child. • Anticipate that if you do use force, the child's reaction will be extreme: <ul style="list-style-type: none"> – Attack officer to protect parent, run, scream, cry. – Zone out: be unresponsive, hide, "self-soothe" by doing something repetitively (rocking back and forth). • Offer a stuffed animal or a sweater/scarf of the parent to comfort the child. 	<p>RAID</p> <ul style="list-style-type: none"> • Element of surprise may be necessary for effective law enforcement, but will escalate children's reactions. • Try to ascertain ahead of time if children are present. If possible, have them removed to a safe place. <p>DV</p> <ul style="list-style-type: none"> • The child may run and/or attack the officer/s making arrest to protect parent. • Child may agree with decision to arrest batterer but feel worried about repercussions of siding with officer in the presence of the batterer.

How To Explain A Parent's Arrest To A Child

ADOLESCENCE—AGES 13 TO 18

CHILD'S PERCEPTION OF ARREST	WHAT TO SAY
<ul style="list-style-type: none">• Fear of separation and loss of parent's protection.• Especially fearful of parent being hurt.• May express anger toward parent and/or officer.• May try to stand up to officer to protect parent. 	<ul style="list-style-type: none">• Do not respond to statements of teens expressing distaste for your presence.• De-escalate the situation by letting youth vent fear, feelings: <i>"Hey, this is a tough situation. We're going to take your parent to the police station to talk about this situation."</i>• Maintain rules and structure to ensure teen feels secure: <i>"This is the way we have to do it by law. What happens next is ___ and then we will let you know in ___ minutes what's going to happen to dad/mom."</i>• Ask teens to assist you with younger children: <i>"What's the best way to get her to come out of the corner? Could you help me?"</i> <i>"Is there anyone you'd like us to call now?"</i>
HOW CHILDREN MIGHT REACT & HOW YOU SHOULD RESPOND	WHEN ARREST IS RAID OR DV
<ul style="list-style-type: none">• Don't take teens' rude or obnoxious behavior personally.• Avoid handcuffing parent in front of youth; attempt to block teens' vision of the arrest.• Anticipate youth may ignore or evade officers out of shame, rage.• Anticipate youth will:<ul style="list-style-type: none">– Attack officer to protect parent, vent anger on you instead of parent, run, scream/cry/express rage, be hypersensitive to touch.– Zone out: be unresponsive verbally, hide, appear to be paralyzed and unable to move, "self-soothe" by doing something repetitively (rocking back and forth).• Engage teens in dealing with the arrangements for care; offer the opportunity to help them feel in control of their situation, to whatever degree is possible.	<p>RAID</p> <ul style="list-style-type: none">• Element of surprise may be necessary for effective law enforcement, but escalates the reactions of teens.• Anticipate that some teens will try to protect themselves.• Try to ascertain ahead of time if children/teens are present. If possible, have them removed to a safe place.• Be aware, that teens may run or strike back at officer/s making the arrest. <p>DV</p> <ul style="list-style-type: none">• Anticipate that some teens will want to help assaulted parent and need guidance as to how.• Teen may agree with decision to arrest batterer but feel worried about repercussions of siding with officer.

Have you notified an officer that your **CHILD** may need to be cared for?

If not, tell us now and:

- We will locate a family member or friend
- Check on your child's safety
- Let you know where your child is

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Int. No. 1349

By Council Member Dromm

A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to implement child sensitive arrest policies

Be it enacted by the Council as follows:

1 Section 1. Title 14 of the administrative code of the city of New York is amended by
2 adding a new section 14-177 to read as follows:

3 §14-177 Child sensitive arrest policies.

4 a. Definitions. For the purposes of this section, the following terms have the following
5 meanings:

6 Caregiver. The term “caregiver” means any individual responsible for the well-being of a
7 child at the time of an arrest, including but not limited to legal parents and guardians, relatives,
8 or other individuals providing supervision to a child.

9 Child bystander. The term “child bystander” means any unemancipated person, or
10 persons, under the age of 18, present or not, whose caregiver is arrested.

11 Partner organization. The term “partner organization” means an agency or non-profit
12 organization with the capacity to safeguard a child bystander from potential trauma and/ or
13 address and minimize the effects of trauma.

14 Trauma. The term “trauma” means an experience that results from an event, series of
15 events, or set of circumstances that are physically or emotionally harmful or threatening on an
16 individual and that has lasting adverse effects on such individual’s functioning and physical,
17 mental, social, emotional, or spiritual well-being.

18 b. The department shall implement a child sensitive arrest policy that include procedures
19 designed to minimize trauma to child bystanders and support a child bystander’s physical safety

1 | and emotional well-being during and following an arrest. Such policy shall posted on the
2 | department's website and include, at a minimum, the following practices:

Comment [T1]: Steps should also be taken prior to an arrest when the presence of children is made known

3 | 1. For cases in which a warrant is served or an arrest is otherwise planned in advance, the
4 | establishment of cooperative agreements with the [or a partner organization to assist the
5 | department in conducting arrests where child bystanders may be present.

Comment [T2]: Should not be ACS; another entity should be sought and contracted with
Deleted: administration of children's services

6 | 2. Promptly ascertaining whether a child bystander is present, including information
7 | gathered from [emergency call operators.]

Comment [AH3]: 911 should ask whether children are present or in the vicinity and include code indicating that a child may be present in dispatch

8 | 3. Where practicable, reasonably delaying the execution of arrest or search warrants until
9 | circumstances exists whereby a child bystander is not likely to be present at the time of the
10 | police encounter. If such delay is not practicable, coordination of such actions with, a partner
11 | organization shall take place.

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12 | 4. Where practicable, guns and tasers shall not be drawn in sight of the child bystander.

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13 | 4. Where practicable, handcuffing and questioning of a caregiver under arrest in a
14 | location away from the child bystander's sight and hearing.

15 | 5. Where practicable and appropriate, prior to being removed from their presence,
16 | providing an arrested caregiver the opportunity to speak with a child bystander who is present to
17 | assure the child that he/she will be safe and provided for. Where an arrested caregiver is unable
18 | to speak with such child bystander, law enforcement at the scene shall explain to the child using
19 | age appropriate language [that such child bystander did nothing wrong and both the caregiver
20 | and child will both be safe and cared for.

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Comment [AH4]: We think it may not be appropriate for the police to tell the child why the parent was arrested and they could just say that they need to take the parent for now and that it's not the child's fault and they will be safe.

21 | 6. Where practicable, providing objects that provide comfort to a child bystander, such
22 | as toys, clothing, blankets, photographs, or food.

Deleted: to such child bystander [why their caregiver was arrested] and that

Deleted: is safe

1 4. The role of the partner organizations in providing support to a child bystander and
2 criteria for determining when child welfare should be contacted.

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3
4 d. Reporting. Within 30 days of January 1, 2020, and no later than 30 days after the end
5 of each quarter thereafter, the department shall submit to the speaker of the council, and make
6 publicly available on the department's website, a report related to arrests occurring in the
7 presence of child bystanders. All data shall be submitted in a machine readable format. Such
8 report shall include, but need not be limited to, the following information for the preceding
9 quarter:

10 1. The number of arrests in which a child bystander was present, disaggregated by
11 borough and precinct;

12 2. [The number of such arrests in which handcuffs were used on a caregiver outside of
13 the presence of such child bystander, disaggregated by borough and precinct;]

14 3. The number of such arrests in which the department coordinated with a partner
15 organization prior to, during, or after such arrest, disaggregated by borough; and

Deleted: [the administration for children's services
or]

16 4. The number of arrests in which child welfare was contacted for the following reasons:
17 to conduct a background check on a potential alternate caregiver, and to make a report with the
18 Statewide Central Register; and

Comment [T9]: Should be a partner org but this
will require a funding investment

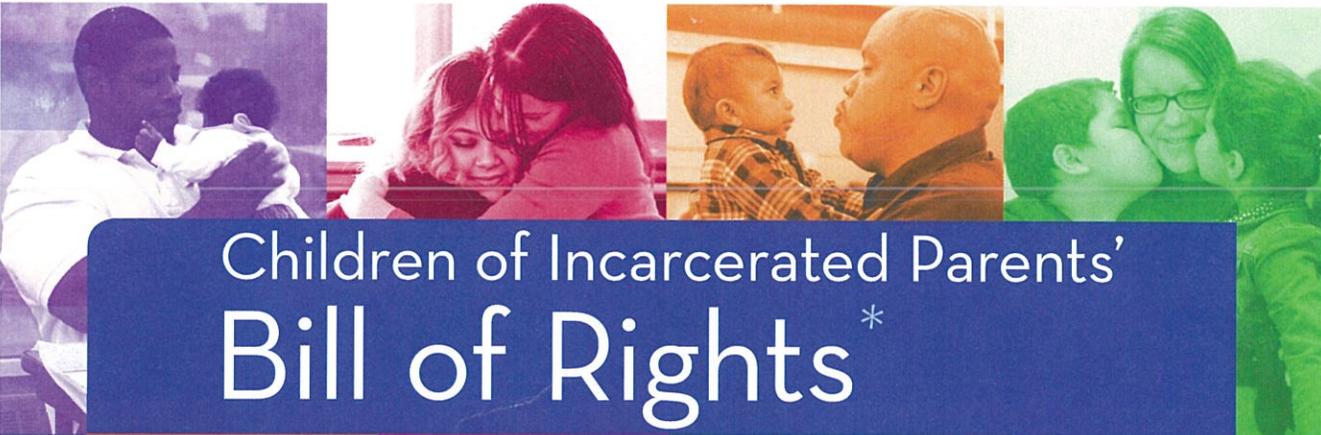
19 4. The number of complaints submitted to the civilian complaint review board, the 311
20 call center, or the department's internal affairs bureau related to arrests conducted in the presence
21 of a child bystander.

22 § 2. This local law takes effect six months after it becomes law.

JDK
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We suggest adding these additional recommendations:

- Precincts should develop a protocol clarifying who will supervise a child who is waiting at the precinct and requiring precincts to make child-friendly items available to occupy and comfort the child
- When child is left with an alternative caregiver, the partner agency will conduct a well-being check within 24 hours and provide community-based resource referrals as needed



Children of Incarcerated Parents' Bill of Rights^{*}

- 1.** I have the right **to be kept safe and informed at the time of my parent's arrest.**
- 2.** I have the right **to be heard when decisions are made about me.**
- 3.** I have the right **to be considered when decisions are made about my parent.**
- 4.** I have the right **to be well cared for in my parent's absence.**
- 5.** I have the right **to speak with, see, and touch my parent.**
- 6.** I have the right **to support as I face my parent's incarceration.**
- 7.** I have the right **not to be judged, blamed, or labeled because my parent is incarcerated.**
- 8.** I have the right **to a lifelong relationship with my parent.**

^{*} Developed by the San Francisco Children of Incarcerated Parents Partnership in 2005: www.sfcipp.org



New York Initiative for
Children of Incarcerated Parents



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Testimony of the New York Initiative for Children of Incarcerated Parents

**at the Oversight Hearing of the City Council Committees on
Public Safety and the Justice System**

Family Separation in Criminal Cases

February 25, 2019

**Presented by
Allison Hollihan
Senior Policy Manager
New York Initiative for Children of Incarcerated Parents
The Osborne Association**

The Osborne 
Association

Transforming Lives, Communities,
and the Criminal Justice System

Thank you for the opportunity to speak with you today. My name is Allison Hollihan and I am the Senior Policy Manager for the New York Initiative for Children of Incarcerated Parents within the Osborne Center for Justice Across Generations. My colleague Tanya Krupat has already addressed the issue of the dire need for New York City to implement child-sensitive arrest protocols and strategies, and I would like to address Intro 806 and the broader need for the City to address and safeguard children whose parents are in the criminal legal system, from arrest to reentry.

Since 2007, Osborne has been coordinating the New York Initiative for Children of Incarcerated Parents (NYCIP), a statewide collaborative of over 60 different government agencies and community and faith-based organizations. When we first launched NYCIP, we were NYC-based, but we quickly realized the need for city-state collaboration since parents who are in prison or on parole are under state custody. Since then, we have been a statewide collaborative.

In 2010, we coordinated the first-ever statewide Summit examining the needs and experiences of New York State's children with incarcerated parents, leading to the issuing in 2011 of a report which provided concrete recommendations per government agency (including recommendations for law enforcement, criminal justice agencies, and children-serving agencies). While some of the report's comprehensive 87 recommendations have since been implemented, most remain pertinent and needed today. Copies of this report have been submitted with my testimony. In 2016, we issued a report specifically for ACS and child welfare outlining recommendations needed within this field and specifically, for children in foster care. We also regularly provide training for the NYC DOE and Family Court, and work with DOHMH to address the needs of children of incarcerated parents as well. We tried to get this issue on the agenda of the NYC Children's Cabinet, but were not successful.

While we have extensive experience convening diverse professionals to examine the needs of children whose parents are in the justice system, and many accomplishments to share, our efforts are small compared to the need (we are only two people), and there is no question there remains a need for leadership at the city level and coordinated action to safeguard children. For this reason, we applaud the intention behind Councilmembers Williams and Levin's introduction of Intro 806. However, we are concerned that placing leadership of this effort within the Department of Correction is hugely problematic, and that this approach is both premature and could actually delay needed progress on this important issue.

Therefore, we ask that in advance of considering this bill, the Council consider the following thoughts and recommendations:

- 1) Before creating a task force, the City Council could pass a resolution or a bill enacting the *Children of Incarcerated Parents' Bill of Rights* (as was actually proposed back in 2011 by Councilmember Ydanis Rodriguez) and require city agencies to inventory their

existing policies and practices, and revise or create policies to safeguard children consistent with the *Bill of Rights*.

San Francisco provides an example of taking this step. In July 2005- 14 years ago- the San Francisco Board of Supervisors passed a resolution endorsing the *Bill of Rights* and encouraging City agencies across San Francisco to work together to implement the rights. In 2009, the California State Senate passed a resolution to distribute the *Children of Incarcerated Parents' Bill of Rights* and “invite discussion and encourage relevant departments to use the *Bill of Rights* as a framework for analysis and determination of procedures when making decisions about services for these children.” (SCR-20; Children of Incarcerated Parents Bill of Rights, 2009-2010)

- 2) City Council could provide funding support to enhance and expand the NY Initiative for Children of Incarcerated Parents to have the capacity to provide training and technical assistance and help agencies do the necessary work to comply with the *Bill of Rights*.
- 3) After the above actions are underway, Intro 806 could be enacted (with some revisions). An interagency citywide task force would be very important to monitor progress and facilitate cross-systems collaboration and coordination. The task force should be headed by an agency and person with knowledge of the special medical, mental health, educational, and other needs of the population. (Intro 806 recommends that DOC chair the Task Force which we do not agree with- centering the DOC or even ACS as the agencies responsible for advancing the well-being of these children further stigmatizes them and can promote over-involvement with these systems.)
- 4) Finally, we want to express our concern around the effectiveness of citywide task forces and their ability to act with urgency and yield concrete results. While we think such task forces are a valuable idea with the potential to be very effective-- particularly for issues such as children of incarcerated parents where so many city agencies are touching their lives but none are responsible for their outcomes nor intentional in their approach-- we also look at the recently passed CARE Act (the Compassion and Assistance for Returning Elders Act). Mayor DeBlasio signed the CARE Act into effect in January 2018 (thanks to a bill sponsored by Councilmember Dromm) creating a citywide interagency task force examining the needs of older people returning from incarceration, both jails and prisons. With growing numbers of older people reentering from incarceration, including growing numbers coming home from prison straight into NYC homeless shelters, this task force is sorely needed. However, *14 months later*, the task force has not been formed and has never met.

NYCIP stands ready and eager to work with City Council to make significant progress to safeguard children whose parents are justice-involved. We have been bringing agencies,

organizations, and individuals together with this goal for the past decade, but so much more could be done with the leadership and commitment of the City Council and the Mayor. It is long past time to address the fact that we do not know how many children in foster care have an incarcerated parent, nor do we know how many children are present at a parent's arrest. It is not okay that we do know that thousands of children are feeling isolated, alone, and stigmatized because of their parent's arrest or incarceration; not okay that we know that many children who want to visit their parents cannot do so due to lack of resources, lack of programs to bring them to visits, and visiting policies and practices at City jails that are traumatizing to children. **There is too much that has become acceptable and "normal" that absolutely should not be.**

I have included many resources with my testimony and hope these will be considered as the Council considers a path forward. We are very grateful that you are actively engaged in considering the impact of City agencies' policies and practices on vulnerable children, and look forward to supporting your commitment to children and working together to lift the burden of stigma off children with justice-involved parent and create a City that has an intentional, coordinated approach to supporting their positive outcomes.

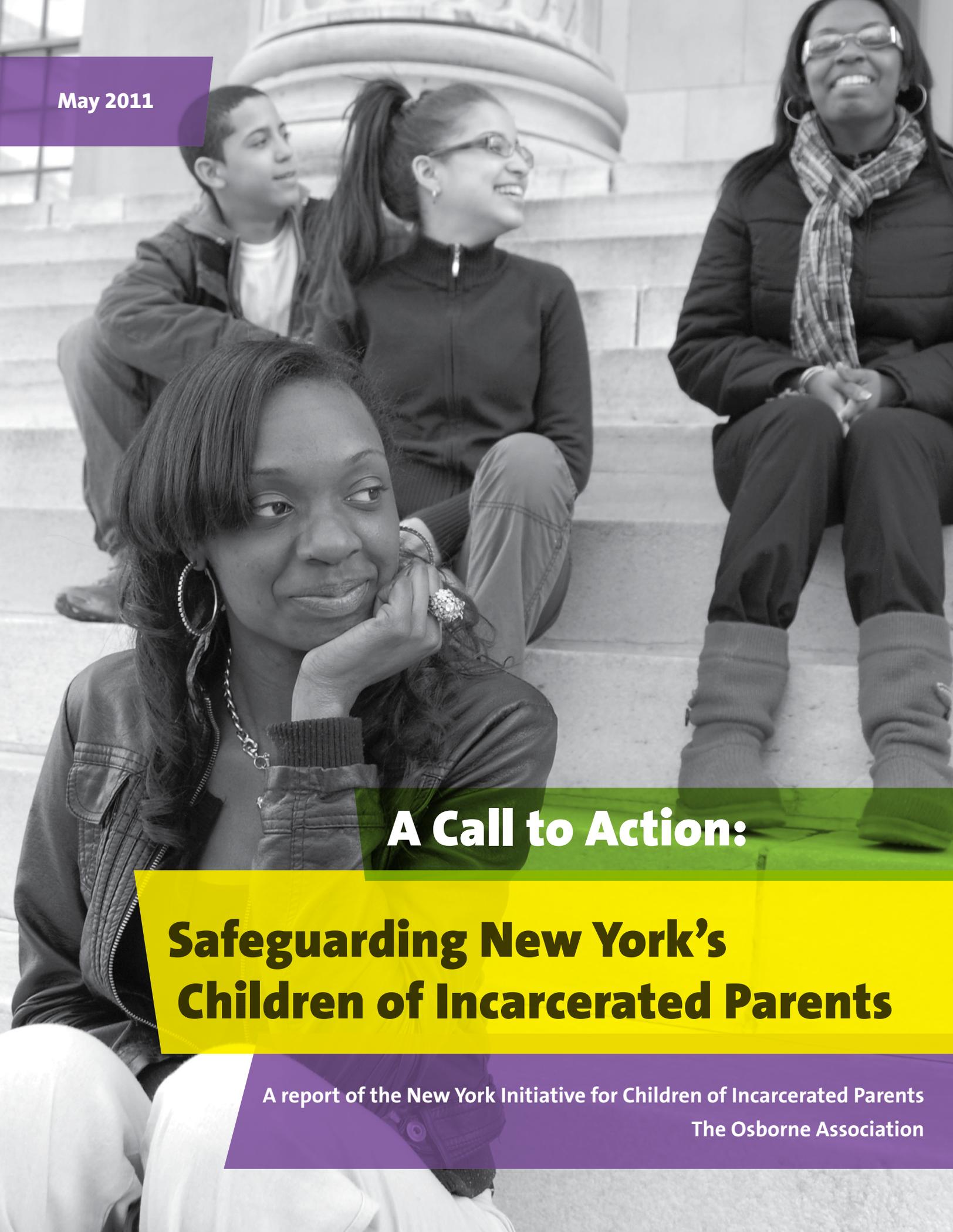
Please note that the New York Initiative on Children of Incarcerated Parents has quarterly Partners meeting. The next meeting is Friday, March 8th from 10am to 12pm. We welcome Councilmembers or your staff to attend.

Thank you.

CONTACT:

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Additional information including the Summit report and handbooks on serving children of incarcerated parents can be found on the Osborne website: www.osborneny.org



May 2011

A Call to Action:

**Safeguarding New York's
Children of Incarcerated Parents**

A report of the New York Initiative for Children of Incarcerated Parents
The Osborne Association

A Call to Action: Safeguarding New York's Children of Incarcerated Parents

**A Report of the New York Initiative
for Children of Incarcerated Parents**

Tanya Krupat, LMSW, MPH
Program Director, The Osborne Association

Elizabeth Gaynes, JD
Executive Director, The Osborne Association

Yali Lincroft, MBA
Private Consultant

About the New York Initiative for Children of Incarcerated Parents

The Osborne Association established the New York Initiative for Children of Incarcerated Parents in 2006, following the creation of the *Children of Incarcerated Parents Bill of Rights* in San Francisco. The New York Initiative was founded to create alignment among public agencies and community and faith-based organizations, in support of policies and practices that meet the needs and respect the rights of children and youth whose parents are involved in the criminal justice system.

Through its work, the Initiative:

- brings together diverse professionals and perspectives to raise public awareness;
- makes recommendations to reform policies and practices that affect children of incarcerated parents;
- develops, expands, and advocates on behalf of effective programs;
- supports children as they seek to maintain relationships with the most important people in their lives;
- coordinates convenings of partners three times a year, to sustain the network of individuals and organizations working to improve the lives of children of incarcerated parents;
- collects and disseminates information regarding developments relevant to children and families affected by incarceration;
- educates the public and state and local officials about children of incarcerated parents through media outreach and public events; and,
- supports the Youth Advisory Board, encouraging young people with currently or formerly incarcerated parents to become leaders and advocates in the movement to transform their rights into their realities.

For more information, contact Tanya Krupat, Program Director at The Osborne Association, 175 Remsen Street, Brooklyn, NY 11201, or NYInitiative@osborneny.org.

About The Osborne Association

The Osborne Association was founded in 1931 to serve individuals and families affected by incarceration, transforming lives, communities and the criminal justice system. Osborne offers innovative and effective programs that serve the community by reducing crime and its human and environmental costs. Osborne seeks reform and rehabilitation through public education, advocacy and alternatives to incarceration that respect the dignity of people and honor their capacity to change as they achieve self-sufficiency, adopt healthy lifestyles, enter the workforce, form and rebuild families, and rejoin their communities.

For more information, contact Info@osborneny.org or write to The Osborne Association, 809 Westchester Avenue, Bronx, NY 10455, or call 718-707-2600.



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This report and the Summit held on November 15, 2010 would not have been possible without the participation, knowledge, and passion of the members of the Steering Committee for the New York Summit on Children of Incarcerated Parents (see next page) and the partners of the New York Initiative for Children of Incarcerated Parents (see **Appendix A**). Many New York state and local government agencies, community-based providers, and children and families directly affected by parental incarceration contributed to the writing of this report. We are grateful for their time, expertise, and commitment which strengthened the contents of this report and increased the likelihood that the recommendations offered here become realities.

Special thanks to Dana Lemaster and Jonathan Stenger for their tireless efforts to organize this report. Gerard Wallace gave of his time and expertise generously. We also thank: Peter Alexander, Denise Arieli-Barufka, Evelyn Blanck, Eric Brettschneider, Susan Chinitz, Maya Cooper, Kathleen DeCataldo, Tamika Edwards, Paula Y. Fendall, Joan Gabbidon, Philip Genty, Jacqueline Greene, Michael Hayes, Thomas Hoeg, Deborah Iarussi, Robert F. Iusi, Tamar Kraft-Stolar, Kathleen Linares, Susan Morley, Erika Palmer, Alessandra Rose, Mark Spawn, Jinnie Spiegler, Michelle Rafael, and Felicia Watson for their expertise and assistance in guiding and distilling the hundreds of ideas gathered at the Summit and in shaping this report.

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* The titles of all Steering Committee members reflect the positions they held at the time of the Summit in November 2010.

8 Introduction

“The U.S. still has the highest incarceration rate in the world and we’re still responsible for the greatest separation of children from their parents since the end of chattel slavery. But in New York, the prison population is down and we now know that New York City jails and New York State prisons in many ways lead the country in providing opportunities for incarcerated parents so that children stay connected.”

Presentation by Elizabeth Gaynes, Executive Director, Osborne Association at the New York Summit on Children of Incarcerated Parents (November 15, 2010)

New York is home to an estimated 105,000 children of incarcerated parents; hundreds of thousands more have experienced their parent’s criminal justice involvement at some point in their lives. Yet some have called this an “orphan issue” as it belongs to no single agency or oversight body and there remains a great deal we do not know about the scope and impact of a parent’s incarceration on children.

In the summer of 2010, a public/private coalition began a strategic planning process to address the practice and policy concerns facing New York’s children and families impacted by incarceration. This effort was built on the momentum of two existing and active interdisciplinary groups – the Osborne Association’s New York Initiative for Children of Incarcerated Parents (NY Initiative) and the Governor’s Children’s Cabinet Subcommittee on Children of Incarcerated Parents. The six-month planning effort included a series of five topical discussion meetings drawing on the expertise of people in the field (in both public and nonprofit agencies), and culminated in a one-day summit on November 15, 2010.

The goal of the Summit, whose heading was “A Call to Action,” was to draw attention to the needs of children whose parents are in the criminal justice system and to develop recommendations for how the systems that touch their lives can minimize trauma and harm, and support their resiliency and success. The Summit was co-sponsored by the Diane Abbey Center for Children and Families at New York Law School and brought together more than 240 people representing 100 different agencies and organizations, as well as individuals directly affected by parental incarceration.

The Summit opened with a panel of young people who have experienced parental incarceration, followed by a panel of commissioners of four state and local agencies. Underscoring the importance of including young people in discussions of policies and practices that affect them, the youth and commissioners then sat on the stage together to answer questions from the audience.

This report builds on the planning process leading up to the Summit, and the actual Summit itself. As the Summit title stated, the purpose of this report is action. It is intended to be a tool that assists policymakers, practitioners, government agency staff, advocates, and families to enact positive changes to benefit the lives of New York’s children.

A vision and specific goals guided the Summit and guide this report:

Vision Statement:

We envision a world in which children whose parents are involved with the criminal justice system are considered—and their needs safeguarded—at every step of the criminal justice process.

Goal 1: Criminal justice/law enforcement agencies

consider children and their developmental and attachment needs at all points along the continuum of their parent’s involvement in the criminal justice system, from arrest through incarceration and through reentry.

Goal 2: Children’s services and social service agencies

are aware of and fluent in addressing the impact on children of a parent’s criminal justice involvement.

Goal 3: Cross-systems coordination facilitates the maintenance of relationships among parents, children, and caregivers that are in children’s best interests. Parents participate in decision-making that relates to their children whenever possible.

Goal 4: Private agencies and public systems incorporate into their work **data collection, research, and evaluation** about the needs and experiences of children of incarcerated parents.

Goal 5: A representative, inter-disciplinary oversight body reporting to the Governor is responsible for ensuring progress in achieving these goals. It includes relevant government and community representatives.

While comprehensive in our goals and approach, we recognize that there are important issues that were outside of the scope of the Summit and this report. In particular, there are many children in New York whose parents are in federal prisons, prisons in other states, or are detained by US Immigration and Customs Enforcement. While some of the material in this report applies to them, there are substantial differences in their experience, especially as it pertains to immigration issues. Unfortunately, it was beyond the scope of the Summit to address these issues. *These children deserve a separate report and special attention.*

Why Now?

The timing for this report is critical. Six years ago in San Francisco the *Children of Incarcerated Parents’ Bill of Rights* (see **Appendix B**) was issued, providing an unprecedented roadmap for reform from a child’s perspective of the criminal justice system; that same year, the NY Initiative was launched using the *Bill of Rights* as a framework for building partnerships and advocating for change. In 2009, the Governor’s Children’s Cabinet created its Subcommittee on Children of Incarcerated Parents (GCC Subcommittee) bringing state agencies together for the first time to focus on the needs of this population of New York’s children.

Today, New York faces a grave economic picture and there has been controversy about prison closures in response to the decreasing prison population. Significant budget cuts affect key programs that support families and children, such as kinship programs and child welfare diversion programs, and pressure on corrections budgets could affect programs that support family ties. In April 2011, Governor Andrew Cuomo dissolved the Governor’s Children’s Cabinet—whose Subcommittee on Children of Incarcerated Parents provided the only statewide government effort to address the needs of this population of children (see **Appendix C** for GCC Subcommittee’s “Guiding Principles to Support Children of Incarcerated Parents”). Governor Cuomo then appointed the Spending and Government Efficiency (SAGE) Commission to improve governmental

efficiencies, an effort that could lead to consolidations and approaches that improve – or diminish – opportunities for children of incarcerated parents.

