



## Prison Shouldn't be a Bar to Motherhood

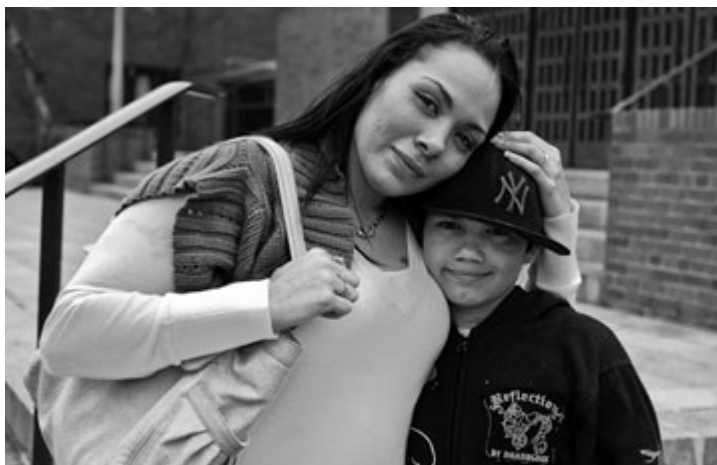
By Rachel Roth  
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*Rigid foster care rules threaten to dissolve family ties when mothers are in prison or residential drug treatment. A new law in New York State takes steps to help these families weather the separation.*

(WOMENSENEWS)--A 29-year-old woman whose mother went to prison when she was a baby says she is just like any other child.

"I need my mother. I've always needed her and in this way I am no different than any other child. Living away from her--having to live away from her because of something she did--has not changed how much I want her mothering," she said.

However, a well-meaning federal law passed in 1997 all too often overrides this sentiment, arbitrarily and permanently severing family bonds.



A formerly incarcerated mother and her son

*Credit: James Trory, courtesy of the Women in Prison Project at the Correctional Association of New York.*



The Adoption and Safe Families Act, called ASFA, was intended to prevent children from bouncing indefinitely between foster homes and to increase their chances of being placed with permanent adoptive families. It set rigid time frames by which an absent parent loses legal rights to his or her child. Once a child spends 15 of 22 months in foster care, the foster care agency moves to terminate the parent's rights. Some states adopted even shorter timelines in their versions of the law, moving to terminate parental rights after as little as six months when a child was placed in foster care as a newborn.

Courts can terminate a parent's rights because she is unavailable by virtue of incarceration or residence in a treatment center to take care of her child, even when there is no evidence of child abuse and when the child wishes to be reunited with the parent.

One-third of children who were so "freed" from their biological parents in New York City between 2000 and 2004 were not adopted, according to a report published in 2006 by the Women in Prison Project of the Correctional Association of New York. They stayed in foster care. These children are "legal orphans," children who have a parent but whose relationship to their parent is no longer recognized by the state.

### 'People Need More Time'

"I think people need more time," said Sharmaine, whose rights were terminated while she was in

treatment. "Just because you're incarcerated or in substance abuse treatment doesn't mean that you don't want to be a mother to your child . . . I am his mother biologically, but the law says I'm not his mother."

In June, Gov. David Paterson of New York signed into law the "ASFA Expanded Discretion" bill to ensure that parents like Sharmaine do not lose rights to their children solely for bureaucratic reasons.

The new law allows for foster care agencies and courts to take into account the special circumstances of parents in prison or residential treatment when determining a child's fate. These circumstances include parents' difficulty seeing children in person, difficulty meeting with lawyers or social workers and difficulty making court appearances, especially for women from New York City who are sent to serve their time in distant upstate prisons. The median prison sentence for women in New York is 36 months, longer than the 15-month deadline in effect until the time the law was changed.

The new law also allows for parents to participate in meetings about their children by video conference or other means if meeting in person is impracticable.

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Because foster care agencies have not always provided the reunification services that parents in prison are supposed to receive, the new law requires such agencies to give parents information about their rights and responsibilities, as well as referrals to services available to help maintain relationships with their children. (This provision warrants monitoring, as it is not clear how providing referrals would work when parents cannot access services without the assistance of prison or treatment center employees.)

## New York Joins Select Group

By allowing for greater flexibility in the foster care system, New York joins a small group of states that have adjusted their laws, including Nebraska, New Mexico, Colorado and California. But in most of the country, parental rights remain in serious jeopardy.

Most women in prison are mothers, and they are five times as likely as imprisoned fathers to have children in foster care. (When a father goes to prison, the children are most likely to live with their mother; when a mother is in prison, the children are most likely to live with a grandparent, the U.S. Bureau of Justice Statistics reports.)

ASFA therefore has a disproportionate impact on mothers in prison. Given the overrepresentation of poor women and women of color in prison--and the overrepresentation of poor children and children of color, particularly African American children, in foster care--it takes a heavy toll on already disadvantaged families and communities.

Earlier this year, the American Bar Association adopted new standards for the treatment of people in prison, including a provision saying they should be informed of the consequences for their parental rights of any arrangements contemplated for the care of a child. If put into practice, this standard would ensure that women are aware of the particular timeframes and risks inherent in each state's foster care system.

One of the barriers to changing the 1997 adoption law is the lack of data. In many cases, government agencies simply do not know how many children are in foster care because their parents are in prison, nor how many parents' rights have been terminated for this reason. Where something as fundamental as the parent-child relationship is at stake, governments need to provide a fuller accounting of how public policies affect the families who are subject to them.

## New York Activist Example

Activists in other states can learn from the New York experience, which involved a sustained commitment by advocates and policymakers who believe that protecting family bonds is an issue of

fundamental fairness.

Tamar Kraft-Stolar, director of the Women in Prison Project of the Correctional Association of New York, says it took four years to get a bill through the legislature and onto the governor's desk. Before that came three years of research and consultations with stakeholders, including affected parents and children.

A critical part of the organizing strategy was to highlight the perspectives of women directly affected by the law.

Formerly incarcerated mothers met with legislators and spoke out at public events. Those still in prison wrote letters, which the Coalition for Women Prisoners collected and turned into a book, along with letters from children of imprisoned mothers.

One contributor to the book describes the pain of losing her children: "As the clock ticked away, I remained in constant fear wondering which monthly visit would be our last . . . I was told that if I agreed to a conditional surrender agreement then I would be allowed limited communication (cards, letters and photos) with my sons. Sadly, these stipulations were never honored . . . I love my sons! I want what I was promised, when I acted in good faith, and signed my agreement!"

Implementation of the new law should spare other families this fate.



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## For more information:

The Women in Prison Project of the Correctional Association of New York:

[http://www.correctionalassociation.org/policy\\_agenda/protecting\\_mothers\\_and\\_children.htm](http://www.correctionalassociation.org/policy_agenda/protecting_mothers_and_children.htm)

"Rebuilding Families, Reclaiming Lives: State Obligations to Children in Foster Care and their Incarcerated Parents," by Patricia Allard and Lynn Lu:

[http://www.brennancenter.org/content/resource/rebuilding\\_families\\_reclaiming\\_lives/](http://www.brennancenter.org/content/resource/rebuilding_families_reclaiming_lives/)

"A Tangle of Problems Link Prison, Foster Care," by Michelle Chen:

<http://www.gothamgazette.com/article/socialservices/20090413/15/2882>

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