

The Modern American

Volume 2

Issue 2 Summer 2006 Commemorative Sylvania
Woods Issue

Article 7

2006

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Recommended Citation

Levy-Pounds, Nekima. "Children of Incarcerated Mothers and the Struggle for Stability." *The Modern American*, Summer 2006, 14-17.

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Keywords

African-American families, Drug-related crimes, drug-trafficking laws, maternal incarceration

CHILDREN OF INCARCERATED MOTHERS AND THE STRUGGLE FOR STABILITY

*By Professor Nekima Levy-Pounds**

As though poor African-American families do not have enough problems to contend with stemming from the lingering effects of slavery, Jim Crow laws, and the institutional racism of the last twenty years or so, these families have been forced to square off against the U.S. government in the so-called “war on drugs.” In the mid-1980s when lawmakers initiated the war on drugs, their purported intent was to catch and incarcerate drug kingpins and high-level dealers who were thought to be responsible for the increased accessibility of illegal drugs in the U.S.¹ To accomplish this goal, Congress implemented harsh federal sentencing guidelines and mandatory minimum sentences that called for convicted drug offenders to serve lengthy prison terms for involvement in drug-related crimes.² Though Congress’ intent in launching the war on drugs was laudable, after twenty years and hundreds of billions of dollars being spent to fight the war, there has yet to be a marked decrease in the flow of illicit drugs in the U.S.³

Yet, since the war on drugs began, tens of thousands of first-time, non-violent offenders, and low-level dealers, including a substantial number of women, have been added to the prison rolls in nearly every state.⁴ According to the Bureau of Justice Statistics (“BJS”), in 1981, 26% of incarcerated women were serving time for involvement in drug-related crimes.⁵ However, recent estimates indicate that over 72% of women serving time in U.S. prisons are incarcerated for drug trafficking convictions.⁶ Additionally, while African Americans account for approximately 13% of the U.S. population, African-American women account for nearly 50% of state female prison populations and 35% of females incarcerated in federal prison.⁷ Interestingly, these women are not kingpins and high-level dealers,⁸ but are often the girlfriends, wives, and relatives of low-level dealers. Sadly, they are also, more often than not, the mothers and primary caregivers of young children.⁹

Women who have been caught and incarcerated for seemingly violating drug-trafficking laws are least likely to have a substantial impact on the flow of drug trafficking in the U.S. However, astonishingly, these women are likely to serve longer sentences than drug kingpins and suppliers due to the unfair application of drug conspiracy laws and inordinate levels of prosecutorial discretion.¹⁰ Under current drug conspiracy laws, a woman’s level of involvement and motivation for participating in a drug-related crime is irrelevant to prosecutorial discretion in bringing charges against her.¹¹ Therefore, in many cases, women are more likely to serve a prison sentence that is disproportionate to their level of participation in a drug-related activity. As 95% of drug trafficking cases end in guilty pleas due to inequitable bargaining power and access to information when dealing with prosecutors,¹² a woman may admit guilt at the urging of her public defender, even if she has never actually sold, manufactured,

or distributed drugs. Thus, off to prison she goes. Then the eminent question becomes: “But where do her children go?”

WHAT HAPPENS TO CHILDREN WHOSE MOTHERS ARE INCARCERATED

Nearly two thirds of incarcerated women are mothers of young children. In fact, approximately 200,000 U.S. children, under the age of 18, are “parented” by an incarcerated mother.¹³ Once a mother has been incarcerated, her children are most often left at the mercy of state foster care systems and the courts to make temporary and long-term care arrangements.¹⁴ This occurs because many of the fathers of these children are often already incarcerated, another disparate result of the war on drugs on poor African-American men.¹⁵ The fragile families left behind, overwhelmingly consisting of poor African-American female-headed-households, are often the last line of defense to ensure family preservation in poor African-American communities.¹⁶ Thus, when single mothers are incarcerated, these fragile families become dismantled and the futures of their children are placed in jeopardy.¹⁷

