

MENTAL HEALTH IMPLICATIONS FOR CHILDREN OF INCARCERATED PARENTS

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I. INTRODUCTION	406
II. WHO ARE THE CHILDREN OF INCARCERATED PARENTS?	407
III. ATTACHMENT: EMOTIONAL FOUNDATION OF THE PARENT-CHILD RELATIONSHIP	408
A. MAINTAINING A DEVELOPMENTAL PERSPECTIVE	411
B. THE IMPACT OF TRAUMA ON CHILDREN.....	412
1. IMPACT OF MATERNAL AND PATERNAL INCARCERATION	413
2. SUBSTITUTE CAREGIVERS	416
a. MODELS OF SUBSTITUTE CAREGIVING.....	417
b. CHALLENGES OF SUBSTITUTE CAREGIVING.....	417
IV. MEETING THE NEEDS OF CHILDREN OF INCARCERATED PARENTS	421
V. APPROACHES TO PROMOTE THE WELL-BEING OF CHILDREN OF INCARCERATED PARENTS AND THEIR FAMILIES	425
VI. CONCLUSION.....	432

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I. INTRODUCTION

Particularly in an era of mass incarceration, many people accused or convicted of crimes are parents who face incarceration for varying periods of time.¹ This may include time spent after arrest waiting to post bail, following sentencing for a crime, or for parole or probation violations.² Although parental status rarely figures into the decision-making regarding incarceration,³ the effect of parental incarceration on children's well-being warrants consideration.⁴ Attorneys serve as counselors as well as advocates for their clients.⁵ Knowing clients' parental status and helping them articulate the effects of incarceration on their children should be one of the responsibilities of the attorney charged with representing the client.⁶ Whether the attorney directly represents a client or is engaged in impact litigation, appreciation for a client's parental status is essential.⁷

The law is not alone in failing to appreciate the importance of parental status. Other areas for which this is a challenge include mental health services⁸ and addiction recovery services.⁹ Parents' willingness to engage in inpatient treatment may be directly impacted by their concerns about who will care for their children,¹⁰ no matter how desperately they may need treatment.

1. See LAUREN E. GLAZE & LAURA M. MARUSCHAK, U.S. DEPT OF JUSTICE, PARENTS IN PRISON AND THEIR MINOR CHILDREN 1 (2010).

2. Cary Aspinwall, *More Women Are Jailed in Texas, Even Though Arrests Have Dropped. Why?*, DALLAS NEWS (Dec. 3, 2017), <https://www.dallasnews.com/news/social-justice-1/2017/12/03/women-jailed-texas-even-though-arrests-gone>.

3. Tamar Lerer, *Sentencing the Family: Recognizing the Needs of Dependent Children in the Administration of the Criminal Justice System*, 9 NW. J. L. & SOC. POL'Y 24, 28 (2013).

4. Anna R. Haskins & Kristen Turney, *The Demographic Landscape and Sociological Perspectives on Parental Incarceration and Childhood Inequality*, in WHEN PARENTS ARE INCARCERATED 9 (Christopher Wildeman et al., 1st ed. 2018).

5. See Kevin Houchin, *Attorney and Counselor at Law, and Ambiguity*, LAWYERIST (June 21, 2017), <https://lawyerist.com/attorney-counselor-law-ambiguity/>.

6. See Lerer, *supra* note 3.

7. See Elizabeth Bartholet, *Creating a Child-Friendly Child Welfare System: The Use and Misuse of Research*, 13 WHITTIER J. CHILD & FAM. ADVOC. 1, 2 (2014).

8. Silvia Krumm et al., *Mental Health Services for Parents Affected by Mental Illness*, 26 CURRENT OPINION IN PSYCHIATRY 362 (2013); see Fiona R. Parrot, Douglas L. Maccines & Janet Parrott, *Mental Illness and Parenthood: Being a Parent in Secure Psychiatric Care*, 25 CRIM. BEHAV. & MENTAL HEALTH 258, 259 (2015).

9. See *Drug Rehab Centers for Those with Children*, AM. ADDICTION CTRS., <https://americanaddictioncenters.org/rehab-guide/with-children/> (last visited Jan. 10, 2018).

10. See *id.*

The criminal justice system is not designed to take into account the needs of parents and their children,¹¹ but there is little doubt that children are heavily impacted by the incarceration of their parents.¹²

In Part II, we examine statistics about parental incarceration—particularly its skyrocketing growth¹³—as well as statistics regarding the children they leave behind.¹⁴ In Part III, we introduce and elaborate on the development of the psychological process of attachment underlying the parent-child relationship. In Part IV, we use a developmental- and trauma-informed lens to examine the effects of parental incarceration on children and to consider issues such as visitation. We explore the increased role for substitute caregivers, often grandparents or other family members, as well as implications for children placed in foster care when no suitable family member can be identified to care for the child. Finally, Part V provides recommendations for reducing the harm of parental incarceration on children and for creating a more child-conscious approach to criminal justice. Throughout this review we will use case vignettes to illustrate the complex effects of parental incarceration, as well as ways in which children's responses to parental incarceration vary depending on their individual characteristics and experiences.

II. WHO ARE THE CHILDREN OF INCARCERATED PARENTS?

More than 800,000 of the 1.5 million individuals incarcerated in the United States in 2007 were parents to 1.7 million children under the age of 18.¹⁵ At that time, 63% and 52% of federal and state inmates, respectively, stated that they were parents.¹⁶ Unique among developed nations, the United States incarcerates, or has under judicial control (e.g., probation, parole, jail, prison), approximately one in thirty-six adults.¹⁷ It is estimated that one in twenty-five children had a parent in jail, but it is difficult to

11. Lerer, *supra* note 3, at 44.

12. *See generally* Richard A. Webster & Jonathan Bullington, *Family Sentence: Children of Incarcerated Parents are Forgotten Victims*, NOLA.COM (Jan. 12, 2017), http://www.nola.com/crime/index.ssf/2017/01/parental_incarceration_family.html.

13. *See generally* MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (The New Press ed., 1st ed. 2010).

14. *See* GLAZE & MARUSCHAK, *supra* note 1.

15. *See id.*

16. *See id.*

17. *See* Haskins & Turney, *supra* note 4.

know exact numbers since data gathered by the Bureau of Justice Statistics (BJS), such as those examined by Glaze and Maruschak, were taken only from state and federal prisons and not from county jails, juvenile detention centers, or facilities for detaining undocumented persons.¹⁸

Exposure to parental incarceration differs according to the gender of the parent. Overall, children are exposed to paternal incarceration at a much higher rate than maternal incarceration. In a sample of young inner city children, 33% had experienced the incarceration of their fathers while 9% had experienced the incarceration of their mothers by nine years of age.¹⁹ Nevertheless, maternal incarceration has increased at a much higher rate than paternal incarceration in recent years.²⁰ Although children of all races are impacted by parental incarceration, a marked racial disparity has emerged. African American and Latino children are more likely than non-Hispanic Caucasian children to experience parental incarceration by their teenage years.²¹ Further, living in poverty or having a parent who has not completed secondary school also confers significant risk for parental incarceration compared to children from higher socioeconomic backgrounds or whose parents have some post-secondary education.²² The identified disproportionate exposure for poor children and children of color is yet another reason that systematic efforts should be made to reduce the impact of parental incarceration on children.²³

III. ATTACHMENT: EMOTIONAL FOUNDATION OF THE PARENT-CHILD RELATIONSHIP

An understanding of the psychological construct of attachment is essential to appreciating the impact of parental incarceration on children. Attachment resides not just in the parent or in the child; rather it is a way of describing the

18. Bryan L. Sykes & Becky Pettit, *Mass Incarceration, Family, Complexity, and the Reproduction of Childhood Disadvantage*, 654 ANNALS AM. ACAD. POL. & SOC. SCI. 127, 128 (2014).

