

**Committee on Legal Aid  
Collateral Consequences of Criminal Convictions  
Family Law Sub-Committee Report**

**February 9, 2012**

The positions taken in this report are solely those of the Committee on Legal Aid and do not represent the position of the Association unless or until adopted by the Executive Committee or House of Delegates.

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SINCE OUR SUB-COMMITTEE FORMED, THERE HAS BEEN MORE FOCUS AND RESEARCH ON THE NEGATIVE EFFECTS OF INCARCERATION ON CHILDREN.

In 2010, our sub-committee was charged with looking at two proposed initiatives, affecting incarcerated parents and their children.

**The first issue dealt with the filing of Termination of Parental Rights (TPR) Petitions against Incarcerated Parents, and the second issue dealt with requiring communication between local DSS Agencies and Foster Care Agencies, and the Corrections Community. We are happy to report that there has been positive activity on both fronts.**

**1) THE FIRST ISSUE: Incarcerated parents and Termination of Parental Rights.**

Background: Under New York's Adoption and Safe Families Act, Foster Care Agencies were required to file Termination of Parental Rights (TPR) petitions if a child had been in foster care for 15 of the previous 22 months. Since the median sentence for New York's incarcerated parents is usually longer than 22 months, those parents were having their rights terminated, even if it was not in the long term best interests of their children.

Our sub-committee reviewed proposed ASFA "Expanded Discretion" legislation that would allow foster care agencies to delay filing a TPR petition. It would also require foster care agencies to inform incarcerated parents of their parental rights and responsibilities and to provide referrals to Social Services and visitation programs. We suggested that the Legal Aid Committee urge NYSBA to support the proposed legislation.

**On June 15, 2010 Governor Paterson signed this revised AFSA "Expanded Discretion" into law.**

**2) THE SECOND ISSUE: Attention to legislative efforts to strengthen parent child "connectivity" by increasing the communication between two New York State agencies, the Office of Children and Family Services (OCFS) and the Department of Corrections and Community Supervision, DOCCS.**

Background: In New York State, and nationally, there are several organizations advocating for the children of incarcerated parents. For example, research efforts sponsored by the VERA Institute and the Annie E. Casey Foundation are showing the consequences of parental incarceration on children.

In New York State, the Correctional Association of New York, "Women in Prison Project" reports that:

- Almost 73% of New York's incarcerated women are parents, compared to more than 58% of men.

- Almost 80,000 children have a parent in New York's prisons, including nearly 5,240 children with an incarcerated mother.
- More than 10,000 children have a mother in a jail or prison in New York State.

At this point, few states have specific legislation requiring that agencies like New York's Office of Child and Family Services work directly with state correction agencies to strengthen families affected by incarceration.

**However, in New York, the OCFS has issued an Administrative Directive, effective June 15, 2011. That Directive, spells out to Social Services districts and foster care agencies, how the new AFSA's Expanded Discretion law would be implemented. (11-OCFS-ADM-7)**

This Directive amends Social Services Law 384-b, to insure that local agencies meet their responsibilities to incarcerated parents and their children. The Directive includes language that sets forth the local agency and caseworker obligations to children and incarcerated parents, including:

- During the child's placement, agency and district caseworkers are to make suitable arrangements with a correctional facility, or a residential substance abuse treatment program, for the parent to visit with the child within the facility or program unless such visiting would be harmful to the child.
- The initial family service plan and the ensuing Service Plan Reviews (SPRs) must be done in consultation with the incarcerated parent, or parent in a residential substance abuse treatment program, unless such consultation is deemed harmful to the child. If it is impractical to hold such consultation in person as a result of incarceration, or placement in a residential substance abuse treatment program, such consultation may be done utilizing available videoconferencing or teleconferencing technology.
- In addition, Social Services districts and agencies must provide information developed by the Office of Children and Family Services to these parents outlining their legal rights and obligations. Two versions of the guide "You Don't Have to Stop Being a Parent" are available. (Version A is for Incarcerated Parents, Version B is for Parents in Residential Substance Abuse Treatment Centers.)
- Social Services districts and agencies must also provide parents with a list including, but not limited to, social or rehabilitative services available in the community, including family visiting services to aid in the development of a meaningful relationship between the parent and child. When possible, such information should include transitional and family support services in the community to which an incarcerated parent, or parent in a residential substance abuse treatment program will return. This information must be provided as soon as the district or agency has located the parent and must include information on how the parent is to communicate with the agency or caseworker. (Administrative Directive, 11-OCFS-ADM-7)

**The Administrative Directive is also very clear on what local DSS caseworkers must do to connect with and communicate with DOCCS staff. This part of the Administrative Directive insists that local DSS agencies, and other foster care agencies, coordinate with DOCCS personnel.**

After locating an incarcerated parent through the Inmate Locator technology:

- The caseworker must identify the parent's Corrections Counselor and the caseworker must initiate contact with the Counselor to discuss visiting arrangements between the parent and foster child, the parent's participation in Service Plan Reviews (SPR), and any other pertinent information.
- The caseworker should also determine the availability of videoconference or teleconference capacity within the facility in order to accommodate the parent's participation in Service Plan Reviews. The use of alternate technology, where available, is required by law when a parent's physical attendance is impractical.
- The caseworker must coordinate with the Corrections Counselor to obtain an acceptable time for phone contact with the parent.
- The caseworker must contact the parent by phone to explain any court or Service Plan Review dates, visitation schedules, and provide an update on the progress of the child.

**Any correspondence between the caseworkers and the Corrections Counselors is to be mailed directly. DOCCS has advised OCFS that the deputy superintendent of the correctional facility is to be contacted should there be any communication difficulties with the parent's Correctional Counselor. (Administrative Directive, 11-OCFS-ADM-7)**