

The Effect of Termination of Parental Rights on Incarcerated Parents

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I. INTRODUCTION

Taisie Baldwin remembered leaving her child behind to serve her incarceration sentence as “the most painful thing I’d ever felt in my life.”¹ After being notified that her daughter was given to the state by her grandmother, she attended the termination of parental rights (TPR) hearings every three months for two years to no avail.² Her appeal would be insufficient, because her daughter was already placed with a foster family who sought to adopt her. Despite the adoptive families’ promise to keep Taisie in touch with her daughter, before long, she was refused access even after serving her prison sentence.³

As of 2016, one in one hundred American children faced the potential termination of parental rights for both of their parents.⁴ This number has roughly doubled since 2000.⁵ Approximately 2.7 million American children have a parent in jail or in prison.⁶ The actual number of affected children is currently unknown, because correction facilities fail to collect this data.⁷ However, it is known that between 2006 and 2016, at least 32,000 incarcerated parents had their children taken from them – nearly 5,000 of those parents appear to have lost their parental rights because of their imprisonment alone.⁸ A caregiver’s incarceration can adversely impact a child’s life, possibly leading to future posttraumatic stress, increased child mental health problems, physical health problems, and antisocial behavior.⁹

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¹ ALLISON DURKIN ET AL., INCARCERATED PARENTS AND TERMINATION OF PARENTAL RIGHTS IN CONNECTICUT: RECOMMENDATIONS FOR REFORM 14 (2021).

² *Id.*

³ *Id.*

⁴ Christopher Wildeman et al., *The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000-2016*, 25 CHILD MALTREATMENT 32, 33 (2019).

⁵ *Id.*

⁶ THE PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION’S EFFECT ON ECONOMIC MOBILITY 4 (2010).

⁷ *Cf.* Wildeman, *supra* note 4, at 32 (noting that estimates of the termination of parental rights have never before been calculated).

⁸ Eli Hager & Anna Flagg, *How Incarcerated Parents Are Losing Their Children Forever*, MARSHALL PROJECT (Dec. 2, 2018, 10:00 PM), <https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-children-forever>.

⁹ JAMES M. CONWAY ET AL., NEEDS CREATED IN CHILDREN’S DAILY LIVES BY THE ARREST OF A CAREGIVER 4, 8, 15 (2016).

Along with the adverse emotional and psychological effects of incarceration on a family, the costs incurred are also extreme. It costs the United States' taxpayers more than one hundred and eighty billion dollars a year to keep over two million people behind bars.¹⁰ This estimated figure is an underestimate, however, when taking into consideration the costs borne by prisoners' loved ones, particularly when trying to access them by phone call or video visit.¹¹ Women often shoulder this burden: Telita Hayes' ex-husband has been incarcerated in the Louisiana State Penitentiary for 28 years. In just one year, she spent approximately four thousand dollars in charges for phone calls, the hourlong drive to prison, and around four hundred dollars for emails sent through the prison-sanctioned email system.¹² Not all families have the income required to maintain communication with incarcerated individuals, and the funding would be better used to support the reunification of families rather than their separation.

This Note will explore the enactment of the Adoption and Safe Families Act (ASFA), and its influence on the termination of parental rights of incarcerated individuals in the United States. It will also explore the disproportionate effect of incarceration on individuals of color, and methods of communication for families that promote reunification and the prevention of termination of parental rights. Lastly, it will offer some policy recommendations such as implementing child friendly visitation facilities within the correctional system, utilizing video technology as an enhanced tool for visitation, considering proximity to home when an individual is incarcerated, and financially incentivizing states to promote reunification rather than out-of-family adoption. These recommendations seek to encourage legislative and judicial change in the current existing protocol regarding termination of parental rights for incarcerated individuals.

II. BACKGROUND AND HISTORY ON LEGISLATION REGARDING PARENTAL RIGHTS

Congress enacted the Adoption and Safe Families Act in 1997 to promote adoption of children in foster care to permanent homes.¹³ It granted fiscal incentives to states that adopted the ASFA so long as they complied with its requirements.¹⁴ In 1998, the Office of Legislative Research (OLR) in Connecticut submitted research and guidance that would allow the state

¹⁰ Peter Wagner & Bernadette Rabuy, *Following the Money of Mass Incarceration*, PRISON POL'Y INITIATIVE (Jan. 25, 2017), <https://www.prisonpolicy.org/reports/money.html>.

¹¹ Nicole Lewis & Beatrix Lockwood, *How Families Cope with the Hidden Costs of Incarceration for the Holidays*, N.Y. TIMES (Dec. 20, 2019), <https://www.nytimes.com/2019/12/17/us/incarceration-holidays-family-costs.html>.

¹² *Id.*

¹³ Adoption and Safe Families Act of 1997, Pub. L. No. 105–89, 111 Stat. 2122 (codified as amended at 42 U.S.C. § 673b).

¹⁴ *Id.*

to comply with ASFA requirements necessary to receive federal funds reserved for states.¹⁵ The ASFA requires that states, or the state agencies that govern child welfare services, file for termination of parental rights when a child is in foster care for fifteen out of the preceding twenty-two months.¹⁶

Connecticut subsequently enacted the statute reflecting the ASFA timeline, setting forth that a termination of parental rights petition can be filed by the Department of Children and Families (DCF) if a “child has been in the custody of the commissioner for at least fifteen consecutive months, or at least fifteen months during the [preceding] twenty-two months, immediately preceding the filing of such petition.”¹⁷ Children who have parents incarcerated for longer than fifteen months are in danger of being in the custody of the Department of Children and Families rather than their parents simply because of a time frame.