19. Haskins & Turney, *supra* note 4, at 12–13.

20. Aspinwall, *supra* note 2; see GLAZE & MARUSCHAK, *supra* note 1, at 2.

21. Haskins & Turney, *supra* note 4, at 11 (“Nationally, one in four African American children and one in 10 Latino children can expect to experience parental incarceration by their teens, compared with one in 25 non-Hispanic Caucasian children.”)

22. Sykes & Pettit, *supra* note 18.

23. See generally Lerer, *supra* note 3, at 24.

emotional connection *between* parents and their children, where each partner contributes. Attachment relationships matter because healthy or secure attachments in early childhood predict more favorable psychological and social relationships later in life.²⁴ Attachment relationships matter for all children, but they are especially vulnerable and important for children in the first five years of life.

Attachment describes an innate behavioral tendency that motivates a young child to seek comfort, support, nurturance, and protection from attachment figures, or caregivers. A child learns through experience with the caregiver that they will provide for the young child's needs, thereby helping to safeguard survivability.²⁵ This tendency manifests behaviorally as seeking proximity to preferred adult caregivers when feeling distress, fatigue, uncertainty, or fear. Young children are believed to seek closeness to feel more secure.

Human infants are born with strong biological predispositions to form attachments to their caregivers. Nevertheless, attachment is not present in newborns or even during the first half of the first year. By two months after birth, infants become demonstrably more social, smiling and cooing responsively, making more sustained eye-to-eye contact, and seeking social interactions. Still, they remain willing to engage socially with anyone and express no obvious preferences when upset or uncertain.

Two behaviors appear in the second half of the first year of life that have not been present before. Stranger wariness describes a tendency for infants to display reticence when approached by unfamiliar adults, rather than the ready willingness to engage with anyone that they had demonstrated previously. Also, at about the same time, infants begin to protest separation for the first time, clinging to and actively seeking physical closeness to their caregivers when distressed or frightened. When stranger wariness and separation protest appear, infants may be said to have formed an attachment to one or more caregiving adults. In other words, after directing social

24. Nancy S. Weinfield et al., *Individual Differences in Infant-Caregiver Attachment: Conceptual and Empirical Aspects of Security*, in HANDBOOK OF ATTACHMENT: THEORY, RESEARCH, AND CLINICAL APPLICATIONS 78 (Jude Cassidy & Phillip R. Shaver eds., 2nd ed. 2008).

25. Angela Breidenstine et al., *Attachment and Trauma in Early Childhood: A Review*, 4 J. CHILD & ADOLESCENT TRAUMA 274 (2011).

behaviors indiscriminately to familiar and unfamiliar adults, infants begin to demonstrate a singular preference, or focused attachment, for the primary caregiver by the end of the first year.²⁶

Attachment develops when an infant experiences a need for closeness, directs attachment behaviors towards a caregiver, and has that need satisfied consistently over time. Attachment figures are those adults whom the infant has learned through repeated experiences are available and can be relied upon to provide comfort, support, nurturance, and protection. In early childhood, young children are not able to sustain meaningful attachments to adult caregivers without having substantial amounts of regular contact with them. This means that, for the most part, attachment figures live with the young child or care for them many hours a week, for example, in child care settings. After age five years or so, children are more able to sustain attachments, even in the absence of regular ongoing contact, but this ability is quite limited in the first several years. This developmental limitation on attachments has significant implications for incarcerated parents.

Disrupting attachment relationships, especially if the child has no other attachment figures available, poses significant risks to young children—the more disruptions the child experiences, the greater the risk for long-term harm. In part, this derives from the young child's limited ability to understand the big picture issues that may lead to disruptions, but losing an attachment figure who helps the child feel more secure in the face of challenges is a serious risk for the young child. Thus, it is imperative that a child who has lost a parent to incarceration, and who has no other attachment figures available, be provided with an adult caregiver who will facilitate a healthy attachment relationship through understanding and effective response to the child's needs.

Attachment remains important through the lifespan, although it may manifest more subtly in older children than in early childhood.²⁷ For example, school age children who come home from school and discuss an encounter with a bully, divorce of a friend's parents, or fears of safety in the neighborhood, are

26. John Bowlby, *The Nature of the Child's Tie to His Mother*, 39 INT'L J. PSYCHO ANALYSIS 350 (1958); see JOHN BOWLBY, *ATTACHMENT* 266 (2nd ed. 1982).

27. See Mary D. Salter Ainsworth, *Attachments Beyond Infancy*, 44 AM. PSYCHOLOGIST 709 (1989).

expressing distress to their parent or caregiver and seeking comfort. Likewise, a teen who can discuss with a parent or caregiver concerns about a fight with a friend or worries about getting in too deep with dangerous friends is demonstrating attachment needs. For our purposes, the child who yearns to see their incarcerated parent or looks forward to every card or letter from their parent in jail is showing other aspects of the attachment relationship.

A. MAINTAINING A DEVELOPMENTAL PERSPECTIVE

In one study, 22% of children whose parents were incarcerated were less than four years old, while 30% were five to nine years old, 32% were between ten and fourteen years old, and 16% were fifteen to seventeen years old.²⁸ The effects of parental incarceration will likely vary depending on the child's age and developmental level. For example, the impact on a two-year-old whose mother, his primary caregiver, has been incarcerated will be very different from the impact on a fourteen-year-old. The seriousness of this will depend, in part, on the child's substitute caregivers and their ability to meet the child's needs for stability and support.²⁹

The ability of the young child to “keep the parent in mind” will be quite different from the ability of the older child. Factors such as memory, cognitive processing, and the ability to take the perspective of others will affect the child's attachment to the parent. Attachment for young children is maintained by frequent contact over long periods of time. The incarcerated parent of younger children, given their adult cognitive capability, will likely be able to maintain attachment to the young child; but the young child, given his cognitive capacity, will simply be unable to do this. The child will need an emotionally available attachment figure willing to serve in that capacity—not merely a placeholder.

Anthony is a thirteen-month-old boy who has never lived with his mother. He was born exposed to drugs and alcohol and has been cared for by his great aunt since birth. His mother is incarcerated in a women's prison six hours north of him where she has obtained drug treatment and parenting classes. She asked her aunt to bring Anthony to see her in prison. How will Anthony tolerate the six-hour car ride? His great aunt is his caregiver; will she accompany him, or will he be

28. GLAZE & MARUSCHAK, *supra* note 1, at 3.

29. Lerer, *supra* note 3, at 33.

handed over to someone he does not know? What will the visit be like for Anthony? Does his mother have a plan for the visit or will they just “hang out”? What is the goal of the visit? Can Anthony touch his mother, or will he only be able to see her through a window?

Maintaining a child-centered approach is an essential aspect of the developmental perspective. This includes striving to understand and meet the needs of the child. This is not always a simple task but may require balancing the needs of the child against those of the adult. However, whether we are discussing visitation, contact with previously traumatizing parents, or an appropriate substitute caregiver for the child, attempting to discern what the child needs and to act in ways that meet those needs is essential.

