

## Strengthening Family Connection for Federally Incarcerated Parents

**Summary:** Currently, more than 50% of incarcerated people are parents at risk of permanently losing their parental rights.<sup>1</sup> The Adoption and Safe Families Act (ASFA) of 1997 is one child welfare policy that contributes to high rates of termination of parental rights (TPR); after its passage, TPR rates increased in 49 states.<sup>2</sup> TPR for incarcerated parents has inequitable impacts on Black, Indigenous, and other people of color, low-income families, and women. State laws and evidence-based practices for TPR exemptions and maintaining family connections already exist and have proven benefits. The federal carceral system should model these laws and practices to address the barriers incarcerated parents face to maintaining connections with their children. Three proposed recommendations are as follows:

1. Establish exclusions to the ASFA at the federal level for parents who are incarcerated for reasons other than harming their children
2. Implement evidence-based practices, such as the Parenting Inside Out (PIO) program across the federal prison system
3. Enact Parent Sentencing Alternatives (PSAs) at the federal level

### Background

More than half of the United States' inmate population are parents who remain at risk of permanently losing parental rights, in part due to harmful child welfare policy and other barriers to maintaining relationships with their children.<sup>1</sup> The Adoption and Safe Families Act (ASFA), originally passed in 1997, currently requires that the process of termination of parental rights (TPR) begin when a child has been in the child welfare system for 15 of 22 months. The average prison sentence from 2010–2013 was 25 months, leaving incarcerated parents at risk of losing rights to their children, including visiting or speaking to the child, having any say in the child's upbringing, or having any say in the child's adoption.<sup>3</sup> *Incarcerated parents also face the risk of shattered parent-child bonds due to the absence of measures to support family connection during incarceration.*<sup>4</sup> Policy needs to address these barriers.

#### *The Adoption and Safe Families Act (ASFA) Uniquely Harms Incarcerated Parents*

*1 in 8 parents permanently lose parental rights because their child enters foster care due to incarceration, even if the parent has not been accused of child abuse, neglect, endangerment, or drug use.*<sup>5</sup> In Washington state, 5,000 incarcerated parents lost their parental rights

solely because of their incarceration between 2006 and 2016.<sup>6</sup>

The ASFA intended to create a pathway to permanency for children in the child welfare system, but it does not account for barriers during incarceration, such as limited ability to maintain contact with a child or attend court hearings.<sup>7</sup> Parental rights may persist under the ASFA if the state finds a "compelling reason" that termination is not in the best interest of a child, or if the state has failed to make "reasonable efforts" to reunify a child and their parents.<sup>7</sup> However, the ASFA ultimately provides states the ability to terminate parental rights based on an indiscriminate time limit and with unclear guidelines on what "reasonable efforts" look like. In fact, *current funding guidelines may incentivize states to move forward with TPR as soon as timelines allow*, considering the average annual public cost is \$10,302 for an adopted child compared to \$25,782 for a child in foster care.<sup>8</sup>

#### *Disproportionate Harm in the Federal Carceral System*

The United States' carceral system continues to perpetuate inequities across various communities, including Black, Indigenous, and People of Color (BIPOC), those experiencing poverty or income instability, and women.

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### Racial Inequity

People of color are overwhelmingly represented in the United States' carceral system. Black individuals represent nearly 40% of the prison population yet are only 13.4% of the general population.<sup>9,10</sup> Indigenous individuals are also disproportionately affected by incarceration, representing about 1% of the general population, but 2.4% of the federal prison population.<sup>9,10</sup>

The trauma of family separation through incarceration is most felt by Black and Indigenous populations. *1 in 10 Black children have an incarcerated parent, compared to 1 in 60 White children.*<sup>7</sup> Overall, 63% of federal inmates are parents, affecting the lives of an estimated 1.7 million minor children.<sup>1</sup>

### Economic Inequity

Moreover, using a monetary bail system continues to ensure that low-income people are at risk of being imprisoned even before being found guilty or for being unable to pay fines and fees.<sup>11</sup> This leaves the poorest families most at risk to lose loved ones to incarceration because of financial barriers. Money is also a barrier for access to contact with family once someone is imprisoned.<sup>12</sup> Over 40% of federally incarcerated people are more than 500 miles away from home.<sup>13</sup> Families must be able to afford to take time off to travel to a visit, leaving inmates farther from home less likely to receive visits.<sup>11</sup> Phone calls and video visits are options, but are not as meaningful as in person visits.<sup>11</sup> Further, phone calls and video visits are often expensive, ranging from \$10-25 for a fifteen minute phone call or from \$1-15 for video visits.<sup>11,14</sup> *These fees create yet another financial barrier for incarcerated people to remain in contact with their loved ones.*

### Gender Inequity

Women in federal prisons are more likely to be farther away from their families than men, partially because there are fewer prisons to house them in. There are 29 federal women's prisons compared to 93 men's prisons.<sup>15</sup>

Incarcerated women are also at higher risk of having their children enter foster care or for TPR than incarcerated men.<sup>7</sup>

While race, gender, and economic inequities have been discussed separately here, the intersectionality of these factors should not be ignored. For example, Black women are twice as likely to be incarcerated than White women.<sup>16</sup> Further, the racial and gender wealth gap contributes to inability to pay bail or for visits and phone calls. One study found that, prior to incarceration, both Black and Hispanic men had lower monthly income than White men.<sup>11</sup> Overall, women earned less monthly income than men in each racial group.<sup>11</sup>

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## Recommendations & Analysis

Racial, economic, and gender inequities are in direct conflict with the values of freedom and justice for all and create ripple effects throughout families and communities. Federal policy should address these imbalances to ensure all parents and their children can thrive.