When custody of a child is in question, the Commissioner of Children and Families has general supervision over the welfare of the children who require the care and the protection of the state.¹⁸ Under Connecticut General Statutes section 47a-112(n), “[i]f the parental rights of only one parent are terminated, the remaining parent shall be the sole parent and, unless otherwise provided by law, guardian of the person.”¹⁹ However, when the rights of both parents are terminated, the Commissioner becomes the guardian of the minor child; this is why the DCF can file the petition to terminate parental rights.²⁰ At all times, the Commissioner of Children and Families has the statutory obligation to make reasonable efforts to reunify a parent with a child, unless that child has been abandoned or otherwise harmed by that parent.²¹

The ASFA and the Connecticut statute both have exceptions to the filing of a petition to terminate parental rights. These include when the child is under care of a relative, when it would not be in the best interests of the child, or when services which would make reunification possible were not offered to the family in question.²² Despite these exceptions, the ASFA financially incentivizes states to encourage adoptions out of foster care rather than reunification with children’s biological families.²³

The legislative intent behind Connecticut’s adoption of the ASFA and the consequent statute reflects the change in priority from reuniting children with their birth families to a new focus on permanency planning

¹⁵ LAWRENCE K. FURBISH, OFF. LEGIS. RSCH., FEDERAL ADOPTION AND SAFE FAMILIES REQUIREMENT, 98-R-0627 (1998), <https://www.cga.ct.gov/PS98/rpt%5Colr%5Chtm/98-R-1142.htm>.

¹⁶ DURKIN ET AL., *supra* note 1, at 11.

¹⁷ CONN. GEN. STAT. § 17a-111a (2021).

¹⁸ CONN. GEN. STAT. § 17a-90 (2021).

¹⁹ CONN. GEN. STAT. § 17a-112(n) (2021).

²⁰ FURBISH, *supra* note 15.

²¹ CONN. GEN. STAT. § 17a-111b(a) (2021).

²² *Id.* at §§ 17a-111a(b)(1–3).

²³ DURKIN ET AL., *supra* note 1, at 11.

post-termination of parental rights, effectively changing the notion of familial preservation.²⁴

III. THE IMPACT OF THE ASFA

Since the enactment of the ASFA, the number of children with an incarcerated parent has increased by nearly eighty percent.²⁵ In 2019, states across the country terminate the parental rights of 71,300 parents.²⁶ The increase in parental incarceration along with the enactment of the ASFA may be the root cause of an increase in termination of parental rights proceedings.²⁷ Because the average length of incarceration in the United States is around 2.6 years from the date of admission to the date of release, an increase in termination of parental rights proceedings is the predictable result of the ASFA provision that allows state actors to move for termination of parental rights if a child has been in state custody for fifteen out of twenty-two months.²⁸

a. Termination of Parental Rights Procedure

In Connecticut, both the Superior Court and the probate courts have jurisdiction over termination of parental rights.²⁹ Generally, termination of parental rights petitions heard in the probate courts are uncontested and heard prior to adoption.³⁰ A petition regarding termination of parental rights is filed in either the probate court or the Superior Court and can be filed by a parent, a child's guardian, DCF, or a relative if the child has been deserted by their parents.³¹ A termination of parental rights hearing must be set within thirty days of the petition being filed, and all parties must have notice of the hearing, unless the probate court sets forth an exception.³²

²⁴ CONN. GEN. STAT. § 17a-110(a) (2021).

²⁵ LAUREN E. GLAZE & LAURA M. MARUSCHAK, PARENTS IN PRISON AND THEIR MINOR CHILDREN 1 (U.S. Dep't of Just., Bureau Just. Stat. 2008).

²⁶ ADMIN. FOR CHILD. & FAMS., TRENDS IN FOSTER CARE AND ADOPTION: FY 2010 – FY 2019 1 (U.S. Dep't Health & Hum. Servs., 2020).

²⁷ See generally, RAQUEL ELLIS ET AL., CHILD TRENDS, THE TIMING OF TERMINATION OF PARENTAL RIGHTS: A BALANCING ACT FOR CHILDREN'S BEST INTERESTS, (Sept. 2009), (establishing that no causal connection has been made, but it is likely to exist due to the timing of the ASFA enactment and increase in termination of parental rights cases).

²⁸ DANIELLE KAEBLE, TIME SERVED IN STATE PRISON, 2016 1 (U.S. Dep't Just., Bureau Just. Stat., Nov. 2018) (citing that there is no Connecticut average because there is no Connecticut data on average length incarceration).

²⁹ LAWRENCE K. FURBISH, OFF. LEGIS. RSCH., STANDARDS AND PROCEDURES FOR TERMINATION OF PARENTAL RIGHTS, 98-R-1142 (1998), <https://www.cga.ct.gov/PS98/rpt%5Colr%5Chtm/98-R-1142.htm>.

