

Preserving the Mother-Child Bond

Gail T. Smith, Attorney at Law, Senior Policy Advisor

Chicago Legal Advocacy for Incarcerated Mothers-Cabrini Green Legal Aid

I am the founder of CLAIM and have been practicing family law for incarcerated mothers and their families for 29 years. Most mothers in jail had sole responsibility for their children prior to arrest, which means that there are serious consequences for the children and for the mother's prospects to regain custody. The Illinois Department of Corrections states that 80-85% of women in Illinois prisons are mothers, and the jail, with its slightly younger population, is similar. Nationwide 2.7 million children have a parent who is incarcerated and 10 million children experience parental incarceration at some point in their lives.ⁱ The problem has grown enough to inspire a Sesame Street character and programming to support children through the separation.

The immediate crisis for a mother in jail is the separation itself and where the children are placed until she comes home. Bonding occurs through a cycle of stress (such as hunger) and stress reduction (feeding). Healthy childhood development depends on having at least one solid, dependable bond with a caregiver. Bonding and attachment are the building blocks of our relationships and decisions for the rest of our lives. Healthy attachment can support the child's mental health even in war-torn areas and violent neighborhoods. Sudden separation can result in emotional trauma, disrupting development. Losing your mother has been described as the worst thing, short of severe physical injury, that can happen to a young child. Further disruption, such as moving in with other caregivers and changing schools, can also disrupt child's life and contribute to poor academic performance, poor peer relationships, and insecurity.ⁱⁱ Denial of mother-infant bonding, or separation of babies or toddlers from the moms they have bonded with, can have a lifelong effect on the child's development, can cause depression for mothers worrying about children's well-being, can impede the mother-child relationship later, and can reduce the mother's ability to win legal custody of the child in court.

Two examples: Jennifer was arrested for defending herself from severe abuse. Her son was just beginning to walk and talk when she was charged. When she finally saw him again several months later, he was staring straight ahead, drooling. He no longer could walk or talk, and it took many months of therapy in the residential center where she was reunited with him to help him get back on track. Joanne was charged with a drug offense, and she was incarcerated when her son was seven months old. He came back home to her a year later. For years, they struggled with his overreaction and regression to infancy whenever he was upset. He attempted suicide and was hospitalized at age nine, still struggling with the separation trauma.

Legally, even a short time in jail can be disastrous. There is a risk that children in foster care may be lost forever if the mother is unable to prove that she made reasonable progress on her foster care service plan while in jail. Parenting classes, substance abuse treatment, counseling and regular visits can help mothers move toward reunification. But these services are primarily available only in Division 17, leaving hundreds of mothers and children at risk of permanent separation.

Short-term guardianship is a helpful tool since mothers with no prior custody order or DCFS case can appoint a guardian for up to a year without court action. CLAIM recently won improvements to the Probate Act to protect short-term guardianships and require notice to short-term guardians if someone else is trying to petition for guardianship. However, if a court appoints a guardian, the mother will need to prove that she has overcome any

addiction, has stable housing and employment, and has repaired her relationship with her children in order to discharge the guardian and bring the children home. It can be a long process.

Domestic relations cases can be very hard on mothers and children as well. Often an abusive father is able to get custody while the mom is in jail – sometimes for a crime in which the father was the principle. Courts favor the status quo and sometimes do not understand the dynamics of domestic violence; some judges have contempt for mothers returning from jail no matter what the underlying circumstances were. It can be extremely difficult for the mother to regain custody even if she always had been the children’s primary caregiver before arrest.

The best way to remedy these problems is to prevent them in the first place. Cook County should:

- Release women to the community while they await trial for nonviolent offenses. Pretrial services should be available to conduct assessments as soon as possible after arrest. The County should provide recognizance bonds when possible to keep mothers with their children.
Whenever a mother has been children’s primary caregiver prior to arrest, we have to assess whether it truly is necessary to keep her in jail pretrial. This is especially true for mothers of infants, toddlers, and preschool children, who are still in their critical mother-child bonding period, and for children with special needs.
- Establish pre-trial community-based residential and day programs that are gender-specific and trauma informed, to build healthy families and reduce recidivism.
- Make trauma-informed drug treatment available to every mother who requests it, inside and outside the jail. Programs like The Women’s Treatment Center, which keep children with their mothers during treatment, have an exceptional success rate – not one re-arrest in the first ten years of IDOC’s Moms and Babies program.
- Offer DCFS-certified parenting classes to every mother with a foster care case and “return home” goal, inside the jail and outside. A practicum component with children present is crucial to meaningful parenting classes.
- Expand the Bright Spaces children’s visiting center. The center is a wonderful space and it is so important for children of mothers in Division 17 to be able to have normal visits. However, children of mothers in Division 3 and the RTU routinely are denied contact with their mothers. No young children should have to visit their mothers through Plexiglas in a noisy, dirty place. It is traumatic for a child who is pre-verbal to see the mother and be unable to touch her. Even worse, we heard recently from a caregiver of young children whose mother is in RTU. They traveled to the jail only to see their mother on a video screen. The children were too young to focus on the screen and the caregiver, recognizing that this was not a true “visit” in the children’s eyes, refused to bring them again. Studies show that if children have to be separated from their mom, frequent visits can help them adjust. Children who had regular visits – who knew they would see their mom again soon -- adjusted better emotionally, socially and in school.
- Stop Shackling Pregnant Women. We commend the Cook County Sheriff for agreeing to the passage of PA 97-0660, which expands protection against restraints not only during labor but throughout pregnancy and the post-partum period. As we have learned more about the medical risks, and how the