B. THE IMPACT OF TRAUMA ON CHILDREN

When we talk about understanding parental incarceration through a trauma lens, we suggest that a child’s exposure to traumatic events be considered when making decisions for the child. Trauma refers not necessarily to events that are difficult or challenging, although traumatic events usually are both. Rather, trauma means that a child experienced an event, or series of events, in which they thought that they or someone close to them would be seriously injured or die.³⁰ Further, for young children, harm to the psychological integrity of the child or someone close to the child, such as a prolonged separation,³¹ could also be viewed as a traumatic experience.³² When a parent commits a crime or is apprehended by armed police in the presence of the child, combined with shouting and confusing orders, the experience is likely to be traumatic.³³

30. Alicia F. Lieberman, *Traumatic Stress and Quality of Attachment: Reality and Internalization in Disorders of Infant Mental Health*, 25(4) *INFANT MENTAL HEALTH J.* 336, 339 (2004).

31. See Patricia Allard, *When the Cost Is Too Great: The Emotional and Psychological Impact on Children of Incarcerating Their Parents for Drug Offenses*, 50 *FAM. CT. REV.* 48, 51 (2012).

32. See Alicia F. Lieberman & Lisa Amaya-Jackson, *Reciprocal Influences of Attachment and Trauma: Using a Dual Lens in the Assessment and Treatment of Infants, Toddlers, and Preschoolers*, in *ENHANCING EARLY ATTACHMENTS: THEORY, RESEARCH, INTERVENTION, AND POLICY* 100, 102 (Lisa J. Berlin et al. eds., 1st ed. 2005); Julie Poehlmann, *Representation of Attachment Relationships in Children of Incarcerated Mothers*, 76 *CHILD DEV.* 679, 692 (2005).

33. See Danielle H. Dallaire & Laura C. Wilson, *The Relation of Exposure to Parental Criminal Activity, Arrest, and Sentencing to Children’s Maladjustment*, 19

Domestic violence also represents a common and particularly traumatizing experience in childhood.³⁴ It is disorganizing to the parent-child attachment relationship³⁵ because the child cannot turn to either caregiver—victim or perpetrator—when frightened by the violence.³⁶ If a parent is associated with traumatic events, either through active participation (e.g., drawing a gun, the child is in a vehicle when shots are fired) or passively (e.g., domestic violence, having to respond to law enforcement's search for a suspect), it is possible for the parent to become associated with the traumatic event and to be a “trauma trigger” or “traumatic reminder” for the child, sparking memories of the traumatic events.³⁷ Being aware of the child's trauma experiences is important for parents as well as for substitute caregivers as they make decisions about the child's contact with incarcerated individuals.

1. IMPACT OF MATERNAL AND PATERNAL INCARCERATION

The impact on children varies widely depending on the gender of the incarcerated parent.³⁸ Children of incarcerated fathers are typically cared for by their biological mothers and are not as likely to experience a change in caregivers.³⁹ Although some incarcerated fathers lived with their children and provided support to them on a day-to-day basis,⁴⁰ others did not live with their children but still interacted with them regularly providing love, guidance, and financial support.⁴¹ After paternal

J. CHILD & FAM. STUD. 404 (2010); Julie Poehlmann-Tynan et al., *Attachment in Young Children with Incarcerated Fathers*, 29 DEV. & PSYCHOL. 389, 390 (2017).

34. See *Child Witnesses to Domestic Violence*, CHILDHOOD WELFARE INFORMATION GATEWAY (2016), <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/witnessdv/>; see generally Todd I. Herrenkohl et al., *Intersection of Child Abuse and Children's Exposure to Domestic Violence*, 9 TRAUMA, VIOLENCE, & ABUSE 84 (2008).

35. Lieberman, *supra* note 30, at 340.

36. Lieberman & Amaya-Jackson, *supra* note 32, at 107.

37. See *id.* at 108–13; Lieberman, *supra* note 30, at 343.

38. Inge Bretherton, Commentary, *Parental Incarceration: The Challenges for Attachment Researchers*, 12 ATTACHMENT & HUM. DEV. 417, 417 (2010). See also Steve Christian, *Children of Incarcerated Parents*, NAT'L CONFERENCE OF STATE LEGISLATURES 1, 1 (2009), https://www.ncsl.org/documents/cyf/childrenofincarcerated_parents.pdf (finding that imprisonment particularly disrupts positive relationships between mothers and their children); Lerer, *supra* note 3, at 29 (finding that 11% of children who have a mother in jail are placed in foster care compared to 2% of children with fathers in jail).

39. Lerer, *supra* note 3, at 32.

40. *Id.* at 33.

41. Allard, *supra* note 31, at 52.

incarceration, children may not experience a change in their primary caregiver—indeed 86% continue to be cared for by their mothers—but the family’s financial circumstances may be significantly impacted.⁴² Further, mothers may become more stressed as their financial circumstances deteriorate, and they have less time and fewer emotional resources to provide to their children.⁴³ Children may go from frequent contact to no contact with their fathers depending on where the father is incarcerated. Although not all fathers play a meaningful role in their children’s lives, a significant portion do. Efforts to maintain contact in person, by phone, mail, or e-mail, although challenging and at times expensive, may serve an important role in the child’s well-being.

DJ is now ten years old and was eight when his father went to prison. He remembers enjoying the times when his father used to come to the house and how it felt to talk things over with him. He misses those times. His father is incarcerated in the southern part of the state, and the family cannot afford to visit him. Phone calls are very expensive too. DJ has been writing letters to his father, and his father has been writing back to him. DJ has saved every letter and feels he can still talk things over with his father through these letters. The prison where his father is incarcerated received a grant to support fathers in maintaining contact with their children, and DJ’s father has signed them up for the program. Using the family iPad, DJ and his dad talk by video once a week for fifteen minutes. DJ and his father both wish the time were longer, but they see this as their special time and never miss their weekly chats.

When mothers are incarcerated, the picture is quite different.⁴⁴ Only 37% of children whose primary caregiver was their mother prior to incarceration go on to be cared for by their biological fathers.⁴⁵ It is much more likely that children will experience a change in their primary caregiver, and in their residence, with the incarceration of their mother.⁴⁶ It is clear that the incarcerated parents of infants, by virtue of not being

42. Lerer, *supra* note 3, at 32; Bretherton, *supra* note 38.

43. See Johnna Christian & Shenique S. Thomas, *Examining the Intersections of Race, Gender, and Mass Imprisonment*, 7 J. ETHNICITY IN CRIM. JUST. 69, 75 (2009).

44. See Allard, *supra* note 31, at 52.

45. Bretherton, *supra* note 38.

46. Joseph Murray & Lynne Murray, *Parental Incarceration, Attachment and Child Psychopathology*, 12 ATTACHMENT & HUM. DEV. 289, 298 (2010).

able to be around their children consistently, cannot remain as attachment figures, and a substitute caregiver must be provided. Older children will be able to keep the parent “in mind” but will still need a caregiver who is present day-to-day for the child.