Incarcerated mother’s children, who range in age from a few days old to age eighteen, may be sent to live with relatives, placed in foster homes with strangers, or placed in institutional settings such as group homes.¹⁸ In addition to the trauma these children face as a result of being separated from their mothers - often their primary and sometimes only caregivers - these children face additional emotional and psychological distress stemming from the break-up of their families and placement in foreign environments.¹⁹ A virtual lack of attention to and dearth of research focusing on the impact of maternal incarceration on minor children forces these children to navigate state foster care systems with little or no access to resources and little control over their lives in general.²⁰

PLACEMENT WITH FINANCIALLY DISTRESSED RELATIVES

In some instances, when a mother is incarcerated, she may be fortunate enough to have parents or other relatives willing to provide care for her children. Although there are benefits to this type of arrangement, there are setbacks as well which may warrant concern. Firstly, due to the substantial increase in the number of single mothers facing incarceration, there has been an unprecedented increase in the number of elderly grandparents providing full-time care for their grandchildren.²¹ A number of these grandparents are disabled or have chronic health issues such as diabetes or high blood pressure.²² Once grandparents are placed in the position of providing full-time care for grandchildren, their existing health conditions may be exacerbated. Moreover, beyond the natural stresses of child-rearing, grandparents

may find the heightened stress of raising teenagers overwhelming. Despite such consequences to themselves, elderly grandparents opt to provide care for their motherless grandchildren to prevent these children from entering state foster care systems.

As the majority of incarcerated African-American women hail from poor families,²³ it is also likely that their parents and other relatives charged with caring for their children are extremely poor. Although these relatives may be struggling to provide adequate financial support for their own families, they may be tempted to stretch already scarce financial resources to help support children whose mothers are incarcerated. While some families do receive foster care subsidies to help meet the needs of children in their care, these funds are often insufficient, forcing families to fall deeper into poverty and marginalization.²⁴

PLACEMENT IN BROKEN FOSTER CARE SYSTEMS

If an incarcerated mother has no available relatives that are willing and able to care for her children, the children will inevitably be sent to live with strangers through foster care placements.²⁵ These children face a myriad of problems when they enter foster care. For example, these children are likely to suffer severe emotional and psychological distress, partly stemming from the trauma of being separated from their mothers, and partly due to the uncertainty that goes along with being displaced from their homes.²⁶ In addition to the stress, anxiety, and fear that accompanies being placed in an unfamiliar environment, these children may also be separated from their siblings,²⁷ which can increase their level of emotional distress. Further, these children may experience a form of post traumatic stress disorder and may experience perpetual grieving or mourning processes, which can manifest as feelings of sadness, anger, hurt, and extreme emotional anxiety.²⁸ Not surprisingly, these children are likely to use drugs, alcohol, and sexual intimacy as coping mechanisms to deal with the stress, grief, and frustration resulting from having a parent in prison.²⁹ In addition to everything else, these children may suffer shame, low self-esteem, and insecurity because of the stigma of having an incarcerated parent and being placed in the foster care system.³⁰

As every child is different, it is impossible to predict how he or she will adapt to life with a parent behind bars. While some children are resilient and seemingly able to adjust to their new living arrangements, others are more likely to exhibit violent behavior and aggression.³¹ Because most public schools are ill-equipped to handle the diverse and multi-faceted needs of these children, their cries for attention may go unnoticed or simply be dismissed as behavioral problems.³² For a variety of reasons, schools may fail to intervene by providing access to appropriate services for these children and may suspend or expel students who are actually in need of emotional or psychological counseling services.³³

As a result, although these children face extraordinary circumstances in their personal lives, and may preemptively be labeled as “problem children.” Such categorization may lead to separation from their classmates or being disciplined for acting

outside the scope of seemingly normative behaviors during the school day.³⁴ At the same time, schools faced with the pressure to meet federal testing standards or risk losing precious federal funding, may opt to place these children in special education. By doing so, schools are consigning these children unintentionally to the fast track toward academic failure. Meanwhile, the mental, emotional, and psychological needs of these children will likely go unmet.