³⁰ *Id.*

³¹ *Id.*

³² CONN. GEN. STAT. § 45a-716(a)-(b), (d) (2021).

b. Necessary Findings to Establish Termination of Parental Rights

Before terminating parental rights, the court must take into consideration various factors when a parent is incarcerated in order to prevent the termination of their parental rights including:

(4) the feelings and emotional ties of the child with respect to the child's parents, any guardian of such child's person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties; (5) the age of the child; (6) the efforts the parent has made to adjust such parent's circumstances, conduct, or conditions to make it in the best interest of the child to return such child home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court may give weight to incidental visitations, communications or contributions, and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child; and (7) the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent.³³

Parental rights cannot be terminated unless the court establishes a “clear and convincing” burden of proof and finds that the termination is in the best interests of the minor child. One of the following statutory requirements must also be met:

the child has been abandoned by the parent . . . (B) the child has been denied . . . the care, guidance or control necessary for the child's physical, educational, moral or emotional well-being . . . (C) there is no ongoing parent-child relationship . . . (D) a child of the parent (i) was found by the Superior Court or the Probate Court to have been neglected, abused or uncared for . . . (E) a child of the parent, who is under the age of seven years is found to be neglected, abused or uncared for, and the parent has failed, is unable or is unwilling to achieve such degree of personal

³³ CONN. GEN. STAT. § 17a-112(k)(4)-(7) (2019).

rehabilitation as would encourage the belief that within a reasonable amount of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . (F) the parent has killed through deliberate, nonaccidental act another child of the parent . . . (G) . . . the parent committed an act that constitutes sexual assault . . . (H) the parent was finally adjudged guilty of sexual assault³⁴

The statute does not set forth that incarceration alone is enough to terminate parental rights. Abandonment is not equivalent to incarceration if the parent continues to be in contact with their child and is given the opportunity to do so. Despite the stringency in meeting the standard of proof for termination of parental rights, incarcerated parents face this risk simply for being incarcerated. However, if incarcerated parents lack access to their children and are facing the possible violation of due process procedural rights as previously discussed, the rights of incarcerated parents are severely limited in advocating for themselves, and thus maintaining rights to their children.

c. Incarcerated Parents' Due Process Right to be Heard

What is troubling is that termination of parental rights proceedings under the ASFA are involuntarily filed against parents, and when those parents are incarcerated, the court does not always take into consideration factors in their favor, particularly because no legislation has been enacted to protect the rights of incarcerated parents.³⁵ Further, Connecticut General Statutes Section 45a-716(d) sets forth that if personal service or abode service cannot be effectuated on “a parent or the father of a child born out of wedlock who is either a petitioner” or someone who waives service, the court may allow first class mail as effective service.³⁶ If the incarcerated individual does not receive mail, they may not receive sufficient notice. Or like in Taisie Baldwin’s experience, notice and a chance to be heard may not be enough.

The lack of effectuated service to incarcerated parents brings up the notion of due process violations, in which parents at risk of losing parental rights should not be “deprive[d] of life, liberty, or property without due process of law.”³⁷ In fact, not all states have established law on parents’ constitutional due process right to participate during termination of parental rights proceedings, highlighting a responsibility on the trial court to ensure

³⁴ CONN. GEN. STAT. § 45a-717(g) (2022).

³⁵ DURKIN ET AL., *supra* note 1, at 13.

³⁶ CONN. GEN. STAT. § 45a-716(d) (2021).

³⁷ U.S. CONST. amend. XIV, § 1.

that the parent can respond or rebut evidence in the proceeding.³⁸ This potential violation of incarcerated parents' due process rights to be heard at a termination of parental rights proceeding can adversely affect not only the parent, but also the child, who may perceive their parents' absence or lack of advocacy as disinterest in their parental rights and the parent-child relationship.

d. Legal Orphanage Created by the ASFA

A notable adverse effect of the termination of parental rights subject to the ASFA timeline is the creation of "legal orphans," or children "whose parents' rights have been terminated and who [have] no legal permanent connection to a family."³⁹ The ASFA timeline (fifteen out of twenty-two months) is particularly troubling in the cases of legal orphans because there is no requirement that the state find a reasonable replacement family for the minor child before terminating their birth parents' parental rights. Rather, the timeline is strictly time itself – the fifteen out of twenty-two months declares when the State can move for termination of parental rights.⁴⁰ Legal orphanage is more likely to impact children whose parents are incarcerated, and in turn, "children with incarcerated parents are more likely to remain in foster care than to be adopted, relative to children whose parents are not incarcerated."⁴¹ This leaves children with very few options in regards to where they end up – their parents' rights can be terminated based simply on time, and then, they can be placed in foster care. In fact, children who enter foster care between the ages of nine and thirteen are more likely to remain in foster care longer if they do not reunify with their families within the first two years.⁴²

On the other hand, fifty-five percent of children who enter foster care between ages eleven and sixteen and later have their parents' rights terminated are adopted.⁴³ This is not a negative effect because children having a space to belong in supports their growth and development.⁴⁴ However, reunification between a child and their biological family should be the ultimate goal of offices like DCF. Adoption outside of the biological family can lead to emotional damage to both parents and their children,

³⁸ Nicole Johnson, *Incarcerated Parents Must be Allowed to Participate in Entire TPR Hearing*, AM. BAR ASS'N: CHILD L. PRAC. TODAY (May 28, 2019), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january--december-2019/incarcerated-parents-must-be-allowed-to-participate-in-the-entire/.