Further, caregiving instability is much more prevalent for children of incarcerated mothers than for fathers.⁴⁷ Usually a relative, often a grandparent, is called upon to care for one or more young children, which may stress an already fragile financial situation.⁴⁸ Approximately 3–10% of children enter formal foster care when their parents are incarcerated because no one is found to care for them; this may begin a process that ends in the eventual termination of parental rights.⁴⁹

The Adoption and Safe Families Act (ASFA) was passed in an effort to correct past circumstances in which children entered foster care at a young age and were virtually “raised in the system,” ill-equipping them for a stable family life.⁵⁰ ASFA dictates that when a child has been in foster care for fifteen of the previous twenty-two months, a permanent plan for the child must be developed.⁵¹ Significant efforts should be made initially when a child enters foster care to find family members who will provide a loving and stable placement for the child. If the parent’s incarceration is a relatively brief one (e.g., if the parent was arrested and jailed pending payment of bond), the child may be returned quickly to the care of the parent. However, if no suitable family caregivers are found who meet criteria for placement (e.g., no previous child abuse reports, no criminal record), the child will be placed in foster care with a non-relative caregiver. When the child has entered foster care, a case plan is developed for the parent. This may include parenting, domestic violence intervention, drug treatment, and other interventions aimed at ensuring that the parent learns to safely care for the child. There may be a variety of obstacles to reunification such as difficulty in determining where the parent is incarcerated and lack of appropriate programs for incarcerated parents.⁵² Once the

47. Christian, *supra* note 38, at 3.

48. Lerer, *supra* note 3, at 32; see Susan D. Phillips et. al., *Disentangling the Risks: Parent Criminal Justice Involvement and Children’s Exposure to Family Risks*, 5 CRIMINOLOGY & PUB. POL’Y 677, 679 (2006).

49. Christian, *supra* note 38, at 4–5.

50. See generally Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115.

51. § 103, 111 Stat. at 2118.

52. Judge Marguerite D. Downing, *Barriers to Reunification for Incarcerated*

child has been placed in foster care, however, the clock begins. If the parent is not released in a timely manner, or if the parent is given a lengthy sentence, a permanent plan must be developed for the child.⁵³ Relatives can receive “child-specific” foster care training and receive financial support towards the care of their young relative, which may ease financial strain. However, the timeframe introduced by ASFA may ultimately result in adoption of the child by a non-family member.

2. SUBSTITUTE CAREGIVERS

When a child’s parent is no longer able to care for them due to incarceration, it is essential that the child be placed in an adequate caregiving environment where they are more likely to form a secure attachment.⁵⁴ Healthy attachments are essential to the well-being of children and help to prepare them for a lifetime of interactions with significant others.⁵⁵ We know that young children are biologically primed to attach to caregivers. Ideally, when a child must develop a new attachment relationship with a different caregiver, the child should be known to the substitute caregiver (e.g., grandparent, aunt, or uncle). Healthy attachments rely on sensitive and emotionally available care, which are based on knowledge of the child as an individual and an understanding of the child’s need to be loved and valued. This enables the child to feel safe both psychologically and physically.

As long as caregivers are sensitive and responsive, the opportunity to attach is present, although the child may need encouragement and support to trust the new caregiver. Although the caregiver may have to “go after” the child to demonstrate their emotional availability and willingness to care for the child, it is unlikely that the child will not ultimately be able to attach to an emotionally available caregiver.⁵⁶ Importantly, especially for young children, they do not have a way of understanding “temporary placements” or “extended respite.” They only

Parents—A Judicial Perspective, 50 FAM. CT. REV. 71, 74 (2012); see generally Ashley T. Scudder et al., *Evaluation of an Existing Parenting Class Within a Women’s State Correctional Facility and a Parenting Class Modeled from Parent-Child Interaction Therapy*, 46 CHILD. & YOUTH SERV. REV. 238 (2014).

53. Myrna S. Raeder, *Special Issue: Making a Better World for Children of Incarcerated Parents*, 50 FAM. CT. REV. 23, 26–27 (2012).

54. Julie Poehlmann, *Representations of Attachment Relationships in Children of Incarcerated Mothers*, 76 CHILD DEV. 679, 679 (2005).

55. Allard, *supra* note 31, at 55, 57.

56. *Id.* at 53.

understand that they need someone who is fully committed to them, which suggests that substitute caregivers should, whenever possible, be psychologically committed to the child's well-being, given what we know about the links to positive child outcomes. Children over the age of six years or so may be able to maintain their incarcerated caregiver in mind, particularly if they are able to have frequent phone, Skype, or in-person contact. Regardless of the child's age, they will need a substitute caregiver capable of understanding the child's perspective and identifying and meeting the needs of the child.

The unique substitute caregiving example of foster care demonstrates how commitment supports the child's development and how a lack of commitment impacts the child.⁵⁷ Notably, when the child does form an attachment relationship with the new caregiver, this does not mean that the child does not love the incarcerated parent; rather, the biological imperative to attach is at work. Given this, it is important to do as much as possible to enhance stability of the placement, providing resources, both tangible and intangible, to the substitute caregiver who may be struggling.

a. MODELS OF SUBSTITUTE CAREGIVING

There are two models of substitute caregiving that have been identified in foster care that seem relevant to the care that children of incarcerated parents receive. One is an *Extended Respite* model in which the child is provided with food, clothing, shelter, and a safe play to stay. In this model the caregiver may feel like a placeholder for the parent rather than assuming the psychological ownership of the child. The second model is more of a *Child-Centered* model in which safety is maintained, as well as essentials such as food, clothing, and shelter. In addition, the substitute caregiver loves the child as their own and accepts full psychological commitment to the child. The latter model is based on the premise that psychological safety and felt security are as important as physical safety.

b. CHALLENGES OF SUBSTITUTE CAREGIVING

There are, of course, challenges to substitute caregiving. Children often must be cared for over an extended length of time.

57. See generally Mary Dozier & Oliver Lindhiem, *This is My Child: Differences Among Foster Parents in Commitment to Their Young Children*, 11 CHILD MALTREATMENT 338 (2006).

This necessitates the substitute caregiver becoming the attachment figure for the child. Even if the caregiver was known to the child previously, and was not the child's primary caregiver, there will be a shift in the relationship and likely an intensification of the relationship. The abrupt change from one caregiver to another may affect the child's ability to trust and attach to the substitute caregiver.⁵⁸ At times, the substitute caregiver may need to work diligently to create an environment where the child feels able to attach. In some circumstances, however, substitute caregivers do not have the energy or motivation to engage the child.

They may also realize that when the parents are released from jail the child will return to the parent. They may be reticent to attach to the child knowing that the relationship will someday change drastically or end. Other relatives may be fully committed to the idea that the child's mother and father, and no one else, should raise the child, citing this as another reason to hold off on fully committing to the child.

Substitute caregivers' feelings about caring for their young relative may vary from pride in their ability to keep them in their family to exhaustion and back again. The substitute caregiver also may be struggling with their feelings about the incarcerated parent, which may range from anger to shame to sadness.⁵⁹ Given the importance of the attachment relationship and the caregiver's willingness to commit to the child, if the substitute caregiver feels reluctant to usurp the role of the parent, they may maintain an extended respite "placeholder" type of relationship with the child. In addition, the substitute caregiver may either focus more on meeting their adult child's needs (e.g., taking a small child many hours to visit the parent that they do not remember), rather than the needs of the child. Further, caregivers may be angry at the adult child and keep the child from them in response to the new burden of caring for the child.

Not surprisingly, there may also be some sadness on the part of the substitute caregiver who realizes that the incarcerated

58. Allard, *supra* note 31, at 52, 54.

59. Joyce A. Arditti, *Locked Doors and Glass Walls: Family Visiting at a Local Jail*, 8 J. LOSS & TRAUMA 115, 128 (2003); TA-NEHISI COATES, WE WERE EIGHT YEARS IN POWER 262 (2017); Lois E. Wright & Cynthia B. Seymour, *Effects of Parental Incarceration on Children and Families*, MICH. FAM. IMPACT SEMINARS 9, 14 (Sept. 2015), https://www.purdue.edu/hhs/hdfs/fii/wp-content/uploads/2015/07/s_mifis05c03.pdf.

parent will not see his child's first steps, hear his child's first words, or be there for the first haircut. Grandparents who have raised their own children will understand what their children are missing, and they are at risk for maintaining a distance from the child because they feel sad for the parents—although it may not be in the child's best interest.