Additionally, children in foster care face the likelihood of being shuffled from foster home to foster home with little regard for the impact that such constant disruption will have on their emotional, mental, or physical health. Although the vast majority of foster parents provide loving, caring homes to children in need, there is always the risk that the health, safety, and security of children will be jeopardized by placing them in the foster care system.³⁵ While foster care was originally envisioned to provide safe shelter for displaced children, in some states it has become a proverbial breeding ground for sexual and physical abuse of foster children.³⁶

Notably, a great deal of abuse of foster children occurs at the hands of other children in foster care.³⁷ A recent study of a group home in Baltimore, Maryland showed that sexual abuse for foster children occurred at a rate of more than 28 times the rate of sexual abuse in the general population.³⁸ Other studies, supporting lawsuits filed on behalf of children abused while in foster care, show disturbingly high levels of child-on-child sexual abuse.³⁹ In some instances, the results of these studies have led to civil judgments amounting to tens of millions of dollars, against state foster care systems.⁴⁰

These studies illustrate the potentially grave consequences of separating children from their mothers that may, with appropriate social services and financial resources, provide more loving, caring, and safer homes than state foster care systems. Furthermore, when one calculates the billions of dollars being spent by states to operate foster care systems, coupled with the expense of lawsuits; it would make more sense from an economic and societal perspective to invest American tax dollars in programs that promote family preservation and upward mobility. This alternative seems more prudent than the current practice of hastily dismantling fragile families in the name of the war on drugs.

LACK OF PARENT-CHILD CONTACT DURING MATERNAL INCARCERATION

While a mother is incarcerated, it may be difficult, if not impossible, for her to remain connected to her children. If a mother is incarcerated in federal prison, she may be relocated to any federal prison in the U.S., without regard for the impact of her relocation on her children.⁴¹ Since most incarcerated women and their children are poor, oftentimes these children are unable to afford trips out of state to visit their mothers in prison.⁴²

Furthermore, even when a mother is serving time in state prison, it may be difficult for her children to have ongoing visits with her.⁴³ Since the rate of female incarceration is still rela-

tively small compared to male rates of incarceration, most states have only one or two prisons for women.⁴⁴ Additionally, many of the prisons for women are located in rural parts of a given state, making transportation from urban areas difficult for children to attain.⁴⁵ To date, only a handful of programs exist to help ease the burden on children of incarcerated mothers by providing access to transportation for children wishing to visit their mothers in prison. Due to many of these barriers, the rate of mother/child visitation has drastically declined over the years. Sadly, 54% of women in 1999 had never received a single visit from their children, as compared with 8% of incarcerated women in 1978.⁴⁶

Even when children are fortunate enough to be able to travel to prisons to visit their mothers, the trauma caused by actually visiting a prison may be too overwhelming for children. In order to visit an incarcerated mother, most prisons have protocols such as security checkpoints, physical searches, and the sustained presence of armed correctional officers which may frighten children or cause them to experience psychological distress.⁴⁷ Beyond that, some correctional departments, such as the State of California, have implemented rules prohibiting children over age seven, for example, from sitting on their mothers' laps during visits.⁴⁸ At most, children are only able to hug their mothers once upon entry and once upon exit. Such an inane rule, at least as far as young children are concerned, can contribute to feelings of emotional detachment and insecurity for children longing for maternal affection.⁴⁹ As a result, children may feel more traumatized and overwhelmed once they leave prison than when they arrived.

Additionally, for some children, even telephone contact with their incarcerated mothers is a luxury they cannot afford. The high cost of collect telephone calls from incarcerated mothers stretches a poor family's resources even further. Sadly, some states benefit from the desire of family members to contact relatives by telephone. The State of California for example, receives up to \$35 million a year from telephone companies as commission on collect call services provided between inmates and those outside prison walls.⁵⁰ Thus the exorbitant cost of collect telephone calls often may force poor families to decide between remaining in contact with an incarcerated loved one and putting food on the table.

Even when a family is provided with a foster care subsidy, the amount of money provided is usually not enough to cover transportation expenses and other costs associated with maintaining the parent-child bond during a mother's incarceration. Additionally, when children are placed in a non-relative foster home arrangement, the foster parent is under no real obligation to facilitate contact between an imprisoned mother and her children. Therefore, for many children, this inability to maintain ongoing contact with their mothers can often increase their sense of anger and frustration about having a mother behind bars.

