INCARCERATED PARENTS AND TERMINATION OF PARENTAL RIGHTS IN CONNECTICUT: RECOMMENDATIONS FOR REFORM

FREQUENTLY ASKED QUESTIONS

MARCH 2021

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When parents are incarcerated, many children are harmed twice over. First, when incarceration removes their parent from them. Second, when the state terminates parental rights because of the length of time the parent spends incarcerated. A federal law called the Adoption and Safe Families Act creates this risk of permanent family separation.

WHAT IS THE ADOPTION AND SAFE FAMILIES ACT (ASFA)?
Passed in 1997 ASFA is a federal law that shifted the goal of child-protection policy from family preservation to adoption. ASFA almost always requires states to move for termination of parental rights (TPR) when a child has been in foster care for 15 of the last 22 months.

HOW DOES ASFA IMPACT KIDS?
From 2006-2019, more than 32,000 children in the United States had an incarcerated parent whose parental rights were terminated. Nationally, ASFA caused a 250% increase in TPR for incarcerated parents. Severing families can cause lasting psychological harm to both children and parents. Furthermore, this termination leaves some children as legal orphans.

WHY IS ASFA WORSE FOR CHILDREN WITH PARENTS IN PRISON?
When deciding whether to approve TPR, judges consider factors such as whether the parent has kept in touch with their child or taken part in parenting programs. Seemingly simple steps that well-resourced parents who are not incarcerated may take, such as calling or spending an afternoon with their child, can be immensely challenging – if not impossible – for incarcerated parents. Many parents are incarcerated a great distance from their families; the cost to call in Connecticut is extraordinary – the highest rate in the country; and long waitlists can prohibit parents from participating in needed programs.

WHY NOW?
ASFA disproportionally harms Black and Latinx children, children living in poverty, and their parents. The COVID-19 pandemic has only exacerbated this disparity. As prisons across the country have decreased visitation, it’s even harder for families to keep in touch. When children don’t have the opportunity to maintain meaningful family ties, it compromises the public good and fiscal responsibility. Studies have demonstrated that maintaining strong family ties with children helps reduce parents’ chances of going back to prison once they are released. It may also decrease costly outcomes for kids, like rates of justice involvement, or disengagement from school, and poor physical and mental health.

WHAT CAN CONNECTICUT DO?
Connecticut has the ability to change this. The state can:
• Pause the TPR timeline for incarcerated parents and prohibit filing when length of detention is a significant contributing factor.
• Halt the timeline for TPR during the COVID-19 crisis.
• Give incarcerated parents a right to free phone calls with their kids and provide humane visitation.
• Establish a presumption that the state should file an exception to TPR when the parent is incarcerated.
• Provide that the state prioritize kin placements and give parents the right to decide who counts as kin.
• Collect and publish data pertaining to TPR for incarcerated and recently released parents, and those participating in residential treatment during their children’s placement with child welfare.
• Create a legal right to reconsideration of TPR when length of incarceration was a factor.
• Require that parents be informed of their TPR risks and rights prior to sentencing.
• Measure reunification efforts based solely on the means available to incarcerated parents.
• Create a racial equity commission to study and mitigate the impact of TPR on racial minorities.
• Train case workers, judges, and family lawyers to advocate for TPR exceptions.
• Expand alternatives to incarceration that judges may consider for parents.
• Require training about the collateral family consequences of criminal sentences for criminal attorneys and judges, and the importance of family impact statements.

Sources
4. How Prisons in Each State Are Restricting Visits Due to Coronavirus, THE MARSHALL PROJECT [Nov. 25, 2020],