At the same time, several key pieces of legislation have recently passed that support kinship families (KinGAP),¹ maintain parent-child relationships when a parent is incarcerated (Chapter 113),² and recognize a child's right to an education free from discrimination and fear (Dignity for All Students Act).³ There is increasing public awareness that incarceration is the most expensive and least effective method for providing social services. The *Children of Incarcerated Parents Bill of Rights* now has implementation efforts in 14 states.⁴ Oklahoma recently passed legislation establishing a statewide task force on children of incarcerated parents joining other states, among them Washington, New Mexico, and Oregon.⁵

Using this convergence of crisis and progress as an opportunity, it is more important than ever that New York allocates its scarce resources effectively through improved state and local agency coordination; collaboration including public-private partnerships; and targeted, tailored, nonjudgmental, accessible services. The recommendations offered here form a roadmap towards achieving these goals. While the report attempts to focus on recommendations that can be accomplished by consensus and in light of current budget constraints, not all challenges facing children of incarcerated parents can be resolved within current laws and without additional resources. For this reason, the Summit recommendations may take several years to complete, but can begin immediately.

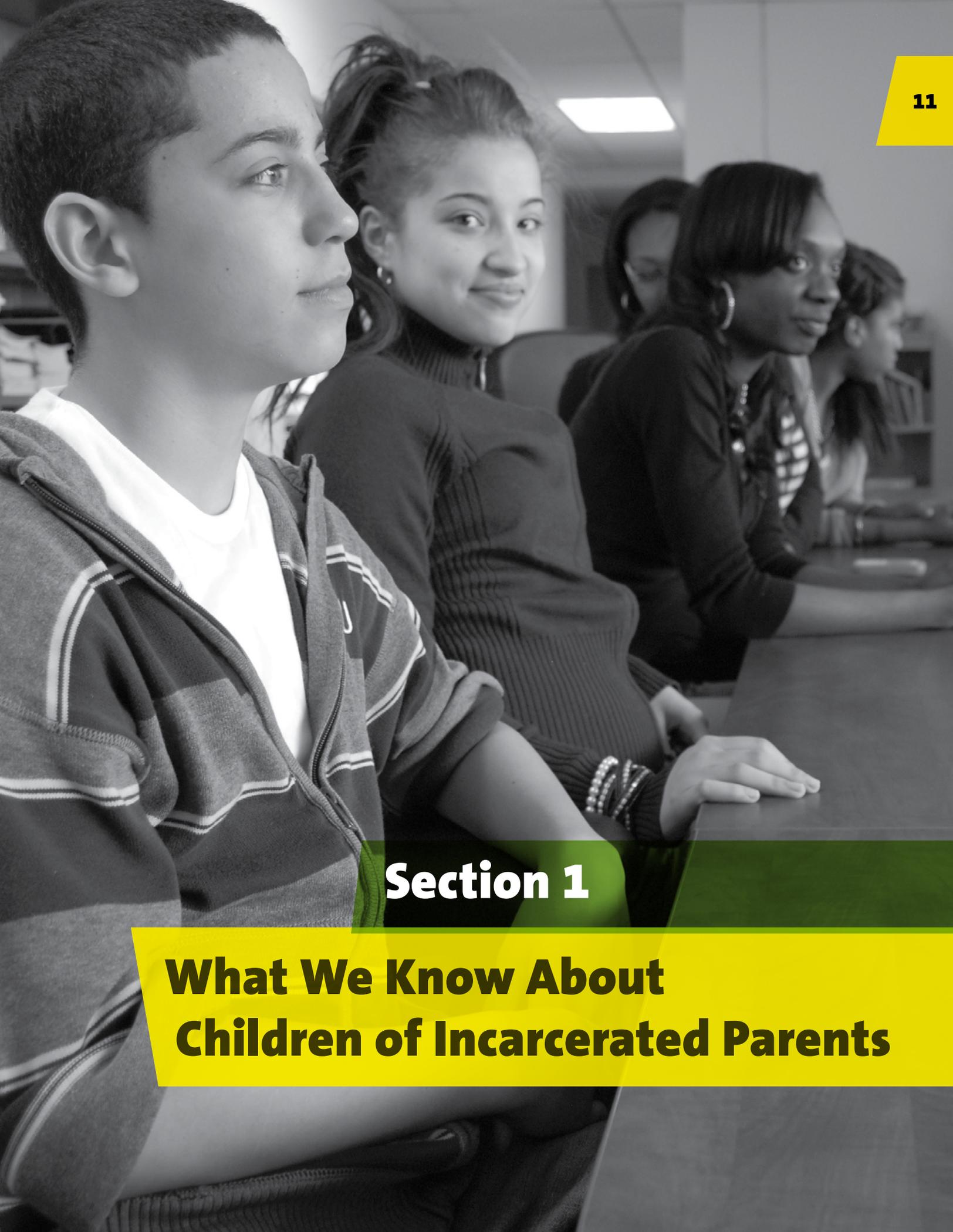
Structure of the Summit Report

The first section presents an overview of what we know (and do not know) about children of incarcerated parents. Our focus is New York State, but we draw on national data both to inform this work and in absence of more local data and research.

The second section focuses on the criminal-justice system from a child's perspective and provides recommendations in the areas of arrest, the courts and sentencing, incarceration (adult jails, prisons, and juvenile detention), and community supervision (probation, alternatives to incarceration, and parole).

The third section focuses on and provides recommendations for systems that serve children, their parents, and caregivers. These include caregiver support and family stability, education, mental and physical health, and child welfare.

The fourth and concluding section focuses on and provides recommendations for coordination, implementation, and accountability for all of the recommendations. This is to ensure that this report does not collect dust on a shelf. It is the goal of the individuals and organizations who participated in the process leading up to the preparation of this report that it be used as an active, working roadmap and a baseline measure for progress to come.



Section 1

What We Know About Children of Incarcerated Parents

12 What We Know

“Children of incarcerated parents are like all other children; like some other children; like no other children.”

Ann Adalist-Estrin, Director,
National Resource Center
on Children and Families
of the Incarcerated

What We Know

There is no single story that describes what it is like for a child to have a parent who is incarcerated. The experience depends on diverse factors, including the quality of the parent-child relationship prior to incarceration, the degree of household stability following the incarceration, and the child’s age, developmental level, and individual personality.⁶ According to researcher Dr. Susan Phillips, risk factors for emotional and behavioral problems among children of incarcerated parents generally operate along two pathways: parental problems that existed prior to and may have contributed to the parent’s incarceration (such as, addiction, mental health, and domestic violence), and problems introduced as a result of the parental incarceration (such as, family and school disruption, attachment issues, poverty, trauma, grief, and stigma).⁷

The common misperception that children of incarcerated parents are more likely to be incarcerated, or are predisposed to a life of crime, can lead to the assumption that the removal of that “bad” parent will improve the situation for the child. However, research suggests that parental imprisonment more often intensifies and compounds, rather than alleviates, the challenges children face.⁸ Whatever the household arrangements prior to incarceration, parents typically participate in raising their children—whether in traditional, two-parent households; single-parent households; or living apart from their children, but providing financial and/or child-caring support.

Although it is challenging to disentangle the effects of parental incarceration from other risk factors that children may have experienced prior to a parent’s incarceration,⁹ parental incarceration is now recognized as an “adverse childhood experience” (ACE) of the type that can significantly increase the likelihood of long-time negative outcomes for children.¹⁰ Parental incarceration is distinguished from other adverse childhood experiences by the unique combination of trauma, shame, and stigma.¹¹ This can increase feelings of isolation and alienation that keep children, caregivers, and parents from seeking services. The long-term effects on children of incarcerated parents may include emotional and psychological problems,

hostility, aggression, academic problems, and greater risk for involvement with the juvenile justice and foster care systems.¹² Particularly traumatic can be the separation from a parent who was the primary caregiver, especially if the children are very young. This separation should be recognized for what it represents to the child: a terrifying blow to their sense of safety, belonging, trust, and development.

According to the American Academy of Pediatrics, “An intervention that separates a child from the primary caregiver who provides psychological support should be cautiously considered and treated as a matter of urgency and profound importance.”¹³

Some children with incarcerated parents experience developmental delays due to physical health problems, neurological damage, exposure to substance abuse, poor or no prenatal care, or a lack of early intervention services. There is also a high prevalence of domestic violence among incarcerated parents, suggesting that many of their children have witnessed violence in the home. For caregivers, this often translates into sleepless nights comforting the children, and struggles to manage the child’s extreme behaviors at home and in school. These behaviors emanate from a child’s feelings of loss, confusion, and anger. These feelings may linger and fester if caregivers lack the resources or are unable to assist children through this struggle. In addition, many caregivers suffer from their own grief and loss with respect to the incarcerated parent.

Some children exhibit externalizing behaviors such as aggression and disobedience or regressive behaviors, such as bed-wetting in younger children. Other children exhibit internalizing behaviors and may be fearful, sad, or withdrawn. Very young children may not understand incarceration and view the separation as voluntary abandonment; they may blame the caregiver and be angry or rebellious with him or her; they may also blame themselves. School-age children may experience problems with grade failure, suspension, and problems

with their peers related to teasing and stigma. Children’s responses are affected by the responses of the adults and peers around them. If they are singled out and labeled by school officials, law enforcement, social workers, as well as by their peers and family, the stigma can damage their self-esteem, cause alienation, and distort their sense of social connections.

Children are affected by the frequency and quality of contact they have with their incarcerated parent. Visiting patterns are often determined by the attitudes of parents, caregivers, social workers, and correctional staff as well as logistical factors like distance, visiting hours, and rules.¹⁴ Many adults assume that contact with an incarcerated parent is negative, although those knowledgeable of the effects of parental incarceration on children understand that “visiting can calm children’s fears about their parent’s welfare as well as their concerns about the parent’s feelings for them.”¹⁵ While children’s feelings about and desires to see and speak with their parent should always be considered, visiting and contact are beneficial to most children’s emotional and psychological well-being. Visits can also assist children and families to discuss and plan for reentry.

There may be an assumption that when the parent is released, the hard times are over; they are not. Reentry is stressful for formerly incarcerated parents, their children, and the parents or caregivers who have been raising children during the incarceration. Depending on the events leading up to the parent’s release, the family may have already been under a great deal of stress and strain. Increased national attention to reentry has not translated into attention on the supports and systems needed to help a family through this transitional time. And lacking from most reentry conversations is how children experience a parent’s release. Assistance to children and families is critical to successful reentry; children’s service providers and advocates have a vested interest in supporting efforts that reduce recidivism as there are few things as devastating to children as a parent’s return to incarceration.

What the National Statistics Tell Us

- **54% percent** of incarcerated men and women are **parents with minor children** (ages 0-17), including more than **120,000** mothers and **1.1 million fathers**.¹⁶
- **More than 2.7 million children** in the United States have a parent who is incarcerated—1 in every 28 children (more than 3.6%) have an incarcerated parent, compared to 1 in 125 just 25 years ago. **Two-thirds of these children's parents were incarcerated for non-violent offenses**.¹⁷
- One in 9 African American children (11.4%), 1 in 28 Hispanic children (3.5%), and 1 in 57 white children (1.8%) in the United States have an incarcerated parent.¹⁸
- 4% of women in state prison, 3% of women in federal prison, and about 5% of women in jail nationwide reported being pregnant at the time of their incarceration.¹⁹
- A national study conducted in 1998 estimated that of parents arrested, **67%** were handcuffed in front of their children, **27%** reported weapons drawn in front of their children, 4.3% reported a physical struggle, and 3.2% reported the use of pepper spray.²⁰
- In 2004, **approximately 59% of parents** in a state correctional facility and **45% of parents** in a federal correctional facility reported never having had a personal visit from their children.²¹
- While many of the risk factors children of incarcerated parents experience are primarily due to problems of parental substance abuse, mental health problems, or inadequate education, **parental incarceration increases the risk of children living in poverty or experiencing household instability independent of these other problems**.²²

- Multiple studies show that while children whose parents are involved with the criminal justice system are exposed to more risk factors than other children, research also shows that there is not a universal risk factor for this population. **These children experience very diverse risks that require tailored services**.²³
- Studies show that, as **the total number of these risk factors increase**, so too does the likelihood that **children will develop serious problems**.²⁴

New York State

In New York, it is estimated that more than **105,000 minor children** have a parent serving time in prison or jail at any one time.²⁵ There are more than 120,000 individuals subject to probation, and nearly 42,000 on parole as of December 31, 2009.²⁶

- Since 2003, **the prison population in New York** has declined. The number of those incarcerated **has dropped by nearly 9% (6,000) since 2006**. For 2009-2010, the New York State Department of Correctional Services saw a decrease of 3% (1,703).²⁷
- The Rockefeller Drug Laws were extremely expensive, pushing the proportion of individuals convicted of drug offenses in New York from 11% to a high of 34% from the mid-1980s through the 1990s. **The 2009 reforms of the Rockefeller Drug Laws are expected to save New York taxpayers \$250 million each year**.²⁸
- In 2009, it was estimated that approximately **100,000 children have a parent in jail** (20%) or prison (80%) in New York.²⁹
- **There were 58,378 men and women under custody in New York State prisons** as of January 1, 2010. Approximately 96% are men and 4% are women—51% are African American, 22% are White, and 25% are Hispanic. Approximately 49% are from New York City, 12% from suburban New York, 23% from upstate urban areas, and 16.2% are from upstate non-urban areas.³⁰

- The **majority of people under New York state custody** (59%) self-reported at the time of admission to the prison that they **had at least one living child**. More incarcerated women (71%) self-reported having living children than men.³¹
- **A survey of 21 New York State** Office of Children and Family Services **kinship programs** found almost **10% of their cases involved an incarcerated parent**. Out of 2,982 kinship clients, **249 (8.35%) cases** involved an incarcerated parent. Within an individual program, the percent of **caseload with an incarcerated parent ranged from 2.4% to 19%**, depending on the location and type of services offered.³²

In 2008, the New York Initiative for Children of Incarcerated Parents developed and conducted a “Families Count Survey” within two New York prisons (Fishkill and Bedford Hills Correctional Facilities, a men’s and women’s prison, respectively). The close to 800 responses from those who self-identified as parents revealed that a minimum of 1,049 children under the age of 18 were separated from their parents by incarceration.

- 58% of incarcerated mothers (n=179) and 54% of incarcerated fathers (n=262) responded that they receive visits with at least one of their children
- Of those who responded to the sub question about visit frequency, 10% of mothers and fathers reported weekly visits, 32% (mothers) and 30% (fathers) reported monthly visits, and 32% reported rare visits.
- Asked about distance as a factor—14% of mothers and 10% of fathers reported being incarcerated within one hour of their children’s residences; roughly 25% of mothers and fathers reported being 2 to 5 hours away; and, 15% of mothers and 10% of fathers reported being 5-10 hours away.
- **Close to 60% of mothers and fathers responded that transportation was a barrier to visiting.**³³

As important as quantitative data is, it is also important to have research about the qualitative experiences of children, their caregivers, and their incarcerated and formerly-incarcerated parents. In 2010, the New York State Council on Children and Families released a report, *Children with Incarcerated Parents: A Journey of Children, Caregivers, and Parents in New York State* that provides unprecedented information about the experiences of children with incarcerated parents.³⁴ The report is based on 32 focus groups conducted throughout the state with caregivers, adolescent and young adult children, and formerly incarcerated parents (262 focus group participants in all). The report concludes with recommendations for improving the well-being of children with incarcerated parents.

What We Don’t Know

While we have estimates of the number of children affected by parental involvement in the criminal justice system, we do not have precise numbers or any method of knowing which children are affected, their needs, or how those needs are being met. It is difficult to identify specific children because neither the criminal justice nor child serving systems have mechanisms for collecting and acting on this information.

Further, parents are typically reluctant to share information about their children for fear of negative consequences: the child welfare system will get involved, they will lose custody of their children, or they will be “hit” with child-support obligations. Children and caregivers may also be wary of sharing this information because of stigma, shame, and a lack of belief that sharing such information will lead to assistance.

While there remains much we do not know, we definitely know enough to act. This is the clear conclusion of the Summit and the recommendations in this report.

Love you
having a blast
dont cry we
all care and
miss you

Section 2

The Criminal Justice System

“My son...he wanted to tell them to get off of his mother so my mother had to hold him back. He said, ‘leave my mother alone.’ My daughter she just stand there crying, trying to hug me before I go out the door and the officers are pulling me to one side...I’m being cuffed and I’m looking at them wanting to cry and I’m looking at my mother wanting to cry and she don’t know what to say.”

Parental arrest focus group participant, 2008,
The Osborne Association

Children’s Experiences

While there is little research available about the experiences and needs of children whose parents are arrested, some studies are beginning to shed light on this issue. A national study conducted in 1998 estimated that of parents arrested, 67% were handcuffed in front of their children, 27% reported weapons drawn in front of their children, 4.3% reported a physical struggle, and 3.2% reported the use of pepper spray.³⁵ According to a 2010 study examining the relationship between witnessing arrests and elevated symptoms of post traumatic stress, children who witnessed the arrest of someone in their household and had a recently arrested parent were 73% more likely to have elevated post traumatic stress symptoms than children who did not have an arrested parent and had never witnessed an arrest.³⁶

Witnessing an arrest or learning that a parent has been arrested can cause anxiety, confusion, anger, sadness, and myriad other emotions in children. Most children do not talk about this experience. In fact, many carry it around with them for years without speaking about it, including to the parent who was arrested. Some have nightmares or develop arrest-related fears. Many develop negative associations with law enforcement or figures of authority as a result. This can put them at risk because they may not seek assistance from the police when they feel unsafe or are in danger. Further, their respect for the law and sense of right and wrong can be complicated by their parent’s arrest. This is particularly true if they were not aware of their parent’s law-breaking, if they witnessed aggression toward their parents during an arrest, or if their parents did not take responsibility for their actions, using language to convey that arrests happen randomly or without justification.

Data Collection/ Identifying Children

In 2010, 584,558 people were arrested in New York: 343,308 arrests in New York City and 241,250 throughout the rest of the state.³⁷ Behind these statistics are children who are present at their parent's arrest or are affected by it. In many cases, the arrest throws their care into question. According to a special study by New York City's Criminal Justice Agency (CJA) in four boroughs of New York City (excluding Staten Island) over five months in 2009-2010, there were 53,891 minor children impacted by a parent or caregiver's arrest.³⁸

With the exception of the CJA study, we do not know the actual number of affected children because statistics on children of arrested parents are not currently maintained by law enforcement, child welfare, or other agency. What we know comes largely from statistical projections and anecdotes from the experiences of service providers. A system of data collection and reporting is needed that both provides systemic overviews and enables us to ensure that the interests of particular children are met. Such a system would identify whether and how many children are present at an arrest of a parent, and who is designated to care for the children. It would also track whether the arrested parent is a custodial parent and ensure that arrangements are made to care for the children.

“My last arrest affected my step-daughter...But fortunately, I told the cop, ‘she’s just a little girl, please be cool.’ He was cool about it... He found out how long it was going to take for her father to get home, and it was okay.”

Parental arrest focus group participant, 2008, The Osborne Association.

Relevant Policies and Regulations

Model child-sensitive arrest protocols implemented in other states and jurisdictions include detailed guidance for arresting officers to minimize trauma for children who are present. Protocols include: not hand-cuffing parents in front of their children whenever possible, allowing parents to reassure their children, waiting for a designated caregiver, not using the siren when leaving, and allowing the parent an additional phone call to arrange childcare. They also include guidance for looking for signs of children who may not be present but may be dependent on the arrested person for care and supervision.

The *New York Law Enforcement Handbook* issued by the New York State Association of Chiefs of Police (2010 and 2011 editions) includes a model and detailed protocol for arrests when a child is present or when the person being arrested is the caretaker of a child (see **Appendix D**).

The protocol can guide arrest procedures not only for police departments, but for all agencies that make arrests, including probation, corrections, parole, and Immigration and Customs Enforcement.

Training/Professional Development

In 2010, the Governor's Children's Cabinet Subcommittee on Children of Incarcerated Parents (GCC Subcommittee) completed a substantial review of national training efforts regarding child-sensitive arrests, with the goal of developing a model curriculum to be adopted by the Municipal Police Training Council (MPTC). MPTC conducts training for law enforcement statewide, excluding New York City; the New York City Police Department (NYPD) conducts its own training. The GCC Subcommittee review found that there is little information on child development or minimizing trauma to children within existing law enforcement training.

Similarly, there is little to no training on the issue and impact of parental arrest among community service providers and government agencies that provide or fund direct services to children and families. As discussed later in the **Mental and Physical Health** section, this is also largely absent from the training of mental and physical health practitioners as well.

Agency Coordination

In several states and jurisdictions, child-sensitive arrest protocols include coordination among law enforcement, child welfare, and community-based children’s mental health providers to address the trauma children experience, as well as the urgent care and custody issues that can arise. One such example is New Haven, Connecticut where local law enforcement agencies partner with the Yale Child Guidance Center to provide services to children at the time of and after their parent’s arrest. In New York, there appears to be significant untapped potential for partnerships between mental health providers and law enforcement to minimize trauma to children of individuals placed under arrest, and provide post-arrest services to them and their caregivers.

A model for interagency coordination already exists in New York City. When the arrest is for severe child abuse and severe maltreatment, a coordinated Instant Response Team Protocol guides the actions of law enforcement, child welfare, and the District Attorney’s offices. Launched in 1998, one of the stated goals is to “minimize trauma to the children during the investigation process by: reducing the need for repetitive interviewing by law enforcement, medical, and social service staff, and by holding interviews and medical examinations in child-friendly surroundings, such as Child Advocacy Centers and special child abuse clinics when possible.³⁹ Concerns for minimizing trauma should apply to the cases of children whose care is in question as a result of parental arrest.

“Often police officers have commented to us that they feel better about doing their work when they know there are people and services available for the children.”⁴⁰

Joy D. Osofsky, Clinical Psychologist

Established and Emerging Efforts in New York

FACIT Program

The Family Crisis Intervention Program (FACIT) within the Rochester Police Department has been providing crisis intervention assistance to crime victims for more than 30 years. The program consists of 17 civilian staff (mostly masters level social workers), one police sergeant, 7 civilian police personnel, and four volunteers. Staff responds to calls for assistance from police officers. The calls may be related to an array of issues, including parental arrest. FACIT staff also provides training for Rochester law enforcement. FACIT is funded through the City of Rochester and the State Crime Victims Board.

Brooklyn District Attorney’s Office Training and Protocol

Starting in 2009, the office of the Brooklyn District Attorney (DA) implemented several mechanisms for identifying children who may be left uncared for due to a parent’s arrest. Currently, the DA’s office conducts bi-monthly borough-wide training of police officers and sergeants. One segment of the training includes alerting officers that individuals have likely not anticipated being arrested and may have unattended children at home; therefore, it is necessary to specifically remember to ask questions about dependent unattended children. If an arrested person answers that there are unattended children, officers must notify a supervisor so that someone can be dispatched to take charge of the children. Once this is done, officers are required

to follow police procedures to ensure the young person is taken care of, and if necessary call New York's child welfare agency, the Administration for Children's Services (ACS). For pre-arranged arrests such as drug raids, officers should arrange to secure children and minimize their trauma. Additionally, the DA's office has established protocols in their complaint room, requiring assistant district attorneys (ADAs) to ask police officers about unattended children when writing up the arrest complaint. Through a pop-up reminder on their computerized case entry system, the ADA is instructed to ask the question several times throughout the process.

“Officers do not want the FACIT program to go away; it is life-saving. They know we’re a resource for them and they trust us. Without us, officers get stuck and have to wait in a house with children for hours. Instead they call us and we come out with an unmarked car and can wait with the child or take them somewhere; it’s not as scary.... Still, we are an idea that is always being challenged.”

Elias Lopez, Coordinator
of the Rochester Police
Department's FACIT program

Materials from the Permanent Judicial Commission on Justice for Children

The Permanent Judicial Commission on Justice for Children (PJJC) produces a pamphlet, “Be Sure Your Child is Cared for and Safe,” that alerts parents to the importance of planning for their children's care. It includes forms that can be used to designate a caregiver for a period of time. It also identifies resources for appointed caregivers. It is designed to be distributed at police and sheriff departments and precincts, as well as in the criminal courts and local jails statewide. (www.nycourts.gov/ip/justiceforchildren/publications.shtml)

Law Enforcement Training

The New York State Association of Chiefs of Police offers model policies and toolkits on various topics as podcasts and PDF downloads from their website. This enables a department to listen to the podcast, customize a sample policy, or download a reference, resource, or cheat sheet. Such mechanisms could be used to provide training on minimizing trauma to children at the time of arrest. (www.nychiefs.org)

Child-sensitive arrest protocols are now implemented in: New Haven, CT, San Francisco, CA, and New Mexico. Additionally, Washington State, Washington, DC, Allegheny County, PA, Little Rock, AR, Oregon, San Antonio, TX, Butte County, CA, and Riverside County, CA have developed specific recommendations for developing and implementing a concrete child-sensitive arrest protocol.

1) All agencies authorized to make arrests (including police, probation, corrections, parole, and immigration) should adopt and implement child-sensitive arrest protocols designed to minimize child trauma and unnecessary out-of-home placements of children.

Protocols would include the following elements:

- look for signs of children as part of every arrest
- minimize trauma to children who are present by not handcuffing parents in front of them and leaving the scene without the siren, whenever safely possible
- allow arrested parents to place additional phone calls to arrange for child care
- provide parents with information to aid them in making arrangements for their children
- provide information to the person with whom the child has been left that can assist them in planning (i.e. information on how to check the status of the case against the arrested parent and where the parent is being held, as well as assistance that may be available to the caregiver)
- instruct officers how to respond when there is no appropriate caregiver available

2) Training for law enforcement agencies should include information about the impact of parental arrest on children, the benefits of child-sensitive arrest practices, and the proper use of relevant protocols.

Training and materials can build on successful efforts in other jurisdictions, incorporating the latest research about trauma and child development.

3) Law enforcement agencies should provide information to arrested individuals about planning for care of children at and after the time of arrest—whether the person under arrest requests information or not.

The Permanent Judicial Commission on Justice for Children's pamphlet, "Be Sure Your Child is Cared for and Safe" and other information should be made available within police precincts and sheriff's departments, as well as in the criminal courts and local jails statewide. A booking room poster/bulletin should be posted that conveys a nonthreatening message about the urgency of making arrangements for children who may be alone or in an unsafe situation. Parents who were hesitant to tell arresting officers about unattended children may decide to do so if they see a poster that asks, "Are Your Kids Safe?" or "Are Your Children Being Cared For?" and advises, "Be sure to tell the officer if you need to make arrangements for your children." The posters and pamphlets would also remind booking officers to ask about dependents.

4) Law enforcement and agencies that serve children and families should develop partnerships to address the needs of children at the time of arrest and provide advice and assistance to arrested parents, arresting officers, and those left to care for children following an arrest.

Law enforcement officials cannot be expected to meet the complex needs of minor children and should be encouraged to refer arrested parents to appropriate resources. Public and private agencies that serve children and families and have specialized knowledge about the impact of arrest on children, care and custody options, and legal issues should be available to provide services to children and families at this critical and stressful time. Providers of child mental-health and trauma-treatment services have a particular contribution to make, as do community-based providers who are already established as trusted providers of other services. Once established, these programs could be listed on booking room posters and in pamphlets, as well as made known to caregivers via the arresting officer and statewide or local information and referral hotlines.

5) Police should collect information about children whose parents are arrested.

Arresting officers should be required to inquire about and note information about minor children present at an arrest, as well as those not present but reported by an arrested person as “dependents.” Police should track these numbers, as well as the number of times a child is left with a designated caregiver, or enters the child welfare system, as a result of an arrest. This data is not currently available, is not collected by any other agency, and in the aggregate has important implications for inter-agency coordination, training, policy reform, and service/ program development. Implementation of this recommendation may require modification of the standard arrest form, the way arrest data is currently aggregated and analyzed, and protocols that protect the identity and confidentiality of minor children.

*“Dear Judge,
My dad is the person
that I love a lot and
he’s also the person
that takes care of me.
So Judge I’m just asking
one thing from you-
please don’t take my
dad away from me or it
will break my heart.
From, Savion”*

**Age 11, Letter to
Criminal Court Judge**

NOTE: Parents who are arrested, processed, and sentenced through the criminal courts may also have Family Court cases that are directly or indirectly related to the parent’s criminal court involvement. This section relates to sentencing in the criminal courts and how that process affects children, as well as challenges that occur when parents have matters pending in both criminal and Family Courts. Additional Family Court issues are addressed in the “Child Welfare,” “Community Supervision,” and “Caregiver Support” sections.

This section also addresses only pre-sentence functions; supervision after sentencing is discussed separately in “Community Supervision.”

