

Parents in Prison

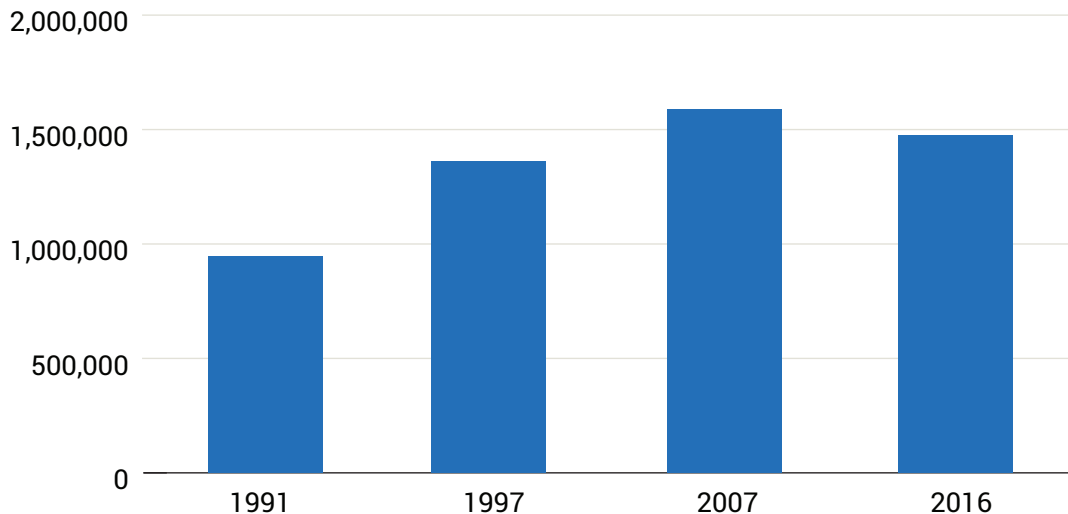
Half of imprisoned people in the United States are parents of minor children who are under age 18: 47% in state prisons and 57% in federal prisons.¹ Most imprisoned parents of minor children are fathers (626,800 fathers, compared to 57,700 mothers). But a higher proportion of imprisoned women (58%) than imprisoned men (47%) have minor children. Between 1991 and 2016, the latest year for which national data is available, the number of fathers in prison increased 48% and the number of mothers increased 96%. This brief examines trends in parental incarceration, strains on families, missed opportunities for interventions, as well as recent reforms.

Children with Parents in Prison

2.7 million children have a parent serving time in prison or jail on any given day, and over 5.2 million have had an incarcerated parent at some point during their lives.² The percentage of children who have experienced parental incarceration varies widely state to state, from a low of 3% in New Jersey to a high of 13% in Kentucky.³ The prevalence of parental incarceration also varies considerably by race. In 2018, 20% of Native children, 13% of Black children, 6% of Latinx children, and 6% of white children had experienced parental incarceration at some point in their lives.⁴ According to the National Institute

of Justice, the impacts of parental incarceration on children include psychological stress, antisocial behavior, academic suspension or expulsion, economic hardship, and criminal activity.⁵ The growth and decline of the number of children with imprisoned parents mirrors the changing incarceration rates of the past few decades. Between 1972 and 2009, the U.S. prison population increased nearly 700%, due to policy changes including long mandatory sentences, the declining use of parole, and more punitive responses to substance use disorders.⁶ Reforms over the past decade, including scaled back “war

Children with Parents in Prison, 1991-2016



Maruschak, L. M., Bronson, J., & Alper, M. (2021). *Parents in prison and their minor children: survey of prison inmates, 2016*. Bureau of Justice Statistics. <https://bjs.ojp.gov/library/publications/parents-prison-and-their-minor-children-survey-prison-inmates-2016>; Glaze, L. E., & Maruschak, L. M. (2010). *Parents in prison and their minor children: Bureau of Justice Statistics special report*. Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/pptmc.pdf>.

on drugs” policies and evidence-based sentencing and re-entry practices, have resulted in a gradual decline in the U.S. prison population, with significant variation across states.