It is also important for substitute caregivers to do their best to contain their negative feelings towards the incarcerated parent.⁶⁰ The parent is, after all, a part of the child and devaluing or denigrating the parent devalues and denigrates the child. It is important for all those involved in the care of children of incarcerated parents to recognize what it means to a child when the adult they must rely on is unable to contain or regulate their feelings.

Fifteen-year-old Danielle desperately misses her mother who was incarcerated two years ago and has ten more years left in her sentence. Danielle and her siblings are cared for by their sixty-eight-year-old maternal grandmother who is deeply ashamed that her daughter "went bad" and is having a hard time accepting it. She has forbidden Danielle to talk to or contact her mother. Danielle has been going over to her cousin's house and has arranged for her mother to call her there. She just wants to hear her mother's voice and that she still loves her. Whose needs are being met by the ban on contacting Mom?

If a substitute caregiver is distracted by life challenges, such as new financial demands or grief over the incarceration of the parent or other issues, the caregiver may be less available for the young child. Other challenges for substitute caregivers include isolation and lack of support. Substitute caregivers may not have friends who are in their same situation, or they may be too busy or overwhelmed to reach out to friends or other relatives for support. Even if other relatives in the community are caring for the children of incarcerated parents, this may not be something that caregivers want to discuss, whether they are embarrassed or ashamed of their adult child who is incarcerated or whether they do not want to admit how much of a challenge it is to care for young children or for teens. Caregivers may have little or no training for the task and may be unsure of where they can receive

60. See Rebecca J. Schlafer & Julie Poehlmann, *Attachment and Caregiving Relationships in Families Affected by Parental Incarceration*, 12 ATTACHMENT & HUM. DEV. 395, 405 (2010).

support. Caregivers who have raised their own children and were looking forward to retirement may experience some grief about caring for the younger relative and the changes that will occur in their lives. Given the stressors that may be present when new children must be cared for, no matter how much they are loved and valued, it is not surprising that substitute caregivers need support.⁶¹

Elderly caregivers also may be ill-equipped to manage children who have been exposed to traumatic events and may be emotionally unavailable to meet their needs, all while children of incarcerated mothers have experienced a significant and enormously challenging change in their caregiving situations.⁶² A young child requires a fully emotionally available attachment figure as a caregiver, and the process of attachment to the substitute caregiver is impeded or facilitated by the caregiver's emotional availability to the child. Indeed, the disruption of the relationship with the parent may affect the child's ability to trust and experience security. Some children begin to call the substitute caregiver "mama" if the other children in the household are doing so. For the child, it is difficult and counter-productive for the caregiver to maintain distance from the child because the child already "has a mama."

We know that higher percentages of insecure or disorganized attachment relationships are present among families that are impacted by stress and trauma, such as maltreatment and domestic violence. This may make it more difficult for the child to cope with the extreme challenges which come from abrupt shifts in caregiving. Indeed, 63% of children were found to be insecure with both their mothers and with subsequent substitute caregivers.⁶³

It is important for substitute caregivers to realize that while babies may draw us to care for them, traumatized toddlers and older children, who have been separated abruptly from their primary caregivers, may pose significant challenges after such a marked shift in circumstances.⁶⁴ For children who may have experienced previous trauma, behavior that seems oppositional

61. Allard, *supra* note 31; Poehlmann, *supra* note 54, at 679.

62. Allard, *supra* note 31, at 53.

63. Murray & Murray, *supra* note 46, at 292; Poehlmann, *supra* note 54, at 690.

64. See generally Dave Munger, *We Respond Differently to Babies' Faces Within 150 Milliseconds*, SCIENCEBLOGS: COGNITIVE DAILY (Feb. 26, 2008), <http://scienceblogs.com/cognitivedaily/2008/02/26/we-respond-differently-to-babi/>.

and defiant may be particularly difficult for caregivers who have taken on the care of their young relatives. Such behavior frequently co-occurs with trauma. It is important to ensure that children who need trauma treatment receive it because it will likely result in a decrease in challenging behavior.⁶⁵

A placement is more likely to disrupt when a caregiver is less committed to the child than when a caregiver is more committed to the child. We know that now, particularly for children of incarcerated mothers, there is a greater likelihood of multiple placements, which may reflect, in part, lower levels of commitment.⁶⁶ Placement disruptions are harmful to children partly because children do not have a way of understanding why changes in placement are occurring, even if they are told in advance.⁶⁷ This is particularly true after the child has established an attachment with the substitute caregiver. It is not possible to avoid the initial disruption due to the parent's incarceration, but following that disruption, changes in caregiving should be undertaken very carefully and only in the most extreme of circumstances.

The literature regarding placement instability for children in foster care is clear about the risk posed by disruptions. Multiple caregiver changes in infancy were associated with increased risk for inhibitory control problems and oppositional behavior at five to six years of age.⁶⁸ Further, placement instability increases risk for both internalizing and externalizing behaviors compared to children with more stable placements.⁶⁹

IV. MEETING THE NEEDS OF CHILDREN OF INCARCERATED PARENTS

The book *Family Members Behind Bars: Difficult Questions*

65. See Michael Scheeringa et. al, *Preschool PTSD Treatment Manual* (2010), <http://latrauma.tulane.edu/assets/pptversion7scheeringa.pdf>.

66. Poehlmann, *supra* note 54, at 682.

67. Frank W. Putnam, *The Developmental Neurobiology of Disrupted Attachment: Lessons from Animal Models and Child Abuse Research*, in ENHANCING EARLY ATTACHMENTS: THEORY, RESEARCH, INTERVENTION, AND POLICY 79, 83–84 (Lisa J. Berlin et al. eds., 1st ed. 2005).

68. Erin E. Lewis et. al., *The Effect of Placement Instability on Adopted Children's Inhibitory Control Abilities and Oppositional Behavior*, 43 DEVELOPMENTAL PSYCHOL. 1415, 1416, 1422 (2007).

69. Rae R. Newton et. al., *Children and Youth in Foster Care: Disentangling the Relationship Between Problem Behaviors and Number of Placements*, 24 CHILD ABUSE & NEGLECT 1363, 1371 (2000).

That Children Ask . . . and Answers That Might Help, which is available online from the Montana Alliance of Families Touched by Incarceration (MAFTI), provides language for talking to children about the incarceration of their parent and to frame responses in developmentally appropriate ways. The book includes tips for caregivers including talking to children about the feelings that they are having, discussing the family's decision about whether they will tell people outside of the family about the parent's incarceration, as well as reminding caregivers to try to maintain a separation between their feelings and the feelings of the child.⁷⁰

The guide provides developmentally appropriate answers to questions that children might have from the time of the parent's arrest through parole, probation, and release. It also lists online resources for substitute caregivers as well as information about where prisons and treatment centers are located, as well as phone numbers for prisons, pre-release centers, and county and tribal jails. Although the guide is focused on Montana's criminal justice system, it includes some excellent descriptions of the process and appropriate ways to answer children's questions.