This analysis provides three recommendations to mitigate the risk of TPR and increase opportunities for family connection during federal incarceration. Our primary goal is to identify recommendations that address current inequities and provide the best opportunity to keep family relationships intact, while also recognizing the cost and effects on the carceral system for each recommendation.

### *Establish Exclusions to the ASFA at the Federal Level*

The ASFA timeline does not account for incarcerated parents. At least 32 states have recognized the problems the ASFA has posed for incarcerated parents and have implemented exemptions, delays, or exclusions to TPR requirements.<sup>7,17</sup> For example, Nebraska and New Mexico exclude incarcerated parents from the ASFA timeframe in cases when incarceration was the only reason to file for TPR.<sup>17</sup> New York

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and Colorado make exceptions to delay TPR proceedings in some cases when a child enters foster care, such as parental incarceration.<sup>17,7</sup> Washington state's 2013 Children of Incarcerated Parents Bill prevents the filing for TPR by default in cases when a child enters foster care due to parental incarceration, and establishes grounds for good cause exemptions when parents demonstrate a "meaningful role" in their child's life.<sup>17</sup> States have modeled that liberalizing the ASFA guidelines in cases of parental incarceration can be invaluable for parents and children.<sup>8</sup>

Unfortunately, exceptions do not provide the same the same protection for incarcerated parents as exclusions would. For example, exceptions to delay TPR based upon judicial review of parent-child relationships still leaves room for unintended bias in the courtroom, where judges are predominantly White, middle-class men. These case-by-case exceptions have the potential to cause unintentional harm for the parents most likely to have their children placed in foster care due to incarceration: Black and low-income women.<sup>7</sup> Furthermore, some requirements, including those based on "meaningful relationships," do not account for incarcerated parents who face many barriers for communication and visitation.<sup>6</sup> Federal *exclusions* to the ASFA for parents who are incarcerated for reasons other than harming their child would increase the continuity of protections for incarcerated parents.<sup>18</sup> Exclusions may be especially beneficial for Black and Indigenous parents and those with low socioeconomic background, who are incarcerated at higher rates than other groups.<sup>19</sup>

Creating universal exclusions to the ASFA for incarcerated parents is unlikely to require additional federal funding or to have a significant effect on the federal carceral system. All 50 states will remain ASFA compliant and continue to receive federal subsidies.<sup>7</sup>

### *Implement Evidence-Based Practices, such as the Parenting Inside Out (PIO) program, Across the Federal Prison System*

Families have a better chance of maintaining meaningful connections if prisons implement specific programs to support incarcerated parents. The Parenting Inside Out (PIO) program is already used in several states and is inexpensive, costing around \$2,300 to implement at a facility for up to 150 participants.<sup>20,21</sup> There are four different versions of the curriculum, including two prison programs.<sup>22</sup> Prisons can decide to implement either sixty or ninety hours of programming.<sup>22</sup> PIO provides parenting skills on topics including communication, problem-solving, emotion regulation, child development, nurturing children, and family dynamics.<sup>23</sup> Incarcerated parents also learn skills that help prepare them for successful community reentry, including transition planning and family reintegration.<sup>22</sup>

The federal Second Chance Act of 2007: Community Safety through Recidivism Prevention, specifically calls for implementation of family-based programs for incarcerated parents and provides grants to states for these programs.<sup>24</sup> Louisiana passed legislation in 2014 to support supervised visitation between incarcerated parents and their children if it is in the child's best interests.<sup>25</sup> Additionally, New Jersey implemented the "Dignity for Incarcerated Primary Caretaker Parents Act" in 2020, providing expanded opportunities for parent visitation and mandating more accountability from the state's Department of Corrections.<sup>26</sup>

Evidence-based practices have the potential to address disparities if implemented effectively. Specifically, it can positively impact impoverished families, since many cannot afford the costs of visits.<sup>14</sup> Parent-child contact is an integral part of the PIO program, requiring more flexibility from prisons to provide opportunities for parent-child contact. Implementing programming for incarcerated parents can also

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help to address the racial inequities of parent-child separation, considering the disproportionality of incarceration rates by race. Black individuals represent nearly 40% of the United States prison population.<sup>13</sup> While PIO will not address the root causes of disproportionality, it is a step towards ensuring all children can maintain relationships with their parents.