³⁹ SHARON MCCULLY & ELIZABETH WHITNEY BARNES, *FOREVER FAMILIES: IMPROVING OUTCOMES BY ACHIEVING PERMANENCY FOR LEGAL ORPHANS* 4 (Nat'l Council Juv. & Fam. Ct. Judges 2013).

⁴⁰ See generally MCCULLY & WHITNEY BARNES, *supra* note 39.

⁴¹ DURKIN ET AL., *supra* note 1, at 15.

⁴² ELIZABETH DARLING, U.S. DEP'T HEALTH & HUM. SERVS. ADMIN. FOR CHILD., YOUTH, & FAMS., *ACHIEVING PERMANENCY FOR THE WELL-BEING OF CHILDREN AND YOUTH* 8 (Jan. 5, 2021).

⁴³ *Id.* at 9.

⁴⁴ MCCULLY & WHITNEY BARNES, *supra* note 39, at 4.

particularly if parents are deprived of their right to attend the hearings which determine their parental rights.

Ultimately, children can be adversely affected by becoming legal orphans due to the timelines created by the ASFA. Legal orphans can remain in the foster care system with no hope of leaving. If children are not adopted after their parents' rights have been terminated, and they age out of the foster care system, they are more likely to participate in low wage employment and face poverty.⁴⁵ Additionally, they may suffer from food insecurity, higher incarceration rates, and single parenthood along with higher rates of homelessness after leaving foster care.⁴⁶ As a result, it would be advisable for courts to look at the resources given to children, including safe and acceptable housing or other family care or adoption, rather than simply implementing termination of an incarcerated parents' rights subject to the timeline implemented by the ASFA.

IV. WHAT ARE THE PARENTAL RIGHTS OF AN INCARCERATED PARENT?

An incarcerated parent may find it difficult to access time with their minor child simply based on their lack of access to the outside world while incarcerated. In a particular case, Ms. T, a mother of three children, lost custody of her children after she was sentenced to prison for two years in Connecticut in 2018.⁴⁷ She tried to arrange visits with her children as much as possible, including making recordings of herself reading books to her children, and enrolled in programs to assist her in her personal development, including parenting, anger management and therapy.⁴⁸ Despite these efforts, in 2019 she found out that DCF filed to terminate her parental rights due to the fifteen months out of twenty-two months rules set forth by the ASFA.⁴⁹ Despite her best efforts, Ms. T was still unable to access her children and to preserve her rights to her children. Ms. T's story is a cautionary tale of what can happen when parents' efforts are ignored, and irreparable harm is done to a family.

However, Connecticut law requires that reasonable efforts to reunify a parent with a child must be made.⁵⁰ In *In re Shafari B.*, the Court analyzed the level of reunification efforts that the Department of Children and Families must take in order to satisfy the statutory requirement pursuant to Connecticut General Statutes section 17a-111b(a).⁵¹ The mother in *Shafari B.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ DURKIN ET AL., *supra* note 1, at 8.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ CONN. GEN. STAT. § 17a-111b(a) (2021).

⁵¹ *In re Shafari B.*, Nos. H12CP04009696A, H12CP04009697A, H12CP04009698A, 2007 WL 155169, at *13 (Conn. Super. Ct. Jan. 9, 2007); *see also* § 17a-111b(a) (2021).

suffered various traumas, and was incarcerated for a period of time.⁵² Upon finding three minor children in the mother's home unattended, DCF became involved and sought to assist the mother by utilizing specific steps to help her regain access to her children.⁵³ The Department reported trying to contact the mother for services, with very little success or compliance.⁵⁴ The Court explained that in order to pursue termination of parental rights, DCF must take reasonable efforts to locate the parent and to reunify the child with the parent.⁵⁵ The Court held that DCF must make reasonable efforts to reunify, subject to the objective standard of reasonableness which is not "useless and futile."⁵⁶

The *Shafari B.* Court went on to state that "the department may meet its burden concerning reunification in one of three ways: (1) by showing that it made such efforts, (2) by showing that the parent was unable or unwilling to benefit from reunification efforts or (3) by a previous judicial determination that such efforts were not appropriate."⁵⁷ In other words, DCF must show that they have made an effort to reunify the child with their incarcerated parent so long as the efforts are not futile. This does not necessarily hold DCF to such an obligation because the statute carves out exceptions, but the State may consider in the future making this a strict obligation before termination of parental rights are granted.

The Court noted that while incarceration may limit the amount of visitation opportunities available to both the parent and child, "[a] respondent's imprisonment, however, does not, in and of itself, excuse DCF from providing her with visitation with his child."⁵⁸ The Court effectively held that incarceration alone is not enough for DCF to sever the parent-child relationship or to impede visitation for them. Therefore, the incarcerated parent should have access to visitation from their minor children, so long as there have been no other reasons indicating that the parent or child would not benefit from such visitation, or that the Court had previously found that the efforts would not be appropriate. Because incarceration alone is not enough for DCF to cease visitation efforts between an incarcerated parent and child, a concerted effort should be made to encourage contact so long as it is in the child's best interests.

⁵² *Id.* at *4.

⁵³ *Id.* at *5.

⁵⁴ *Id.* at *7.

⁵⁵ *Id.* at *13.

