

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 8-9, 2010

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges federal, state, territorial, and local
2 governments to ensure that judicial, administrative, legislative, and executive authorities expand,
3 as appropriate in light of security and safety concerns, initiatives that facilitate contact and
4 communication between parents in correctional custody and their children in the free
5 community. Such initiatives should:
6
7 (a) to the extent practicable, assign prisoners to a facility located within a reasonable
8 distance from the prisoner’s family or usual residence;
9
10 (b) encourage and support no cost or low cost public transportation between urban
11 centers and prisons for families of prisoners;
12
13 (c) revise visitation rules, including those related to hours and attire, to facilitate extended
14 contact visits between parents and their minor children, and assure that information is
15 made available to parents regarding opportunities to visit with their children;
16
17 (d) modify visitation areas to accommodate visits by young children;
18
19 (e) provide reasonable opportunities for inmates to call and write their minor children at
20 no cost or at the lowest possible rates;
21
22 (f) seek to reduce barriers that limit opportunities for children in foster care to visit their
23 incarcerated parent, and make available services to help address the trauma that these
24 children face resulting from parental incarceration;
25
26 (g) adopt or expand programs on parenting and parenting skills available to incarcerated
27 prisoners with minor children, and provide their family members with services designed
28 to strengthen familial relationships and child safety, permanency, and well being
29 outcomes; and
30
31 (h) provide the opportunity for incarcerated parents to participate meaningfully in
32 dependency-related court proceedings involving their children and ensure competent and
33 consistent legal counsel to aid them in these cases.

102E

34 FURTHER RESOLVED, That the American Bar Association urges states, territories, and the
35 federal government to adopt policies and procedures, to the extent consistent with security,
36 safety, and privacy concerns, that require child welfare agencies to track the incarceration status
37 of the parents of children in foster care, and that facilitate communication between the child
38 welfare system and the corrections system regarding the incarceration status of the parents, the
39 location of the parents' correctional facilities, and subsequent transfers of the parents to other
40 correctional facilities.

41
42 FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and
43 local governments to clarify that incarceration alone should not be grounds for judicial
44 termination of parental rights, nor does incarceration negate child welfare agency requirements
45 to provide reasonable efforts that may aid in facilitating safe, successful, and appropriate parent-
46 child reunification; and

47
48 FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and
49 local governments to explore the use of innovative means of providing opportunities for
50 parent/child contact and communication, including but not limited to intergovernmental
51 contracts, and alternatives to incarceration such as privately operated residential facilities.

REPORT*

Incarceration has an impact on the relationship between prisoners and their minor children and in doing so, has implications for the criminal justice system and society as a whole. The purpose of this report is to provide background information on the resolutions proposed to the American Bar Association that seek to mitigate the negative consequences of incarceration on the parent-child relationship and facilitate contact and communication between prisoners and their children during the period of incarceration. Children, as used in these resolutions, includes step children and adopted children.

Incarceration has an impact on a substantial number of parents and children. In 2007, approximately 52% of prisoners in state prisons and 63% of prisoners in federal prisons were parents of minor children.¹ As a result, about 1,706,600 minor children (2.3% of the U.S. resident population under the age of 18) had parents in the nation's prisons that year.²

These prisoners and their children face many obstacles to maintaining their relationship during the period of incarceration. As discussed more fully below, visitation may be difficult because the parent's prison may be in a remote area and travel to the prison may be prohibitively expensive. Prison rules may discourage visitation by minor children. The visiting room in the correctional facility may not accommodate visitation by young children. Moreover, parent and child may find telephone calls prohibitively expensive.

If an inmate cannot overcome these obstacles and her child is in foster care,³ she may lose her parental rights. Although at least half the states already include some form of incarceration as a reason for termination of parental rights,⁴ the Adoption and Safe Families Act of 1997 ("ASFA")⁵ has substantially increased cases terminating parental rights due to

* Report written by Jane H. Aiken and Zathrina Zasell G. Perez .

¹ LAUREN E. GLAZE & LAURA M. MARUSCHAK, BUREAU OF JUSTICE STAT., U.S. DEP'T OF JUSTICE, SPECIAL REPORT: PARENTS IN PRISON AND THEIR MINOR CHILDREN 1 (2008), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/pptmc.pdf>. In raw numbers, 809,800 of the 1,518,535 prisoners that were held in the nation's prisons in 2007 were parents of minor children. *Id.* Approximately 744,200 of the 809,800 incarcerated parents were fathers and 65,600 were mothers. *Id.* at 2.

² *Id.*

³ In 2000, 10% of mothers and 2% of fathers in state prison reported that their child was placed in foster care. CHRISTOPHER J. MUMOLA, BUREAU OF JUSTICE STAT., U.S. DEP'T OF JUSTICE, SPECIAL REPORT: INCARCERATED PARENTS AND THEIR CHILDREN 4 (2000), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/iptc.pdf>. About 70% of foster children have had a parent incarcerated at one time or another during their time in foster care. Jeremy Travis, *Families and Children*, FED. PROBATION, Jun. 2005, at 36 (citing research by the Center for Children of Incarcerated Parents). At any given time, 10% of children in foster care have a mother in correctional custody and 33% have a father in correctional custody. *Id.*

⁴ Philip M. Genty, *Damage to Family Relationships as a Collateral Consequence of Parental Incarceration*, 30 FORDHAM URB. L.J. 1671, 1677 n.44 (2003). Termination of parental rights also can be predicated on consequences flowing directly from imprisonment. Myrna S. Raeder, *Gender-Related Issues in a Post-Booker Federal Guidelines World*, 37 MCGEORGE L. REV. 691, 700 (2006). These consequences include "child in foster care most of her life, parental failure to contact or support child for a period of over six months, parent incapable of performing parental duties, parent's progress stagnated, abandonment, or parent failed to rehabilitate." *Id.*

⁵ Pub. L. 105-89.