For some children, separation from their mothers will end once their mothers are released from prison; meanwhile, a growing number of children will never be reunited legally with their mothers. In 1997, Congress passed the Adoption and Safe Families Act ("ASFA") as a purported attempt to limit the amount of time children spend languishing in state foster care systems.⁵¹

Under ASFA, if a child has been in foster care for 15 of the last 22 months, the state has the right to terminate a parent's rights and place that child on the fast-track for adoption.⁵² While some states have adhered to the recommended guidelines established under ASFA for termination of parental rights, other states have adopted even shorter time frames prior to permanently severing a parent-child relationship.⁵³ The underlying presumption supporting ASFA is that children in foster care receive a greater benefit by being adopted, rather than being reunified with their mothers after release. Thus, ASFA has the unintended effect of creating double punishment for incarcerated mothers - the emotional and psychological distress caused by physical separation during incarceration and the anguish of becoming legal separated from their children. Unfortunately, it is not clear whether the enactment of ASFA alone has reduced "foster care drift," as approximately 20% of children age out of foster care, many of whom are unprepared for life outside the foster care system.

PIPELINE TO PRISON FOR CHILDREN OF INCARCERATED MOTHERS

The severe emotional and psychological trauma that some children face as a result of being separated from their mothers may cause these children to behave in ways that virtually guarantees their involvement in the juvenile justice system, and in some cases, the adult criminal justice system. Recent studies confirm that children of incarcerated parents are more likely than children in the general population to end up behind bars. As can be expected, these children often find unconventional ways to deal with the pain they face stemming from the break-up of their families. These coping mechanisms may include violence, delinquency, and involvement in illicit drug use and drug trafficking.⁵⁵ In fact, children of incarcerated parents are also more likely to participate in gang-related activities as a means of substituting the family they lost "to the system," arguably paving the way for future involvement in the criminal justice system.⁵⁶

Though many children of incarcerated mothers are suffering internally from the pain of maternal separation, they may also experience an emotional desensitization which minimizes their ability to feel pain for others. This indifference to harm is arguably partly to blame for disturbing levels of young male violence in inner city communities. In particular, poor, young African-American men may be especially susceptible to masking emotional distress due to societal expectations of machismo and bravado.⁵⁸

Unfortunately, law enforcement officers, legislators, nor members of the judiciary do an adequate job of assessing these underlying causes of juvenile delinquency. Thus, these children, often bereft of adequate access to counsel and maternal input, due to parental incarceration, are forced to navigate the juvenile justice system, and more increasingly the adult criminal justice system, without sufficient protection and attendance to their needs.

In conclusion, given the disproportionate and deleterious impacts of the war on drugs on fragile African-American families, Congress needs to repeal drug sentencing laws, and commit

to a holistic approach to address underlying socio-economic conditions which fuel drug-related involvement. Instead of continuing to funnel hundreds of billions of dollars into a largely ineffective war on drugs, Congress should redirect its spending to build programs that increase access to quality education for poor children, provide comprehensive job training and child care assis-

tance for families in need, and promote family preservation and upward mobility for poor families. Until our government decides to loosen its reliance on over-incarceration to address drug-related crime, we can expect to see tens of thousands more innocent children become casualties of the war on drugs.

ENDNOTES

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¹ See generally Marc Mauer, *Race to Incarcerate, The Sentencing Project* 76 (New Press 1999); see also Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987 (codified as amended in scattered sections of 18 U.S.C. & 28 U.S.C.); Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207; Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181; see also U.S. GAO REP. TO THE CHAIRMAN, SUBCOMM. ON CRIME AND CRIMINAL JUSTICE, COMM. ON THE JUDICIARY, H.R., MANDATORY MINIMUM SENTENCES: ARE THEY BEING IMPOSED AND WHO IS RECEIVING THEM? 2-3 (1993) [hereinafter *GAO Report*].

² See *United States v. Booker*, 543 U.S. 220 (2005) (holding that the federal sentencing guidelines were merely presumptive, as opposed to mandatory for sentencing judges. The Court stated, "Ours of course, is not the last word. The ball now lies in Congress' court."); see also *Blakely v. Washington* 542 U.S. 296 (2004); *U.S. v. Fan Fan*, 543 U.S. 220 (2005). Although judges have more discretion in deciding sentence lengths for individual defendants, they have largely continued to follow the sentencing guidelines when making sentencing determinations. This reluctance by judges to deviate from the guidelines stems from their fear that Congress will enact legislative changes that reduce judges' discretion. As a result of the court's ruling in *Booker*, Congress is considering how best to restructure the federal sentencing guidelines; a move that might bring some relief for federal drug defendants wishing to avoid a determinate sentencing.