⁵⁶ *In re Shafari B.*, 2007 WL 155169, at *13.

⁵⁷ *Id.*

⁵⁸ *Id.* at *15.

a. Racial Disparities in Termination of Parental Rights Among Individuals of Color

In Connecticut, Black children are 3.77 times more likely to experience termination of parental rights proceedings than white children, while Latinx children are 2.6 times more likely to experience termination of their parents' rights than white children.⁵⁹ There are several possible causes for this racial disparity, but as previously mentioned, solely having an incarcerated parent for a time period over twenty-two months can trigger a termination of parental rights proceeding.

Incarceration disproportionately affects people of color because of the disparate impact of mass incarceration in these communities.⁶⁰ Children of color, particularly Black children, are disproportionately affected by their parents' incarceration because Black Americans are incarcerated at 4.8 times the rate of white Americans.⁶¹ Even though racial disparity has decreased from 2000-2016, there remains a 5-to-1 disparity between Black and white incarcerated individuals.⁶² Additionally, the number of Black men and women has declined, while the incarceration of white individuals has increased.⁶³ The decline in racial incarceration rates is offset, however, by the increase of expected length of stay in prison for Black individuals.⁶⁴ In fact, the average length of incarceration stays for Black persons increased by almost two percent more for each convicted individual.⁶⁵ Therefore, children of Black incarcerated individuals are more likely to be disproportionately affected by ASFA's time frames.

Ultimately, the interaction of longer sentences and the timeline requirement of the ASFA thus results in increased termination of the rights of Black parents.

b. Cost of Access for Incarcerated Individuals to Contact their Children

Up until new legislation in the fall of 2022, Connecticut had the most expensive rate for prison phone calls.⁶⁶ A fifteen-minute phone call between an incarcerated person in Connecticut and an outside member cost

⁵⁹ Wildeman et al., *supra* note 4, at 40.

⁶⁰ DURKIN ET AL., *supra* note 1, at 13.

⁶¹ ASHLEY NELLIS, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS 6 (The Sent'g Project 2021).

⁶² WILLIAM J. SABOL ET AL., TRENDS IN CORRECTIONAL CONTROL BY RACE AND SEX 4 (Council on Crim. Just. 2019).

⁶³ *Id.* at 5.

⁶⁴ *Id.* at 1, 15-17, 20-21; *see also* Weihua Li, *The Growing Racial Disparity in Prison Time*, MARSHALL PROJECT (Dec. 3, 2019), <https://www.themarshallproject.org/2019/12/03/the-growing-racial-disparity-in-prison-time>.

⁶⁵ SABOL ET AL., *supra* note 62, at 5.

⁶⁶ Rachel M. Cohen, *Connecticut Lawmakers Want to Try Again to Make Prison Phone Calls Completely Free*, THE INTERCEPT (Feb. 22, 2021), <https://theintercept.com/2021/02/22/prison-phone-calls-connecticut/>.

nearly five dollars.⁶⁷ Connecticut families spent over fourteen million dollars per year to talk to their incarcerated family members.⁶⁸ The State received over seven million dollars in kickbacks, with the rest going to Securus, a private telecommunications corporation contracted by the Department of Corrections.⁶⁹ Effectively, the State has been profiting off of incarcerated individuals communicating with their families. Additionally, of the remaining estimated seven million dollars that are kicked back to the State of Connecticut, only about 350,000 dollars of that budget is allotted to programs for the incarcerated population.⁷⁰ A hefty portion of the funds, around five and a half million dollars, goes to the Judicial Branch to pay for probation officers in a specialized probation unit that helps individuals avoid technical violations of their probation and consequent rearrests.⁷¹ While the legislature is seemingly well-intended, these funds could be used to better support incarcerated individuals.

It is only recently that the Connecticut legislature has signed into law free phone calls for inmates, beginning October 1, 2022.⁷² In the meantime, however, families and individuals have incurred these extra costs and will continue doing so to communicate with their incarcerated loved ones. The change in phone call policy will benefit incarcerated individuals and their families. However, more effective methods of contact such as video calls still place the cost on incarcerated individuals.

The State of Connecticut has implemented the distribution of more than 1,500 computer tablets to incarcerated individuals at one facility, the MacDougall-Walker Correctional Institution, with aspirations to expand the pilot program until all incarcerated individuals in Connecticut have received a tablet.⁷³ The tablets allow incarcerated individuals to view “educational materials – including books and educational videos – at no cost. They will also have the opportunity to purchase additional materials such as electronic books, and music.”⁷⁴ It is important to note that incarcerated individuals must pay not only for materials such as books and music, but also must pay a charge of nineteen cents to send an email to family members.⁷⁵ Among many video visitation contractors, family members may have to pay per

⁶⁷ *Connecticut State Prison Phone Rates and Kickbacks*, PRISON PHONE JUST., <https://www.prisonphonejustice.org/state/CT/> (last visited Sept. 5, 2022).

⁶⁸ Cohen, *supra* note 66.

⁶⁹ *Id.*

⁷⁰ Lisa Backus, *State to Give Inmates Tablets, Charge Fees*, CT NEWS JUNKIE (Jan. 25, 2021), <https://ctnewsjunkie.com/2021/01/25/state-to-give-inmates-tablets-charge-fees/>.