Generally, children of incarcerated parents need to hear the truth about the situation at a level that is developmentally appropriate for them. For example, telling children that parents are "away at school," "working far away," "in the military," or "in the hospital" may create worries and concerns for the child. If the child is told the parent is "in the military," the child may begin to wonder if their parent might be hurt or killed while fighting in a war. Similarly, if told that the parent is hospitalized, the child may wonder if the parent is deathly ill and unlikely to survive. The child may wonder why the parent does not come home for school breaks or come to visit them if they are just away working. There are several choices available to families: tell the truth and let the story of the parent's incarceration be out in the open, tell the truth and ask the child to keep it quiet, or make up a story.⁷¹ Each of these choices has pros and cons, and families will

70. *Family Members Behind Bars: Difficult Questions Children Ask . . . and Answers that Might Help*, MONT. ALLIANCE OF FAMILIES TOUCHED BY INCARCERATION 7 (2009) [hereinafter MAFTI], <http://cor.mt.gov/Portals/104/Victims/FamilyMembersBehindBars.pdf>.

71. See Ann Adalist-Estrin, *Questions Children Ask*, NAT'L RES. CTR. CHILD. & FAMILIES OF THE INCARCERATED: CHILDREN OF INCARCERATED PARENTS LIBRARY (2014), <https://nrccfi.camden.rutgers.edu/files/cipl103-conversations-questionschildrenask.pdf>.

ultimately make the decision that works for them. Unfortunately, there may be a stigma associated with having an incarcerated family member, so families must take this into consideration when deciding how to share information about the parent's incarceration.⁷²

Children of incarcerated parents require physical and psychological safety as well as reassurance and security. It is important to realize that such children are not responsible for "being strong" or "holding the family together."⁷³ These are adult responsibilities and even though the family has been challenged by the incarceration of the parent, it is not the child's job to take on adult responsibilities. Caregivers and incarcerated parents should remind themselves of this when they are tempted to make requests of children.

It is important to recognize that visitation with the incarcerated parent may have a range of both positive and negative aspects. At times, visitation may be quite stressful for a child.⁷⁴ Decisions about visitation should be carefully considered for each individual child. Individual children will have different reactions to the prospect of visiting their parent, depending in part on the child's prior relationship with the parent, where the prison is located and the set up for visitation, how open the parent is to the visit, whether they will remain with their attachment figure during the visit, and a variety of other factors.⁷⁵ Columbia Law School Clinical Professor Phillip M. Genty encourages avoiding stereotypes regarding the children of incarcerated parents and their families (e.g., all children desperately want to visit their parents; no child wants to visit their parent in prison; all incarcerated parents are victims of the system; all incarcerated parents are evil and should receive no visits).⁷⁶

Whenever possible, an attachment figure should accompany

72. Arditti, *supra* note 59, at 133; Julie Poehlmann-Tynan & Joyce A. Arditti, *Developmental and Family Perspectives on Parental Incarceration*, in *WHEN PARENTS ARE INCARCERATED: INTERDISCIPLINARY RESEARCH AND INTERVENTIONS TO SUPPORT CHILDREN* 53, 65 (Christopher Wildeman et. al. eds., 1st ed. 2018).

73. See Allard, *supra* note 31, at 52.

74. Poehlmann, *supra* note 54, at 693.

75. See Arditti, *supra* note 59, at 131, 133.

76. Philip M. Genty, *Moving Beyond Generalizations and Stereotypes to Develop Individualized Approaches for Working with Families Affected by Parental Incarceration*, 50 *FAM. CT. REV.* 36, 41, 43 (2012).

the child to the prison visit. Answering questions as honestly and appropriately as possible is an important way to provide support to the child visiting his parent. The anxious or frightened child should receive appropriate reassurance. Ideally, the parent will have support and preparation for the visit with the child, including how to face the challenge that is presented by recognizing that the child may have become attached to someone else.

Transitions between substitute caregivers and the returning formerly-incarcerated parents should be carefully planned, starting with the question about whether it makes sense for the child to be reunified with his parent.⁷⁷ The goal is that neither the parent nor the child is overwhelmed by the process, resulting in sabotage of the reunification. When the parent has been released from incarceration, it may be tempting to return the child to the care of the parent immediately. It is as important to assist the child in this transition as it was to support the child when he was first placed with the substitute caregiver.

A focus on the needs of the individual child is essential. For example, the following questions should be considered: (1) Was the child young enough when the parent was incarcerated that the substitute caregiver is the only attachment figure the child has ever known; (2) Has the child had an opportunity to reform the relationship with the caregiver; (3) Is the child's developmental level such that the child has been able to "keep the parent in mind" during the incarceration; (4) How thoroughly has the parent been rehabilitated (is there concern about re-offending); and (5) Is the parent ready to provide care for the child (e.g., has the parent obtained housing, a source of income, and an awareness of the child's educational needs and other activities). Removing all support from the child, or the recently released parent, at this crucial time is not appropriate. Particularly for a young child, the parent and child should build or rebuild an attachment relationship as they work to transition to living together again. Further, the substitute caregiver should remain in the child's life as much as possible so that the child does not lose contact with their attachment figure, putting him at risk to mistrust the availability of important people in his life.

77. See generally J. Danielle McAfee & David R. Leggans, *Protecting the Interests of Abused and Neglected Children: Is Court-Ordered Family Reunification Always the Best Policy?*, 9:1 J. CHILD & FAM. ADVOC. 3 (2009).

V. APPROACHES TO PROMOTE THE WELL-BEING OF CHILDREN OF INCARCERATED PARENTS AND THEIR FAMILIES

As much as possible, all aspects of the criminal justice system should consider the needs of dependent children whose parents are affected by it.⁷⁸ For example, arrest protocols should be developed for children present at the apprehension of a suspect, given that 20% of children are present when their mother is arrested.⁷⁹ Efforts to arrest the parent out of the child's sight or in a way that is mindful of the presence of children are important.⁸⁰ Children who see their parent handcuffed or tased may be worried about them and have questions about whether the parent will be safe.⁸¹ Stories of stun grenades thrown through the front door, shooting the family dog, and children showing "extreme distress" highlight the traumatic effects that impact children during arrests.⁸²

Four-year-old Angel was present when her father was arrested for a drive-by shooting committed two months earlier. The family home was surrounded by law enforcement, and her mother, who had been in a violent relationship with her ex, the children's father, tried to protect the children by telling them to get on the floor. The child remembers the armed police passing by the windows. Angel remembers this happening over a year ago, and her mother describes her as "jumpy" and "hyper." Angel talks about that day and sometimes startles if there is a loud noise behind her. When her mother talks about visiting their father or when they talk on the phone, Angel becomes "goofy," running around the house and bouncing off the walls. Her mother has taken Angel to get evaluated for Attention Deficit Hyperactivity Disorder (ADHD). The father will be released in several years, but Angel already worries about this, talking about the fighting between her parents and when the police came to their house. Angel's behavior suggests that she may have PTSD from her experience a year ago. She should be assessed to see whether she would benefit from Trauma Focused

78. Lerer, *supra* note 3, at 44.

79. Murray & Murray, *supra* note 46, at 293.

80. Ginny Puddefoot & Lisa K. Foster, *Keeping Children Safe When Their Parents Are Arrested: Local Approaches That Work*, CAL. RES. BUREAU 07-006 1, 13 (2007), <https://www.library.ca.gov/crb/07/07-006.pdf>.

81. See Murray & Murray, *supra* note 46, at 293.

82. Poehlmann-Tynan, *supra* note 33, at 396.

Cognitive Behavioral Therapy for preschoolers.

When a family member goes to court, the child may or may not be present, which should be determined based on the best interest of the child. If family members or the accused would be likely to display a great deal of strong or negative emotions, the child's presence should be carefully considered since there may be no one to help the child understand what is happening.