³ See Mauer, *supra* note 1.

⁴ See Mauer, *supra* note 1.

⁵ See Meda, Chesney-Lind, *Imprisoning Women: The Unintended Victims of Mass Imprisonment, in INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 79, 80 (Marc Mauer & Meda Chesney-Lind, eds., New Press 2002) (showing an increase in the number of incarcerated women from 12,000 in 1980 to over 90,000 by 1999).

⁶ See U.S. DEP'T. OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT by Lawrence A. Greenfield and Tracy L. Snell, *Women Offenders* 7 (1999, rev. 2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/wo.pdf> [hereinafter *Women Offenders*].

⁷ *Id.*, see U.S. DEP'T. OF JUSTICE, BUREAU OF JUSTICE STATISTICS BULL.: PRISON & JAIL INMATES AT MIDYEAR 2004 at 11 (2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjm04.pdf> (showing that in 2004, African-American women were twice as likely than Latinas to serve time in prison and four times as likely as White females to serve time in prison); see also Dorothy E. Roberts, *Criminal Justice and Black Families: The Collateral Damage of Over-Enforcement*, U.C. DAVIS L. REV. 1005, 1017 (2001).

⁸ See Myrna Raeder, *The Forgotten Offender: The Effect of Sentencing Guidelines and Mandatory Minimums on Women and Their Children*, 8 FED. SENT. REP. 157 (1995); See Meda Chesney-Lind, *THE FEMALE OFFENDER: GIRLS, WOMEN AND CRIME* 147 (Sage Publications 1997) (showing increase in female prison population, largely due to the war on drugs).

⁹ See *Women Offenders*, *supra*, note 6 at 7; see also Leslie Acoca & Myrna S. Raeder, *Severing Family Ties: The Plight of Nonviolent Female Offenders and Their Children*, 11 STAN. L. & POL'Y REV., 135-36 (1999).

¹⁰ See 16 AM. JUR. 2D CONSPIRACY § 41 (2005), *Direct or Circumstantial Evidence* (stating that a conspiracy may be proven by circumstantial evidence); see also David Bjerk, *Making the Crime Fit the Penalty: The Role of Prosecutorial Discretion Under Mandatory Minimum Sentencing*, JOURNAL OF LAW AND ECONOMICS (2005), available at http://socserv.memaster.ca/bjerk/JLE_Oct05.pdf; see also Alexander Smith & Harriet Polack, *Curtailing the Sentencing Power of Trial Judges: The Unintended Consequences*, COURT REVIEW 6 (American Judges Association 1999), available at <http://aja.ncsc.dni.us/courtrev/cv36-4/36-4Index.pdf>.

¹¹ Heneefah A. Jackson, Comment, *When Love is a Crime: Why the Drug Prosecutions and Punishments of Female Non-Conspirators Cannot be Justified by Retributive Principles*, 46 HOW. L.J. 517 (2003).

¹² See U.S. DEP'T. OF JUSTICE, BUREAU OF JUSTICE STATISTICS BULL.: FELONY SENTENCES IN STATE COURTS 2002 (2004), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fssc02.pdf>; Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463, 2464-65 (2004); Alexandra Natapoff, *Speechless: The Silencing of Criminal Defendants*, 80 N.Y.U. L. REV. 1449 (2005); SEE U.S. SENTENCING COMMISSION, *Guilty Pleas and Trials in Each Circuit and District tbl.10* (2005), available at <http://www.ussc.gov/ANNRPT/2003/table10.pdf>.

¹³ See *Women Offenders* *supra* note 6.

¹⁴ See Child Welfare Information Gateway, *Foster Care: Numbers and Trends*, <http://nccanch.acf.hhs.gov/pubs/factsheets/foster.cfm> (last visited Jan. 27, 2006) [hereinafter *Foster Care*].