⁷¹ *Id.*

⁷² Act of June 16, 2021, Conn. Pub. Act No. 21-54.

⁷³ Press Release, State Conn. Dep’t Corr., Department of Corrections Begins Rollout of Computer Tablets for Inmates at the MacDougall-Walker Correctional Institution (Jan. 22, 2022), <https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/Coronavirus-Press-Releases-2021/DOC-Press-Release-reTablets-012221.pdf>.

⁷⁴ *Id.*

⁷⁵ Backus, *supra* note 70.

minute during video visits, or per visit, along with credit card fees.⁷⁶ These charges can quickly add up for low-income individuals and for incarcerated individuals who use their funds for personal items while they are incarcerated.

c. The Difficulty in Accessing Incarcerated Parents for Visitation

Understandably, it is difficult for incarcerated parents to have access to their children during their time in jail or prison. There are restrictions for jail or prison visitors, lack of access to communication tools, and physical separation between the incarcerated individual and their families. In person contact remains relatively rare.⁷⁷

Additionally, when a parent is incarcerated, there is no consideration regarding the distance between their correctional facility and where their family resides, so access to their children can become impossible. Research shows that around sixty-three percent of people in state prison are incarcerated over one hundred miles away from their families.⁷⁸ This data also reflects that about over half of incarcerated people in a facility less than fifty miles from home receive a visit, but as the mileage away from home increases, the likelihood of visitation decreases (for example, an incarcerated person who lives between 101 and 500 miles away only has an approximately twenty-six percent chance of receiving a visit).⁷⁹

Four states, including Hawaii, resolve their prison crowding problem by shipping approximately 7, 200 inmates to out-of-state facilities run by for-profit companies: “California prisoners go to Arizona and to the Mississippi Delta; Vermont prisoners go to a remote corner of Michigan; and Arkansas prisoners go to Texas. The U.S. Virgin Islands also sends its prisoners away, to Florida, Arizona and Virginia.”⁸⁰ Individuals from large cities are likely to be imprisoned in rural state prisons which can be hundreds of miles away from their homes and federal inmates can be held at any federal prison in the United States.⁸¹ This inaccessibility can lead to families spending thousands of dollars; a visit from Hawaii to an incarceration center in Arizona can cost anywhere from 2,000 dollars and upwards.⁸²

⁷⁶ BERNADETTE RABUY & PETER WAGNER, SCREENING OUT FAMILY TIME: THE FOR-PROFIT VIDEO VISITATION INDUSTRY IN PRISONS AND JAILS 19 (Prison Pol’y Initiative 2015).

⁷⁷ DAVID MURPHEY & P. MAE COOPER, PARENTS BEHIND BARS: WHAT HAPPENS TO THEIR CHILDREN? 9 (Child Trends, 2015).

⁷⁸ Bernadette Rabuy & Daniel Kopf, *Separation by Bars and Miles: Visitation in State Prisons*, PRISON POL’Y INITIATIVE (Oct. 20, 2015), <https://www.prisonpolicy.org/reports/prisonvisits.html>.

⁷⁹ *Id.*

⁸⁰ Eli Hager and Rui Kaneya, *The Prison Visit that Cost My Family \$2,370*, MARSHALL PROJECT (Apr. 12, 2016), <https://www.themarshallproject.org/2016/04/12/the-hawaii-prison-visit-that-cost-my-family-2-370>.

⁸¹ *Id.*

⁸² *Id.*

Incarcerated parents are not granted parental visitation rights, and the effort to have children visit with incarcerated parents is subject to what is in their best interests and what is accessible. One grandmother, Jean White, reported that due to the distance between her son and his children – they were all from Vermont and he was incarcerated in Michigan – they were only able to visit their father once a year, if that.⁸³ Placing inmates such a far distance away from their families and their children can only adversely affect both parties. Studies have shown that limited access to in-person visitations can affect inmates positively.⁸⁴ Having additional visits from family members reduces the risk of recidivism once an incarcerated person leaves prison.⁸⁵

Additionally, physical visitation of prison facilities can be frustrating and difficult to achieve. Some states have restrictions on time frames – North Carolina only allows one visit per week for two hours – other states require prospective visitors to give their social security numbers, effectively excluding visitors that are undocumented.⁸⁶

During the COVID-19 pandemic, when in-person visits were prohibited, Departments of Correction began to realize how expensive phone calls were for inmates.⁸⁷ A study showed that phone calls between parents and their children increased the quality of their relationship, especially those who had more frequent phone calls.⁸⁸ While the high cost of phone calls was resolved through legislation in Connecticut, in-person visits also have a positive effect on incarcerated individuals.

Further, prisons have gone so far as to ban sending mail, and permitting inmates to send postcards only, leading to expenses thirty-four times as much as it would cost an inmate to send a fully-fledged letter.⁸⁹ Harsher Departments of Correction, such as the one found in Maricopa County, Arizona instituted a post-card only policy in the county jail, after which, 14 states followed suit.⁹⁰ The implementation of these harsh restrictions on methods of communication as simple as sending letters can adversely affect the incarcerated parent-child relationship in that mail communication is one of the most common forms of communication.⁹¹ In

⁸³ *Id.*

⁸⁴ Leah Wang, *Research Roundup: The Positive Impacts of Family Contact for Incarcerated People and Their Families*, PRISON POL'Y INITIATIVE (Dec. 21, 2021), https://www.prisonpolicy.org/blog/2021/12/21/family_contact/.