Children’s Experiences

Several variables affect the emotional response of children who are aware of their parents’ involvement in court proceedings. These include their age and developmental level, their knowledge of the legal situation, and their relationship with their parent. Parents often disclose information about their children during a bail interview by a pretrial service agency or to their lawyers in an effort to secure their pretrial release. However, children may be left in unstable situations by parents who did not make arrangements for ongoing childcare or custody because they assumed they would quickly be released pretrial. Prompt release on bail or pretrial supervision may reduce the trauma of arrest by returning the parent to the community. Longer periods of detention may exacerbate uncertainty and anxiety for children—and for the adults caring for them. If an arrested parent is the custodial parent, children may be shuffled between temporary living situations and the emotional impact of the absence may be greater. Friends and family who try to help by taking in the affected children may struggle with the additional responsibilities as they try to maintain their own work and family obligations. These circumstances often lead to a great deal of instability for children.

Children’s experiences may be even more acute at the time of sentencing. The impact will vary depending on whether their parents were out on bail or detained prior to sentencing, whether their parents were custodial or primary caregivers, whether they were forced to move as a result of their parent’s arrest, or even whether they were relieved by their parent’s arrest because of criminal behavior or addiction that concerned them. For older children who may be attending court, writing letters on the parent’s behalf, or hearing about plea negotiations, the sentencing process may be emotional, stressful, or indifferent to their needs.

In contrast to what usually happens, many young people believe their needs should be taken into consideration by the criminal court. Right #3 of the *Children of Incarcerated Parents Bill of Rights* (see **Appendix B**) speaks to this: “I have the right to be considered when decisions are made about my parent.”⁴¹ Lawyers making bail applications generally

cite a defendant's child-care and financial obligations to his or her children in support of pretrial release, but are rarely informed about the broader impact of pretrial detention on children. Historically, sentencing has been focused on the specifics of a defendant's crime and criminal history. It does not consider the impact of various sentencing options on the defendant's children and parenting responsibilities. Victim Impact Statements and Community Impact Statements recognize the importance of input from those affected by an individual's crime (Maryland and Minneapolis, among other places, use Community Impact Statements).⁴² Family Impact Statements would introduce the voices of the children of the defendant into this calculus, so that their well-being could be included among the factors sentencing judges consider.

When parents have concurrent criminal (including County Court or Supreme Court) and Family Court cases, their children may be affected by the decisions of either or both courts, and the lack of coordination between the two. Currently, it is possible for criminal and Family Court dates to be scheduled in conflict with each other. Because the criminal court calendar supersedes that of Family Court, parents with a conflicting appearance are forced to miss their Family Court hearing. These absences may then be seen as an indication that the parent does not care about his or her children or does not want to participate in planning for the children's future. There is currently no database or mechanism to allow courts to coordinate hearing dates or be made aware of conflicts.

Children's access to their parents may also be affected by orders of protection issued by criminal courts that pertain to the defendant's children. Since child development, parent-child attachment, childhood trauma, or treatment of children's trauma are generally not the focus of criminal-court proceedings, orders of protection issued by criminal courts risk harming children. Family Court judges are generally better situated to make these rulings and review them over time; children would benefit from such orders being under Family Court jurisdiction. Orders of protection currently specify the type of parent-child contact allowed. The relatively

new option of tele-visiting between incarcerated parents and their children should be considered when such orders are issued and reviewed.

Identifying Children/ Data Collection

There is currently no systematic collection of information about minor children as part of criminal court processing. In New York City, the Criminal Justice Agency (CJA) interviews defendants in the court pens prior to their initial court appearance to determine conditions of pretrial release or bail. In other counties this function may be performed by other agencies, including probation. As mentioned briefly in the **Arrest** section (p. 18), between September, 2009 and January, 2010 CJA added three questions regarding children to their defendant interviews in four boroughs, excluding Staten Island. The supplemental questions were not part of the bail assessment: 1) do you provide support to minor children?; 2) what ages are these children?; and, 3) do you live with them?

The data revealed that of 110,789 arrests, 31,164 arrested persons reported "providing support" to a total of 53,891 children who experienced the arrest of their primary caregiver, other parent, or guardian. Further analysis of this data by borough, children's age, age and gender of the person under arrest, and custodial parent/living arrangement is now possible. Such analysis would provide unprecedented information about the children of arrested parents. Similar surveys at various points along the court and sentencing process would provide information about how these affect defendant's children, with implications for service delivery and policy reform.

There is information about the defendant's family members in the pre-sentence investigation report (PSI), prepared by probation and discussed further below, and children can be included here. However, specific information about the defendant's children or responsibility for them is not a focus of the PSI, and this information is not aggregated or analyzed.

Relevant Policies and Regulations

New York laws concerning pretrial release and sentencing permit judges to take into account a wide range of factors, and do not prohibit consideration of children and family obligations. A commission is currently considering possible changes to the sentencing laws and could formally recommend that children's needs and rights receive heightened consideration during the sentencing process. This has implications for presentence investigations and reports, alternatives to detention, alternatives to incarceration, and determinate versus indeterminate sentencing.

New York requires probation departments to prepare pre-sentence investigation reports in many cases.⁴³ These reports provide valuable information to a court regarding a defendant's legal history and social circumstances including family situation, school history, mental health history, and substance abuse history, to assist the court in reaching an appropriate disposition. The PSI accompanies a person sentenced to prison where it is used by corrections staff for classification and parole staff for reentry planning. The PSI is commonly thought to be the most important document concerning a person incarcerated in the state prison system.

While New York does not routinely include Family Impact Statements as part of the sentencing process, historical argument and out-of-state examples offer support for this. At a US Senate Subcommittee Hearing on Children and Youth in 1973, several prominent scholars, including Margaret Mead and Urie Bronfenbrenner, recommended that Family Impact Statements become a required part of policymaking.⁴⁴ Witnesses at the hearings expressed concern that child-focused programs alone could not safeguard the well-being of children and that it was more effective to "strengthen and support parents than substitute for them."⁴⁵ San Francisco began using Family Impact Statements in 2009 and in the high-profile sentencing of Andrew and Lea Fastow in the Enron scandal, "they and their lawyers made the children's needs central to plea negotiations." The result was staggered sentences so that one parent would always be there to care and provide for the children.⁴⁶

In 1999, Louisiana revised its Administrative Code to include a Family Impact Statement such that "prior to the adoption and implementation of rules, each state agency shall consider and state in writing the impact of such rules on family formation, stability, and autonomy." This Family Impact Statement was to consider—among other factors—the effect on the "functioning of the family" as well as on "the behavior and personal responsibility of children."⁴⁷

Training/Professional Development

Although their decisions deeply affect children, criminal court judges do not receive formal training on child development, attachment, child trauma, or brain development research related to children's needs. Similarly, Family Court judges generally do not receive training on the impact of a parent's criminal justice involvement on the children before them in child welfare, custody, visitation, or juvenile delinquency petitions. In fact, judges in both courts are often unfamiliar with the prison system as it relates to parent-child contact, particularly visiting rules, conditions, and programs. There are few mechanisms outside of the annual Judicial Training Institutes for judges from criminal and Family Courts to share challenges and strategies, or discuss cases that are in both courts simultaneously. While legal practitioners including judges are required to obtain Continuing Legal Education (CLE) credits each year, conferences, seminars, panels, and webinars offering such credits rarely address jail and prison programs and policies relevant to incarcerated parents and their children, including information on visiting conditions and parenting programs. Further, staff preparing pretrial or presentencing recommendations, whether for probation or alternative to incarceration

(ATI) programs, should receive training in conducting family assessments that would inform Family Impact Statements and sentencing recommendations.

Agency Coordination

Individuals who are incarcerated are dependent on inter-agency coordination to appear in court. Courts must issue an order to produce to an individual's local or state correctional facility which must then transport them to court. While the New York State Department of Corrections and Community Supervision (DOCCS) makes more than 4,000 trips to court each year, there continue to be challenges with incarcerated parents being produced in court, particularly Family Court.⁴⁸ There are several factors that may cause difficulties, including the lack of a timely and accurate order, the order being sent to a facility after the parent has been transferred to a different facility, and differences in the names listed on the family and criminal-court cases. There are also instances where incarcerated parents decide not to appear because they would lose their place in preferred housing or in required programs. Trips to court can involve days or weeks in the local jail, depending on court adjournments, available transportation back to the state prison, or other complicating factors. A designated liaison between corrections and the courts could alleviate some of these issues. Additionally, video conferencing offers an alternative to being transported to court (see "Established and Emerging Efforts in New York" below).

In 2009, San Francisco began implementing a Family Impact Statement (FIS) as part of the probation report submitted to the sentencing judge. In 2011, California State Senator Carole Liu introduced legislation specifically recommending statewide county-level adoption of the Family Impact Statement.⁴⁹

Established and Emerging Efforts in New York

New York City has a well established community of ATI programs and indigent defense agencies that advocate for community alternatives prior to plea and sentencing. ATIs often allow for parents to live in the community with their children while completing their treatment services and obligations to the court. Existing indigent defense and defender-based advocacy programs have forensic social workers or other clinical staff who prepare pre-plea and pre-sentence memoranda in which family impact is generally included, and recommendations for enrollment in ATIs include consideration of various sentencing options on children.

Statewide, New York has done considerable work to expand the use of video conferencing as a means to increase parents' participation in a variety of family court hearings, including child support and permanency hearings. Several jails and prisons in the state utilize the option regularly. In 2008, an inter-disciplinary working group drafted guidelines to expand the use of video conferencing for these purposes, although these remain in draft form. Video conferencing is cost effective and can avoid the disruption of a court trip, including possible removal from a long-awaited parenting or drug-treatment program that may be required by Family Court. Video conferencing is not appropriate in all cases. However, having people incarcerated closer to their children and to the court where they have ongoing cases would also promote increased parental participation and cost savings (see the **Incarceration** section for discussion of proximity to children and prison assignment).

1) The Office of Probation and Correctional Alternatives and local probation departments should include a Family Impact Statement as part of pre-sentence investigations and reports to the court.

The Family Impact Statement should minimally include:

- whether a parent is the primary caregiver
- the extent of a parent's involvement in a child's life and home
- level of financial and emotional support provided
- involvement with Family Court
- predicted short and long-term impact on a child of a parent's incarceration
- a psychosocial assessment of the parent
- if appropriate, a statement from the child about the impact of their parent's absence

This would ensure that courts have knowledge of the effect of various sentencing options on the children and families, and are able to consider this in their decision-making.

2) Sentencing laws should integrate consideration of the impact of incarceration on the defendant's children with the goal of minimizing the collateral harm done.

3) The Office of Probation and Correctional Alternatives should support the development of specialized training on the implementation of Family Impact Statements, including modules that could be included in staff training curricula of county and city probation departments and ATI programs.

4) Family Court should have jurisdiction over orders of protection pertaining to children; when criminal courts issue such orders they should stipulate "subject to Family Court review and modification."

As the court makes decisions about the forms of contact permitted in various cases, it should consider tele-visiting as an option.

5) The Office of Court Administration and correctional agencies should examine the process of producing incarcerated parents in Family Court with the goal of increasing participation in Family Court proceedings.

This should include hearings related to delinquency, permanency, child support, mediation, or other subjects. Guidelines for the use of video conferencing should be finalized and distributed statewide.

6) Legal and judicial training institutes, court-based lunchtime discussion sessions and workshops should incorporate information about child development, including research on brain development, attachment, and trauma, and the importance of maintaining contact between a parent and child.

Organizations and institutions that offer CLE credits for legal practitioners, particularly prosecutors and defense counsel, should offer training that includes the Family Court consequences of arrests and convictions for clients with children, the impact of sentencing and incarceration on children, minimizing trauma for children involved with court hearings (particularly in criminal courts), visiting, and the impact of a parent's dual court involvement on children.

“Incarceration involves not only the person who’s sentenced, but everyone whose lives that they affect. And so therefore it is our job to do what we can to maintain familial and community bonds throughout the incarceration period, and to decrease social and institutional stigma that is not confined to the incarceration period.”

Makeba, Summit Youth Panel, November 2010

NOTE: While some people use the term “jail” to refer to any secure correctional facility, jails are local facilities operated by cities or counties to house individuals who have been arrested and are being held awaiting disposition, or who have been sentenced to incarceration for up to one year. Outside of New York City, county jails are generally run by the Sheriff’s Departments; New York City jails are operated by the NYC Department of Correction (DOC). New York’s state prisons are operated by the Department of Correctional Services (DOCS), although the recent merger with the Division of Parole has resulted in a new Department of Corrections and Community Supervision (DOCCS).

Children’s Experiences

The effect on a child of seeing his or her parent in a jail or prison is quite distinct from the physical absence that occurs when a parent is incarcerated. Depending on age, attachment, and the degree to which a parent was present in a child’s life prior to incarceration, this absence can have varying effects. These are significantly mitigated by the degree to which the parent can be present in the child’s life during the period of incarceration through visits, letters, phone calls, and recently, tele-visiting.

While it is important to improve the skills of professionals across all systems to address the impact of parental incarceration on children, the people who make the biggest difference in their children’s lives—whether they are physically present or not—are their parents. Incarcerated parents have the responsibility and, in most cases, the capability to contribute to their children’s healthy growth. Many need tools and skills to make this contribution, and an opportunity to practice them. They also need to understand how their past choices affect their children and how much their future choices matter. Parenting and other programs offered during incarceration are critical to assisting parents in this effort to safeguard their children in the community.

When children are asked about their greatest concerns regarding their incarcerated parents, their first question is usually “When are they coming home?” Depending on their age and the degree of contact that children have had with their parent before and during incarceration, the experience of awaiting a parent’s return “home” may differ considerably. For children whose parents are subject to the Parole Board’s discretionary release, the lack of certainty leading up to the Board’s decision is typically stressful. Sometimes the pressure and demands on the other parent or caregiver can be so great that the children’s own feelings about the parent’s possible release are overlooked. Children can be both hopeful and afraid to hope; they may have few, if any, people to talk to about their feelings. And when a parent is denied parole, their children often lose faith in the fairness of the system. Sometimes, faced with another two years before the next possibility for

parole, children are tempted to give up trying to hold together their relationship with their parent.

Even when a parent has a firm release date or is granted parole, children may have confused or ambivalent feelings. For parents who hope to reunite with their children, current caregivers may be relieved or they may be concerned about whether things will work out this time. And without support on the inside helping the incarcerated parent to plan for reentry and reunification, the parent may be making promises that are unlikely to be kept. The time leading up to release can be happy but stressful in the life of a child who has been waiting for a parent to return home.⁵⁰

Visiting

The debate about whether it is “good for children” to visit prisons has existed as long as prisons have allowed visiting. Some argue it is frightening for children to see their parents in a condition of confinement. Others believe young children will not even know they are in a prison. Still others worry that the deterrent value of prison is lost if visiting children find prisons too humane. Yet, most people who have taken children on visits believe they are reassured when they can see their parents and comforted by their parent’s touch and presence.

Because visiting conditions vary among facilities and because children themselves come to visits with different backgrounds and expectations, the availability and impact of visiting differs from one child to another. However, experts generally agree that in the vast majority of cases, children benefit from being able to see, hear, and touch their parents; they also agree that the process before, during and after visiting has a great deal to do with a child’s positive or negative experience. Thus, in addition to the visiting time spent with the incarcerated parent, correctional staff, visiting rules, the visiting room environment, and caregivers also influence children’s visiting experiences.

It should be noted that there are parents, especially during pretrial detention, who do not want their children to visit them. They may believe that

they will be released shortly and hope to spare their children substantial disruption or the trauma of even knowing that their parent was arrested (see **Caregiver Support and Family Stability**, “Children’s Experiences,” p. 44). As reality sets in, parents may change their minds, or they may continue to believe that their children are better off without seeing them. Many parents are unaware of their children’s developmental and attachment needs and how to best support them. Further, parents facing a prison sentence may be too focused on their own needs and may not consider what their children need at this critical time. For all of these reasons, it is important to provide incarcerated parents with the information they need to reduce their own children’s fears and trauma, and to provide family members and guardians caring for these children with current, relevant information about how to support children, including navigating the correctional system to facilitate visits and ensure the best possible experiences for children.

For children to derive the most benefit from visiting their parents, the experience itself should be as child-friendly as possible consistent with security priorities of corrections. While it is standard in New York to allow contact visits, some jails may only allow non-contact visits. Seeing a parent you cannot

“Prison visits matter. Children and parents will tell you again and again how important it is that they see each other, and research backs them up. Consistent, ongoing contact reduces the strain of separation, lowers recidivism, and is the single most important factor in determining whether a family will reunify after a prison term.”⁵²

**Nell Bernstein, Author and Coordinator,
San Francisco Children of Incarcerated
Parents Partnership**

touch is very upsetting to most children, and non-contact visiting is recognized among children's advocates as cruel and damaging to children.⁵¹

Unfortunately, extreme security measures that are visible to children may cause them to assume they are in a dangerous situation. Other children will interpret an unwelcoming environment and unfriendly response from uniformed staff as validation of their negative experience with or view of law enforcement. Children are often confused or upset by prison rules or interactions that appear to infantilize or disrespect their parents. For example, incarcerated parents are not permitted to handle money or go beyond the yellow line that separates the vending machines from the visit area in many New York facilities.

While New York's state prisons have relatively generous visiting policies, the experience of being processed for visits varies greatly from one facility to another. When families arrive at the "wrong" time, on the "wrong" day, or with the "wrong" clothing or identification they may be turned away even if they have been traveling all night with young children. Or, they may find a sympathetic officer who is willing and able to find some resolution so they can enter the facility. Generally, there is no recourse for a person excluded from visiting; no one to call during the weekend to resolve the problem or elevate it to a supervisor once the officer at the front gate says "no." Having anticipated the visit for weeks, the impact of this on children can be devastating. This disappointment may leave them confused, hurt, disappointed, sad, or angry. While it is easy enough to blame the adult visitors for not reading or understanding the rules before undertaking their trip, it is never the children's fault. Efforts should be made to make visiting rules and schedules publicly accessible and to better ensure that families understand visiting procedures.

The interactions that children observe between uniformed staff and their parents and caregivers (both the incarcerated parent and the adult who has brought them to the visit) have a profound impact on their view of authority and law enforcement personnel.

Treatment that is perceived as disrespectful or abusive can be traumatizing, while officers with a friendly but professional demeanor and strong interpersonal skills can have a marked impact on allaying children's fears for themselves and their parents, as well as restoring faith in those who represent the justice system.

There are instances where the child of an incarcerated parent is also incarcerated in an Office of Children and Family Services (OCFS) juvenile facility. Communication in these instances is challenging and visiting is currently not permitted, although there is an OCFS policy that allows letters and phone calls. In fact, OCFS updated their policy in March 2011 to permit letters and phone calls from an incarcerated person to a youth in residence when the person is "an immediate family member" if it is determined the contact is in the best interest of the resident.⁵³ Implementation of this policy may require a Memorandum of Understanding between OCFS and DOCCS, as well as with local jails.

Phone Calls and Letters

Phone calls and letters are the primary forms of communication that exist for most children and their incarcerated parents. Phone calls from state prisons are outgoing collect calls from the facility to a land-line, residential telephone and must be made using New York's collect-call vendor. New York has recently passed legislation to reduce the exorbitant charges placed on families for these calls. However, phone bills from prisons can still be costly for families, leading some community parents or caregivers to place "blocks" on their phone or limit the number of calls with the child's parent. Letters are also critical and many children appreciate, even love, getting letters from their parents; however, in this day of Facebook, Twitter, and other social media, fewer children write letters to their parents. In light of new technologies, new forms of parent-child communication should be explored to maintain relationships between children and their incarcerated parents.

Identification/Data Collection

Jails and prisons do not routinely collect information about families and children beyond what is needed for purposes of security and classification. When people are first admitted to jail or prison, information is usually collected about next of kin and sometimes the number of living children, but specific information about minor children is rarely gathered. Even if asked, parents first entering the jail or prison system may be hesitant to disclose this information due to fears about stigmatizing their children, triggering child support orders, or being charged with neglect in connection with their criminal conduct.

Information about the number and ages of children with incarcerated parents is relevant to efforts to plan for services and programs for the children. It is also important in an effort to support incarcerated parents to meet their children's needs, such as through parenting programs and child-friendly visiting rooms. Information related to children such as outstanding child support orders or family court involvement would be useful to ensure parents are advised of their rights and responsibilities. In addition, affected agencies can use this information to improve coordination to fulfill their respective mandates and missions. Information about children is also relevant in the effort to house parents in facilities closer to their children, especially if the children are in foster care or there are open Family Court cases. This report opened with a discussion of recent efforts to collect data on the children of incarcerated parents. These data gathering efforts would be made more reliable if they were paired with clear communication to parents that their participation would lead to increased or improved services that benefited children, parents, and caregivers.

Recently OCFS began to collect data on how many incarcerated youth are parents. The current data is self-reported and is a point-in-time snapshot. As of March 1, 2011, about 3% of OCFS residents are parents (32 out of 1003 residents). This affects programming, visiting, and efforts to maintain contact between teen parents and their young children.⁵⁴ In addition, OCFS soon plans to collect data about the number of youth in residence with an incarcerated parent.

Relevant Policies and Regulations

Maximum security state prisons offer visiting 7 days a week. Nearly all other state facilities offer visits at least on weekends and holidays. Extended visits for spouses, children, and immediate family members are available at specific prisons that offer the Family Reunion Program. At the facility level, policies vary regarding searches, frequency of visits, visiting room arrangements, and activities. Some prisons have or allow special foster care visits on non-visiting days. Visits at local jails vary by county.

Individuals incarcerated in state prisons are permitted to make collect phone calls to approved family residences on a virtually unlimited basis at prescribed times, generally 7 days a week. Telephone policies at local correctional facilities vary by county.

Incarcerated individuals at state prisons may write to and receive letters from their children, although all mail is scrutinized. Stamps may be purchased at commissary.

Training and Professional Development

Corrections staff do not routinely receive training on parental incarceration, its impact on children, and the benefits to all family members when they are able to maintain contact. Some correctional staff believe that visiting prisons is bad for children; others are concerned that children may be used to carry contraband. Visiting room staff training does not routinely address ways to reduce the potential trauma of searches or the damage done when children observe interactions that demean their parents. Children would benefit greatly if officers were trained in child-sensitive security procedures. Correctional staff who do recognize these emotional impacts on children may prefer not to work in the visiting room to avoid the emotionality of the experience.

Agency Coordination

DOCCS has a director of Ministerial, Family, and Volunteer Services, and many facilities have corrections counselors who serve as liaisons or supervisors of Family Reunion and other family activities. However, there is no clearly designated liaison for agencies that serve family members and children, such as, schools, child welfare, juvenile facilities, and courts. Designated liaisons are needed statewide and in each facility to ease coordination and communication between agencies.

It is very positive when child welfare agencies and correctional facilities cooperate to increase children's access to their parents. However, these visits generally are available only on school days. Interagency efforts to offer visits on weekends and holidays can help to prevent children from having to make the untenable "choice" between attending school and spending time with their parent (discussed further in the **Child Welfare** section).

Established and Emerging Efforts in New York

Nurseries

New York established the first prison nursery for women in 1901 at Bedford Hills Correctional Facility, adding a second nursery at Taconic Correctional Facility in 1990. In 1989, New York City established the only jail nursery in the country at Rikers Island.⁵⁵ Women who are pregnant when they are incarcerated can participate in the nurseries; those who recently gave birth and were then incarcerated are ineligible. Babies are allowed to stay in the nurseries for up to one year. This can be extended to 18 months in certain special circumstances, usually when the mother is eligible for release during this period and could therefore leave with the baby. These pioneering efforts have had long-lasting positive effects on children. Bedford Hills is involved in a longitudinal study to follow nursery babies and mothers that has shown initial positive results.⁵⁶

Parenting Programs

New York contracts with nonprofit organizations to provide parenting courses and children's centers in several men's and women's prisons, and provides a range of other family and parenting support through its own staff and volunteers. Recognizing that children are profoundly affected by the quality of the relationships between their incarcerated and custodial parents, DOCCS has permitted the Osborne Association to offer relationship courses for incarcerated men with their partners at several facilities.

Visiting Programs

For nearly forty years, New York has led the nation in visiting access at state prisons, offering contact visits at all prisons, daily visiting at maximum security prisons, and extended family visiting for children at numerous facilities throughout the state. DOCCS also offers free monthly bus transportation to those wishing to visit incarcerated family members.

In the 1970's, DOCS established Sesame Street corners in many visiting rooms to provide children with games and books. More than 30 years ago, Catholic Charities opened the Bedford Hills Children's and Parenting Centers, and in the mid-1980's launched their Summer Program. The Children's Center is nationally recognized and offers a spacious child-friendly nurturing environment. The Parenting Center offers an array of parenting and relationship courses for mothers, including the summer program that allows children to spend one week each summer visiting their mothers during the day in a summer-camp environment. It is hosted by committed community families. Each of the programs is staffed by trained civilian and incarcerated individuals.

In 1990, the Osborne Association opened its Children's Center at Sing Sing Correctional Facility. Since then, the concept has been replicated in more than a half-dozen other men's prisons. These child-friendly areas where children can visit and play with their incarcerated fathers are staffed with trained Inmate Program Aides as well as Osborne civilian staff or trained volunteers.

34 Incarceration

More recently in NYC, DOC has permitted the Osborne Association to distribute coloring books and crayons to visiting children at one jail on Rikers Island. This year, DOC also established children's play areas within three visiting rooms on Rikers, allowing children to spend time with their incarcerated parent in a more child-friendly setting.

Since 2000, the New York City Administration for Children's Services Children of Incarcerated Parents Program (CHIPP) has coordinated special visiting to Rikers and state prisons, as well as out-of-state prisons in the tri-state area, for foster care children (discussed further in the **Child Welfare** section).

For the past several years, DOCS has offered tele-visiting from its office in Harlem. Since 2010, DOCCS and the Legislature have supported a tele-visiting program between Albion Correctional Facility, near Rochester, NY, and the Osborne Association's Brooklyn site that includes visit coaching on both ends.

Note: The following recommendations address incarceration that occurs after arraignment (i.e. not police lock-ups or court pens, but after a court appearance when a person is detained pretrial or sentenced after conviction.) Some of the discussion and recommendations are the same for local jails/penitentiaries and for state prisons; others apply only to the prison system and are presented after the general recommendations.

Jails and Prisons

- 1) At intake, corrections/sheriff's departments should collect data on children whose parents are in custody.**

This should include the number and ages of minor children, whether a parent is custodial, and whether there are child support orders, orders of protection, or Family Court involvement. Data should be held confidentially and aggregated to determine program needs, and also available to corrections staff for purposes of classification, facility assignment, program assignment, and related purposes.

- 2) Corrections staff should offer multiple opportunities for parents to locate their children or contact individuals and agencies responsible for their minor children.**

This should begin at intake at each facility to allow parents to ensure that their children are being cared for.

- 3) Information about visiting and other forms of contact with incarcerated parents should be made publicly accessible via the internet and as written materials.**

Current information should be provided that includes a designated phone number for specific guidance on the visiting rules and process. It should also include a number that families denied entry for a visit can call during weekday and weekend hours.

- 4) Upon admission, incarcerated individuals should be permitted to send a letter, without charge, containing information about how children may maintain contact with incarcerated parents.**

This should include visit rules and schedules and mail and telephone guidelines. It should also include resource information for guardians—created by experts and made available by facility counselors—about preparing a child to visit a correctional facility.

- 5) Information for parents on Family Court issues, including child support, foster care, custody and visitation, should be made available at intake and thereafter.**

- 6) Counseling and program staff should receive training on current child support policies and initiatives pertaining to incarcerated parents. Parents who disclose that they have child support orders should be encouraged to contact relevant agencies.**

- 7) Correctional facilities should provide children ample opportunities for visiting at times that do not interfere with school attendance.**

Recommendations

8) Corrections administrators should ensure that visiting protocols, including processing and searches, are child-friendly.

All children should be able to touch their parents, in settings appropriate to children, and young children should be permitted to sit on parents' laps.

9) Visiting staff, including corrections officers who process visitors and supervise visits, as well as corrections counselors, should receive training on child-sensitive security and the impact of parental incarceration.

- All visiting and counseling staff should be trained on the impact of arrest and incarceration on children, child development, interpreting children's visiting behaviors (before, during, and after the visit), and maximizing security while minimizing trauma to children.
- Training modules should be developed with input from stakeholders who are experts on the impact of various practices on children.

10) Correctional staff assignments to process visitors and supervise the visiting room should be based on skills, training, and ability to interact with the public, especially children. These assignments should not conform to strict staff seniority rules.

Where appropriate, union representatives should be included to develop assignments that recognize the needs of children and job-related considerations.

11) Corrections and sheriff's departments should explore or expand the use of technology to increase opportunities for children to maintain contact with their parents.

- **Expanding tele-visiting.** Tele-visiting is a promising additional venue to increase children's access to their parents. Tele-visits should be offered as a supplement to face-to-face visits and can be effective in maintaining and strengthening the parent-child relationship. To be effective, there should be trained staff at both the correctional and community sites.
- **Piloting secure e-letter system, such as exists within the federal bureau of prisons, to allow incarcerated parents to communicate with children by e-mail.** Implementing an e-letter program whereby children could email a central email address per facility should be considered. Emails would be read and printed out by the mailroom (or other designated staff) and delivered as a letter to the incarcerated parent.

12) Correctional administrators should seek and welcome partnerships with community and faith-based organizations to provide the community link to escort children to visits or tele-visiting sites.

Visiting rules should allow for one volunteer to escort more than one family's children at a time. These organizations can or may already provide needed wrap-around support for children and families.