Tamar Lerer, author of *Sentencing the Family: Recognizing the Needs of Dependent Children in the Administration of the Criminal Justice System*, suggested an innovative mechanism for developing a "criminal justice system that considers children" by making the Best Interest of the Child Standard (BICS) applicable whenever a judge makes a decision regarding a defendant, including "pretrial detention, sentencing, and prison visitation."⁸³ Lerer contends, for example, that flight risk and danger to the community are considered to determine whether bail is appropriate.⁸⁴ Under her innovative approach, the best interests of the defendant's minor children would also be considered.⁸⁵ A decision would first be made about whether the defendant was a "psychological parent" of the child.⁸⁶ After that, judicial and prosecutorial decisions would include not just deliberation about "retribution, incapacitation, rehabilitation, and deterrence," but also the best interests of the defendant's minor children.⁸⁷

Efforts should be made to create a more child-friendly environment for visitation.⁸⁸ Understanding that children will likely want to touch their parent, rather than visit through a glass, is important.⁸⁹ Creating a space that allows for families to interact, perhaps with toys or with board games and other developmentally appropriate items, is important to strengthen the visitation experience.⁹⁰ Children should have an attachment figure with them whenever possible when visiting with parents to provide support in what may be a stressful situation.⁹¹

83. Lerer, *supra* note 3, at 44.

84. *Id.* at 44–46.

85. *Id.*

86. *Id.* at 39.

87. *Id.* at 43.

88. Allard, *supra* note 31, at 57.

89. Arditti, *supra* note 59, at 123–24.

90. *Id.* at 134; Poehlmann-Tynan & Arditti, *supra* note 72, at 66–67.

91. Allard, *supra* note 31, at 56–57.

When appropriate for a given child, Skype, Facetime, or Tango should be used to enable more frequent video interaction between parents and their children.⁹² However, this should not replace all physical contact between the child and parent, especially for young children who are unlikely to be able to participate meaningfully in video conferencing.⁹³ Lowering the cost of phone calls to home is an important way to increase interaction between parents and their children. Making a profit from exorbitant phone charges is unconscionable and remains an obstacle between parents and their children.

Parents should, whenever possible, be incarcerated closer to their families.⁹⁴ Making an effort to include this information in sentencing decisions is an important step in preserving family ties and motivating prisoners to maintain good behavior. Further, moving parents repeatedly from prison to prison so that family members may not know the location of the parent at any given time interferes with the efforts of the family to maintain contact with their incarcerated family member.

For women prisoners, reproductive health services are sometimes lacking, or severely compromised, and can result in women receiving inappropriate treatment for a range of issues, including prenatal care, miscarriage, and childbirth. The use of shackles when pregnant women are in labor is a particularly heinous failure to recognize the ways in which women, including pregnant women, are different from male prisoners and the ways in which their rights to humane treatment are being abrogated.⁹⁵

Although there are no prison nurseries in federal prisons, ten states currently have prison nurseries, and there is evidence of decreased recidivism among the women who participated in the nursery programs.⁹⁶ Further, interventions in prison nurseries

92. Allard, *supra* note 31, at 57.

93. *Id.*

94. Lerer, *supra* note 3, at 28–29; *see also* Allard, *supra* note 31, at 56 (noting that visits with incarcerated parents can become “expensive and logistically difficult” when they are incarcerated far away).

95. Lily A. Dishchyan, *Shackled During Labor: The Cruel and Unusual Truth*, 14 WHITTIER J. CHILD & FAM. ADVOC. 140, 146 (2015); Estalyn Marquis, “Nothing Less Than the Dignity of Man”: Women Prisoners, Reproductive Health, and Unequal Access to Justice Under the Eighth Amendment, 106 CAL. L. REV. 101 (forthcoming 2018).

96. Drika Weller Makariev & Phillip R. Shaver, *Attachment, Parental Incarceration and Possibilities for Intervention: An Overview*, 12 ATTACHMENT & HUM. DEV. 311, 324 (2010).

have enabled rates of secure attachment between mothers and children co-residing there, similar to those in middle-class samples.⁹⁷ The decision to use family members as substitute caregivers rather than prison nurseries has significantly shifted the responsibility and the expense from the prison system to families who are often ill-equipped to bear it.⁹⁸ Consideration of prison nurseries would be an important way to facilitate the relationships of incarcerated mothers with their children.

Community-based residential centers for mothers who are non-violent offenders would be another option for incarcerated mothers.⁹⁹ This would allow mothers who deliver babies while incarcerated to have the child remain with them for a period of time (usually around twelve to eighteen months) and strengthen the attachment relationship between the mother and her newborn baby. Additionally, it may result in better visitation between the mother and her older children as the incarcerated mother would reside closer to her family.¹⁰⁰ Similarly, a jail diversion program for non-violent pregnant offenders, which included an attachment intervention as well as drug treatment, found that rates of secure attachment were similar to those of low-risk samples, suggesting that diversionary programs may represent an important alternative to incarceration.¹⁰¹

Caregivers benefit from support and encouragement, as they take on the care of their younger relatives, working as they do so to make decisions about what is in the children's best interests.¹⁰² Substitute caregivers should receive concrete financial support, including government assistance if needed.¹⁰³ In addition, caregivers deserve emotional support, such as the opportunity to discuss their feelings of anger and exhaustion.¹⁰⁴ Community centers might offer "grandparenting" classes because there are

97. M.W. Byrne et al., *Intergenerational Transmission of Attachment for Infants Raised in a Prison Nursery*, 12 ATTACHMENT & HUM. DEV. 375, 382, 386 (2010).

98. See Lerer, *supra* note 3, at 32–33.

99. *Mothers, Infants and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives*, WOMEN'S PRISON ASS'N 4 (2009), <https://www.prisonlegalnews.org/news/publications/womens-prison-assoc-report-on-prison-nurseries-and-community-alternatives-2009/>.

100. *Id.*

101. See Jude Cassidy et al., *An Attachment Perspective on Incarcerated Parents and Their Children*, 12 ATTACHMENT HUM. DEV. 333 (2010).

102. See Makariev & Shaver, *supra* note 96, at 321.

103. Allard, *supra* note 31, at 52, 57.

104. See Allard, *supra* note 31, at 53 (noting that substitute caregivers often struggle to step into the incarcerated parent's role).

many relative caregivers who find themselves in similar circumstances, whether the arrangement is a formal or informal one.¹⁰⁵ Websites and newsletters are also useful to obtain information that is important for caregivers, such as locations of Women, Infants, and Children (WIC) offices and other support resources.¹⁰⁶ Additionally, resources to help caregivers in meeting the emotional needs of the children they care for are also important. The National Resource Center on Children and Families of the Incarcerated website, maintained by Rutgers University, contains a number of excellent resources for family members and others caring for the children of incarcerated parents.¹⁰⁷

We spoke earlier of using a trauma-informed approach to understanding children whose parents are incarcerated. Importantly, many incarcerated individuals, both men and women, have experienced a variety of traumatic situations.¹⁰⁸ The contribution of traumatic experiences to criminal behavior cannot be overlooked. Dan Griffin, a sociologist who has developed a curriculum to provide trauma and gender-sensitive interventions for men affected by substance abuse and other challenges, contends that “no one should get out of jail without trauma treatment.”¹⁰⁹

Shaka Senghor speaks to this in his 2016 autobiography describing his experience in the criminal justice and carceral systems: “I was terrified. The cold, steel barrel pressed into my consciousness a colder reality—at fourteen, I was about to die. . . .

105. See FAM. & CHILD. SERVS., <http://www.fcsok.org/classes/grandparents-raising-grandchildren/> (last visited Jan. 2, 2018).