*PIO has also proven to have cost-saving long-term benefits, including higher rates of successful community reentry and lowered recidivism, mitigating the effects of family separation, and lower crime rates for children of incarcerated parents.<sup>27,28</sup> The cost savings of lowered recidivism rates should not be understated, considering the average annual cost per inmate in the United States was \$33,274 in 2015.<sup>29</sup>*

PIO has been proven to have many benefits, including lowered recidivism, substance use and criminal behavior.<sup>30</sup> Other research regarding familial connections while incarcerated indicates positive effects for the carceral system, including a decrease in parole failure and less misbehavior from incarcerated people who receive visits.<sup>27,31</sup>

### ***Enact Parent Sentencing Alternatives (PSAs) at the Federal Level***

PSAs provide an opportunity for families to remain intact and ensure community safety. Washington state enacted a bill in 2010 that created two different PSAs for certain eligible parents facing incarceration.<sup>32</sup> Each program has certain eligibility requirements, including custody of the child(ren) and holding no prior convictions for felony sex or violent offenses.<sup>25</sup> Washington's Family and Offender Sentencing Alternative (FOSA) allows for up to twelve months of community supervision as an alternative to jail time.<sup>31</sup> The FOSA also requires certain treatment and programming, in addition to a quarterly report by the Department of Corrections (DOC) on the supervised individual's progress.<sup>31</sup> The other PSA in Washington state is called the Community Parenting Alternative

(CPA).<sup>33</sup> This program is more restrictive, requiring electronic monitoring service while the individual resides in the community.<sup>31</sup> The CPA also provides more intensive services, including drug testing, monthly contact with a child protective services worker (if applicable), phased employment restriction, and gradual access to more family contact.<sup>33</sup>

Sentencing alternatives are already used widely by the court system. Courts already operate electronic monitoring and various treatment programs. Washington state and Massachusetts have passed legislation to provide alternatives to incarceration for parents in certain cases.<sup>34,35</sup> Other states have enacted sentencing alternatives for drug offenders, including Texas and California.<sup>32</sup> Federally, the passage of the Family First Prevention Services Act of 2018 and the Family First Transition Act of 2019 does indicate states' growing ability to fund prevention programming with federal dollars.<sup>36</sup>

If implemented effectively, this option provides opportunities to close gaps in equity for certain racial groups, genders, and socio-economic groups. 1 in 10 Black children have an incarcerated parent and incarcerated women are more likely than men to have parental rights taken away while incarcerated.<sup>8,6</sup> PSAs provide an opportunity to divert women and Black individuals from the carceral system so that they can remain with their families. Considering that children of incarcerated parents are more likely to experience time in prison themselves as adults, PSAs can help break the disproportionate cycle of imprisonment for Black families.<sup>22</sup> Additionally, PSAs give individuals the ability to continue working and providing for their families rather than being locked away and unable to earn any income.

While only Washington state has enacted parent-specific sentencing alternatives, many other states already operate prison sentencing alternatives in some way, such as electronic monitoring, work release programs, or treatment programs. Cost analysis shows that

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prison alternatives are more cost effective than incarceration.<sup>37</sup> California, Florida, New York, and Texas are estimated to save an annual \$465 million, \$90 million, \$365 million, and \$800 million, respectively.<sup>37</sup> Cost estimates for these states were calculated using states' reported costs for incarceration and reported costs of sentencing alternatives.<sup>37</sup> These cost savings don't account for future lower recidivism rates, which will save prisons \$33,274 per person annually.<sup>28</sup> Furthermore, cost savings extend beyond the incarcerated person alone. Children of incarcerated parents are at higher risk of imprisonment as adults, potentially extending the financial burden of incarceration for generations.<sup>26</sup>

Sentencing alternatives have proven to have benefits for the carceral system. For example, *only 6% of participants who completed a PSA in Washington state returned to prison.*<sup>38</sup> An analysis of drug treatment programs developed after California's "Substance Abuse and Crime Prevention Act" was enacted found that those who completed the drug treatment program were 22% less likely to be rearrested than those who did not complete the program.<sup>33</sup>

Unfortunately, completion rates for many alternative programs are relatively low.<sup>32</sup> Additionally, those at risk of incarceration may not want to engage in programs due to the threat of facing their entire sentence if they fail to meet program requirements.<sup>30</sup>

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## Recommendations

The following recommendations have the potential to mitigate the risk of TPR, increase opportunities for family connection during federal incarceration, and address inequities in the federal prison system that disproportionately harm Black, Indigenous, and other people of color, those experiencing poverty or income instability, and women.

1. Create exclusions for the ASFA at the federal level to provide consistent protections for parental rights of

incarcerated individuals and to de-incentivize states from filing TPR for financial gain.

2. Implement evidence-based practices across the federal carceral system. The Parenting Inside Out program is already in use in several states and has proven to be effective in contributing to positive outcomes for incarcerated people and their families, including lowered recidivism, less misbehavior in prisons, and increased parenting and communication skills.
3. Enact parent sentencing alternatives (PSAs) at the federal level to provide parents at risk of incarceration an opportunity to remain with their families in their own communities, lower rates of crime and recidivism, lower federal incarceration costs, directly address racial and economic disparities within the federal prison system and expand protections for Black, Indigenous, and low-income parents.

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