13) Jail and prison law libraries should include updated information about parental rights and responsibilities, resources to assist incarcerated parents, and recent legislative changes that affect them.

Other government departments such as education, child welfare, child support, health, as well as community and faith-based providers can provide materials for the libraries. Partnerships with local law schools or law firms could lead to student-led workshops for incarcerated parents about family law provisions relevant to parents.

14) DOCCS and individual correctional facilities should designate a staff person to serve as a Family Services Liaison. This role would coordinate activities and information between DOCCS and relevant agencies, including family court, schools, child welfare, child support enforcement, foster care, and community based organizations.

- Family Services Liaison staff would encourage and arrange phone calls or videoconferencing between prisons and schools, foster care agencies, and other agencies to allow parents to participate in decision-making about their children's lives.
- Family Service Liasons could also serve as an internal resource for correctional staff related to the family matters of incarcerated parents.
- Family Service Liasons should have expertise in family dynamics, child development, parent-child relationships and current research about successful reentry and recidivism prevention.

15) Corrections departments should implement child-sensitive arrest protocols and train officers who may make arrests at facilities.

- When making arrests of visitors accompanied by children, corrections officers should adhere to child-sensitive arrest protocols (see **Recommendation 1** in the **Arrest** section, p. 21).
- When an arrest is of the only adult(s) with visiting children, efforts should be made to identify and contact a family member, relative, or friend before contacting the local child welfare agency.
- Agreements should be developed between local child welfare agencies to allow children to be placed in foster care in their county of residence.

Prison and Reentry

1) Maintain or increase children's access to their parents by:

- **Prioritizing proximity to children as part of DOCCS classification and prison assignment system.** The criteria for deciding where individuals are housed—including decisions about transfers between facilities—should include proximity to children (after security and mental health and medical needs). Since state facilities are often remote, implementation could begin with a pilot that focuses on incarcerated parents with open child welfare cases or incarcerated parents who were their children's primary caretakers.
- **Preserving and expanding visiting programs, family centers, and children's centers.** As they implement budget cuts, DOCCS should maintain policies and programs that are child and family-sensitive. Programs that should be preserved, expanded, or created include the Family Reunion Program, hospitality centers, children's visiting centers, free bus program, parenting and relationship programs, technology improvements (secure email, Skype and tele-visiting), and temporary release for family responsibilities.

Recommendations

2) Reexamine merit time and supplemental merit time criteria to credit parenting programs and other relationship-skills building courses.

Incentivize parents to participate in these programs by allowing them to substitute for programs that earn merit time credit.

3) With additional resources, ensure that all prisons offer parenting and family support programs. Consider parental programming needs when assigning individuals to facilities.

4) Correctional agencies should partner with children and family service providers and children's mental health experts to develop a child-sensitive security and correctional practice checklist for corrections.

This would enable correctional agencies to comprehensively inventory their policies and practices from a child's perspective to reduce children's trauma and support their well-being.

5) Corrections staff who work with incarcerated parents to develop transition accountability plans (TAPs) should assist parents in developing program and reentry plans that include child-related considerations.

- TAPs should include in-depth family dimensions to assist incarcerated parents who will be co-parenting or who hope to regain custody of their children after release. It is crucial that this planning occur before release.
- TAPs should outline parental goals regarding their children, translate these goals into necessary actions, and identify the appropriate resources and supports. Left unaddressed, these issues can become unnecessarily upsetting, postpone reunification, and result in conflicts among parole, Family Court, and employment requirements.
- Those with children in foster care or active orders of protection related to their children have special requirements that must be addressed at the planning stage for successful reentry.

6) The Parole Board should implement and consider Family Impact Statements (FISs) and the effect each release option will have on children and families.

FISs should consider:

- whether a parent was the primary caregiver prior to incarceration;
- the extent of a parent's involvement with their children since incarceration or release on parole;
- a parent's level of financial, emotional, and physical support to their children;
- a parent's involvement with Family Court;
- the predicted short- and long-term impact of the release, denial of the release, or violation resulting in re-incarceration. This can include a statement by the children about the impact of their parent's absence, release, or return post-violation.

“Most people are unaware that there are more individuals under probation supervision in New York State than in prison and on parole combined.”

Robert F. Iusi, Jr.
Director of Probation,
Warren County

NOTE: People who are convicted of a crime may be in the community under the supervision of probation, parole, or an alternative to incarceration program (ATI). Probation is offered in lieu of prison and is supervised by city or county probation officials who must comply with guidelines promulgated by the state Office of Probation and Correctional Alternatives, now part of the Division of Criminal Justice Services. New York also offers a range of alternatives to incarceration, operated by non-profit organizations under contract to a locality, that divert defendants into community-based programs that operate through agreements with prosecutors or courts.

Parole, which occurs after a period of incarceration, is a state function. The Division of Parole has merged with the Department of Correctional Services (DOCS) to create the Department of Corrections and Community Supervision (DOCCS).

Children’s Experiences

Children whose parents are sentenced to probation, in an alternative to incarceration program (ATI), or on parole may be unaware of their parents’ status. Alternatively, they may feel like the supervision their parents are under places them under a microscope. Their experience will depend on whether they live with their parent, the frequency with which the probation or parole officer visits the home, his or her demeanor in the home, whether the child is aware the person is a law enforcement officer, and what the parent tells the child. Curfews and travel restrictions have more obvious effects on home life, placing limitations on when and where the children and family can go.

Children with a parent under community supervision may feel some of the additional burdens associated with having an incarcerated parent. These include shame, stigma, and, in some cases, the pain of hearing insensitive and insulting comments about the parent. Even when there is virtually no contact between the child and the supervising officer, the parent may be experiencing the collateral consequences of a criminal record that make it hard to care for children, including family reunification challenges, reduced employment opportunities, and difficulty accessing housing and higher education.

Although many people on probation spent little or no time detained prior to sentence, parents on parole may have spent considerable time in prison. Even parents who were attentive to their children while incarcerated may be overwhelmed by the challenges of reentry. Parents coping with these challenges may be unable to deliver on their own promises and best intentions, leaving their children disappointed, hurt, confused, or angry.

Some parents are sentenced to ATIs as a condition or in lieu of probation. These programs may require a significant time commitment without regard for a participant’s child care responsibilities. They also rarely serve the entire family, and do little to measure or strengthen a participant’s competence as a parent or caregiver.

Parents who take responsibility for their children while under community supervision may find that the expectations and requirements on them undermine their efforts. Appointments with probation and parole officers (POs) must be met regardless of child care obligations, but children may not be permitted into parole or probation offices. Home visits may occur while children are home, but POs or caseworkers may say things—or ask questions—that are not child-appropriate. And, in cases where the parent is alleged to have violated the conditions of supervision, a PO is entitled to arrest and detain the parent in the presence of the child, without regard for its traumatic effect or a plan for the child’s care when their parent is removed from the home.

Data Collection/ Identifying Children

In order to take children into consideration when planning a visit, setting a reporting schedule, placing employment or travel restrictions, or making an arrest, probation and parole officers need detailed information about people living in the home, including children. Further, many people under supervision have non-custodial children who may not be identified to supervision agencies but should be considered in treatment and supervision plans. Knowing whether people under supervision are parents also helps agencies plan for services that are likely to benefit those under supervision. For example, a probation department that knows how many children are affected by a parent’s probation status, might plan for, fund, or sponsor parenting programs or other efforts to increase successful outcomes for parents on their caseload. To our knowledge, this information may be known to individual POs, but does not appear to be routinely collected, aggregated, or utilized by community corrections agencies.

Relevant Policies and Regulations

Probation and parole officers are law enforcement officers. They are armed and able to make arrests for probation or parole violations, even if no additional crime has been committed. Many officers have social work backgrounds and may be personally sensitive to the needs of children; however, the job is currently focused on law enforcement. When NYC probation officers were given the right to carry guns nearly 10 years ago, the commissioner remarked “We are going from an agency that held the probationer’s hand in the office and gave them a handkerchief, to an agency that is going out into the community and holding probationers accountable for the promises they made to the court.”⁵⁷

Children are not allowed in some parole and probation offices. This can create child care problems and expenses for already stressed families. Sometimes it even forces parents with unavoidable child care obligations to miss appointments. Similarly, other conditions of supervision may be imposed without taking children into account. While some probation and parole offices may not be appropriate places for children, departments should address this issue either by designating child-friendly reporting offices per locality, providing clear guidance to parents on probation or parole about how to address conflicts between parental responsibilities and reporting/supervision requirements, or making all offices minimally child-sensitive.

Training and Professional Development

The standard training for probation, parole, and even some ATI staff does not cover information on the impact of a parent’s arrest and sentence on his or her children; nor does it address ways that people under supervision can be encouraged and supported to provide nurturing care to their children. Probation and parole officers should have a clear protocol and training in making arrests or executing warrants when children are present.

Agency Coordination

Coordination between community supervision agencies and agencies with which parents may be involved regarding their children (such as, schools, child welfare, and child support enforcement) can assist in meeting each agency's mandates. For parents attempting to reunite with children, partnerships can better address permanency planning requirements such as parental participation in family team conferences, service plan reviews, and court hearings.

Established and Emerging Efforts in New York

Several probation departments have shown interest in doing more to consider the impact of incarceration on children and families during the presentence investigation. This would provide probation officers with enhanced information about the parenting responsibilities of those under supervision, and the impact of this supervision on children. There is also interest in making probation offices more child-friendly. In NYC, there has been discussion of co-locating probation offices within community organizations, making it easier for people to report within their own neighborhoods.

State corrections and parole agencies are in the process of merging and will be positioned to implement a more seamless process from prison to parole. This could allow the needs of children and families to be taken into greater consideration when setting the conditions of parole and in reentry planning. This may also expand the role of county-based Reentry Task Forces in generating family-focused strategies for reentry. Until now, nonprofits have been best able to bridge the experience of prison to parole for families. For example, at the Queensboro Correctional Facility, a reentry facility for men, the Osborne Association's Family-Focused Reentry Program includes families in reentry planning to ensure that all family members are prepared for the challenges of reunification and its impact on children.

Recommendations

1) Probation and parole departments should develop clear and practical protocols and conditions of supervision for parents and caregivers responsible for children while under community supervision. Departments should provide staff training on these protocols and devise mechanisms for monitoring their implementation.

Protocols provide guidance for probation and parole officers as well as parents, and can prevent conflicts that may arise in the absence of clear policies. Protocols would minimally address reporting to probation or parole offices with children, what to do when conflicting child-related appointments arise, child-related emergencies, and overall childcare responsibilities.

2) Probation and parole departments should implement child-sensitive arrest protocols and train their officers on this protocol.

When making arrests, officers should adhere to a child-sensitive protocol (see the **Arrest** section, **Recommendation 1**, p. 21) When possible, efforts should be made to execute warrants when children are not present. If the arrest must take place when children are present, efforts should be made to minimize trauma to the children.

3) Probation and parole departments should develop guidelines and provide staff training on interacting with families.

This should include visits to approve residences. Training should encourage officers to recognize the positive role that families play and how they can be critical partners in assisting probation and parole to fulfill their mandate.



Section 3

Children's Service Systems

44 Caregiver Support & Family Stability

“When we remove children from the care of their primary giver we are interfering with an essential developmental process. There may be times when this is necessary for maintaining our social contract of law and order; however this process should be undertaken with care and concern for the child’s well-being at every step.”

Deborah Iarussi, LCSW,
Sills Family Foundation

*NOTE: This section discusses caregivers outside the child welfare system. When “kinship caregivers” are referred to here, it does not include kinship foster parents. Kinship foster parents are licensed foster parents monitored by child welfare agencies and the family court (they are discussed in **Child Welfare**).*

Children’s Experiences

When one parent becomes incarcerated, the remaining parent becomes even more critical in the child’s life. In the great majority of cases, it is the father who goes to prison while the mother remains to care for the child. And in most cases, it is this mother with whom the child was living prior to the father’s arrest. This is true whether the father was living in the home, living separately but involved in their child’s life, or totally absent. Depending on the extent to which the father was contributing to the financial and emotional life of his children and their mother, the impact on the child can vary enormously. Many fathers play significant roles in their children’s lives in spite of not living with them. When a mother is incarcerated, it is much less likely that the father will assume care. It is more likely that grandparents, especially grandmothers, will assume care. One study found about 67% of incarcerated mothers reported their children living with grandparents or other relatives.⁵⁸

A result of losing a parent to incarceration may be to escalate a child’s fear of losing the other parent or the caregiver. Some parents and caregivers report “velcro” children who stick to them and do not let them out of their sight. Children may become hyper-vigilant and monitor the caregiver’s behavior, telling them not to drive too fast, or to cross the street when they see a police officer nearby so that they do not get arrested. Parents, grandparents, and other caregivers report dealing with children’s nightmares, questions, confusion, and difficult emotions like pain and anger. Even children who are relieved by their parent’s absence may also worry about them.

Children’s behavior and interactions with their caregivers are affected by what they are told. In some cases, particularly with younger children, children are not told the truth. Some caregivers and incarcerated parents alike minimize the separation, stating that it will be over shortly, not wanting to talk about it, or specifically instructing children not to tell anyone outside the family. Efforts to hide this subject create a burden of keeping family secrets. This burden can significantly increase children’s stress, which then adds to the stress of their caregivers.

Caregiver Challenges

It is challenging for a caregiver to support a child's relationship with his or her incarcerated parent. Although distance and finances play a role, emotional and relational factors may be more influential in determining whether a child will see or speak with his or her parent. Caregivers may feel hostility toward the incarcerated parent. There may also be a history of domestic violence, past or current orders of protection, or other safety concerns. Custodial parents and relative caregivers alike may worry about whether to bring children to visit, and how to handle the children's responses and emotions after the visit. The custodial parent or caregiver may support the child having contact with the incarcerated parent, but they themselves may not want any contact (see the **Incarceration** section for more visiting challenges).

There are many hurdles that can tip the scale against maintaining contact with an incarcerated parent. Caregivers may believe children are ill-served by visiting a correctional facility or an incarcerated parent; they may also feel the parent doesn't deserve to see their children. Even couples determined to stay together may find it difficult to protect their children from the stresses on their own lives and relationship. Parents who were dependant on their now-incarcerated partners for financial or emotional support may express frustration and anger in front of their children. In fact, regardless of financial and custody arrangements, family members may express a range of emotions that undermines a child's relationship with the incarcerated parent and confidence in any or all of them.

Living arrangements when a parent is incarcerated are diverse, complex, and may change over time. They include families moving closer to a prison where the parent is incarcerated, moving to a different city or neighborhood in response to reduced financial circumstances or disapproval of neighbors, children moving in with grandparents or other relatives, siblings living with different caregivers, and older siblings caring for younger siblings.

Non-parent family members who assume care upon the incarceration of a parent are commonly called kinship caregivers.⁵⁹ Although they are far less numerous than mothers raising children whose fathers are incarcerated, kinship caregivers often have to attend to more urgent needs than those affecting custodial parents. For this reason, the Summit discussion focused more heavily on kinship caregivers.

“Imagine getting a call from the local social services department asking you to immediately become caregiver for your four-year-old granddaughter. Her mother's been arrested ... What would you do? You would say, ‘Yes. I want my grandchild.’ Because that's what families do. It's a core family value to care for our own. Yet good intentions aren't enough. The next day brings real questions. How do I go to work? How do I get medical care for the child? ... Without kinship services and support, more relative caregivers will be unable to provide care and more children will enter more expensive foster care.”⁶⁰

Testimony by Gerard Wallace, Esq., Director,
New York State Kinship Navigator

Kinship Challenges

Kinship caregivers are rarely prepared to take custody of children of incarcerated parents. If they agree, they are confronted with the financial, educational, legal, and medical challenges of assuming full responsibility for children. They must move quickly to obtain legal authority to make decisions for children. Without it, simple parental tasks like school enrollment or medical care can become daunting challenges that can result in school absences or periods without medical care. Birth certificates and medical records are necessary to assume custodial care for a child and must be found or requested. Providing full-time care to a child may mean giving up a job, or an unexpected need for day care. Material needs, such as beds, clothing, and other items may also arise immediately. Outside of foster care, there is very little financial assistance available for kinship caregivers (see “Relevant Policies and Regulations”).

Kinship caregivers are often isolated or misinformed, and may not know about existing benefits and programs that could aid them. Many cannot afford attorneys and must self-advocate for services and custodial rights, which can be intimidating and daunting. Some kinship caregivers forgo assistance because they lack the information and resources to complete the guardianship/custody proceedings in court.

Despite these significant difficulties, studies repeatedly show the advantages of kinship care over non-relative foster care placement for most children. These outcomes include fewer placement disruptions, fewer problems with behavior and developmental delays, fewer runaways, improved school attendance, closer attachment to their caretakers, and more regular contact with their parent and siblings.⁶¹ Research and personal testimony by kinship families describe numerous instances in which children avoid entering foster care and have improved the stability and well-being of both the child and caregiver.⁶² Additionally, the annual cost-per-child of kinship care is a fraction of the cost to place a child in foster care.⁶³

The prospect of a parent’s release from prison affects both custodial parents and kinship caregivers, who may be both eager for and anxious about what the impact will be. There may be concern about whether the public housing ban on people with convictions will apply or whether parole will permit the reentering parent to reside in the household. Many caregivers want to support returning parents and welcome them home, but worry about financially supporting another adult in the home, who will likely face significant barriers finding employment and may return with emotional and psychological scars from incarceration.

Data Collection/ Identifying Children

There is no reliable data about how many custodial parents or kinship caregivers are raising children with an incarcerated parent. Agencies with which they may interact, including Medicaid, public assistance, Social Security, and services for the elderly do not collect the data that would help them recognize the extent to which families with incarcerated parents are part of their service population that may have special needs. New York State kinship programs now track this among the caregivers they serve (see **What We Know**, p. 15). In December 2010, the Governor’s Children’s Cabinet’s Subcommittee on Children of Incarcerated Parents surveyed close to 900 parents about children’s living arrangements. The forthcoming data from this survey is critical to plan service delivery and development, cross-agency coordination, policy development or reform, and resource allocation and funding.

Relevant Policies and Regulations

Kinship Caregivers

New York has passed many laws helpful for grandparents and other relatives raising children. These include the Grandparents Rights Act,⁶⁴ the Standby Guardianship Act,⁶⁵ the Parental Designation Act,⁶⁶ and statutes governing Permanent Guardianship Status⁶⁷ and Medical Consent to Immunizations and Emergency Medical Care.⁶⁸ These enactments are part of the Legislature's response to kinship community's need to make important decisions on behalf of children in their care.

Currently, sources of financial assistance for kinship caregivers outside of the child welfare system provide much less than needed to care for a child. Medicaid's income-based "child-only" public-assistance grant is typically less than the non-specialized foster-care rate and does not increase proportionately with each additional child in the household. Families with more than one child per household generally receive an additional \$150 per child per month, considerably less than the costs associated with the care of that child. And, while children in these households may qualify for subsidized childcare and children's health insurance through Child Health Plus, kinship caregivers do not qualify for services that licensed foster parents—including kinship foster parents—can access without regard to their income. These services include children's mental health, respite care, or other supportive programs. Although New York recently enacted the Kinship Guardianship Assistance Program (KinGAP), it is only for kinship foster parents, and there remains no form of subsidized guardianship in New York for 140,000 grandparents raising grandchildren and 60,000 other relatives who are primary caregivers (KinGAP is discussed further in the **Child Welfare** section).⁶⁹

Child Support

There is no specific assistance for custodial parents who lose the income previously provided by an incarcerated parent. While child support orders may continue to accrue during incarceration, few parents can fulfill these obligations while in prison.

Incarcerated parents who watch their child support debt become insurmountable while incarcerated may be discouraged from providing even emotional support to their children. The New York State Division of Child Support Enforcement (DCSE) has made recent efforts to strike a balance between a custodial parent's financial need and the benefit to the child of having a parent return to the community without unmanageable debt. This balance takes into account that non-custodial incarcerated and re-entering parents have value beyond their financial contributions.

In 2010, amendments to New York State Family Law provide that incarceration shall not be a bar to the court finding a "substantial change in circumstances," unless that incarceration was a result of non-payment of child support, or an offense against the custodial parent or the child who is the subject of the order.⁷⁰ This affects any child support order issued on or after October 13, 2010 and allows for a non-custodial parent to request a poverty order based on incarceration; if granted, the non-custodial parent's monthly payments may be reduced to a minimum of \$25 a month with a \$500 cap on arrears.

Training and Professional Development

Public or private agencies that interact with caregivers generally do not train staff to inquire or respond to issues related to incarceration. Agency staff may not have knowledge of the criminal justice system that would help them respond supportively. Nor may they recognize common euphemisms for incarceration, e.g., the parent is "upstate" or "away working." This leads to missed opportunities to provide critical information and support to often overwhelmed and high-need caregivers, and to improve coordination among systems.

Agency Coordination

The DCSE has been working with state and local corrections officials to advise incarcerated parents of their rights and options when there is an open child support case (see “Established and Emerging Efforts in New York”). In New York City, the Office of Child Support Enforcement (OCSE) has been reaching out to the NYC Department of Correction and providers who serve incarcerated and formerly incarcerated non-custodial parents, to develop new approaches to increase the emotional and financial contributions that parents make despite their criminal justice involvement. Efforts include co-locating child support staff on Rikers Island to meet with fathers to promptly address child support issues, and incentivizing legitimate employment upon release that will support the noncustodial parent and his or her children.

County Reentry Task Forces throughout New York State bring together agencies that have a role in post-release success. They have primarily focused on planning and coordination of employment and housing. Studies repeatedly show that family support is a critical factor in preventing recidivism; reentry task forces should include representatives of local child support, kinship, and family-oriented programs, and local Responsible Fatherhood grantees to develop a family support component. Reentry task forces should also examine concrete barriers to family reintegration, such as the ban on living in public housing and the lack of family transitional housing.

Established and Emerging Efforts in New York

Supportive Services for Custodial Parents in the community

A number of community-based programs provide support groups and assistance to custodial parents and family members in the community, including partners and spouses raising children whose other parent is incarcerated. For example, Prison Families of New York sponsors support groups around the state (www.pfnny.org). The Osborne Association’s Family Resource Center and Women’s Empowerment Hotline offer a toll-free number to provide information and support to family members as they attempt to maintain family ties (1-800-344-3314), as well as courses and retreats designed to strengthen relationships.

The New York State Kinship Navigator and OCFS-funded kinship programs

The Office of Children and Family Services (OCFS) administers a statewide kinship navigator program, and twenty-one regional kinship programs that serve thirty counties. One of only eight such statewide models throughout the country, New York’s Kinship Navigator program is a toll-free phone line and a comprehensive website (www.NYSNavigator.org) that provides information, referrals, and assistance to kinship caregivers throughout the state. The regional kinship programs provide case management, advocacy, legal assistance, informational and educational workshops, emergency funds, children’s programming, caregiver peer mentoring, and support. Many of the OCFS regional kinship programs are considered national models. New York has implemented a data collection system to track outcomes and provide an in-depth statewide profile of kinship families, including how many include children of incarcerated parents.⁷¹

Child Support

In 2008, the State DCSE worked with the Department of Correctional Services to develop the video, *Child Support Information for Incarcerated Noncustodial Parents*. This has been distributed to all state prisons for use in their transitional services program. In addition, DCSE developed the brochure, "If Life Has Changed... So Can Your Child Support" to provide non-custodial parents with information about how to file for a modification in Family Court when circumstances change.

In New York City, OCSE began co-locating staff at Rikers Island to meet with fathers about their open child support cases. This initiative was developed to support discharge planners who had limited knowledge about child support, and wanted assistance in addressing the barriers to successful reentry posed by large arrearages and child support orders. They noted there was significant distrust of anything related to child support and it was critical to be present in the jail to address child support issues. This effort is helping to address child support orders and arrears and is beginning to shift the culture among child support staff and fathers.

Recommendations

1) OCFS should commission or conduct a cost-benefit analysis to examine federal and local funding streams for subsidized guardianship for caregivers outside of the child welfare system.

This analysis should include whether subsidized guardianship reduces foster-care placement and improves outcomes for children.

2) With additional resources, expand subsidized guardianship in New York to include kinship caregivers outside of the child welfare system.

The only form of subsidized guardianship that New York currently offers is KinGAP, a program exclusive to kinship foster parents. Kinship caregivers outside of the foster-care system are currently ineligible to receive this subsidy that is equal to the adoption subsidy (and significantly greater than the child-only grants for which kinship caregivers can currently apply).⁷²

3) DOCCS should provide corrections counselors, incarcerated parents, visitors, and program staff with contact information for the New York State Kinship Navigator.

4) A collaborative working group should develop a training program for program staff who serve caregivers of children of incarcerated parents including staff, of early intervention programs, Head Start, daycare and afterschool

providers, respite providers, and other agencies that work with or provide benefits to caregivers.

Potential working group members include New York State Kinship Navigator, partner agencies of the New York Initiative for Children of Incarcerated Parents, custodial parents, kinship caregivers raising children of incarcerated parents, and mental-health providers. Training should include creative strategies for reaching caregivers, including outreach in prison visiting rooms, public service announcements, information directories, and social media.

5) County Reentry Task Forces should develop strategies for strengthening families through comprehensive discharge planning processes that include children (as appropriate), caregivers, and parents.

Reentry planning should include a needs assessment among families prior to and during reentry. Task forces should create county-specific resource listings for returning parents. They should coordinate with OCFS kinship programs and work with local providers to increase awareness of the needs of returning parents, their children, and families.

6) Local housing authorities should allow the formerly incarcerated to reside in public housing when necessary to reunite parents with their children.

7) Parenting programs, responsible fatherhood, and relationship-strengthening programs in the community and in jails and prisons should incorporate information on co-parenting, including mediation in the event of conflict between incarcerated parent and custodial parent or caregiver.

Child Support:

8) DOCCS and local corrections departments should check for child support orders during intake and inform parents of their right to seek modification of orders.

9) State and local child support enforcement offices should enhance outreach and communications to incarcerated parents, provide general information on child support to state and local correctional facilities, offer training to corrections staff, and provide current information to jail and prison law libraries.

Materials can include the DCSE's video, *Child Support Information for Incarcerated Noncustodial Parents* and brochure, "If Life Has Changed... So Can Your Child Support." Local child support agencies should co-locate child-support staff within jails and prisons, a model that Rikers Island has successfully demonstrated.

10) The Family Court Act §§ 451 and 461 and Domestic-Relations Law § 236 Part B should be made retroactive.

This would allow parents whose incarceration was not the result of non-payment of child support, or an offense against the custodial parent or child who is the subject of the order, to qualify for a poverty order of \$25 a month with a \$500 cap on arrears, even if the order was imposed prior to October 2010.

11) State and local child support enforcement offices should consider suspending child support orders during incarceration.

This is particularly important if the parent is in a facility that does not provide work or if the incarcerated parent has very limited assets.

12) Custodial parents who received child support should be eligible for "child-only" grants during the period of incarceration, regardless of income.

Child-only grants will help to offset lost support when a parent is incarcerated through no fault of the custodial parent.

“The hardest part of my school experiences while my father was incarcerated—and he’s been incarcerated since I was 4—was not having him at my graduations, especially high school...and applying to college and having to write ‘I have no father’ on my financial aid application. That hurt.”

Kevin, 18, after completing his first semester of college

Overview

Children’s Experiences

As educational professionals know, the life circumstances and experiences of children outside the classroom directly affect their ability to be physically and emotionally present and ready to learn inside the classroom. Students with incarcerated parents may experience disruptions in their home lives and changes in their caregivers. As a result, they may miss days of school, or even have to change schools. For some, the dual burdens of worrying about their incarcerated and custodial parents and hiding what is going on in their families can detract from their ability to concentrate at school. Some students doubt their ability to succeed given their parent’s failure. Others overcompensate for their parents’ failings by trying to disprove the notion that “the apple doesn’t fall far from the tree.”

These internal struggles are magnified for children who hear negative comments from peers, professionals, or family members about their parent or about their own potential. Further, when the parent’s status is known to others, some students report they are then blamed for items that are missing or other negative incidents, as if criminality were in their genes. Children of incarcerated parents may even have strong personal reactions to increased police presence for security within their schools.⁷³ For children who wonder if they are destined to end up where their incarcerated parent is, this can be particularly damaging.

Within the classroom, students may feel isolated by assignments that assume the parent is physically available to them. They also feel saddened and alone when a parent misses graduations, school plays, sports games, or other milestones and achievements. Unlike absence due to death or military deployment, the loss of parents to incarceration is often a source of shame.

Research indicates that children of incarcerated parents have difficulty in school. One study found that 23% of children with a father who has served time in a jail or prison have been expelled or suspended from school, compared with just 4% of children whose fathers have not been incarcerated.⁷⁴

School social workers and guidance counselors are often unable to effectively address the various issues faced by children of incarcerated parents. They have heavy caseloads and lack training on parental incarceration. It requires special knowledge to know how to help an incarcerated parent remain involved in his or her child's school life or whether there are community programs that might help the student and/or his or her family. While some children report they don't want to attend a school-based program for fear of everyone "knowing their business," other children feel comfortable and desire this support. School-based programs have been effective in other jurisdictions when offered with sensitivity and discretion.