There is no comprehensive data on the number of parents under community supervision (i.e., probation or parole). However, if the same proportion of women under community supervision were mothers as those in prison, 441,000 mothers of minor children were likely under some form of supervision in 2019.⁷

Contact with Children

Parental incarceration significantly impacts family living situations and childcare. In 2004, nearly half (49%) of all parents in state or federal prisons lived with their minor children prior to incarceration—two-thirds of mothers (66%) and just under half of fathers (47%).⁸ The United States’ enduring reliance on long sentences creates a lasting barrier between parents and children. In 2020, more than 200,000 people were serving life sentences—1 in 7 people in prison.⁹ For many incarcerated parents, interacting with their children outside of a prison will be impossible for the rest of their lives.

A large number of parents are incarcerated far from their homes, making contact with children difficult. On average, people in state prisons are incarcerated 100 miles from their previous address.¹⁰ In the federal prison system, the average distance between prison and home is 500 miles. Distance from prison facilities, amongst other barriers, makes in-person visits difficult—and in many cases, nearly impossible. Over half of parents in state prisons (59%) and just under half (45%) of parents in federal prisons did not have any personal visits with their minor children while in prison in 2004.¹¹

In nearly all states, people who give birth while incarcerated are separated from their child soon after. In some states, such as Alabama, mothers are routinely separated from their children just 24 hours after giving birth.¹² According to a Pregnancy in Prison Statistics study from 2016, there are an estimated 58,000 admissions of pregnant people to prisons and jails every year.¹³ In some states, rates of miscarriage,

premature birth, and cesarean sections were higher in prisons than in the general population.¹⁴

Missed Opportunities for Intervention

Parents in prison are more likely to have experienced health issues, economic instability, or abuse as compared to the general population.¹⁵ In 2004, 65% of parents in prison had a recent history of alcohol or drug use, 55% were currently experiencing mental health disorders, and 19% were physically or sexually abused prior to their incarceration.

The criminal legal system does little to ameliorate the pressing issues that incarcerated parents face. In 2004, only 14% of imprisoned parents received parenting or child-rearing classes, and only 31% participated in educational programs.¹⁶ Similar disparities exist for parents facing mental health challenges or substance use disorders, with only 30% of incarcerated parents with mental health disorders receiving treatment and 43% of those with substance use disorders receiving treatment.

Collateral Consequences

The collateral consequences of a criminal conviction present significant barriers to parents’ ability to support their children. In 1997, the Adoption and Safe Families Act (ASFA) terminated the parental rights of parents whose children had been in foster care for 15 of the most recent 22 months. This legislation had a detrimental impact on incarcerated parents, forcing many with longer sentences to forfeit their rights.¹⁷ In the five years following the enactment of ASFA, the number of cases terminating parental rights due to incarceration increased 250%, from 260 to 909.¹⁸ Between 2006 and 2018, 32,000 incarcerated parents lost their parental rights; 5,000 of these cases were based on incarceration status alone.¹⁹

Since 1996, the Welfare Reform Act (the federal Personal Responsibility and Work Opportunity Reconciliation Act) has banned people with felony drug convictions from federal cash assistance and food stamps programs—although states are able to opt out of or modify the ban. As of August 2021, twenty-one states still impose full or modified bans on Supplemental Nutrition Assistance Program (SNAP)

benefits for people with a felony drug conviction. Twenty-four states—and Washington DC—impose full or modified bans on Temporary Assistance for Needy Families (TANF) benefits for people with a felony drug conviction.²⁰ Because of the disparate racial effects of the criminal legal system, women of color are disproportionately impacted by TANF and SNAP bans.²¹ These restrictions continue despite mounting evidence that access to assistance programs lowers recidivism and helps justice-involved parents meet their children’s basic needs.²²

Reforms

Decarceration generally positively impacts families impacted by the criminal legal system, with reforms targeting drug and property offenses, such as California’s Proposition 47 and Oklahoma’s Senate Question 780, particularly helpful for reducing women’s imprisonment.²³ In addition, a number of recent reforms address the specific needs of imprisoned parents and their children. These reforms range from establishing family-based alternatives to incarceration to expanding services and ending SNAP and TANF benefit bans.