¹⁵ See *Women Offenders*, *supra* note 6 (illustrating that African-American men face disproportionate rates of incarceration, largely stemming from the war on drugs).

¹⁶ See Dorothy E. Roberts, *Criminal Justice and Black Families: The Collateral Damage of Over-Enforcement*, U.C. DAVIS L. REV. 1005, 1017 (2001); see also Velma LaPoint, *Prison Effect on the African-American Community*, 34 HOW. L. J. 537 (1991).

¹⁷ See Roberts, *supra* note 16.

¹⁸ See *Foster Care*, *supra* note 14.

¹⁹ See generally Marcy Viboch, *Childhood Loss and Behavioral Problems: Loosening the Links*, http://www.vera.org/publication_pdf/324_598.pdf (last visited Jul. 24, 2006).

²⁰ See also Children of Incarcerated Parents, A Bill of Rights, found online at <http://www.cwla.org/programs/incarcerated/billofrights.pdf>, [hereinafter *Children of Incarcerated Parents*]; see generally, Barbara Bloom & David Steinhart, *National Council on Crime and Delinquency, Why Punish the Children?* (1993).

²¹ See *Caught in the Net: The Impact of Drug Policies on Women and Families*, 2004, <http://www.nicic.org/Library/020392> [hereinafter *Caught in the Net*]; see also Leslie Acoca & Myrna S. Raeder, *Severing Family Ties: The Plight of Nonviolent Female Offenders and Their Children*, 11 STAN. L. & POL'Y REV., 135-36 (1999).

²² See generally Jennifer Gonnerman, *Life on the Outside: Prison Odyssey of Elaine Bartlett* (Farrar, Straus and Giroux 2004).

²³ See *Women Offenders*, *supra* note 6.

²⁴ See Gonnerman, *supra* note 22 (showing how the family's financial stability weakened during Elaine Bartlett's incarceration and was partly responsible for a series of unfortunate events that occurred and how Elaine's children and mother were often without food and other necessities during Elaine's incarceration).

²⁵ See *Foster Care*, *supra* note 14 (detailing that at least 38 % of children in foster care are African-American even though African Americans represent only 13 % of the U.S. population).

²⁶ See Child Welfare League of America, *What Happens to Children?* <http://www.cwla.org/programs/incarcerated/whathappens.htm> (last visited Mar. 22, 2006); see also Sandra Bass, Margie Shields & Richard Behrman, *Children, Families and Foster Care: Analysis and Recommendations*, in 14, THE FUTURE OF CHILDREN, 14-15 (2004).

²⁷ See Katherine Gabel & Denise Johnson, CALIFORNIA RESEARCH BUREAU: CHILDREN OF INCARCERATED PARENTS (Katherine Gabel & Denise Johnson, eds., Lexington Books 1995), <http://www.library.ca.gov/crb/00/notes/v7n2.pdf>.

²⁸ See generally, Vera Institute of Justice, *Childhood Loss and Behavioral Difficulties at School: Overview* (Jan. 1, 2006), available at http://www.vera.org/project/project1_1.asp?section_id=5&project_id=66.

²⁹ *Id.*; see also Viboch, *supra* note 19.

³⁰ See Vera Institute of Justice, *supra* note 29; see also "Caught in the Net," *supra* note 21 at 50.

³¹ See also Viboch, *supra* note 19.

³² See also Viboch, *supra* note 19.

³³ See also Viboch, *supra* note 19.

³⁴ See Children of Incarcerated Parents, *supra* note 20.

³⁵ See Wilson, *supra* note 36 (discussing the case of Rilya Wilson, a four year old girl who was taken from the home of her biological mother addicted to crack-cocaine and placed in the home of a foster parent who murdered her; also discussing the case of Gregory Love, as 23 month old who was taken from his birth parents because they failed a drug test, and placed in a foster home where he died of a purported head injury); see also NATIONAL COALITION FOR CHILD PROTECTION, FOSTER CARE VS. FAMILY PRESERVATION: THE TRACK RECORD ON SAFETY, available at <http://www.nccpr.org/newissues/1.html>.

³⁶ See Catherine Wilson, *Children Who Die or Are Murdered in Foster Care*, <http://www.ejfi.org/family/family-90.htm>; see also *Foster Care*, *supra* note 14.