Students' school experiences affect their engagement and confidence in school settings. Children who are teased, isolated, or blamed come to dislike learning and doubt that school is a safe and welcoming place.

Identification/Data Collection

While schools do not routinely collect information about parental incarceration, most teachers report that they know or suspect that some of their students have parents who have been arrested or incarcerated. Given the large number of children affected by parental incarceration, it is logical to assume that this is a significant issue for schools and the professionals who work in them. Data about students with incarcerated parents would likely demonstrate the need for increased services and support, although some may be hesitant to disclose this information. Adequate confidentiality safeguards and staff training are critical. Without the assurance that sensitive information will be held in confidence and lead to supportive services, it is likely that data collection will significantly undercount these children, or unintentionally increase stigma, fear, or isolation.

Relevant Policies and Regulations

In New York, incarceration does not diminish a parent's right to be involved in children's educational decision-

"I did a presentation for my class at school about having a parent who was incarcerated because my father is. When I started, I asked how many kids had an incarcerated parent, and 3 raised their hand. When I finished, I asked the same question again and 15 said they did. It's hard to come out and talk about this."

Jahnay, 16, father is incarcerated

making, although it may make it less convenient. The role of a parent as an advocate and informed decision-maker is central to federal law and is woven into the history of the modern educational system. New York educational law specifically requires consent from a child's parent for decisions regarding special education and Individual Education Plans for students, even if the parent is currently incarcerated. Beyond meeting legal requirements for parental consent, a parent's involvement in his or her child's education may foster the child's academic aspirations, educational success, and a love of learning.

New York passed the Dignity for All Students Act (DASA) in June 2010; it takes effect in July 2012. DASA offers a promising mechanism for addressing the need for safe space and protection within schools for children with incarcerated parents. While DASA does not explicitly recognize children of incarcerated parents, it does prohibit harassment and discrimination against all students in New York public schools.⁷⁵

The federal McKinney-Vento Homeless Assistance Act was passed in April 2006. It provides a precedent for proactive efforts to protect a specific population of students who may feel stigmatized and be unlikely to self-identify. McKinney-Vento addresses the needs of students who are homeless or considered in temporary housing. It demonstrates how training, proactive efforts, and a shared understanding of the context of children's lives can contribute to children's educational achievement.

Training and Professional Development

Educational professionals currently do not receive formal training on parental incarceration, its prevalence or impact on students, and the ways that parents, even when incarcerated, can encourage and inspire their children to seek and maintain school success. Teachers, guidance counselors, and other school staff are often unaware that a child's parent is incarcerated. If they do know, they may be under the impression that they do not need to contact or involve the incarcerated parent. Some may also have biases or make assumptions about the value of this parent in the child's life, thinking it better for the child if their incarcerated parent is not involved. Even when school staff is aware of and want to contact and involve an incarcerated parent, they may not have the information or tools to do so. Most school staff also lack information about community resources that can provide services to children of incarcerated parents.

Agency Coordination

Interagency protocols between schools and correctional facilities could assist school staff in contacting incarcerated parents when a decision or consent is needed in a timely manner. Parents and school staff are dependent on staff at correctional facilities to make their connection. Correctional counselors at facilities who do attempt to assist a parent with their child's education may not know how to begin the process of contacting their child's school. Designated interagency liaisons and interagency partnerships are needed to support the educational success of students with incarcerated parents. Partnerships between schools and community-based providers are also important so that students can be referred for support offered off-site.

Although coordinated visiting programs between child welfare agencies and correctional facilities are very positive steps towards increasing children's access to their parents, they are generally only available on school days. Interagency efforts to minimize missed school for children can help to prevent children from having to make the untenable "choice" between attending school or spending time with their parent.

Established and Emerging Efforts in New York

Partnerships to Address the Intersection of Child Welfare, Education, and Parental Incarceration

The NYC Administration for Children's Services Education Unit (CSEU) provides education advocacy services on behalf of children involved in the child welfare system. In 2010, the CSEU drafted a policy and training module for child welfare staff regarding the involvement of incarcerated parents in special-education decision making for their children. The CSEU website was subsequently updated to include more information for child welfare staff on working with incarcerated parents.⁷⁶

CSEU, Advocates for Children, the Legal Aid Society's Education Advocacy Project, and counsel from the New York City Department of Education (DOE) worked together to develop and roll-out a new policy document for DOE staff entitled "Guidelines and Procedures for the Assignment of Surrogate Parents." It includes a section on working with incarcerated parents, and a form specifically for incarcerated parents to designate parental authority. The package also was coupled with training for implementation of the policy.

Parent Engagement

Engaging parents in their children's education is now a major focus at the local and state education levels. The New York State Education Department (NYSED) offers parental information and resource centers to "help implement successful and effective family engagement policies, programs, and activities that lead to improvements in student academic achievement."⁷⁷ In NYC, the DOE has an Office of Family Engagement as well as parent coordinators on staff. Although these initiatives do not yet include specific efforts to engage incarcerated parents, they offer the foundation for doing so.

School-based Programs Around the Country*

New Mexico's KidPACT program offers a community support system for school youth of incarcerated or formerly incarcerated parents. Services include home visiting, case management, counseling, facilitated support groups and collaboration with mental health teams in South Valley schools. Summer activities and support groups are offered. The program is designed to reduce drop-out rates, reduce the shame of parental incarceration and family violence, and teach children awareness and the necessary skills to overcome the developmental effects of parental and/or generational incarceration. (<http://pbjfamilyservices.org/prisonrelated.html>)

Community Works' ROOTS program in San Francisco, CA is a school-based program for students with an incarcerated parent which incorporates an arts and social justice curriculum with support services and case management. (<http://www.communityworkswest.org/index.php/about-us>)

Youth Advocacy Board for Children Left Behind in Arkansas provides school-based support groups for children of incarcerated parents, foster children, and children of undocumented immigrants, all youth that are coping with parental loss. Recruitment of participants is done discreetly by school counselors and by program members who know other affected children in their neighborhoods or from visiting rooms at the jail or prison. The youth meet as a leadership and advisory board on restorative justice, often presenting at conferences. Groups provide the opportunity for sharing, journaling, and planning ways to contribute to their communities. For example, some youth work with younger children as mentors and tutors. (<http://www.arkansasvoices.org>)

Pennsylvania Prison Society's Support for Kids with Incarcerated Parents (SKIP) program is offered within schools, community centers and faith-based organizations. The program provides: 1) A safe place to discuss feelings with other children; 2) Organized activities designed to build self-esteem and help children get along with others; 3) A better understanding of and ways to deal with parents' incarceration; 4) An understanding that people in prison made mistakes, are neither heroes nor victims; and 5) Information and referrals to caregivers about other human service agencies when necessary. (www.prisonersociety.org/progs/ifs_skip.shtml)

Therapeutic Intervention Project [TIP] is a service of the Center for Children of Incarcerated Parents in Pasadena, CA. TIP was piloted in 1991 and originally served middle-school children. Since 1992, TIP has provided services to children in elementary schools and daycare settings. (<http://www.e-ccip.org/program.html>)

Milk and Cookies (MAC) Children's Program, Richmond VA. In January, 1999 Assisting Families of Inmates, Inc. launched a unique school-based program addressing the needs of children impacted by parental incarceration. The program sites are all located in schools in the city's Southside where the population of children with an incarcerated parent was known to be one of the highest in Richmond. (<http://www.afoi.org/services/children.html>)

*Information excerpted from program websites. This is not an endorsement, but an illustration of different approaches.

Recommendations

1) State and local education departments should provide training on parental incarceration for teachers and educational staff so they can work more effectively with children with incarcerated parents.

The training should be:

- Developed with input from formerly incarcerated parents, adult children with incarcerated parents, advocates, and service providers.
- Address crisis intervention, behavior, and classroom management. It should be culturally competent and informed by the latest research on brain development and post-traumatic stress.
- Focus on methods and value of including incarcerated parents in their children's education.
- Offered in different formats including web-based training and with resources via the intranet statewide.
- Incorporated into the training of newly hired teachers, in-service trainings of existing teachers, and the educational curricula for aspiring teachers.

In addition to developing the training discussed above, issues affecting children with incarcerated parents should be integrated into existing training on obtaining consents, grief and loss, and other topics.

2) State and local education departments should re-examine existing school activities/curricula to consider impact on children separated from their parents.

For example, classroom assignments should be reviewed from the perspective of students separated from their parents due to incarceration (as well as foster care, military deployment, and residential drug treatment programs) to avoid embarrassment and promote an inclusive school environment.

3) State and local education departments and corrections should work together to facilitate parental involvement in educational decision-making.

This collaboration could be achieved by:

- Establishing designated staff within each agency, and within each school and correctional facility, that is responsible for communicating with each other to facilitate educational decision-making when parents are incarcerated.
- Using technology to enable parental involvement in parent-teacher conferences and reviews of Individual Education Programs.
- Monitoring interagency efforts in both the educational and correctional systems to ensure accountability for regular communication between schools and correctional facilities, and compliance with time-sensitive actions/decisions, as required by educational law.

4) NYSED and the Center for School Safety should include students with incarcerated parents as a protected class within the guidelines and implementation of the Dignity for All Students Act.

5) State and local departments of education should proactively offer supportive services for students with incarcerated parents.

- The availability of these services should be well publicized, including posters and handouts, as well as through the websites of individual schools and the local departments of education.
- Support services should include school-based counseling with guidance counselors or school psychologists trained on the impact of parental incarceration and the benefits of maintaining family ties.
- Support groups should be offered at community-based sites that include peer support and advocacy, referrals for therapy, and referrals to mentoring programs.
- Schools should develop and distribute a list of local community and faith-based organizations that provide relevant services.

6) State and local departments of education should address parental incarceration through existing parent support and family engagement offices.

- Equip staff at the Parental Information and Resource Centers, the NYC Department of Education's Office of Family Engagement (and their Parent Coordinators), and the local county equivalent offices with information and training on the importance of involving incarcerated parents in

their children's education, and on how to navigate the criminal justice system.

- Charge the parent-support units with responsibility for offering information and support to incarcerated parents, parents/caregivers in the community, and educational staff.
- Staff within these offices could serve as trainers for state and local education departments, as well as liaisons to criminal justice officials.

7) State and local departments of education should include an opportunity to disclose parental incarceration on enrollment, family information, and other intake forms.

If information gathering is combined with efforts to offer services and a safe environment free of judgment, families and students may begin to self-identify. This would lead to more reliable data and better tailored services and educational approaches for affected children.

8) State and local departments of education, college prep programs, and community-based providers should support the pursuit of higher education of students with incarcerated parents.

Guidance counselors and college preparatory programs should receive training on the impact of parental incarceration and the benefits and techniques for involving parents in the college going process. Students should be offered assistance in completing financial aid forms and accessing required legal documents, such as birth certificates and social security cards.

“Years ago, when their father was arrested and went to jail, I took my kids to a therapist to help them cope with it. When I asked her how she would approach this, she said she would treat it like any other abandonment. I was no expert, but it didn’t seem like any other abandonment to me! It took me years to find someone who would support them.”

Mother of two children ages 2 and 6 at time of arrest

Children’s Experiences

Parental incarceration represents an ambiguous and complicated form of loss for children whose incarcerated parent is often psychologically and emotionally present, but physically absent. The “unknowns” of the criminal justice system (most importantly, a parent’s release date) further add to the ambiguity and complexity of the loss. Incarceration damages part of the essential bond between a child and parent. Children have many unanswered questions about what will happen to them and their parent, and may lose the security of feeling their parents are able to protect them.⁷⁸

Across the continuum of a parent’s criminal justice involvement, including arrest, sentencing, incarceration, reentry, and sometimes re-incarceration, children may face a range of distinct and varied health-related challenges. Some grapple with issues and emotions that are beyond their developmental level to resolve. These stressors can affect children’s physical health, causing headaches, high blood pressure, eating disorders, worsening asthma, and sleep disturbances, among other issues. These conditions may endure beyond their parent’s release and even into adulthood.

Children may blame themselves for their parents’ choices, or make choices themselves that jeopardize their ability to fulfill their own potential. Children may also exhibit angry or aggressive behaviors, or turn their anger or hurt inward. These behaviors can be misunderstood or misdiagnosed if a parent’s incarceration is not considered as a related factor.

The development of young children can be derailed if their primary caregiver is incarcerated. This may result in an increase in regressive behaviors such as bed-wetting, reduced or halted speech, and delays reaching developmental milestones. If the child was living with both parents, the parent remaining at home is often experiencing his or her own elevated stress, and may have fewer emotional and financial resources to care for children. Other relative caregivers may not have the requisite legal authority or financial resources to seek or continue care.

Some of the mental health issues for children of

incarcerated parents may be short-term, and not every child needs outside support or treatment, but many would benefit from non-judgmental services and access to care. For more serious physical and mental health issues, early assessment and developmentally appropriate treatments are important.

There have been sufficient advances in our understanding of trauma and neuroscience to imagine more effective approaches to address the needs of children of incarcerated parents. If those in the “helping professions” were more aware of the effects of incarceration on children, youth, families, and entire communities, they could develop skills and tools that would effectively address the emotional and physical manifestations of this “adverse childhood experience.” Unfortunately, even those closest to the child—family, teachers, pastors, and friends—may assume that children are “better off without the parent.” This assumption is prevalent among health care providers who may have little knowledge or experience of what incarcerated parents could contribute to a child’s healthy development if given an opportunity to do so.

For children whose parents have substance abuse or mental health issues, or have cycled in and out of jail or prison, coping with a parent’s absence can involve coming to terms with their parents’ limitations. This is a task that demands tremendous maturity and resilience, better aided by supportive adults, professionals, and peers experiencing similar issues. As family therapist Dr. Joseph Crumbley points out, the “normal” developmental process of grappling with issues of identity, loyalty, and legacy is particularly complex for children with an incarcerated parent.⁷⁹ Two important responses that could assist youth with this—connecting them with their parent and with their peers in similar

situations—are often discounted or overlooked.

Children are damaged by public stigma and the negative assumptions that attach to people in prison. The health challenges children face in coping with the trauma of a parent’s arrest and incarceration would be fewer if the media and public were more sensitive to issues of incarceration and its affect on family. Further, children’s exposure to incarceration over time—like exposure to a disease—can wear down their immune systems and resilience, weakening their prospects for healthy futures.⁸⁰ Research now suggests that incarcerating high numbers of people in certain communities actually make them less safe.⁸¹

A study in Washington State found that at least 15% of the youth seen in public mental health agencies are children with parents who have a prison record. Data collected by an early intervention services unit at a hospital in Oakland, California found 40% of the children in their program had one or both parents incarcerated.⁸²

Identifying Children/ Data Collection

The goal of identifying children of incarcerated parents at an individual and aggregate level is to offer tailored services that meet their needs. Consistent with cautions expressed elsewhere in this report, this information needs to be collected with sensitivity and safeguards. And, despite the fact that children are always affected when a parent is incarcerated, it should not be assumed that all children of incarcerated parents need or want therapeutic services. Services should be offered on a voluntary, confidential basis.

Research is necessary to expand our understanding of the scope of a problem and justify financial resources and policy changes, but reliable data will not emerge until children and families experience the benefits of being counted.

“We all struggle with our identity. Will we become our parent behind bars? Is being a criminal part of who we are?”

Youth Advisory Board Member, 15,
The Osborne Association

“When I started, I felt I had no one to talk to. In less than three months of going to weekly therapy sessions, I learned how to open up to a stranger; how not to blame myself for what people did to me. I learned not to blame myself for my brother’s passing away—I was doing everything I could to help him. I learned to deal with problems instead of running away from them; and I learned to figure out who I want in my life instead of just keeping anyone around because I want someone to be there for me.”

Teresa, 17, mother incarcerated since age 4; two parole denials

Existing Policies and Regulations

It was outside of the scope of the Summit (and this report) to do a thorough examination of current healthcare and mental health regulations and policies. However, there are recent precedents for adding particular questions about family stressors to routine health and mental health screening tools. There is also increased understanding of the value of informing policymakers about conditions that inhibit or promote social and emotional wellness, particularly in children. Such work can inform how investments are made in programs that support children’s healthy development.⁸³

National incarceration policies, including drug-enforcement policies, have separated unprecedented numbers of parents from their children and exposed thousands of children to traumatic and repeated incidents of the arrest of their parents and neighbors. These policies affect family and social cohesion that protects children from adverse health consequences

of exposure to incarceration. Although it is beyond the scope of this report, it is clear that public health officials and health practitioners should lead efforts to reform criminal justice policies to reflect children’s attachment needs and develop practices that minimize trauma to children.

Training and Professional Development

Despite research acknowledging that children of incarcerated parents “experience very diverse risks that require tailored services,” few mental and physical health professionals receive training on how parental incarceration affects children, or how and when to include parents in developing and delivering health services.⁸⁴ To our knowledge, there are no professional specialties or certificate programs that cover this topic. Additionally, the mental and physical health fields have not developed assessment/screening tools or specialized interventions for this population of children. This also means that Family Court judges and foster care agencies often rely on professionals to evaluate children’s “best interests” and provide services who are not knowledgeable about parental incarceration.

Given the millions of Americans with criminal records, it is clear that most programs that serve children are already encountering the effects of parental incarceration. These programs range from Head Start, Police Athletic Leagues, school intervention programs, after school programs, and pediatric and family practices. Yet, few organizations train their staff to serve families with criminal justice involvement. (Some organizations do offer counseling on loss and grief, and parental incarceration may be addressed within this context.)

Agency Coordination

Coordination among agencies directly and indirectly involved with families affected by incarceration will help support children's physical, behavioral, and mental health. Programs that serve children of incarcerated parents often report that they would benefit from mental health partners. Specifically they need assistance to address challenges that their staff is not equipped to handle, like trauma and depression. Co-locating mental health professionals within trusted community-based organizations could dispel mistrust of the mental health system and increase follow-through on referrals.

The Child Health Plus program has expanded access to primary health care for children. However, according to a report issued by the New York City Early Childhood Mental Health Strategic Workgroup, "few pediatricians and primary health care providers routinely screen for emotional problems in young children, or assess the quality of the relationship of the parent and child, a primary influence upon the child's mental health."⁸⁵ Partnerships between pediatricians and trained mental-health providers are essential so that once screening mechanisms established, pediatricians can make referrals to skilled mental health practitioners.

Existing committees working to improve children's health and well-being, whether focused on infant and early childhood mental health, foster care, or special-needs children should invite those with criminal justice expertise to serve on committee.

Coordination between corrections departments, the New York State Office of Mental Health (OMH), and mental health providers could lead to the development of protocols and opportunities for incarcerated parents to participate in their children's treatment and counseling as appropriate.

Established and Emerging Efforts in New York

New York has some of the country's most established programs for children and families of the incarcerated, many of which include mental health consultants or clinical staff to supplement their services. Others also screen to ensure that children are connected to primary-care providers and assist caregivers with accessing healthcare for children without doctors. Although not an exclusive list, the following agencies offer child-focused services that attend to the relationship between the child and his or her incarcerated parent and caregiver, and address children's physical and mental health needs either directly or through referrals.

Edwin Gould Services for Children and Families' Incarcerated Mothers Program

Edwin Gould provides services for family members who are caring for children when their mother is incarcerated. They offer case management, entitlements advocacy, counseling, and other assistance for caregivers. Their specialized services for youth include a recreation program for children 9-12, an after-school program for ages 13-17, and an after-school mentoring program for ages 7-15. (www.egscf.org)

Hour Children

Hour Children's outreach includes support and empowerment for mothers upon reunification with their families, and a variety of services to children, including residences for children as an alternative to foster care during a mother's incarceration, an early childhood center, a mentoring program, recreational activities, and facilitated visits to incarcerated mothers. Hour Children also offers transitional housing to recently released mothers and their children. (www.hourchildren.org)

Recommendations

The Osborne Association

Osborne offers services to families such as prison-based fatherhood, parenting and visiting services, and community-based activities for children, including a peer support group, college prep program, and activities with volunteers from faith- and community-based organizations. Osborne coordinates a leadership program for youth (14-21) who learn about the power of their experiences as children with incarcerated parents, and are trained as public policy advocates (www.osborneny.org)

The Women's Prison Association (WPA)

WPA makes it possible for women to obtain work, housing, and health care; to rebuild their families; and to participate fully in civic life. Services include Huntington House, a residential transitional-housing program for women returning from incarceration to reunite with their children. While there, they receive supportive services including family counseling. (www.wpaonline.org)

Other Efforts

Child-friendly visiting, including extended family visits, children's centers within jail and prison visiting rooms, and parenting programs for incarcerated parents can improve children's health by allowing parents the opportunity to understand and meet their children's needs throughout the difficult period of incarceration. New York is also home to two prison nurseries at Bedford Hills and Taconic Correctional Facilities and one jail nursery at Rikers Island (discussed further in the **Incarceration** section, p. 33).

New York City has expressed a strong commitment to Responsible Fatherhood initiatives which, along with federal funding for Responsible Fatherhood and Healthy Marriage, include families affected by incarceration and may lead to improved services for their children.

New York also has had several federally-funded mentoring programs for children of incarcerated parents (discussed in the **Caregiver and Family Stability** section, p. 48).

1) A comprehensive training curriculum on effective approaches for identifying, assessing, and serving children affected by parental incarceration should be developed for healthcare and mental health professionals.

- The training should be developed by an interdisciplinary working group that includes community-based providers, caregivers, adult children of incarcerated parents, and other stakeholders.
- This curriculum can also inform the development of standards of care, in-service trainings, awareness-raising materials, and the development of assessment tools and interventions.

2) The provision of health care, including mental and behavioral health, to children and families affected by incarceration should be developed as a core competency area within professional training for pediatricians, family practitioners, nurses, midwives, physician's assistants, psychiatrists, psychologists, and social workers.

- The curriculum, as described above, should be adapted for and included in medical and nursing schools and graduate schools of social work and psychology.
- Within medical schools, this topic should also be included in the specialties of developmental and behavioral pediatrics, and family, social, and community medicine.
- The impact of parental incarceration on children and its implications for health care should be included as a topic for "grand rounds," presentations offered in all hospitals, and licensing renewal credit courses.

3) Programs that address the mental and physical health needs of young children should provide training on parental incarceration to their staff.

This includes preschool-based mental health services, mental health providers within community-based mental health programs, early-intervention programs, and early-childhood care and education programs such as Head Start, early Head Start, child care, and universal pre-kindergarten.

4) Pediatricians, adolescent-health providers, and family practice physicians, as well as mental-health clinicians in public and private agencies, should incorporate questions about family incarceration into their standard intake questions.

In 2010, pediatricians Zuckerman and Parker recommended that “effective screening can be incorporated into standard care by enquiring about household composition and changes at each visit. For example, ‘Have there been any changes in your family or in who is living at home?’ Using nonjudgmental language and focusing on a willingness to help the child and family will help facilitate disclosure.”⁸⁶ An interdisciplinary group or one of the existing committees mentioned in **Recommendation 7** below, should explore the process for adding questions to routine screening forms and intakes.

5) Family Court should ensure that all mental health providers who conduct child and adolescent evaluations are proficient in the effect of parental incarceration on children and youth.

This should include a basic understanding of the criminal justice system, trauma-informed care, and how parents can contribute to the healthy of development of children during and after incarceration. These trained mental-health providers can serve as resources for decision-making by the court.⁸⁷

6) Local and state lists of pediatricians, adolescent-health providers, and mental-health practitioners who are well versed in issues related to parental incarceration should be developed and made available.

- Nonjudgmental therapeutic services should be available and accessible to families. They should be reimbursable by Medicaid, culturally competent, and sensitive to the stigma of incarceration and distrust many families have of “therapy.”
- Community providers, child welfare agencies, and agencies that assist families in accessing health-care benefits could make referrals to the mental-health providers on these lists.
- 1-800-LIFENET is a widely accessed information and referral service that could be asked to develop and maintain this list. In addition to their hotline, they offer a diverse range of printed and digital materials.

Recommendations

7) Topics relevant to children with incarcerated and formerly incarcerated parents should be included on the agenda of existing children's committees.

- Children of incarcerated parents should be integrated into children's committees, councils, task forces, and initiatives already underway and providing leadership in many areas to improve the well-being of New York's children. Among these are the Committee on Preschool Special Education, Early Childhood Advisory Council, NYC Children's Mental Health Committee, and the newly-formed Council on Young Child Wellness.⁸⁸
- Committees concerned with children should examine the professional needs of those working with children of incarcerated parents and the needs of their caregivers.

8) State and local public health departments should include a staff clinician to serve as a mental health consultant and advisor on children of incarcerated parents.

This replicates the model of early childhood mental health consultants offered within some local departments of health. These consultants serve as a valuable resource for mental-health providers, teachers, guidance counselors and others throughout the particular jurisdiction.

9) New York City's Department of Health and Mental Hygiene should issue a Children's Health Information Bulletin (CHI) on children of incarcerated parents.

CHIs are periodic, widely distributed and widely read 4-page pieces on particular topics important for medical and mental health providers.

10) An interdisciplinary study group including clinicians and academics should be created to review existing research and interventions and develop recommendations regarding effective assessment tools and interventions.

- Existing national clinical/therapeutic interventions for children of incarcerated parents should be examined, including assessment tools and strategies for handling trauma related to parents' arrest, sentencing, incarceration, reentry, and recidivism.
- The role of peer support groups, therapeutic visiting programs, and caregiver support programs should be considered.
- Assessment tools should be geared toward the level of service and support needed.
- With additional resources, promising programs should be piloted and replicated as appropriate.
- This interdisciplinary group could offer technical assistance to programs serving children and families so they are more responsive to the needs of children with an incarcerated parent.

11) Prisons and jails should develop protocols and support technology that would allow incarcerated parents to be involved in family counseling when clinically indicated.

For example, “telepsychiatry” could be used to allow incarcerated parents to participate in their child’s mental health treatment.

12) Community and faith-based organizations should work with pro bono media advisors and public health professionals to organize a public education campaign about the impact of incarceration and its stigma on children.

A campaign should use social-networking websites, a hotline with trained staff, and printed materials available in schools, daycare centers, shelters, hospitals, and doctors’ offices. Child safety, infant mental health, and autism campaigns launched by departments of health or advocacy organizations during the past few years provide precedents and examples for this.

“I guess some caseworkers assume your mom is a bad person when they hear she’s incarcerated. But they should keep an open mind and remember that every child has only one mother, one father. The ones we’re given are special to us, even if we can’t live with them, even if they’re not perfect.”

Youth speaker with Fostering Change for Children, NY

Overview

Children’s Experiences

Most children with incarcerated parents live in the community with their other parent, relatives, or family friends. But there are added challenges for the thousands of children who have an incarcerated parent and are in foster care. They share the same feelings that all foster children experience, including confusion, fear, anger, and abandonment. They also struggle with additional burdens—including shame and stigma—associated with having an incarcerated parent. These children are dependent upon gatekeepers in two systems to facilitate access to their parents. Contact with their parents is usually less frequent than for foster children whose parents are not incarcerated. Efforts to include their parent in planning for their future are more complicated and often less successful, and important decisions may be made without their incarcerated parent’s involvement. Children may not be asked about their feelings about their parent or consulted about the kind of contact they would like to have. In some cases, this can exacerbate feelings of isolation and anger, as well as distrust of professionals who say they are protecting children’s “best interests.”

Children do much better when foster parents are sensitive and supportive of their contact with their incarcerated parents. When foster parents are not supportive, torn loyalties, confusion, anger, and even “acting out” can occur, sometimes leading to multiple placements or separation of siblings. State and federal law requires child welfare agencies to search for relatives for placement before a child enters foster care, but it is the agency and Family Court’s responsibility to determine the best placement resources for each child.⁸⁹ Child welfare policy recognizes that children benefit from remaining with family. If relatives choose to become kinship foster parents (which many do for financial reasons), the same requirements for visiting, contact, permanency planning and other aspects of the child’s placement apply. However, if a parent is incarcerated at the beginning of the case or if their whereabouts are listed as unknown—a euphemism that often masks parental incarceration—there may not be a full exploration of placing the child with this parent’s relatives. As a result, children may be placed with foster

parents who are strangers when there may be willing and loving extended-family members available.

Although attachment to their parents can be built through frequent and consistent face-to-face visits, infants in foster care present acute attachment needs that cannot be fully met by an incarcerated parent. The nature of infant attachment is such that infants will bond with their day-to-day provider—their foster parent in this case—rather than an incarcerated parent who they rarely see on a consistent basis. While healthy development requires a secure attachment to at least one consistent and responsive provider, it poses challenges to reunification with an incarcerated parent and makes frequent visits even more critical. Attachment needs and children's need for permanency can conflict with prison sentence lengths and a parent's desire to resume or assume the primary caregiver role upon release. Careful, individualized assessments by agencies and courts can be challenging, but new developments in New York such as Chapter 113 and KinGAP provide additional guidance and options.

Teens also have attachment needs that are central to their developing sense of identity and belonging. These can be overlooked as caseworkers and therapists focus on addressing outward behaviors and working with or searching for “discharge resources.” For teens and older children, being connected with other children in foster care who have an incarcerated parent can have a powerful and positive effect. This does not happen often, and critical opportunities are missed for peer support that may lift the burden of shame.