⁸⁵ *Id.*

⁸⁶ Rabuy & Kopf, *supra* note 78.

⁸⁷ Lindsey Van Ness, *COVID Froze Prison Visits, Spotlighting High Cost of Phone Calls*, PEW CHARITABLE TRUSTS (Aug. 4, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/08/04/covid-froze-prison-visits-spotlighting-high-cost-of-phone-calls>.

⁸⁸ Danielle L. Haverkate & Kevin A. Wright, *The Differential Effects of Prison Contact on Parent-Child Relationship Quality and Child Behavioral Changes*, 5 CORR.: POL'Y, PRAC., & RSCH. 222, 237–39 (2018).

⁸⁹ Wang, *supra* note 84.

⁹⁰ *Id.*

⁹¹ See Haverkate & Wright, *supra* note 88, at 237–38.

fact, restricting access to visits can even be particularly harmful for prisons – a prison that banned in-person visits saw an increase in assaults within their facility.⁹²

Even if families can access the resources it takes to visit a faraway prison – transportation, time, accessibility – upon arriving at a facility they may face searches and prison-like conditions that can be traumatizing. In-person visits may be upsetting to children and cause a reaction in which the children feel that they are also subject to incarceration due to the conditions of the visiting locations.⁹³ This, among the plethora of difficulties in access to incarcerated individuals, makes it difficult to encourage visitation between incarcerated parents and their minor children. Despite the difficulties that some facilities implement to encourage inmate-family member contact, prison visitation is crucial for the overall well-being of the family unit.

V. POSSIBLE OPTIONS FOR REFORM AND THE IMPORTANCE OF VISITATION

Despite the difficulties, communication between incarcerated individuals and their families is crucial for the maintenance of relationships outside of the incarceration setting. This can be done with the use of: (1) alternative methods of visitation, (2) facilities specifically created to enable children to visit their incarcerated parents, and (3) overall reform to benefit incarcerated individuals.

a. Alternative Methods of Communication to Promote Relationships

Visits with family and otherwise generally maintaining family relationships have been found to be some of the best ways to reduce recidivism in incarcerated individuals.⁹⁴ States' legislatures should focus on access for incarcerated individuals in order to prevent released individuals from reoffending. The simplest method of contact, phone calls, are only just now becoming more accessible: in fact, Connecticut was the first state in the United States to pass legislation making phone calls for incarcerated individuals free.⁹⁵ Other states should implement similar legislation to allow for free phone calls, rather than utilizing for-profit contracts with telephonic providers.⁹⁶

An additional way to assist incarcerated parents' access to their children is the use of video visitation to help supplement in-person visitation.

⁹² Wang, *supra* note 84.

⁹³ MURPHEY & COOPER, *supra* note 77; *see also* Joyce A. Arditti, *Child Trauma Within the Context of Parental Incarceration: A Family Process Perspective*, 4 J. FAM. THEORY & REV. 181, 193–95 (2012).

⁹⁴ Rabuy & Kopf, *supra* note 78.

⁹⁵ Act of June 16, 2021, Conn. Pub. Act No. 21-54.

⁹⁶ *See generally* Human Rights Defense Center, *Rates and Kickbacks*, PRISON PHONE JUST., <https://www.prisonphonejustice.org> (last visited Sept. 16, 2022) (noting that prison phone contracts are based on a commission model that results in inflated costs of prison and jail phone calls).

With the development of technology, and as prisoners get more access to tablets, the use of video visitation may allow children to have more contact even if only virtually. Having access to video visits actually increases the amount of the average number of in-person monthly visits.⁹⁷ Encouraging user-and-budget-friendly video visitation software into prisons would help states overall, as data suggests that recidivism is lowered when an inmate has more contact with their families.⁹⁸ States must be careful, however, to avoid for-profit contracts with telecommunications companies that charge inmates per minute or per virtual visit. A better system would be that inmates could receive free visits so long as communication is with their child.

b. Change in Institutions to Benefit Children and Their Incarcerated Parents

Facilities in Connecticut and more broadly, in the United States, should place a focus on family-friendly visitation, whether it is an adjacent facility, or an area specially designated to host children and their families. These facilities or spaces should be child-friendly, providing the families with safe activities and methods to create memories together, such as providing games or photographs. An exemplary program is Hour Children, a provider of services for incarcerated women and children in New York State.⁹⁹ Hour Children provides a residential nursery at Bedford Hills Correctional Facility so that mothers can live with their infants for up to 18 months and a Child Development Center to provide care for those infants while the mothers attend school or programming during the day. Additionally, they provide playrooms at two correctional facilities to encourage “child-friendly environment, with age-appropriate games and . . . arts projects to encourage mother-child bonding.”¹⁰⁰ Most notably, their Visiting and Family Assistance Program at the Rose M. Singer Center Correctional Facility helps connect incarcerated mothers to their families by helping them access virtual visitation, counseling, advocates for family court, and other community referrals.¹⁰¹

Connecticut could easily implement some sort of facility at their women’s prison, since there is only one in the state.¹⁰² Facilities may need to have Department of Correction employees, and other workers staffed which may assist in the transition for children from the outside world to a

⁹⁷ Wang, *supra* note 84.