³⁷ See *Foster Care*, *supra* note 14; see also *A Critical Look at the Foster Care System: How Wide-spread a Problem?*, <http://liftingtheveil.org/foster04.htm> (detailing that foster children are 28 more times likely to suffer sexual abuse) [hereinafter *Critical Look*].

³⁸ See *Foster Care*, *supra* note 14; see also *Critical Look*, *supra* note 37.

³⁹ See *Foster Care*, *supra* note 14; see also *Critical Look*, *supra* note 37; see also Tom Price, *Will Recent Changes Make At Risk Children Safer?*, CQ RESEARCHER 15 (April 22, 2005), <http://pewfostercare.org/press/files/cq042205.htm>.

⁴⁰ See *Critical Look*, *supra* note 37.

⁴¹ See Justin Brooks & Kimberly Bahna, "It's A Family Affair"—*The Incarceration of the American Family: Confronting Legal and Social Issues*, 28 U.S.F. L. REV. 271 (1994); see *Olim v. Wakinekona* 461 U.S. 238, 244-48 (1983) (holding distant inmate relocation, 2,500 miles from family across the Pacific Ocean, is constitutional).

⁴² See *Caught in the Net*, *supra* note 21 at 51; see also U.S. DEP'T. OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT by Christopher Mumola, *Incarcerated Parents and Their Children* 5, <http://www.ojp.usdoj.gov/bjs/pub/pdf/iptc.pdf> (2000)

⁴³ See Gonnerman, *supra* note 22.

⁴⁴ According to the U.S. Department of Justice, Bureau of Justice Statistics, women represent 6.6 % of the total state inmate population, see <http://www.ojp.usdoj.gov/bjs/crimoff.htm#findings>.

⁴⁵ See *Caught in the Net*, *supra* note 21 at 51.

⁴⁶ See Children of Incarcerated Parents, *supra* note 20.

⁴⁷ See *Caught in the Net*, *supra* note 21 at 51.

⁴⁸ See *Caught in the Net*, *supra* note 21 at 51.

⁴⁹ See *Caught in the Net*, *supra* note 21 at 51.

⁵⁰ See *Caught in the Net*, *supra* note 21 at 51.

⁵¹ See Adoption and Safe Families Act of 1997, 42 U.S.C. § 675 (2004).

⁵² *Id.*; see also Children of Incarcerated Parents, *supra* note 20.

⁵³ See Dorothy Roberts, *The Challenge of Substance Abuse for Family Preservation Policy*, 3 J. HEALTH CARE L. & POL'Y 72 (1999); see also Barbara White Stack, *When the bough breaks: Beaver County moves faster than average to sever parents' legal rights to their children*, PITTSBURGH POST-GAZETTE (Dec. 13, 1999), available at <http://www.post-gazette.com/registerate/19991213beaver1.asp>.

⁵⁴ See Casey Family Programs, *Outcomes for Youth Exiting Foster Care*, http://www.hunter.cuny.edu/socwork/nrcfcp/downloads/outcomes_for_youths_exiting_foster_care.pdf, (According to a four-year study conducted by the Casey Foundation of youth who had aged out of foster care, only half of the children had high school diplomas, about half were unemployed, 60 % of females had given birth to children of their own, and at least 60 % of the youth studied had been homeless at one point in time following their exit from foster care.); see also Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637, 661 (2006).

⁵⁵ See generally Aaron Kipnis, *Angry Young Men. How Parents, Teachers, and Counselors Can help "Bad Boys" Become Good Men* (Jossey-Bass, Inc. 1999).

⁵⁶ *Id.* at 145.

⁵⁷ *Id.*; see also J. Mark Eddy & John B. Reid, *The Antisocial Behavior of the Adolescent Children of Incarcerated Parents: A Developmental Perspective* 21 (Oregon Social Learning Center 2002); see also generally, Franklin Zimring, *American Youth Violence* (Oxford University Press 1998).

⁵⁸ See generally Dylan Conger & Timothy Ross, *Reducing the Foster Care Bias in Juvenile Detention Decisions. The Impact of Project Confirm* (Vera Institute of Justice 2001) http://www.vera.org/publication_pdf/146_182.pdf.