While it should always be carefully assessed and children should be prepared in advance, visiting a parent in prison or jail can reduce children's anxiety, allow parents to reassure children, maintain relationships, and prepare for reunification or other permanency goal (visiting is discussed further in the **Incarceration** section, p. 33).

Data Collection/ Identifying Children

In September 2010, there were 23,784 children in foster care in New York (64% of whom resided in New York City). In June 2010, 6,001 (26%) foster-care children statewide resided with kinship foster parents.⁹⁰ The majority of children in foster care (almost 75%) return home to their parents.⁹¹ A survey of 153 NYC case records for children in foster care showed that 10% had an incarcerated parent at some point during the one-year review period.⁹² National data collected from parents in state and federal adult prisons found that mothers were five times more likely than fathers to report that a child was in foster care (11% vs. 2% respectively).⁹³

It is important to learn the number and identity of children in foster care who have an incarcerated parent, to improve outcomes for children as well as for program improvement, staff development, and partnerships with outside funders. Gathering this information allows early identification that can influence placement decisions.

Reasonable efforts (also referred to as “diligent efforts”) are currently documented in Connections, New York's child welfare database, as well as permanency hearing reports, but there is no mechanism to identify and review these reports for cases in which a parent is incarcerated. Monitoring reasonable efforts in cases with an incarcerated parent should include whether visits have been scheduled and provided, if parents have been meaningfully involved in and receiving service plan reviews, and whether the parent has been produced in court.

While there is no available statewide data on the number of children in foster care with an incarcerated parent, two significant fields were recently added to Connections that could contribute to what is known. Both fields are from the Adoption and Foster Care Analysis Reporting System (AFCARS), the federal child welfare database. One field now offers “parental incarceration” as a “factor related to the removal of the child.” The other, the “parent's address” field, now includes a drop-down box for “correctional

facility.” Neither of these fields is required nor do they identify an incarcerated parent who was not the respondent (i.e. who was already incarcerated at the time of a child’s removal). As such, neither field currently provides reliable data. As of December 2010, a statewide review of the first field found that it remained blank 75% of the time.⁹⁴ The second field may not be updated throughout the life of a foster care case; if it were, it would offer a reliable way to identify children of incarcerated parents, including when a parent becomes incarcerated after the child has been placed in foster care.⁹⁵

The Minnesota child welfare data system includes a parental incarceration code among the reasons for a child’s placement, and further indicates whether it was the primary or secondary reason for placement. Between January 2000 and June 2007, there were 4,816 children with the incarcerated parent code who experienced 5,031 placements. This data allows them to track outcomes for these cases which have revealed that the vast majority of these children are reunified with their parent(s).⁹⁶

Relevant Policies and Regulations

In New York, the arrest or incarceration of a parent is not sufficient grounds for an allegation of child abuse or neglect, nor is incarceration alone grounds for termination of parental rights. However, if the parent cannot designate a caregiver at the time of arrest, current practice seems to be that the New York State Central Registry (SCR) may register a call from an arresting officer needing care for a child as an allegation of “failure to plan” or “inadequate guardianship.” This automatic allegation opens a Family Court case, even if the parent is being arrested for a non-child-related

crime and masks the underlying cause of parental arrest. This can also lead to unnecessary Family Court proceedings. The recent change in the child support law (October 2010) to no longer consider incarceration as “voluntary unemployment,” may be instructive for the Office of Children and Family Services as it examines this further.⁹⁷

Existing New York child welfare laws and regulations require permanency planning with an incarcerated parent, and visits between parent and child in accordance with any applicable court orders and the child’s best interests. Such visits are minimally expected to be biweekly for cases in which the parent is incarcerated and the goal is reunification. This is true unless the child’s placement makes biweekly visits impossible, in which case monthly visits are minimally required.⁹⁸ Caseworkers and family court have the same responsibilities and face the same urgency to achieve permanency for a child with an incarcerated parent as they do for a child with a parent in the community.

In June 2010, New York joined a handful of other jurisdictions to amend the Adoption and Safe Families Act (ASFA); the amendment is now referred to as Chapter 113.⁹⁹ Chapter 113 limits the use of parental incarceration and residential substance-abuse treatment as a basis for a petition to terminate parental rights when these factors have played a significant role in the child remaining in foster care for 15 of the last 22 months if there is a meaningful relationship between the child and the incarcerated parent. The law requires foster-care agencies to provide incarcerated parents with information about their rights and responsibilities (including visiting), and reentry services, and requires them to use available technology to facilitate parental participation in Service Plan Reviews.

On April 1, 2011, New York enacted a Kinship Guardianship Assistance Program (KinGAP) that introduced an additional permanency option for children placed with kinship foster parents. KinGAP allows children to exit foster care while providing ongoing financial assistance (subsidized guardianship) to their caregivers, provided these caregivers were

caring for a child as kinship foster parents. The subsidy is equivalent to the adoption subsidy and, with some exceptions, continues through a child's 18th birthday. Significantly, unlike adoption, KinGAP does not require termination of parental rights. There are specific eligibility criteria such as demonstrating why adoption or reunification is not in a child's best interests. Some kinship foster parents are reluctant to terminate the parental rights of their child, and grandparents are often uncomfortable becoming the legal parents of their grandchildren. While establishing a new permanency option, KinGAP is not supported by new resources. Funding is provided by the foster care block grant in the 2011-2012 budget.

Training and Professional Development

Parental incarceration is not currently included in standard caseworker or supervisory training. Nor is it included in the curricula of most Masters in Social Work (MSW) programs that often precede a child welfare career. Foster and adoptive parent training in New York, called "Model Approaches to Partnerships in Parenting," also does not include this topic, although related topics such as grief and loss, trust, and working with "birth parents" are included.

Legal practitioners in the child welfare system often advocate for a plan of action and permanency arrangements without knowledge of available programs, relevant research, or innovative practices. They rarely receive up-to-date information about prison and jail visiting procedures, community programs for children of incarcerated parents, or other resources related to parental incarceration. Family Court judges are often unaware of programs, research, and resources for children of incarcerated parents. Many attorneys who represent children in foster care, as well as the judges who make life-changing decisions based on the children's "best interests" have never been to a prison visiting room or accompanied a child to see an incarcerated parent, and may fail to advocate for the visit that may be in the child's best interest.

Agency Coordination

Partnerships between child welfare and corrections can assist in meeting each agency's mandates. Coordinated visiting programs such as the NYC Administration for Children's Services' (ACS) Children of Incarcerated Parents Program (CHIPP) reveal the positive difference a designated visiting program can make for children in foster care. Extending the partnership to Family Court can also ease permanency planning requirements such as parental participation in Family Team Conferences, service plan reviews, and court hearings.

The passage of Chapter 113 has led to remarkable collaboration and coordination between the New York State Department of Correctional Services (DOCS) and the Office of Children and Family Services (OCFS), including the development of informational materials, a cross-training curriculum, and designated liaisons within each agency charged with implementing this new law.

Established and Emerging Efforts in New York

Dedicated programs

In 2000, ACS launched CHIPP to focus on providing visits to children with open child welfare cases and their incarcerated parents. To ACS' credit, this program has survived several rounds of budget cuts and continues to provide a special visiting program on Rikers Island, upstate visits, training to caseworkers and other child welfare staff, and special events for children in foster care with incarcerated parents.

Technical Assistance and Training

For the past three years, New Yorkers for Children has funded the Osborne Association and Fostering Change for Children to work with selected New York City foster care agencies providing training, technical assistance and clinical consultation on cases involving incarcerated parents with older children who do not have clear permanency plans. To date, the Permanency and Well-Being Enhancement Project has worked with eight foster care agencies; trained hundreds of caseworkers, supervisors, and administrators; and worked to achieve or advance towards permanency in close to 30 cases.

Peer Support for Teens and Information on Parental Incarceration for Professionals

Youth Communication is an organization that coordinates a year-round writing program for 24 teens who participate in intensive focus groups to identify the most important issues they face in foster care. Their writing about these issues is published quarterly in 48-page reports, as issues of *Represent* magazine. The most important reports are expanded and published as books. *Wish You Were Here: Teens Write About Parents in Prison* includes 12 stories by teens and 11 by parents in prison. *Represent* and *Wish You Were Here* are suitable for caseworker and supervisory training, training for foster and adoptive parents, and teen support.¹⁰⁰

Visiting Hosts

In NYC, ACS has issued “Visiting Host Guidelines” to provide guidance for approving an adult volunteer to escort children on visits, addressing the resource and scheduling barriers that caseworkers face.¹⁰¹ This model is particularly promising for children visiting incarcerated parents; other jurisdictions should consider adapting these guidelines and implementing visiting hosts for children with incarcerated parents.

Parent and Youth Advocates

Throughout New York, parents who have had their own child welfare cases are being employed as advocates and peer supports to those currently navigating the child welfare system. This offers a promising model for engaging and supporting incarcerated parents as well. Similarly, some child welfare and foster care agencies have formed youth advisory boards or youth councils that likely include children of incarcerated parents. Parent and youth advocates who have experience with parental incarceration are important partners to raise awareness; develop protocols, partnerships, materials and resources; and offer support to children and youth.

- 1) OCFS should require child welfare agencies to identify children in foster care with incarcerated parents at every point in the life of a case, from placement to permanency.

Aggregating this data would allow efficient streamlining of resources, promote agency coordination (e.g., collaborative visiting programs between child welfare and corrections), and provide the basis for program and resource development.

- 2) Family Court judges should question any instance in which a parent is listed as “whereabouts unknown” to ensure the legally required diligent search for both parents includes local, state, and federal correctional facilities, as well as immigration detention centers.

- 3) OCFS and local child welfare agencies should encourage DOCCS to assign parents with open Family Court cases to prisons within 100 miles of their children’s residences.

This is consistent with **Recommendation 1** in the **Incarceration** section (p.37) and would save time and money for OCFS and local child welfare agencies that are responsible for providing visiting access.

- 4) Family Court, OCFS, and local child welfare agencies should refer to the regional lists of mental health providers trained in parental incarceration and

consider the benefits of maintaining relationships between parents and children when referring a child in foster care for therapeutic assessment, evaluation, or services

(see **Recommendation 6** in the **Mental and Physical Health** section, p. 63).

- 5) OCFS should monitor the completion of the two fields in Connections that can identify children with an incarcerated parent.

The importance of completing these fields should be included in caseworker and supervisory training, specifically as it relates to permanency planning for placement of children with incarcerated parents.

- 6) OCFS should update Connections to add “incarceration” and “residential placement in a substance abuse treatment center” as exceptions for filing a termination of parental rights petition, consistent with the law change in June 2010 known as Chapter 113.

- 7) OCFS and local child welfare agencies should integrate parental incarceration into existing caseworker and supervisory training and, with additional resources, offer a stand-alone training

Recommendations

module within both foster-care and preventive programs.

This training should be collaboratively developed among OCFS, local child welfare agencies, service providers, and advocates, and include recent changes in the law (Chapter 113), new permanency options (KinGAP) and permanency planning tools, the importance of visiting and maintaining relationships with an incarcerated parent even when reunification is not the goal. The training should be provided to local child welfare agencies and OCFS administrators and be adapted for preventive service program staff, as well.

8) OCFS and local child welfare agencies should develop a system for monitoring “reasonable efforts” and permanency planning for cases involving incarcerated parents.

This is not only important for the individual children and families, but to inform training, support for children and caseworkers, partnerships with community-service providers, and interagency coordination.¹⁰²

9) OCFS and local child welfare agencies should designate liaisons to facilitate communication and coordination with local, state and federal correctional facilities.

Consistent with the recommendations in **Incarceration** (see **Recommendation 14**, p. 37) and **Education** (see **Recommendation 5**, p. 57), OCFS should designate a liaison at local child welfare agencies who correctional administrators and staff can contact. These liaisons would coordinate visits and the involvement of the parent in Family Team Conferences, Service Plan Reviews, and court dates.

10) OCFS should support the expansion of tele-visiting as a cost-effective supplement to face-to-face visits for children in foster care (as well as for youth in OCFS facilities whose parents are in DOCCS custody).

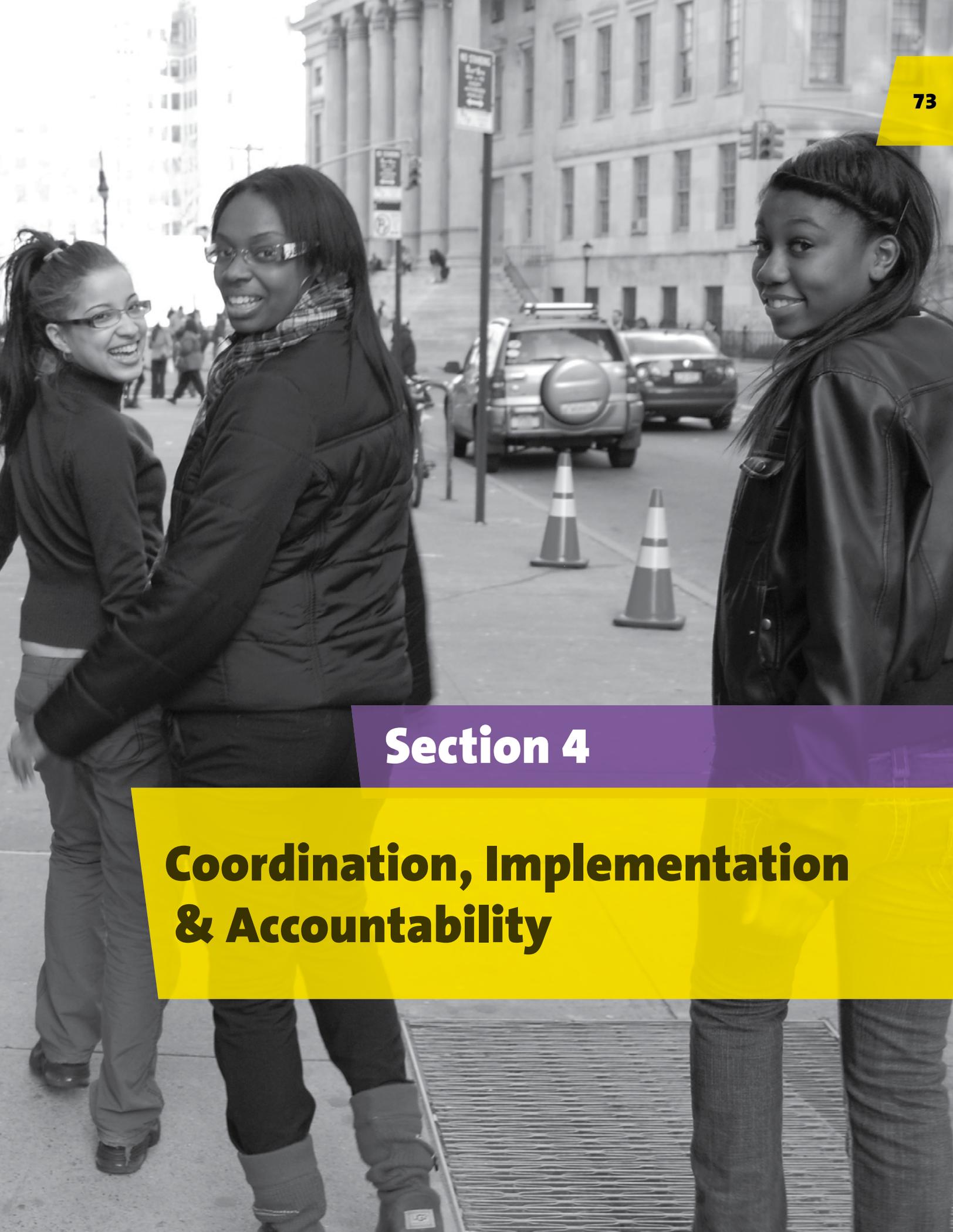
OCFS should work with DOCCS to expand this interagency program and provide guidance to local jurisdictions regarding implementation.

11) OCFS should examine the State Central Registry’s options for accepting a call from police and opening a case when an arrested parent is unable to designate a caregiver for the child.

If necessary, the Child Protective Services Act of 1973 should be amended to allow the child to be cared for by the local child welfare agency, as a “voluntary placement” or a category that would indicate “unexpected incapacity to care for the child.”¹⁰³

12) OCFS and local child welfare agencies should explore creative methods to increase children’s access to their incarcerated parents.

Given the resource constraints on child welfare agencies and the challenges of facilitating visits, creative efforts are needed to ensure children’s relationships with their parents are not sacrificed. Visiting hosts and tele-visiting should be explored as cost-effective ways to increase children’s contact with their parents.



Section 4

Coordination, Implementation & Accountability

Coordination, Implementation & Accountability

As documented in this report, there is significant work underway in New York to support the well-being of children of incarcerated parents. Still, we remain far from achieving the goal of safeguarding their futures in a comprehensive, integrated, and systemic way. To date, there have primarily been two statewide, interagency efforts to move in this direction: the New York Initiative for Children of Incarcerated Parents (NY Initiative) and the Governor’s Children’s Cabinet’s Subcommittee on Children of Incarcerated Parents (GCC Subcommittee).

Since 2006, the NY Initiative, a special project of the Osborne Association, has been convening diverse agencies to address policy and practice issues related to children of incarcerated parents. What began as a few nonprofit organizations gathering together has grown into a statewide collaborative including state and city agencies and community and faith-based organizations. While the NY Initiative has brought about increased attention and some genuine reforms, its leadership—based in New York City—has neither the resources nor the influence needed to ensure that state and local public and private agencies devote the needed resources and attention to this population of children.

Formed two years ago, the GCC Subcommittee demonstrated the effectiveness of the model of a statewide working group with leadership from both public and private agencies. Under the overall direction of the Council on Children and Families (CCF), and co-chaired by Jacqueline Greene of the Division of Criminal Justice Services (DCJS) and Elba Montalvo, Executive Director of the Committee for Hispanic Children and Families, the GCC Subcommittee brought together state agencies including: the Department of Correctional Services, Department of Labor, Office of Alcoholism and Substance Abuse Services, Division of Parole, New York State Association of Chiefs of Police, State Education Department, Department of Health; the NY Initiative and the Women in Prison Project of the Correctional Association of New York participated as community-based partners and provided a community-based perspective.

During the short time it existed, the GCC Subcommittee made important progress in raising the visibility of these children and their needs, bringing criminal justice and human services agencies to the table, developing goals and a set of guiding principles, reviewing national models of child-sensitive arrest practices, and gathering original data from incarcerated parents in New York State. Despite very significant inroads, Governor Cuomo discontinued the Governor’s Children’s Cabinet in April, 2011.

Without the GCC Subcommittee, there is no state level interagency body to focus on the well-being of children with incarcerated parents and to coordinate the convening, collaboration, and communication of state and local agencies concerning these children. While the NY Initiative and its constituent partners have contributed to drawing attention to this issue statewide and have included and engaged New York City agencies—and will continue to do so—it would be a true loss for this state and government level work to come to a halt now. This is a critical time when there is new focus on the size, the cost, and the effectiveness of the State’s prison system, and when the goals of the Subcommittee’s work mirror those of the governor: efficiency and effectiveness of government, coordination of agencies, identification of areas of unmet need, and elimination of duplication.

Governor Cuomo recently named the members of his Spending and Government Efficiency (SAGE) Commission who are charged with “saving taxpayer money, increasing accountability and improving the delivery of government services.”¹⁰⁴

The recommendations offered here support all of these goals but advocate for a child’s eye view of all public policies, taking into consideration the hundreds of thousands of New York’s children affected by their parent’s criminal justice involvement. A voice for the children of the incarcerated is needed at the state level since no one agency represents them and their interests are largely absent from existing children’s advocacy efforts. Thus, while we recognize the governor’s goal of “right-sizing” government, it is critical that an enduring structure

is built that maintains a state focus on this issue, and that has the ability to call state and local agencies and community-based partners to the table to institute meaningful and lasting reforms.

For these reasons and because of all the practical recommendations identified during the Summit by representatives of diverse state and local agencies and outlined in this report, we recommend the following:

Recommendation 1:

A statewide coordinating council on children of incarcerated parents should be established, housed within the Council on Children and Families (CCF), to continue and build on the work of the GCC Subcommittee.

CCF reports directly to the governor and is charged with addressing cross-systems issues by convening multiple agencies, including community-based partners. CCF coordinated the work of the Governor’s Children’s Cabinet and would continue to coordinate the work of the Children of Incarcerated Parents Coordinating Council (CIP). CCF would chair this effort, with vice chairs from the Division of Criminal Justice Services and the NY Initiative. DCJS has been co-chairing the GCC Subcommittee and its leadership role demonstrates that this is a criminal justice system issue of consequence. The NY Initiative brings content expertise, which it contributed to the GCC Subcommittee, and has demonstrated success over the past 5 years in convening and engaging diverse fields, agencies, and representatives to address the needs of this population of children.

The CIP Coordinating Council would minimally include the following state agencies: Department of Corrections and Community Supervision, Department of Health, Department of Labor, Office of Mental Health, Office of Alcoholism and Substance Abuse Services, Office of Probation and Correctional Alternatives, Office of Temporary and Disability

Assistance, Office of Children and Family Services, State Education Department, Division of Budget, as well as representatives from Chiefs and Sheriff’s associations, and local government agencies, including child welfare and community corrections. It would also include community-based service provider and advocate representatives, as well as those directly impacted, including at least two adult children of an incarcerated parent, a formerly incarcerated parent, and caregiver. Part of the work of the CIP Coordinating Council will also be to cultivate parallel local interagency, cross-systems efforts (see **Recommendation 5** below).

Recommendation 2:

Integrate children of incarcerated parents into the discussions and determinations of the SAGE Commission.

Given that children of incarcerated parents are an “orphan issue”—currently not the responsibility of any government agency or body—it is important that they do not get lost in the current and future discussions of improving government efficiency, consolidation and elimination. Addressing the needs of these children are likely to require the creation, development, and funding of new efforts (which may not be popular ideas in the current climate, but may dovetail well with long term commitments to child wellbeing.) It will also involve the coordination, consolidation and collaboration that are at the core of current government efforts. It is critically important that the work already underway to move in the direction of responding to the needs of this significant population of New York’s children not be curtailed, and actually be assisted by the SAGE Commission’s efforts.

Recommendation 3:

The New York State Legislature, specifically Senate and Assembly committees that relate to children and families, as well as corrections, should convene a joint hearing on children of incarcerated parents.

Statewide public hearings would serve to inform the legislature about the needs, experiences, and challenges of these children, and their caregivers and parents, and also about the challenges faced by the professionals and systems they interact with. Strategies and approaches that are working or hold promise would also come to light. Although most of the recommendations in this report could be accomplished without legislation, there are some that would need changes to current laws or regulations. The New York City Council recently held hearings on children of incarcerated parents (on April 13, 2011) and members of the sponsoring committees—General Welfare; Youth Services; Public Safety; Fire and Criminal Justice— noted that little is known and greater interagency coordination is needed. Public hearings would provide invaluable information to the state legislature.

Recommendation 4:

Create state and local level partnerships to facilitate and promote constructive efforts to support children of incarcerated parents and their families.

Partnerships and Memoranda of Understanding (MOUs) among all or between specific agencies would signal recognition of a shared population deserving of attention and coordination, but would facilitate much needed interagency collaboration that could ease challenges faced by each agency when operated without these agreements or MOUs. Among the agencies identified as most important at the state level

are: the Department of Corrections and Community Supervision, Department of Health, Office of Mental Health, Division of Criminal Justice Services, Office of Children and Family Services, the State Education Department, and the Office of Temporary Disability Assistance. These state level partnerships could also serve to promote similar agreements on local levels.

Recommendation 5:

City and county governments should review the recommendations in this report to the extent that the policies and practices herein are relevant to local agencies (police, jails, child welfare, probation, schools, community and faith-based organizations) and form local working groups or task forces as appropriate to address local issues and collaborate with the CIP Coordinating Council.

Recommendation 6:

All government agencies who contract for services to children and families should integrate consideration of children of incarcerated parents into their RFP process, and consider allocating a percentage of available funding to programs that specifically and competently serve children of incarcerated parents.

As a requirement for responding to an RFP (among the criteria proposals must meet), applicants would have to demonstrate how their proposed services or program model would respond to children whose

parents are incarcerated. In addition to direct services, this would include professional development and staff training, collaboration with designated programs, interagency partnerships with corrections, and more.

Recommendation 7:

The governor and/or executive agencies should sign onto the “Guiding Principles” developed by the Governor’s Children’s Cabinet’s Subcommittee.

See the GCC Subcommittee “Guiding Principles” in **Appendix C**.

State agencies should submit progress reports on efforts to follow the Guiding Principles as it relates to the agency’s interaction with children of justice-involved parents.

Recommendation 8:

New York State and local (city or county) governments should formally endorse a “child impact approach” to public policy in the state.

Particularly at this critical juncture of re-evaluating New York State’s governmental structure and functioning, public policy decisions as well as those about infrastructure, effectiveness, efficiency, and processes should routinely respond to the question, “How will this impact the state’s children?” This would include adopting a child impact approach to the work of the SAGE Commission.

- 1 Effective April 1, 2011, KinGAP provides an additional permanency option for exiting foster care, it allows kinship foster parents to continue to receive a monthly subsidy similar to the adoption subsidy; unlike the adoption subsidy, it does not require termination of parents' rights.
- 2 Effective June 2010, Chapter 113 allows for the circumstances of parental incarceration and residential drug treatment to be considered by caseworkers as reasons not to file to terminate parents' rights after 15 of the past 22 months, as required by the federal Adoption and Safe Families Act (ASFA).
- 3 Effective July 2012, The Dignity for All Students Act (DASA), discussed in "Education" section, asserts students' rights to an educational environment free from discrimination and harassment, as well as, providing concrete guidance for operationalizing DASA at the school level.
- 4 On the Bill of Rights, see www.sfcipp.org; Newell, D (2008). *You Mean they have children? A multi-state effort to improve policies and practices for children of incarcerated parents*. Contact deeannlr@aol.com for a copy.
- 5 See Oklahoma Institute for Child Advocacy. (2011). Task force for children with parents in prison goes to governor. Available from <http://www.oica.org>
- 6 Parke, R., & Clarke-Stewart, A. (2001). Effects of parental incarceration on young Children. Presented at the *From Prison to Home: The Effect of Incarceration and Reentry on Children, Families, and Communities*.
- 7 Phillips, S. D., Erkanli, A., Keeler, G. P., Costello, E.J. & Angold, A. (2006). Disentangling the Risks: Parent Criminal Justice Involvement and Children's Exposure To Family Risks. *Criminology and Public Policy*, 5, 677–702
- 8 Allard, P., & Green, J. (2011). *Children on the outside: Voicing the pain and human costs of parental incarceration*. Retrieved from Justice Strategies: <http://www.justicestrategies.org/publications>
- 9 Hairston, C. (2007). *Focus on children with incarcerated parents: An overview of the research literature*. Baltimore, Maryland: Annie E. Casey Foundation.
- 10 Raimon, M., Lee, A., & Genty, P. (2009). Sometimes Good Intentions Yield Bad Results: ASFA's Effect on Incarcerated Parents and Their Children [cited by Urban Institute Center for the Study of Social Policy. (2009). *Intentions and results: A look back at the Adoption and Safe Families Act.*]
- 11 Bates, R., Lawrence-Wills, S., & Hairston, C. (2003). *Children and families of incarcerated parents: A view from the ground*. Jane Addams Center for Social Policy and Research, Jane Addams College of Social Work. Retrieved from http://www.uic.edu/jaddams/college/research_public_service/files/childrenbrief.pdf
- 12 Council on Crime and Justice. (2006). *Children of incarcerated parents*. Minneapolis, Minnesota: Author.
- 13 American Academy of Pediatrics: Committee on Early Childhood, Adoption, and Dependent Care. (2000). Developmental issues for young children in foster care. *Pediatrics*, 106 (5), 1145-1150.
- 14 Parke, R.D. & Clarke-Stewart, K.A. (2003), *The Effects of Parental incarceration on Children: Perceives, Promises, and Policies*. In J. Travis & M. Waul (Eds.), *Prisoners Once Removed* (p. 207). Washington, DC: The Urban Institute Press.
- 15 Parke, R.D., et al. (2003).
- 16 The Pew Charitable Trusts: Pew Center on the States. (2010). *Collateral Costs: Incarceration's Effect on Economic Mobility*. Washington, DC: Author. Retrieved from http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Collateral%20Costs%20FINAL.pdf
- 17 Pew Charitable Trusts. (2010).
- 18 Correctional Association of New York. (2009). *Women in Prison Fact Sheet*. New York, New York: Women in Prison Project.
- 19 Correctional Association of New York. (2009).
- 20 Phillips, S. D. (1998). Programming for children of female offenders. Proceedings from *4th National Head Start Research Conference*. Washington, DC [cited in report to the Oregon Legislature on Senate Bill 133 (p.2). December 2002]
- 21 Appendix Table 10, p. 18, in Glaze, L., & Maruschak, L. (2010). *Parents in prison and their children*. Bureau of Justice Statistics.
- 22 Phillips, S.D., Erkanli, A., Keeler, G.P., Costello, J.E., Angold, A., Johnston, D., et al. (2006). Disentangling the risks: Parent criminal justice involvement and children's exposure to family risks. *Criminology and Public Policy*, 5, 677–702. [cited by Nickel, J., Garland, C., & Kane, L. (2009). *Children of incarcerated parents: An action plan for federal policymakers*. New York, New York: Council of State Governments Justice Center]
- 23 Phillips, S.D. & Gleeson, J.P. (2007). *What we know now that we didn't know then about the criminal justice system's involvement in families with whom child welfare agencies have contact*. Chicago, Illinois: University of Illinois Center for Social Policy and Research. [cited by Nickel, J., Garland, C., & Kane, L. (2009). *Children of incarcerated parents: An action plan for federal policymakers*. New York, New York: Council of State Governments Justice Center]
- 24 Phillips, S.D. & Gleeson, J.P. (2007).
- 25 The Osborne Association. (2010). *New York Initiative for Children of Incarcerated Parents Fact Sheet*. Brooklyn, New York: Author.
- 26 New York State Office of Criminal Justice Services (2010). *New York State criminal cases supervised reports (Office of Probation and Correctional Alternatives Memorandum)*. Albany, New York: Author.