In the past decade, some states have begun taking family relationships into account during sentencing. In 2010, Washington State passed SSB 6639, allowing special sentencing for parents with minor children. The bill allows judges to impose a 12-month period of community supervision, treatment, and programming for some parents facing a prison sentence, or to release parents to electronic monitoring for up to the last 12-months of their sentence.²⁴ In 2016, Oregon established the Family Sentencing Alternative Pilot Program, a community-based program through which primary parents facing sentences for non-violent crimes can be diverted from prison and participate in supervision and treatment programs.²⁵ Hawaii now requires officials to consider parent-child relationships when deciding where a parent will be incarcerated, in an effort to minimize the distance required for children to travel to visit their parent.²⁶ Programs similar to those implemented in Washington and Oregon are currently operating in California, Illinois, Massachusetts, and Tennessee, and are under consideration in Oklahoma and Connecticut.²⁷

Some jurisdictions have also improved the treatment of pregnant people in the criminal legal system. The First Step Act, enacted in 2018, prohibits the shackling of pregnant people during delivery in federal prisons and encourages the placement of people in facilities closer to their families.²⁸ Despite this historic reform, many people will not benefit from the positive provisions of the Act, as most incarcerated women are held in state or local facilities. The Act also does not restrict the indiscriminate or arbitrary use of solitary confinement against pregnant people or the inadequate provision of OB-GYN care. In July 2021, Minnesota became the first state to authorize the release of pregnant and postpartum incarcerated people to community-based programs that offer pre- and post-natal care, parenting classes, educational and vocational programs, and mental health or chemical dependency treatment.²⁹

Currently and formerly incarcerated parents have also led reform movements to improve state-level laws regarding parental rights for people in prison. In 2010, New York passed the ASFA Expanded Discretion Bill, giving foster care agencies the ability to postpone filing for parental rights termination in cases solely based on a parent’s incarceration or engagement in a drug treatment program.³⁰ In 2013, Washington State passed the Children of Incarcerated Parents bill, which gave this same discretion to courts.

Federal funding for programs supporting system-impacted families has modestly increased, although more is needed to strengthen and grow the programs. In 2020, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) established the Second Chance Act Addressing the Needs of Incarcerated Parents and Their Minor Children.³¹ The Act funds local and state governments to develop programs supporting incarcerated parents with minor children. Also in 2020, Congress approved \$3,500,000 in funding for the creation of pilot programs supporting family-based alternative sentencing for nonviolent offenses.³²

Congress has also recently considered, but failed to pass, legislation to improve support for families impacted by the criminal legal system. The Finding Alternatives to Mass Incarceration: Lives Improved by Ending Separation (FAMILIES) Act, proposed in

November of 2020, would have created alternatives to incarceration for eligible parents and caregivers, while providing the necessary resources for their children to remain at home, and out of the foster care system.³³ Modeled after Washington State and Oregon’s programs, the Act would allow federal judges to divert parents into programs that offer education, employment services, parenting skills, mental health and substance abuse services, and housing assistance. In April of 2021, congressional representatives introduced the Making Essentials

Available and Lawful (MEAL) Act, which would lift SNAP and TANF restrictions for people with felony drug convictions.³⁴ Over 100 organizations working to advance human rights and solve world hunger have come out in support of the Act.³⁵

While recent reforms are encouraging, decarceration and re-investment in housing, healthcare, education, employment, and family services are vital to addressing the ongoing needs of families impacted by the criminal legal system.

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