⁹⁸ Rabuy & Kopf, *supra* note 78.

⁹⁹ *Who We Are: Hour Story*, HOUR CHILDREN, <https://hourchildren.org> (last visited Sept. 9, 2022).

¹⁰⁰ *Prison-Based Family Services Programs*, HOUR CHILDREN, <https://hourchildren.org/how-we-help/prison-based-family-services-programs/#:~:text=Hour%20Children%20helps%20women%20to,that%20may%20impact%20her%20children.> (last visited Jan. 20, 2023).

¹⁰¹ *Id.*

¹⁰² *Frequently Asked Questions*, CONN. STATE DEP’T CORR., <https://portal.ct.gov/DOC/Common-Elements/Common-Elements/Frequently-Asked-Questions-FAQ> (last visited Sept. 24, 2022).

closed-in facility, and assistance coping with seeing their parents incarcerated. This may include social workers, case workers, or other social service employees tasked with assisting families within visitation. However, this money would be well spent, considering that Connecticut pays over 125 million dollars for foster care expenditures, and over 170 million dollars for congregate care expenses.¹⁰³ Connecticut is one of only four states that allows extended visitation with children and incarcerated individuals, but eligibility guidelines are strict, and inmates only have access to these types of visits every ninety days.¹⁰⁴ Although the conjugal visit system is better than nothing, children with incarcerated parents deserve bonding time in spaces that are child friendly.

Additionally, alongside intra-prison facilities to promote the reunification of families, intra-prison programming should be implemented that allows incarcerated parents to learn more about parenting, child development, and the importance of family bonds. Connecticut's facilities currently do offer some forms of parent programming, but they are limited in scope.¹⁰⁵ The implementation of parent programming should include virtual visits and other methods of communication that assist parents in actually connecting and communicating with their minor children.

c. Overall Reform

Additionally, as previously discussed, the ASFA incentivizes states to finalize adoptions, by providing financial payments.¹⁰⁶ Federal funding should be equalized, and states should receive similar incentives for when families are reunified. Even if these cases are rarer, equalizing incentives will encourage states to truly consider what is better for the minor child.

States can also consider implementing legislation similar to that enacted in New York. In 2021, Governor Andrew Cuomo signed into law "April's Bill" or the "proximity bill" which requires that the Department of Corrections and Community Services begin housing incarcerated individuals in prisons closest to the residences of their children to help facilitate visitation and family support.¹⁰⁷ This, however, will only be effective if states consider the locations of their prisons, and potential

¹⁰³ CHILD WELFARE AGENCY SPENDING IN CONNECTICUT, CHILD TRENDS 5 (2018).

¹⁰⁴ Thomas Dutcher, *Extending the Ties that Bind: Considering the Implementation of Extended Family Visits in Prisons*, EBP SOC'Y: EDUC. BLOG (Sept. 7, 2021), <https://www.ebpsociety.org/blog/education/487-extending-the-ties-that-bind>; see also State Conn. Dep't Corr., Admin. Directive 10.6 (2020), <https://portal.ct.gov/-/media/DOC/Pdf/Ad/AD10/AD1006.pdf>.

¹⁰⁵ See generally *Programs and Services*, CONN. STATE DEP'T CORR., <https://portal.ct.gov/DOC/Common-Elements/Common-Elements/Program-and-Services> (last visited Sept. 24, 2022).

¹⁰⁶ DURKIN ET AL., *supra* note 1, at 11.

¹⁰⁷ Kevin Bliss, *Law Passes Requiring Parents in New York Prisons to be Housed Close to Their Children*, PRISON LEGAL NEWS (June 1, 2021), <https://www.prisonlegalnews.org/news/2021/jun/1/law-passes-requiring-parents-new-york-prisons-be-housed-close-their-children/>.

relocation of those facilities. Other suggestions include providing free transportation methods to families who want to visit prison facilities with the use of federal grants or crowd fundraising. One program, “Get on the Bus,” was implemented in California with the use of volunteers and supporters to unite children with their parents in prison.¹⁰⁸ This program also seeks to eliminate mandatory minimum sentences for non-violent offenses, and advocates for community-based alternatives to incarceration for primary caregiver women with dependent children.¹⁰⁹

VI. CONCLUSION

More comprehensively, the United States should consider overall prison reform in the shape of fewer prison sentences and less prison time. Despite the decrease in the number of incarcerated individuals, the United States has the highest incarceration rate of any country in the world.¹¹⁰ As set within this Note, the incarceration of a parent can have life-changing consequences for minor children. As such, the United States should consider an overall reform of incarceration to benefit children, or, at the bare minimum, reforms within the incarceration systems that currently exist that will at the very least support those who are most vulnerable within it.

¹⁰⁸ Get on the Bus, *Who We Are*, CTR. FOR RESTORATIVE JUST. WORKS, <https://crjw.org/get-on-the-bus/> (last visited Sept. 10, 2022).

¹⁰⁹ Get on the Bus, *History*, CTR. FOR RESTORATIVE JUST. WORKS, <https://crjw.org/get-on-the-bus/history-gotb/> (last visited Sept. 10, 2022).

¹¹⁰ *United States Profile*, PRISON POL’Y INITIATIVE, <https://www.prisonpolicy.org/profiles/US.html> (last visited Sept. 10, 2022).