stress and pain of shackling can increase the risk of pre-term labor and low birth weight, we are grateful for the new law. However, more work is needed to insure that all personnel who encounter and transport pregnant and post-partum women have proper training about the new law. CLAIM recently surveyed downstate counties and learned that 22 release women and set a continuance date well after their due date, because they believe the stress of jail is not appropriate for pregnant women.

The Children of Incarcerated Parents Bill of Rights, which Sheriff's staff worked on with a large coalition from 2005-2008, states, among other things, that children should have a right to have their needs considered when decisions are made about their parents. This should include considering the parent's role in the children's lives when bond is set, and at sentencing. It also includes the right to speak with, see, and touch the parent. This means contact visits in an appropriate setting such as Bright Spaces.

When mothers and children are separated for an extended period, it can be impossible to repair the damage. When mom comes home, the difficulties of legal battles, rebuilding trust and repairing the frayed relationship create stress for mother and child. The damage impairs the mother's sense of her capacity as a mother, and can impede her successful reentry to the community. Preventing the separation in the first place will reduce the damage done to the family by the mother's arrest and give them a chance to gain stability.

In summary, we recommend:

- 1. Release women to the community on recognizance while they await trial for nonviolent offenses.**
- 2. Increase Deferred Prosecution and Provide Community-Based Services.** Dismiss the case and avoid a criminal record if the mother completes recommended services. This will reduce barriers to employment and housing for a lifetime.
- 3. Increase the number of women in the MOMS program at Haymarket and other residential treatment programs.** Keep children with their mothers to strengthen the family and the mother's recovery.
- 4. Expand the Bright Spaces center visits to all mothers and children, and create a family-based intervention program around the center with classes and services available to ALL mothers in custody.**
In addition to helping children, visits enhance mothers' success. A study by the Minnesota Department of Correctionsⁱⁱⁱ tracking 16,420 prisoners found that visits reduce repeat offenses. Even one visit from a family member made a difference, and inmates who had visits more often were much less likely to recidivate. This confirms smaller studies and a large 40-year longitudinal study in California. The current lack of support for children's visits is a profound failure to use a crucial resource – family connections – a powerful motivator for women returning to the community.
- 5. Make Reunification Services available to all mothers in the jail, not only to those in Division 17.**
This should include family counseling, parenting classes, family conferences for major decisions, and well-trained family advocates. Focus on strengthening parenting skills and mothers' understanding of child development. Address the pattern of family violence; help women understand patterns of domestic abuse and how it harms children who witness it. Help children's caregivers access needed services while the mother is away. Help the family create a smooth transition with appropriate services when the mother comes home. For mothers of children in foster care, such programs can prevent termination of parental rights, which means the permanent loss of all contact with children, and has led to many children aging out of foster care.

6. Implement healing circles and accountability circles to help families process the impact of family violence, addiction, and separation in ways that give all participants the dignity of addressing the harm and repairing the relationship. The circle process gives participants the ability to recognize the harm they have caused in a way that is respectful rather than shaming. While labor intensive, these circles can lead to better outcomes for the children and the family. Judge Dickler has begun to use them to some extent in the domestic relations division. They can motivate family members to accept therapy and treatment they might not previously have understood the need for, and they can begin the process of family healing when addiction has caused chaos.

7. Increase access to short-term guardianship assistance. Insure access to domestic relations and probate court for mothers in pretrial detention. CLAIM can assist the Jail with this as long as they do not obstruct access. Our staff is working with Judge Dickler to increase participation in family law cases through improved court practices and possibly through phone conference hearings. The participation of all parties leads to better-informed court decisions and better outcomes for the children.

Conclusion We can avoid terrible consequences for children and mothers, as well as enormous costs in arrests and prosecutions of future offenses, if we release mothers when possible, and make high-quality family services the centerpiece of women's pre-trial experience, both in the community and in the jail. Thank you for your consideration of these recommendations.

ⁱ The Pew Charitable Trusts: Pew Center on the States. (2010). Collateral Costs: Incarceration's Effect on Economic Mobility.

ⁱⁱ Poehlmann J. Representations of attachment relationships in children of incarcerated mothers. *Child Dev* 2005; 76: 679-96.

ⁱⁱⁱ http://www.doc.state.mn.us/publications/documents/11-11PrisonVisitationResearchinBrief_Final.pdf