- 27 New York State Department of Correctional Services. (2010). *Under custody report: Profile of inmate population under custody on January 1, 2010*. Albany, New York: New York State Department of Correctional Services. Retrieved from http://www.DOCCS.state.ny.us/Research/Reports/2010/UnderCustody_Report.pdf
- 28 See Allard, P., & Green, J. (2011).
- 29 Since no single agency tracks parents across arrests, county jails and state and federal prisons in New York, this number is an estimate is based on national percentages applied to the New York State Jail population. See http://www.correctionalassociation.org/publications/download/wipp/factsheets/Families_Fact_Sheet_2009_FINAL.pdf
- 30 New York State Department of Correctional Services. (2010).
- 31 New York State Department of Correctional Services. (2010).
- 32 New York State Kinicare Coalition (2010). Since this data is self-reported by relative caregivers, there is likely to be significant undercounting, given the stigma and shame associated with parental incarceration.
- 33 The survey asked if transportation was a barrier to visiting but did not specify whether this referred to accessing means of transportation or all that is entailed with traveling to a prison (packing food, waking up early, cost of travel, etc.).
- 34 DeMasi, M.E. and Teuton Bohn, C. (2010). *Children with Incarcerated Parents: A Journey of Children, Caregivers and Parents in New York State*. Albany, New York: The Council on Children and Families. Available at: <http://www.ccf.state.ny.us/Initiatives/KidsCountRelate/kcResources/ChildIncarceratedParents.pdf>
- 35 See Phillips, S. D. (1998).
- 36 Phillips, S. D., & Zhao J. (2010). The relationship between witnessing arrests and elevated symptoms of posttraumatic stress. *Children and Youth Services Review*, 32 (10), 1246-1254. doi:10.1016/j.childyouth.2010.04.015
- 37 See New York State Division of Criminal Justice Services at <http://criminaljustice.state.ny.us/crimnet/ojsa/arrests/NewYorkState.pdf>
- 38 New York City Criminal Justice Agency (CJA) collected data on the following three questions asked of all arrestees once CJA had completed the bail assessment they conduct with all New York City arrestees: "Do you support children? What are their ages? Do they live with you?"
- 39 P. Alexander, personal communication, March 12, 2011
- 40 Osofsky, J.D. (2004). *Young children and trauma: Treatment and intervention*. New York, New York: Guilford Press.
- 41 For the complete Children of Incarcerated Parents Bill of Rights, see www.sfcipp.org.
- 42 See Maryland's at www.co.ho.md.us/statesAttorney/SAMain/CommunityJusticeInitiative/SA_communityandMinneapolis and Minneapolis's at www.compact.org/wp-content/uploads/2009/04/gust-jordan.pdf
- 43 Article 12-A of New York State Executive Law
- 44 Ooms, T. (1995). *Taking families seriously: Family impact analysis as an essential policy tool*. Paper prepared for expert meeting October 19-20, 1995, in Leuven, Belgium (p.2). http://www.familyimpactseminars.org/pf_fis02suppreport.pdf
- 45 Ooms, T. (1995).
- 46 Bernstein, N. (2005). *All alone in the world: Children of the incarcerated* (p. 260). New York, New York: The New Press.
- 47 See Louisiana Administrative Procedure Act, Chapter 13A, Acts 1999, No. 1183, §972 for Family Impact Statement.
- 48 New York State Department of Correctional Services, personal communication, March 2010
- 49 Recent update from the San Francisco Children of Incarcerated Parents Partnership (SFCIPP) director, Nell Bernstein and from independent public policy consultant, Yali Lincroft. For more information see www.sfcipp.org.
- 50 It is not yet clear how the merger of DOCCS and the Division of Parole and the full implementation of Transition Accountability Plans and Risk/Needs Assessments will affect reentry planning and specifically the impact on children during and following incarceration.
- 51 See Bernstein, N. (2005). Chapter 3: Visiting.
- 52 See Bernstein, N. (2005). p. 76
- 53 New York Codes, Rules and Regulations (NYCRR), Title 9, Part 171
- 54 Office of Children and Family Services, personal communication, March 3, 2011
- 55 One report found that "when adequate resources are available for prison nursery programs, women who participate show lower rates of recidivism, and their children show no adverse affects as a result of their participation. By keeping mothers and infants together, these programs prevent foster care placement and allow for the formation of maternal/child bonds during a critical period of infant development.", see Women's Prison Association. (2009). *Mothers, infants and imprisonment: A national look at prison nurseries and community-based alternatives*. New York, New York: Author.
- 56 Byrne, M. (2009). *Maternal and child outcomes of a prison nursery program*. New York, New York: Columbia University Institute for Family and Child Policy. Retrieved from http://www.nursing.columbia.edu/byrne/prison_nursery.html
- 57 von Zielbauer, P. (2003, August 7). Probation Department Is Now Arming Officers Supervising Criminals. *The New York Times*. Retrieved from <http://www.nytimes.com>

- 58 Glaze, L., & Maruschak, L. (2010). *Parents in prison and their children* (Publication No. NCJ 222984). Washington, DC: U.S. Department of Justice. Bureau of Justice Statistics.
- 59 "Kinship caregivers are defined as relatives, members of a tribe or clan, godparents, step-parents, or other adults who have a kinship bond with a child." See Child Welfare League of America. (1994). *Kinship care: A natural bridge*. Washington, DC: Author.
- 60 Testimony by Gerard Wallace, Esq. was presented to the New York State Joint Legislative Public Hearing Human services 2011-2012 Executive Budget Proposal (February 16, 2011).
- 61 Gleeson, J. (2007). Kinship care research and literature: Lessons learned and directions for future research. *The Kinship Reporter*, 1(2). Retrieved from <http://www.cwla.org/programs/kinship/kinshipsummer2007.pdf>
- 62 Testimony by Gerard Wallace, Esq. (February 16, 2011)
- 63 New York State Kincare Coalition (2010).
- 64 Amending New York Domestic Relations Law 729(2) and New York Family Courts Act 1017
- 65 New York Surrogate Court Procedure Act § 1726
- 66 New York General Obligations Law, Title 15-A, §§ 1551-55
- 67 New York Surrogate Court Procedure Act § § 1700 ff
- 68 New York Public Health Law § 2504
- 69 U.S. Census Bureau. (2009). American Community Survey. Retrieved from http://www.census.gov/acs/www/data_documentation/2009_release/
- 70 Family Court Act Sections 451 and 461; New York Domestic Relations Law Section 236, Part B
- 71 Testimony by Gerard Wallace, Esq. (February 16, 2011).
- 72 Testa, M. F. & Cohen, L. (2010, June). *Pursuing Permanence for Children in Foster Care: Issues and Options for Establishing a Federal Guardianship Assistance Program in New York State*. School of Social Work, University of North Carolina at Chapel Hill.
- 73 New York Civil Liberties Union. (2007). *Criminalizing the classroom: The over-policing of New York City schools*. New York, New York: Author. Retrieved from <http://www.nyclu.org/publications/report-criminalizing-classroom-2007>
- 74 Johnson, R. C. 2009. Ever-Increasing Levels of Parental Incarceration and the Consequences for Children. In S. Raphael & M. Stoll (Eds.), *Do prisons make us safer* (p.199). New York, New York: Russell Sage Foundation.
- 75 New York Civil Liberties Union. (2010). *Dignity for All Students Act*. New York, New York: Author. Retrieved from <http://www.nyclu.org>
- 76 On child welfare staff working with incarcerated parents, see the New York City's Administration for Children's Services Education Unit, www.nyc.gov/html/acs/education/index.html
- 77 On the Parental Information and Resource Centers (PIRCs), see the New York State Education website, <http://www.nysed.gov/>. PIRC's are offered throughout the state including upstate New York (Watertown, Rochester, Syracuse, Fallsburg, Monticello and elsewhere) and in the Bronx, Yonkers, and Queens.
- 78 On more about parental loss, see Boss, P. (2006). *Loss, trauma and resilience: Therapeutic work with ambiguous loss*. New York, New York: WW Norton; Boss, P. (2000). *Ambiguous loss: Learning to live with unresolved grief*. Cambridge, Massachusetts: Harvard University Press.
- 79 Keynote speech by Joseph Crumbley, Ph.d. Proceedings from 3rd Kinship Care in New York: *Keeping Families Together Summit*. Albany, New York: June 2010.
- 80 On children's exposure to incarceration over time, see Drucker, E. (2011). *A plague of prisons: The epidemiology of mass incarceration in America*. New York, New York: The New Press.
- 81 On research focusing on incarceration at the neighborhood level, particularly incarceration "tipping point", see research by Dina Rose and Todd Clear, 1998. Several studies maintain that communities may reach an incarceration "tipping point".
- 82 B. Ivins, personal interview, January 2011
- 83 Nelson, F., & Mann, T. (2011), Opportunities in Public Policy to Support Infant and Early Childhood Mental Health. *American Psychologist*, February-March, 129-139.
- 84 Phillips, S.D., & Gleeson, J.P. (2007).
- 85 New York City Center for Child Development. (2004). *Promoting the mental health and healthy development of New York's infants, toddlers and preschoolers: A call to action*. New York, New York: New York City Early Childhood Mental Health Strategic Workgroup.
- 86 On developing effective screening tools for standard care, see p. 457 of Augustyn, M., Zuckerman, B, & Caronna, E. (2010). *The Zuckerman Parker handbook for developmental and behavioral pediatrics for primary care* (3rd Edition). New York, New York: Lippincott, Williams, and Wilkins.
- 87 On more on the importance of partnerships between mental health providers and Family Court Judges, see Osofsky, J., & Lederman, C. (2004). Healing the child in juvenile court. In J. Osofsky (Ed.), *Young children and trauma: Intervention and treatment* (Chapter 9). New York, New York: Guilford Publications.
- 88 The Council on Young Child Wellness is part of a Substance Abuse and Mental Health Services Administration (SAMHSA) Project Launch Grant that is addressing young children's physical and mental health in a broad-based, cross-systems way, and involving communities themselves.

- 89 Office of Children and Family Services, email communication, April 22, 2011.
- 90 Discharge data covers children who left care between July and September, 2010, see www.ocfs.state.ny.us and see statewide data on placement types at www.ocfs.state.ny.us/main/cfsr/cfsrdata/Statewide/P5_Placement_Type.pdf
- 91 See statewide OCFS data at www.ocfs.state.ny.us
- 92 For more information on findings, see Children's Right. (2009). *The long road home: A study of children stranded in New York City foster care*. New York, New York: Author. The study excluded children who were legally "freed" for adoption.
- 93 Harrison, P.M., & Beck, A.J. (2006). *Bureau of Justice Statistics Bulletin: Prisoners in 2005*. Washington, D.C.: U.S. Department of Justice. Retrieved from <http://bjs.ojp.usdoj.gov/content/pub/pdf/p05.pdf>
- 94 Office of Children and Family Services, personal communication, December 2010
- 95 According to a Vera Institute study, this is the most frequent sequence of events for mothers when there is an overlap of foster care placement and incarceration. See Ross, T., Khashu, A., & Wamsley, M. (2004). *Hard data on hard times: An empirical analysis of maternal incarceration, foster care, and visitation*. New York, New York: Vera Institute of Justice.
- 96 Larson, A., & Swanson, M. (2008). *Identifying children with incarcerated parents: The child welfare data environment*. In Center for Advanced Studies in Child Welfare. *CW360: A comprehensive look at a prevalent child welfare issue* (p.5). St. Paul, MN: Author. Retrieved from <http://www.cehd.umn.edu/ssw/cascw/attributes/PDF/publications/CW360.pdf>
- 97 Family Court Act Sections 451 and 461; New York Domestic Relations Law Section 236, Part B.
- 98 18 NYCRR 430.12(d)(1)(i); New York State 85 ADM 42 interpreted this regulation to mean that incarcerated parents should have visits at least monthly when the permanency goal is discharge to parent. The Social Services Law states that visits are required within New York State, but that outside New York State, visits are required only where "reasonably feasible and permissible."
- 99 Adoption and Safe Families Act (ASFA) is a federal law enacted in 1997 to address the problem of children "lingering" in foster care.
- 100 See www.youthcomm.org and www.youthcomm.org/miva/merchant.mvc?Screen=PROD&Product_Code=CW18&Sto
- 101 New York City Administration for Children's Services. (2007). *Visit host guidelines: Bridges back home*. New York, New York: Author.
- 102 Child welfare regulations require agencies to demonstrate "reasonable efforts" to reunify a family when a child enters foster care, in all cases except where a Court has suspended these. "Reasonable efforts" are defined in the law and in child welfare practice.
- 103 The purpose of the Child Protective Services Act of 1973 is to encourage more complete reporting of child abuse and maltreatment. The law established a Child Protective Service in each county in New York. Each Child Protective Service is required to investigate child abuse and maltreatment reports, to protect children (under 18 years old) from further abuse or maltreatment, and to provide rehabilitative services to children, parents, and other family members involved.
- 104 Governor Press Office (2011, April 19). Governor Cuomo Announces Members of SAGE Commission to Modernize and Right-Size State Government. [Press release] Retrieved May 3, 2011, from <http://www.governor.ny.gov/press/041911SAGECommission>

Appendix A: List of New York Initiative for Children of Incarcerated Parents Partners

Community-Based Partners

Advocates for Children of New York
 Agenda for Children Tomorrow
 Applied Research Center
 Bronx Defenders
 Center for Family Representation
 Center for the Study of Social Policy
 Children's Defense Fund
 Children's Project Fund
 Children of Promise-New York City
 Community Service Society
 Court Appointed Special Advocates (CASA) Project Family Connect
 Fostering Change for Children (formerly CT Wocat)
 Edwin Gould Services
 Families, Fathers & Children
 Graham Windham
 Hour Children
 Hostos Lincoln Academy
 Imagine Me Leadership Academy
 Jewish Board of Family and Children's Services
 Kerwin Phillips Foundation's Prison Brake Network
 Legal Aid Society Juvenile Rights Division
 Legal Information for Families Today (LIFT)
 MercyFirst
 Permanent Judicial Commission on Justice for Children
 Police Athletic League
 Safe Horizon Brooklyn Mediation
 Sills Family Foundation
 United Way
 United We Stand of NY
 Women's Prison Association
 Women in Prison Project-Correctional Association of New York
 Vera Institute of Justice
 Weissberg Foundation

Government Partners

Council on Children and Families
 Kings County District Attorney's Office
 New York City Administration for Children's Services (ACS)
 New York City Department of Correction (DOC)
 New York City Department of Probation
 New York City Department of Education (DOE)
 New York City Department of Youth and Community Development (DYCD)
 New York City Department of the Aging
 New York City Human Resources Administration's (HRA) Office of Child Support Enforcement (OCSE)
 New York City Mayor's Office of the Family Services Coordinator
 New York City Mayor's Office Fatherhood Initiative
 New York State Division of Criminal Justice Services (DCJS)
 New York State Department of Correctional Services (DOCS)
 New York State Office of Children and Family Services (OCFS)
 New York State Office of Alcoholism and Substance Abuse Services (OASAS)
 New York State Education Department (SED)
 New York State Center on School Safety
 Several of New York City's Family Court Judges
 Unified Court System's Court Improvement Project

CHILDREN OF INCARCERATED PARENTS: A BILL OF RIGHTS

1. I HAVE THE RIGHT TO BE KEPT SAFE AND INFORMED AT THE TIME OF MY PARENT'S ARREST.
2. I HAVE THE RIGHT TO BE HEARD WHEN DECISIONS ARE MADE ABOUT ME
3. I HAVE THE RIGHT TO BE CONSIDERED WHEN DECISIONS ARE MADE ABOUT MY PARENT.
4. I HAVE THE RIGHT TO BE WELL CARED FOR IN MY PARENT'S ABSENCE.
5. I HAVE THE RIGHT TO SPEAK WITH, SEE AND TOUCH MY PARENT.
6. I HAVE THE RIGHT TO SUPPORT AS I STRUGGLE WITH MY PARENT'S INCARCERATION.
7. I HAVE THE RIGHT NOT TO BE JUDGED, BLAMED OR LABELED BECAUSE OF MY PARENT'S INCARCERATION.
8. I HAVE THE RIGHT TO A LIFELONG RELATIONSHIP WITH MY PARENT.

Appendix C: Guiding Principles to Support Children of Incarcerated Parents

All New Yorkers have a vested interest in ensuring that our children grow up to be healthy adults, possessing the knowledge and skills needed to become self-sufficient, contributing members of our communities. For some children, however, the successful transition to adulthood is inhibited by complex life circumstances. This is particularly true for children with incarcerated parents.

The guiding principles below are founded on respect for the dignity and worth of each individual, regardless of race, color, gender, language, religion, sexual orientation, political or other opinion, national or social origin, property, wealth, birth or other status or abilities. They are non-binding policy statements that are intended to provide guidance to State agencies to support children of incarcerated parents and they do not impose any mandates on any State agency or signatory to the Principals.

Children need:

1. to be safe and have information about the arrest and post-arrest process of their parent. They are entitled to age-appropriate explanations and to know the age-appropriate truth about what happened. They should be provided information about where their parent will be / has been taken and what will happen to them. Protocols need to be available to Police Officers to help them address a child's fears and needs when a parent is arrested.
2. to feel loved and to be consulted when decisions are made on their behalf during their parents' absence. In all decisions concerning children made by the courts, child welfare agencies, law enforcement and other administrative and government bodies the primary concern should be the best interests of the child, especially as those interests relate to maintaining and remaining in stable living situations, familiar schools, neighborhoods, religious and cultural institutions, and with guardians/ caregivers who have a positive supportive relationship with the child, and will advocate on their behalf (including supporting their relationship with an incarcerated parent, when in their best interest).
3. to be considered when decisions are made about their parents. The parent-child relationship almost always needs to continue and this benefits both the parent and child. Law enforcement, Courts, Probation, Corrections, and Parole need to consider children in their decision-making if feasible, including about location of incarcerated parents, as well as in their visiting and communication policies which should encourage visits and contact, and provide child-sensitive visiting areas.
4. to be given the option and the means to maintain contact with their parents, including, direct, face-to-face visits, phone calls and letters on a regular basis. In almost all cases, children want some type of continued contact with their parent. Visits need to allow for as natural an interaction as possible and be in a setting which acknowledges developmental and attachment needs of children. When contact is not in the child's best interest, reassessment of the decision should occur as circumstances change over time.
5. to be supported during their parents' incarceration to ensure their physical and emotional well-being, and healthy development as well as their educational achievement. Caregivers in turn, need support (emotional and in most cases, financial as well) in order to provide for the children in their care.
6. to feel safe, reassured and confident despite their parents' incarceration. Children need to receive the same nurturing, encouragement and acceptance as all other children; they need to know their parents' decisions and the resulting incarceration are not their fault. Well trained, open, non-judgmental professionals need to be available to them.
7. to have and be able to maintain a life-long relationship with their parents in most circumstances. The parent-child relationship holds significant importance over time and throughout the lifespan of a child. Where appropriate, every effort should be made to safeguard this relationship in the best interests of children and with a lifelong perspective informing all decision-making. This includes recognizing that what may not be in the child's best interest now, may be so in the future, and that the parent-child relationship remains critical at all ages, including and throughout adulthood.

Considerations For Children Of Arrested Subjects

PRE-ARREST OR PRE-RAID PLANNING - Attempt to identify whether the presence of children is anticipated at the location where an arrest or raid is planned; consider alternatives in order to minimize the possibility of children being present; in the event children are present, have a contingency or safety plan in place to address safety considerations of children. Consider having Child Protective Services agents standing by if this does not compromise the investigation or arrest/raid strategy.

DETERMINE - Whether children are present or if the arrestee is responsible for children; Ask and observe (toys, clothing, formula, diapers, bunk beds, etc.); If children are at school, arrange for notification of a school official.

ARREST PARENT OUT OF THE PRESENCE OF CHILD(REN)

– If possible, giving due consideration to the safety of officers, children, the suspect and others, consider arresting, handcuffing and questioning of parents out of the view of their children. **NOTE** – children may feel safer about the situation when compassion is shown to the arrestee.

REASSURE – When safe to do so, allow the parent to assure children that they will be okay (unless unsafe to do so or if emotional state of arrestee would negate this approach); Explain what is happening. Assure children that they have done nothing wrong. Explain that their parent will be safe; Offer age-appropriate explanation.

ENSURE SAFETY OF CHILD(REN)

Can the arrested parent make arrangements for care of child(ren)? If booking procedures normally permit a single telephone call, permit reasonable additional calls so that parent can arrange child care or allay fears of child(ren); Assist in locating or contacting caregiver designated by the parent; If unable to reasonably locate suitable caregiver, contact Child Protective Services.

SCREEN CAREGIVER – The goal of responding officers is to minimize unnecessary trauma to the children of arrestees and to determine the best alternative

care for the children. Generally, the arrested parent has the right to choose appropriate placement for their children (Exceptions would include designated caregiver with active drug use, presence of weapons, history of sexual offense and/or violence against children, or other indicators of an unsafe environment). Be sure to document the identity, location and contact info of the caregiver with whom children are placed. If unable to identify or locate an appropriate caregiver, contact your Supervisor and/or Child Protective Services on-call caseworker.

DOCUMENT the identities and biographical information of all children present; the identities, address and contact information for caregivers of children; medical information (allergies, meds, doctor)

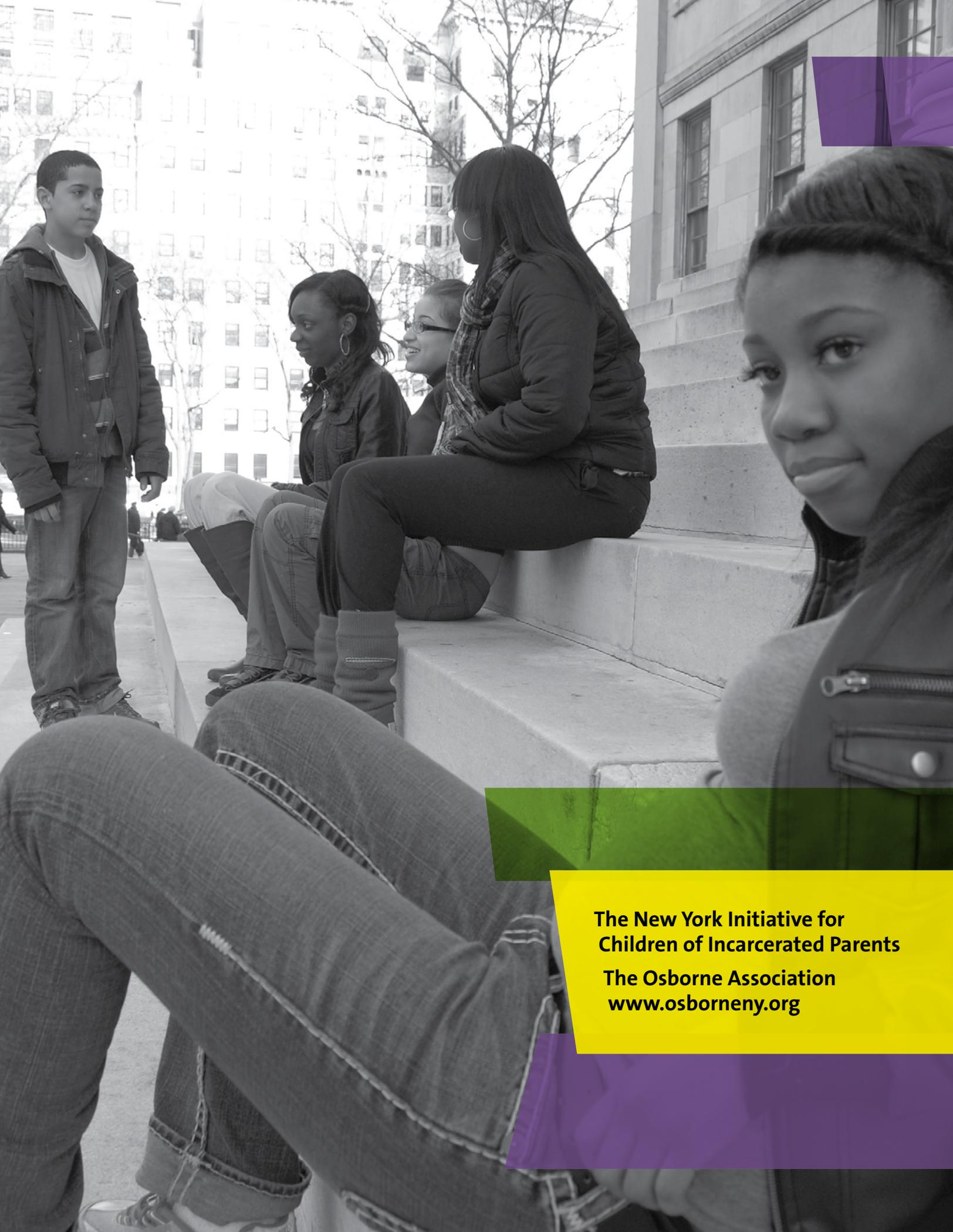
OFFER older children and other caregivers information about post-arrest procedures. Where the subject will be taken; how long they may be held; visiting hours and procedures

IF YOU BELIEVE CHILDREN ARE IN IMMINENT DANGER

– Police shall take all appropriate measures to protect a child's life and health including, when appropriate, taking or keeping a child in protective custody without the consent of a parent or guardian if such person has reasonable cause to believe that the circumstances or condition of the child are such that continuing in his or her place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to the child's life or health. (§417 NY Social Services Law – see Consolidated Law section of this Handbook)

Resources to assist children of Incarcerated parents in my jurisdiction:

**The Osborne Association's
Family Resource Hotline:
1-800-344-3314**



**The New York Initiative for
Children of Incarcerated Parents**
The Osborne Association
www.osborneny.org

**The Bronx
Defenders**

**Redefining
public
defense**

**New York City Council
Committee on Public Safety Jointly with the Committee on Justice System
Hearing re: Family Separation in Criminal Cases
February 25, 2019
Written Testimony of The Bronx Defenders
By Fallon Speaker, Eli Northrup, and Caitlin Becker**

The Bronx Defenders (“BxD”) has provided innovative, holistic, and client-centered criminal defense, family defense, immigration representation, civil legal services, social work support and advocacy to indigent people in the Bronx for more than 20 years. Our staff of close to 400 represents nearly 28,000 people every year and reaches thousands more through community outreach. The primary goal of our model is to address the underlying issues that drive people into the various legal systems and to mitigate the devastating impact of that involvement, such as deportation, eviction, the loss of employment and public benefits, or family separation and dissolution. Our team-based structure is designed to provide people seamless access to multiple advocates and services to meet their legal and related needs.

I. The Consequences of a Single Arrest.

In January of this year, police arrived at Ms. B¹’s apartment in the Bronx in response to a call regarding a domestic dispute. When they arrived, Ms. B’s husband opened the door and told the police that the two of them had gotten into an argument but that he did not intend to press charges. The police indicated that they intended to place Ms. B under arrest anyway. Ms. B recalled seeing the videos of Jazmine Headley’s arrest on the news and she was terrified of what the police would do to her child if they arrested her. Unfortunately, her worst fears were realized. Police forced their way into the apartment and aggressively pulled Ms. B’s nine-month old baby from her arms, causing the young child to cry and scream. They did not let Ms. B comfort her child nor did they assist Ms. B in making arrangements for her son’s care. Instead, the police arrested Ms. B in front of her child and charged her with endangering the welfare of her child, resisting arrest, assault, and harassment.

Exposure to toxic stress in infancy, such as witnessing a primary caregiver’s arrest, can have lifelong negative consequences for children. Babies like Ms. B’s, who have experienced a

¹ Names and identifying details have been changed to protect client confidentiality

traumatic event and abrupt separation from their parents, are more likely to exhibit difficulty with making healthy attachments, maladaptive behaviors and experience academic difficulties.²

At the criminal court arraignment Ms. B's husband was present in the courtroom and told the district attorney that he did not want an order of protection and did not believe one on behalf of their child was necessary. Despite this, and the the fact that Ms. B had no criminal record whatsoever, the district attorney asked for and the judge issued a full stay away order in favor of Ms. B's husband and their infant son. This meant that Ms. B's family was officially separated indefinitely: she could not go back to her home or see her infant son until the order of protection was modified in Family Court or the case ended.