106. See Divya Saxena & Sean Brotherson, *When Grandparents Become Parents to Their Children*, NDSU EXTENSION SERV. (April 2013), <https://www.ag.ndsu.edu/publications/home-farm/when-grandparents-become-parents-to-their-grandchildren/fs1639.pdf>.

107. See *Fact Sheet on Justice Involved Women in 2016*, NAT'L RES. CTR. ON JUSTICE INVOLVED WOMEN, <https://nrccfi.camden.rutgers.edu/> (last visited Dec. 19, 2017).

108. See Bonnie L. Green et al., *Trauma Experiences and Mental Health Among Incarcerated Women*, 8 PSYCHOL. TRAUMA 455 (2016); Nancy Wolff & Jing Shi, *Childhood and Adult Trauma Experiences of Incarcerated Persons and Their Relationship to Adult Behavioral Health Problems and Treatment*, 9 INT'L J. ENVTL. RES. PUB. HEALTH 1908 (2012); Audra D. S. Burch, *A Gun to His Head as a Child. In Prison as an Adult.*, N.Y. TIMES (Oct. 15, 2017), <https://www.nytimes.com/2017/10/15/us/childhood-trauma-prison-addiction.html>.

109. Dan Griffin, CEO/Lead Consultant, Griffin Recovery Enterprises, Address at the Engaging Father More Effectively Workshop (Mar. 8–9, 2016).

Something in me snapped. Memories of getting shot flashed through my head All I recall is the feeling of danger that surged through me as I fired several shots. . . . In that moment, I knew the guy had died.”¹¹⁰ Senghor’s behavior was clearly triggered by his response to previous trauma experiences and resulted in murder. Providing trauma treatment would enable individuals to cope with the post-traumatic stress disorder (PTSD), which has arisen from their traumatic experiences, and help to prevent further trauma-mediated criminal behavior. Additionally, we know that substantial numbers of women prisoners have been victims of trauma, either in early childhood (e.g., sexual abuse) or as adults (e.g., domestic violence, sex trafficking). Providing them with trauma treatment might contribute to decreasing self-destructive behaviors, such as substance abuse, and improve women’s capacity to protect themselves and their children.¹¹¹

Decision-making should be based on the needs of the individual child.¹¹² Examples of the types of questions that deserve individualized responses include whether the parent is an attachment figure to the child. Some incarcerated parents have never lived with or cared for their children, much less been an attachment figure. Children should be asked if they want to communicate with their parent because some children may wish to while others would find this particularly stressful. Even in sibling groups, what is appropriate for older children may be much less appropriate for younger children.

Alexa B. Lutchen has written about the conflicts of interest which may arise when representing multiple children in one family.¹¹³ For example, a teen might have a different opinion about whether they desire ongoing contact with their parent than a much younger sibling.¹¹⁴ Adults may have to extrapolate what the younger child’s needs are, while the older sibling could likely state his own preferences. Maintaining a trauma-informed

110. SHAKA SENGHOR, WRITING MY WRONGS: LIFE, DEATH, AND REDEMPTION IN AN AMERICAN PRISON 21, 172–73 (2016).

111. See Green, *supra* note 108, at 461–62; *Fact Sheet on Justice Involved Women in 2016*, NAT’L RESOURCE CTR. JUSTICE INVOLVED WOMEN 1, 3 (2016), <http://ejinvolvedwomen.org/wp-content/uploads/2016/06/Fact-Sheet.pdf>.

112. Genty, *supra* note 76, at 37.

113. Alexa B. Lutchen, *Conflicts of Interest in Representing Siblings in Child Protection Cases: Problems and Solutions*, 14 WHITTIER J. CHILD. & FAM. ADVOC. 54 (2015).

114. See Lutchen, *supra* note 113, at 54–56.

stance will assist in appropriate and individualized decision-making for children of incarcerated parents.

The child may not understand why mean or negative things are being said about his parent and may have questions about whether these statements are true. When the family member or parent has been convicted, the child may wonder if it is somehow his fault that the parent is not coming home or whether there was someone else who did this behavior with the parent.¹¹⁵ If the parent has been convicted of hurting someone, the child may wonder if they could be hurt or if the victim will be mad at the child. When sentencing takes place, it is again important to consider whether a child should be present. The child may be sad when the family member actually begins the sentence in prison, but if the child was the victim of the crime, he may feel safer if the parent is not living with him.

Attachment theorist John Bowlby spoke of “knowing what you are not supposed to know and feeling what you are not supposed to feel.”¹¹⁶ Although some families make the decision to tell the child factual information about what has happened, others decide to convey inaccurate information.¹¹⁷ The narrative about what has happened should be appropriate to the age or developmental level of the child. Learning ways to speak accurately to children about their feelings and reactions is essential. This is important from the first steps of arrest through the eventual transition home. It is important to tell the child the truth.¹¹⁸ However, if the substitute caregiver is uncertain about certain dates, such as when the parent will return home after imprisonment, it is more important to provide a metric that the child can understand, for example, “Mama will be home after you have two more birthdays.”

Developmentally appropriate narratives are an important part of the individualized approach to helping children manage the incarceration of their parents.¹¹⁹ For example, when a child asks when she might see her parent, if the distance is too great, it would be appropriate to say that because it is so far away, she will be unable to visit until next spring. Children may wonder

115. See Poehlmann, *supra* note 54, at 687–88.

116. JOHN BOWLBY, A SECURE BASE: PARENT-CHILD ATTACHMENT AND HEALTHY HUMAN DEVELOPMENT 99 (1988).

117. Poehlmann, *supra* note 54, at 682.

118. Adalist-Estrin, *supra* note 71.

119. MAFTI, *supra* note 70.

what will happen to them when their parents are arrested. If the current caregiver is uncertain what plans will be made for the child, the caregiver could note that it is not yet certain who will care for the child but that the family will make sure the child is safe. When a child has asked when her mother will come back and take care of her, and her mother's sentence is known to be very long, the child could be told that mother will be in prison for a very long time and that she will likely be all grown up by the time that her mother comes out of prison. Even though it might be difficult to see the emotional reactions of the child to such difficult news, it is important to reassure the child and convey the sense that the adults will care for the child and keep her safe.

VI. CONCLUSION

Attachment forms the basis of emotional development in early childhood and can be a vital protective factor for children living in adversity. Providing developmentally- and trauma-informed care for children of incarcerated parents is essential for their well-being. In particular, affording children of incarcerated parents the opportunity to be cared for by a loving, emotionally-available substitute caregiver in their parent's absence is an important factor in their long-term adaptation.

Substitute caregivers must receive both concrete and psychological support to manage the responsibilities they have undertaken. They are, after all, responsible for providing physical and psychological safety for children, advocating for them and seeing that all their needs are met. Making decisions about children that are individualized includes remaining mindful of developmental factors impacting the child as well as any traumatic experiences the child has undergone. A variety of traumatic experiences may affect both the incarcerated parent and their children. Remaining aware of the influence of such experiences and ways to intervene in reducing trauma symptoms is an important part of care for both children of incarcerated individuals and their parents.

Innovative approaches, such as Lerer's suggestion that consideration of the Best Interest of the Child Standard be applied, as well as more traditional factors in determining pre-trial detention, sentencing, and other processes of the criminal justice system are worth considering, given the significant impact of incarceration on the well-being of children whose parents are incarcerated.

Some of the suggestions we have made require funding. It is our hope that we can prioritize prison reforms, such the recently legislated Louisiana Justice Reinvestment Package, and find a way as a society to support our youngest citizens who are significantly impacted by the criminal justice system.