In addition to the criminal case, the Administration for Children's Services ("ACS") was called and a case was initiated in family court for neglect. An ACS case was opened despite the fact that her husband told police that the baby was not in the room during their argument, Ms. B had no history of violence or neglect, and her child was in good health and well. The narrative put forth by ACS and the arresting police officers was that Ms. B had endangered her baby by using him as a *human shield* to prevent police from arresting her. In reality, the scene was chaotic and confusing for Ms. B. She was terrified; the officers were yelling and escalating the situation, insisting on her arrest despite her partner's assurance that he would not press charges; and they were tearing her baby out of her arms. She tried to comfort her child and protect him from a hostile and frightening situation.

This narrative followed Ms. B and, seven days later, when a Family Court judge finally heard Ms. B's case for the first time, the judge ruled that Ms. B could not be reunited with her son. Family court judges are almost always unwilling to overturn the rulings of criminal court judges issued in preceding criminal court proceedings and when an order of protection is issued in one case it has serious consequences for all subsequent proceedings.

I share this story of Ms. B, a client of the Bronx Defenders, to demonstrate that the Jazmine Headley case is far from an aberration and has not resulted in a change in the daily practices of the NYPD. In Ms. B's case, the police were aggressive and created an atmosphere of fear and confusion that caused Ms. B to react as any concerned parent would. Rather than bring reassurance and order, the police escalated the situation in a way that led our client to be traumatically separated from her newborn son. All of this could have been avoided had the police been properly trained on effectuating arrests when children are present. As public defenders, we know that these type of arrests happen all the time without any public scrutiny or outcry.

The harshness, fear, and harm created in these moments was put on display for the public on December 7th, 2018, during the arrest of Jazmine Headley in a Brooklyn Human Resources Building. While the NYPD's actions were not caught on camera in Ms. B's case, the effects are no less real. And the resulting trauma they cause is no less harmful. The fear experienced by

² McKelvey, L.M, Edge, N.C., Mesman, G.R., Whiteside-Mansell, L., & Bradley, R.H. (2018). Adverse experiences in infancy and toddlerhood: Relations to adaptive behavior and academic status in middle childhood. *Child Abuse and Neglect*, 82, 168-177.

Ms. B during this police encounter that initiated a natural reaction to protect her baby is not a fear held in isolation. It is a fear experienced by parents who encounter police officers seeking to arrest them while they are with their children on a regular basis. It is a fear that can be mitigated.

II. We must mitigate harm of arrest for parents and children by implementing child-sensitive arrest policies.

As practitioners, we see firsthand the impact an arrest can have on families, especially when a child is present. Whenever we speak with clients who have been arrested in front of their child, their first concern is always their child's wellbeing. Oftentimes, they express deep dismay or justified outrage at the police officers' handling of the situation, many of which involve aggression, violence and yelling which evokes fear in parents and children alike. Our clients' singular goal in these situations is to protect their children, yet they are often powerless to do so and any attempts to protect or even comfort their children are interpreted as failing to follow officers' directives or, worse, resisting arrest and endangering their own child's welfare.

The impact of these escalated encounters between parents and police on children is even more severe. Children who witness a parent's arrest experience short term distress and are at a higher risk for developing serious emotional and behavioral problems in life. Babies and toddlers, far from being immune from witnessing their parent be arrested or separated from their parent due to their young age, have less developed coping skills than older children and are at particular risk for experiencing negative life outcomes as a result of witnessing a parent's arrest. Beyond witnessing the arrest, young children in particular are further traumatized by the sudden separation from their primary caregivers, causing a rupture in the essential attachment relationship.³

This is a national problem. According to the National Resource Center on Children and Families of the Incarcerated, "a study conducted in 1998 estimated that of the parents arrested: 67% were handcuffed in front of their children, 27% reported weapons drawn in front of their children, 4.3% reported a physical struggle, [and] 3.2% reported the use of pepper spray."⁴ Further, studies showed that "children who witnessed an arrest of a household member were 57% more likely to have elevated posttraumatic stress symptoms compared to children who did not witness an arrest."⁵ We have an obligation to mitigate the harmful effects of a parent's arrest on their children.

On February 1, 2019, 42 human service providers, faith leaders, and advocates called on Mayor De Blasio to implement policies to safeguard children of arrested parents.⁶ (attached as Appendix A). According to this release, "As of 2016, all law enforcement officers in New York State,

³ Roberts, Y.H., Crusto, C.A., & Kaufman, J.S. (2012). Traumatic impact of familial arrest on young children. *Journal of Trauma & Treatment*, 8.

⁴ Children and Families of the Incarcerated Fact Sheet, National Resource Center on Children and Families of the Incarcerated. (2014).

⁵ *Id.*

⁶ Safeguarding Children at the Time of Arrest, February 1, 2019.

<https://www.bronxdefenders.org/letter-to-mayor-de-blasio-safeguarding-children-at-the-time-of-arrest/>

except for the NYPD and the New York State Police, receive training on how to safeguard children at the scene of arrest as part of the NYS Office of Public Safety's Basic Training."⁷ We join them in urging the City and NYPD to protect children by changing the way officers interact with parents and children during arrest encounters to help minimize the trauma they experience in these moments. It is essential that arresting officers are educated on the harmful effects that witnessing a parent's arrest can have on children, and the heightened risk for long-term negative physical and emotional effects on these children. In 2016, the International Association of Chiefs of Police, in collaboration with the Department of Justice, issued a model protocol and officer training intended to protect the emotional and physical well being of children at the time of a parent's arrest.⁸ This model protocol and training includes an overview of the psychological impact of traumatic experiences on children, and provides guidance for officers about what they can do to minimize the harm. A comprehensive training curriculum with case scenarios will better prepare officers to respond to the challenges posed by the arrest of parents.

In addition to implementing training for New York City Police officers to safeguard children at the scene of the arrest, we agree with the four minimal child-sensitive principles that should guide any arrest of a parent in front of a child⁹:

- Arresting the parent out of the sight of children;
- Not handcuffing the parent in front of the child or using a siren;
- Allowing the parent access to their cell phone and extra phone calls to arrange care for the child; and
- Allowing the parent to comfort and explain to the child what is happening.

None of these principles were observed during Ms. B's arrest, and she and her family are now dealing with the devastating consequences of the police officers' mishandling of her arrest and the unnecessary separation of her and her child. As a mother, Ms. B was terrified of being arrested and the harm that would come to her son if they were separated. She wanted to ensure that her son would be safe and cared for while she was in custody. She was trying to comfort her baby and protect him, while police officers were screaming demands at her and needlessly escalating the situation. Had the officers been trained in safeguarding children at the time of a parents' arrest, the scene created at the time of Ms. Headley and Ms. B's arrests would have been very different. Rather than creating an environment of chaos and fear that escalates an already fraught situation, officers must be taught to de-escalate and better understand the positions of mothers like Ms. Headley and Ms. B who are merely trying to protect their children. They must be trained in the devastating impact of a parent's arrest on children, and work to mitigate the harm children experience when a parent is arrested.

⁷*Id.*

⁸ International Association of Chiefs of Police (2016). *Safeguarding children of arrested parents: Officer training*. Retrieved from

<https://www.theiacp.org/sites/default/files/pdf/IACPCAPOfficerTrainingFacilitatorGuideCombined.pdf>

⁹ Safeguarding Children at the Time of Arrest, February 1, 2019.

<https://www.bronxdefenders.org/letter-to-mayor-de-blasio-safeguarding-children-at-the-time-of-arrest/>

The Bronx Defenders supports the initiatives detailed in the letter to Mayor De Blasio and also supports a local law requiring NYPD to implement child-sensitive arrest policies. We believe that the drafting of such a law should include input from personally-affected individuals and families, experts in childhood trauma, human service providers, faith-based organizations, advocacy groups, and institutional public defense organizations, as well as representatives from NYPD and ACS.

III. Criminal courts are over-issuing orders of protection against parents on behalf of children, leading to unnecessary separation of families.

The harm done to Ms. B and her family was not confined to her arrest. When she was brought to Criminal Court to be formally charged, the Judge, upon the District Attorney's application, issued a full stay away order of protection preventing her from having contact with both her husband and her son. This happened despite the fact that her husband was seated in the arraignment courtroom asking that no order be issued on his behalf and that such an order would cause unnecessary and traumatic family separation. Ms. B's case is not an aberration. In order to reduce unnecessary family separation caused by arrest and incarceration, we must also address how the criminal court system regularly and unnecessarily separates families by issuing orders of protection as a matter of course in every case.

Criminal court judges are authorized by section 530.12 of the Criminal Procedure Law to issue orders of protection on behalf of family offense victims, including parents and children. The criminal court can issue temporary orders of protection during the pendency of a case and final orders upon sentencing on conviction for any crime between family members, including a parent and a child. In criminal court, temporary orders of protection are issued *pro forma* against parents on behalf of children at arraignment or against children on behalf of parents and renewed at each subsequent court appearance without the court ever holding a hearing, considering evidence, or hearing from the family members affected.

Generally the court appearance at which routine temporary orders of protection are entered or continued by criminal court judges last less than five minutes. There are no reports provided from professionals making recommendations; the child, who is separated from his parent as a result of the order, has no voice or representation in the proceedings; and, the District Attorney who makes the request almost always has no information about a concurrent family court case and a parent's progress in services required by that proceeding and has no obligation to provide any reason or information about why the order of protection is being requested.

Final orders of protection are issued upon a conviction at sentencing – usually as part of a plea agreement. A final order of protection from the criminal court can prohibit contact between a child and parent for a set period of time depending upon the charge, essentially depriving the child of any meaningful relationship with his or her parent.

The issuance of orders of protection by the criminal court in every case without any meaningful inquiry or scrutiny violates fundamental constitutional rights to family integrity and due process.

Forced parent-child separation can have profound effects on children, including the development of poor coping skills, low self esteem, and delinquent behaviors.¹⁰

The perfunctory and irresponsible manner in which family separation is caused by the criminal court is best illustrated when compared to the procedures and protections required by the Family Court Act and the Social Services Law which governs civil neglect and abuse proceedings in family court.¹¹ In civil neglect and abuse proceedings, prior to a child being separated from her parent, the law requires that a family court judge find that the child is at imminent risk of serious harm to her life or health and that it is in her best interest to be removed from his or her home. The child is represented by an attorney in the proceeding. If the parent objects to being separated from her child, the family court takes testimony and considers evidence. In subsequent proceedings, the family court continues to evaluate whether the child can be returned safely to her home. The judge has access to the most current information from the local social services agency about the parent's progress, rehabilitation and compliance with mandated services. It is contrary to both the legislative intent of New York law and to best child welfare practices to preclude the Family Court from acting on its assessment of children's best interests.

Criminal court orders of protection, on the contrary, effectively separate families without an analysis of the child's best interest. At the request of defense counsel, some criminal court judges will permit these orders to be subject to family court modification. If the order of protection is made subject to family court modification, a parent can file a petition for visitation or custody in family court or the family court judge in a concurrent neglect action can order visitation or return the child to the parent's custody. Making orders subject to family court modification, however, is in the discretion of the criminal court judge and not always granted. When the criminal court issues an order of protection on behalf of a child against her parent without allowing for modification by the family court, they are effectively separating a family and leaving a parent and child without recourse.

Even in cases where the order is made subject to modification by a family court, the existence of the criminal court order of protection greatly colors the proceeding and stacks the case against the parent. When a criminal court order of protection is in place, ACS is more likely to file a case against a parent in family court alleging neglect or abuse. Family court judges are inclined to order more restrictive visitation, such as supervised as opposed to unsupervised visitation. In some instances, family court judges have expressed reluctance and confusion as to whether they have the power to reunite a parent and her child when a criminal court order of protection is in place, even if that order is subject to family court modification. This is so, even if they find no risk to the child. In this way, criminal court orders of protection, even those that are modifiable by a family court, serve to prolong family separation when no safety risk exists.

It is imperative that criminal court judges stop issuing blanket orders of protection in these cases, and specifically where the case involves parents and children. Below we outline ways in which the courts can scale back on the routine issuance of protective orders.

¹⁰ Geller, A., Garfinkel, I., Cooper, C., & Mincy, R. (2009). Parental incarceration and child well-being: Implications for urban families. *Social Science Quarterly*, 90(5), 1186-1202.

¹¹ See SSL 384-b(1)(a)(ii)(iii).

A. Criminal courts should not issue orders of protection between parents and children as a matter of course and if necessary should issue limited orders of protection unless there is specific evidence that a child is at imminent risk of serious harm in the parent's care.

In Ms. B's case, a temporary full stay away order of protection was entered against her on behalf of her baby, without any actual evidence or proof that her son had been harmed or that she posed any risk of harm to her son. Her son sustained no injuries while she held him in the face of police aggression, and she made no threats to his safety while holding him. Arguably, the threat to both her safety and that of her son's came from the way in which the police officers escalated the situation. If the court felt that a protective order was necessary, however, despite the absence of any criminal history or allegations of neglect, the court should have issued a limited order of protection on behalf of Ms. B's son. This order could have been crafted to indicate that she could not hit, harm or harass her son and had to avoid any verbal or physical altercation in his presence. This order would have ensured her son's safety, addressed any concerns raised by the case while it progressed, and would prevent needless traumatic separation and allow Ms. B to continue to care for him.

We propose that at arraignments, criminal court judges refrain from issuing blanket temporary orders of protection and consider the obstacles and trauma faced by children and parents from arrest to reunification. Judges should presume that a limited order of protection will suffice in any case in which the prosecution is asking for an order of protection. After a careful analysis, should the Criminal Court feel that more than a limited order of protection is needed to ensure the safety of a child, then the default should be that any full stay away order of protection is (1) made subject to Family Court modification and (2) subject to regular review by the Criminal Court judge.

B. If a criminal court is going to issue a final order of protection, it should be required that the order of protection must be subject to modification by a family court.

A second issue that arises with orders of protection occurs after a client has been adjudicated guilty and is being sentenced. At this time, criminal court judges have the power to issue final orders of protection, which can last up to 10 years. One of our clients, Mr. G, came to us in Bronx Family Court after he had been arrested and tried in Manhattan Criminal Court for an unrelated charge. As a result of his prior criminal case he was ordered to comply with a five year final order of protection on behalf of his 1-year-old son. The final order of protection issued by the Criminal Court in Mr. G's case was not subject to family court modification. When Mr. G. appeared in family court to petition for visitation with his son he was informed by the Family Court Judge that the criminal court order of protection precluded the Family Court Judge from considering visitation in the child's best interest. When our office contacted Mr. G.'s criminal defense attorney to inquire about the order, we learned that no application had been made for family court modification because the attorney was unaware of the consequences that a final order of protection in that case could have on Mr. G's relationship with his son.

Two prominent issues regarding final orders of protection stand out from Mr. G's experience. The first is that final orders of protection issued by criminal courts, with no analysis of the impact on a child and that child's best interest, can result in family separation that, as discussed below, can become permanent. Without a provision for family court modification, the parent is effectively prevented from living, visiting, bonding, or communicating with their child. Typically, in the family court context, a termination of parental rights hearing involves the petitioner proving by clear and convincing evidence that a parent has permanently neglected or abandoned their child by failing to engage in services to ameliorate alleged harm, failing to plan for their child, and failing to visit regularly, and that it would be in the child's best interest to be permanently legally severed from his parent. By issuing a permanent order that can have the same or similar effects for a long period of time, without the same access to process or a hearing, the criminal court is effectively bypassing constitutional and statutory protections provided to parents and children.

IV. Termination of parental rights and the permanent dissolution of a family is too often a direct consequence of parent incarceration.

Throughout the entirety of this process, from initial arrest through sentencing, some parents remain incarcerated. Incarcerated parents face insurmountable obstacles in trying to maintain and build a relationship with their children.

Research suggests that more than 2.7 million children in the U.S. have an incarcerated parent. That is 1 in 28 children.¹² Incarcerated parents can lose their children to the child welfare system either during the initial arrest or at some point during their incarceration.

When parents lose their children to the child welfare system during the initial arrest, their children are often placed in foster care. Very little time, if any, is given to an arrested parent to make arrangements for their child in order to avoid foster care. In many cases, it is the arrest itself that triggers child welfare involvement, and ACS might allege that the child is neglected because the parent was arrested and failed to make an appropriate plan of care for the child(ren). In these instances, the parent is typically given notice of the pending family court case while in jail, is produced to appear at court proceedings, but may experience very little or no contact with their children during the initial weeks or months of incarceration.

The passage of the Adoption and Safe Families Act ("ASFA") in 1997, created a federal timeline for parents to reunify with their children. According to ASFA, parents who do not plan for their children or move towards reunification with their children for 15 out of 22 months of planning, are subject to having a petition filed to terminate their parental rights. This presumption in favor of termination is often more severe for parents who are incarcerated. According to the National Conference of State Legislatures,

¹² Children and Families of the Incarcerated Fact Sheet, National Resource Center on Children and Families of the Incarcerated. (2014).

although the Adoption and Safe Families Act does not explicitly require a termination of parental rights filing against incarcerated parents, the 15 of 22 months provision technically would apply in cases where reunification is delayed beyond 15 months due to a parent's incarceration, even if the parent is receiving services to facilitate reunification. Because the typical sentence for an incarcerated parent is from 80 to 100 months, most imprisoned parents of children in foster care are at some risk of losing their parental rights.¹³

Incarcerated parents and children are often not able to participate in regular visitation. Incarcerated parents are rarely able to participate in court mandated services such as drug treatment, parenting skills class, domestic violence classes, or anger management classes. Many are unable to receive any true therapeutic or mental health assistances outside of medication management. Thus, they are unable to address the issues and circumstances that gave rise to the child welfare proceeding and progress toward reunification in the time mandate required by ASFA.

Furthermore, incarcerated parents experience parental alienation from their children in the form of court orders designed to limit their ability to have contact with their children, such as orders of protection and diversion programs. For example, Ms. N, a client of The Bronx Defenders, was ordered by criminal court to complete a diversion program in order to avoid a sentence of two years of incarceration. The diversion program required her to enroll in an inpatient drug treatment program for a period of 18-24 months. She enrolled in the program to avoid incarceration and to rebuild her relationship with her child. She began visiting with her daughter and engaged in rehabilitative services ordered by the family court. Eventually, although the family court deemed it safe for her to have overnight visits with her daughter, she was unable to do so due to the regulations of the mandated program. Despite her best efforts, Ms. N.'s ability to reunify with her daughter was thwarted by the criminal court order. During this time, the foster care agency filed a termination of parental rights petition against her, alleging that she had permanency neglected her child because she failed to address the issue. Too often, child protective agencies and family courts quickly move to terminate the rights of incarcerated parents and those serving sentences in diversion programs like Ms. N.

We must expand the ability of incarcerated parents' ability to meaningfully participate in their children's lives during their period of confinement. According to the National Conference of State Legislatures, "research suggests that intervening in the lives of incarcerated parents and their children to preserve and strengthen positive family connections can yield positive societal benefits in the form of reduced recidivism, less intergenerational criminal justice system involvement, and promotion of healthy child development."¹⁴ Our current approach to working with incarcerated parents and children is damaging children and their families. Increased access to child-friendly visitation and regular contact between parents and children would mitigate the harm of parent-child separation.

¹³ *Children of Incarcerated Parents*. Steve Christian, March 2009.
<https://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf>

¹⁴ *Id.*

Some states have passed legislation to aid incarcerated parents in maintaining the right to parent their children. For example, in 2017 Oregon passed a bill of rights for children of incarcerated parents, ORS 423-160.¹⁵ This bill asserted that children of incarcerated parents have the right to “be protected from additional trauma at the time of an arrest . . . to be considered when decisions are made about the child's parent . . . to speak with, see, and touch the incarcerated parent . . . [and] to have a lifelong relationship with the incarcerated parent.”¹⁶

This sort of legislation is a good start, but can be broadened to include more protective measures for parents and children including:

- Funding for resources to provide face-to-face, video, and telephone contact, daily;
- Funding for resources to provide incarcerated parents the option to appear in court by video when housed in a facility that does not facilitate transportation to family court;
- Funding for resources for community-based agencies to increase access to therapeutic and reunification services for incarcerated parents
- Ending full stay away orders of protection that create a barrier in family members or resources aiding in visitation for incarcerated parents and their children, not supervised by the agency;
- Mandatory review of all consequences of diversion programs for each client prior to that client accepting the program; and
- Increase access to residential treatment facilities where parents and children can reside together.

V. Conclusion

In sum, The Bronx Defenders believes that the harms that are inflicted on families from the initial arrest to the sentencing phase, must be addressed in their totality. We support both bills currently being considered by the Council (Int. 0806-2018 and Int. 1349-2019) and urge the Council to go further. We support an amendment to New York City’s Administrative Code to require police departments to implement child sensitive arrest policies. We believe practical training is necessary, as well as input from experts, community stakeholders and advocates who represent incarcerated parents and parents who face arrest, and children who have been affected by parental arrest and incarceration.

We agree that the creation of an interagency task force to address the obstacles faced by children of incarcerated parents is a good first step. We implore the Council, however, to not only consider children of incarcerated parents, but incarcerated parents and the family as a whole. We believe that current parties listed to serve on this task force is lacking in representation of necessary stakeholders. While we do believe it is important to have the NYPD and ACS at this table, we also believe it is important for the following to have a seat at the table: parents and

¹⁵ <https://www.oregonlaws.org/ors/423.160>; *see also*, Christopher Zoukos, *Children with Incarcerated Parents get Bill of Rights in Oregon*, (Oct. 24, 2017) https://www.huffingtonpost.com/entry/children-with-incarcerated-parents-get-bill-of-rights_us_59d57fbde4b03384c43e5808

¹⁶ *Id.*

children with lived experience of family separation due to arrest and incarceration, public defense institutions who represent parents who are arrested, institutions who represent children, community justice advocates, parent support coalitions, and coalitions who fight for the rights of the current and formerly incarcerated. Lastly, we do not believe that the appropriate agency to chair this taskforce is the Department of Corrections. Instead, we believe that an agency in the community and informed by the experience of children and families affected by parental incarceration would be better suited at centering the voices of those most impacted by family separation due to arrest or incarceration.

APPENDIX A

Safeguarding Children at the Time of Arrest

February 1, 2019

Dear Mayor de Blasio,

We, a diverse group of human service providers, faith-based leaders, and advocates call on the leadership of New York City to immediately adopt a city-wide policy to safeguard children at the time of a parent's arrest and provide **all** arresting officers with substantive training to minimize trauma to children who are present during an arrest. NYC has a clearly articulated protocol in place when the parent is being arrested for harm to the child;¹ we call on NYC to have an equally detailed and comprehensive protocol when parents are arrested for non-child-related reasons.

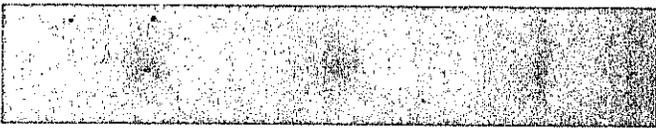
It is clear from the incident on December 7, 2018, when responding officers forcibly ripped Jazmine Headley's infant son from her arms at a Brooklyn Human Resources Administration (HRA) building, that the officers were not equipped with the sensitivity and skills necessary to consider the needs and safety of Ms. Headley's son. Contrary to the response of the NYC Patrolmen's Benevolent Association President Patrick J. Lynch who stated, "The immediate rush to condemn these officers leaves their fellow cops wondering: when confronted with a similar impossible scenario, what do you want us to do?" there is a lot that the officers could have done differently (not to mention that this was hardly an "impossible scenario"). There are concrete steps to put into place immediately to ensure this never happens again. Children's well-being depends on these next steps, and officers' safety and welfare are maximized by implementing these steps as well.

The NYPD, HRA, and all city agencies and contracted entities with the power to conduct arrests can implement a comprehensive policy to safeguard children of arrested parents and begin training **all** officers immediately on child-sensitive arrest protocols. Existing resources and training curricula exist. For example, the International Association of the Chiefs of Police (IACP) model policy for "Safeguarding Children of Arrested Parents" published in 2014 outlines a detailed law enforcement protocol to safeguard children, and an implementation guide and training tools are available on the IACP website. Curricula on child-sensitive arrest practices should also be included in The New York Police Academy Basic Training curricula. As of 2016, all law enforcement officers in New York State, **except for the NYPD and the New York State Police**, receive training on how to safeguard children at the scene of arrest as part of the NYS Office of Public Safety's Basic Training.

Child-sensitive arrest protocols should minimally include the following whenever possible and appropriate:

- arresting the parent out of the child's sight;
- not handcuffing the parent in front of the child or using a siren;

¹ Instant Response Teams respond to cases involving severe abuse and/or maltreatment of a child and consist of personnel from ACS, NYPD, and the county District Attorney's office who work together to minimize trauma to children.



- allowing the parent access to their cell phone and extra phone calls to arrange care for the child;
- allowing the parent to comfort and explain to the child what is happening.

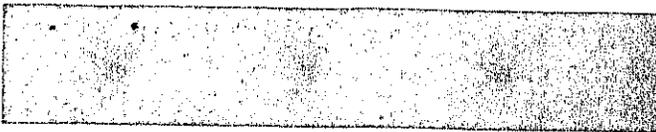
Arresting officers should ask all arrested individuals whether they are responsible for someone in need of alternative caregiving arrangements so that no child or vulnerable adult is left unattended and at risk. Written protocols should cover all arrest scenarios, including warrants that should be executed when children are least likely to be in the home. Monitoring implementation is critical to ensure that officers are following the protocol and to identify additional training needs. Law enforcement agencies should collect and report on data including how many children are present at the time of an arrest so that NYC can ensure supportive services are available to children.

It is critical to recognize and safeguard the thousands of children who experience the arrest of a parent every year in New York City. We know from data aggregated by the New York City Criminal Justice Agency that **at least 35,581 children lived with a parent who was arrested in 2017**. While we don't know how many children witnessed the arrest (this data remains unavailable), it is safe to say that far too many children experience this trauma.

We call on you and the leadership of our City to take these immediate steps to safeguard children.

Sincerely,

1. Bronx Clergy Criminal Justice Roundtable
2. Bronx Christian Fellowship
3. CASES
4. Center for Community Alternatives
5. Center for Family Representation
6. Child Center of NY, Queens
7. Children of Promise NYC
8. Children's Defense Fund, New York
9. Children's Haven
10. Citizens Committee for Children
11. Community Connections for Youth
12. Community Service Society
13. Concerned Clergy for Choice
14. EAC Network
15. Empire State Progressives
16. Families, Fathers And Children
17. Fortune Society
18. Gods Battalion of Prayer, Brooklyn
19. Graham Windham
20. Greenburger Center for Social and Criminal Justice
21. Hindu Temple Society of North America
22. JCCA
23. Lawyers for Children
24. Legal Action Center
25. Mott Haven Reformed Church
26. Mount Vernon Heights Congregational Church
27. New Hope Christian Fellowship Brooklyn
28. New York Board of Rabbis
29. New York Initiative for Children of Incarcerated Parents
30. New York Zero to Three Network
31. Not on My Watch! Safe Haven Network
32. NYS Council of Churches
33. NYU Family Defense Clinic
34. Office of the Appellate Defender
35. Sills Family Foundation
36. St. James' Church, NYC
37. The Osborne Association
38. TASC of the Capital District
39. Youth Represent



40. We Got Us Now
41. Women & Justice Project

42. Women's Prison Association

Cc:

Speaker Corey Johnson, New York City Council
Commissioner James O'Neill, New York City Police Department
Commissioner Steve Banks, Human Resources Administration
Liz Glazer, Director of the Mayor's Office of Criminal Justice
Councilmember Stephen Levin, Chair, Committee on General Welfare, City Council
Councilmember Donovan Richards, Chair, Committee on Public Safety, City Council

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2-25-14

(PLEASE PRINT)

Name: Assistant Chief Ernesto Richards

Address: _____

I represent: NYPD

Address: 1 Police Plaza NY NY 10038

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2-25-19

(PLEASE PRINT)

Name: Deputy Chief Theresa Tobin

Address: _____

I represent: NYPD

Address: 1 Police Plaza NY NY 10038

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Exec. Dir. Oleg Chernyavsky

Address: NYPD

I represent: _____

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Lisa Schreibersdorf

Address: _____

I represent: Brooklyn Defender Service (Formerly DASH)

Address: 177 Livingston Street Brooklyn

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 806 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: ALLISON HOLLIMAN

Address: 175 REMSEN ST

I represent: NEW YORK INITIATIVE FOR CHILDREN

Address: OF DISADVANTAGED PARENTS

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1349 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: DANYA KALPNI

Address: 175 REMSEN ST. BROOKLYN NY 11201

I represent: OSBURN ASSOCIATES

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: 1 DIIONNA KING

Address: Drug Policy Alliance

I represent: DPA

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/25/19

(PLEASE PRINT)

Name: Fallon Speaker

Address: _____

I represent: The Bronx Defenders

Address: 360 E 161st St Bronx, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. 1349 Res. No. _____

in favor in opposition

Date: 2/25/19

(PLEASE PRINT)

Name: Kate Wood

Address: 199 Water Street NY, NY

I represent: Legal Aid Society

Address: same as above