102E

incarceration.⁶ With a few limited exceptions, ASFA requires that parental right termination proceedings be initiated with respect to a child if the child spends fifteen out of any twenty-two month period in foster care.⁷ The ASFA timeline begins to run once the child enters foster care.⁸ Although a parent can prevent the initiation of termination proceedings by satisfying the reunification plans of local child welfare agencies, prisoners have difficulty meeting such plans in light of their incarceration and the resulting barriers they face in maintaining ties with their children.⁹ The impact of parental termination is devastating on the parents and has been compared to a “civil death penalty.”¹⁰ The permanent severance of the parent-child relationship imposes on incarcerated parents an additional punishment above and beyond the sentence they receive.¹¹ Moreover, among the 2007 prison population, drug and public-order offenders were more likely than violent offenders to be parents.¹² Absent an independent finding of parental unfitness, termination of parental rights is “an abnormally stiff penalty” for non-violent crimes.¹³

Parental termination also has negative consequences on the inmate’s minor child. A court order terminating the parent-child relationship makes the child eligible for adoption. However, many children with respect to whom parental rights have been terminated either linger in foster care for years before being adopted¹⁴ or are never adopted and instead, are shifted

⁶ Genty, *Damage*, *supra* note 4, at 1678 (stating that during the first five years after the passage of ASFA, such cases increased by 250 percent).

⁷ *Id.* § 103(a). The statute excepts situations where the child is in the care of a relative, the family has not been provided with reunification services, or a compelling reason exists as to why it is not in the best interest of the child to terminate the parent-child relationship. *Id.* See generally Catherine J. Ross, *The Tyranny of Time: Vulnerable Children, “Bad” Mothers, and Statutory Deadlines in Parental Termination Proceedings*, 11 VA. J. SOC. POL’Y & L. 176 (2004) (discussing the implications of the ASFA on parent and child and criticizing the presumption created by the 15/22 month timeline).

⁸ ASFA § 103(a)-(b).

⁹ Myrna S. Raeder, *A Primer on Gender-Related Issues that Affect Female Offenders*, CRIMINAL JUSTICE, Spring 2005, at 19; TIMOTHY ROSS, ET AL., VERA INST. OF JUSTICE, *HARD DATA ON HARD TIMES: AN EMPIRICAL ANALYSIS OF MATERNAL INCARCERATION, FOSTER CARE, AND VISITATION 1-2* (2004), available at http://www.vera.org/publication_pdf/245_461.pdf. See generally ANNIE E. CASEY FOUND. & THE WOMEN’S PRISON ASS’N, *PARTNERSHIPS BETWEEN CORRECTIONS AND CHILD WELFARE: COLLABORATION FOR CHANGE, PART TWO 14-17* (2001) [hereinafter *Partnerships*], <http://www.aecf.org/upload/publicationfiles/partnerships%20between%20corrections.pdf> (discussing the various obstacles that child welfare agencies face in working with incarcerated parents).

¹⁰ *Drury v. Lang*, 776 P.2d 843, 845 (1989); see also *In re Smith*, 601 N.E.2d 45, 54 (1991) (describing the permanent termination of parental rights as “the family law equivalent of the death penalty in a criminal case”). The Supreme Court has recognized that parents have a fundamental due process interest in parenting and that this interest “does not evaporate simply because [the parents] have not been model parents or have lost temporarily the custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life.” *Santosky v. Kramer*, 455 U.S. 745, 787 (1982); see also *Troxel v. Granville*, 530 U.S. 57 (2000).

¹¹ Jenni Vainik, Note, *The Reproductive and Parental Rights of Incarcerated Mothers*, 46 FAM. CT. REV. 670, 682 (2008).

¹² GLAZE & MARUSCHAK, *supra* note 1, at 4.

¹³ *Cf. Vainik, supra* note 11, at 682 (“Denying a woman her constitutional right to raise and care for her children because she committed a petty drug crime is an abnormally stiff penalty.”).

¹⁴ In FY 2007, 51,000 children in foster care were adopted, leaving a total of 130,000 children waiting to be adopted at the end of year. CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., *TRENDS IN FOSTER CARE AND ADOPTION –FY 2002-FY2007 2* (2008) [hereinafter *HHS Statistics*], available at

among foster care homes until they emancipate or age out of the system.¹⁵ Children in this latter group are “at a higher risk for homelessness, unemployment, illness, incarceration, welfare dependency, and sexual and physical victimization than their peers.”¹⁶ The reliance on foster care following the termination of parental rights is also problematic for the foster care system, which is already strained by more children entering foster care than exiting.¹⁷ Moreover, children often suffer psychological and social trauma as a result of the permanent severance of even damaged parent-child relationships.¹⁸ This trauma may be compounded if termination also leads to the child severing ties with siblings and other relatives.¹⁹

Even in cases where parental rights are not terminated, parental incarceration has negative consequences on minor children, including those who come from impaired family circumstances.²⁰ These children are likely to be affected emotionally and behaviorally by the forced separation from their parents that incarceration requires. They may experience feelings of trauma, anxiety, shame, guilt, and fear, and display low self-esteem and social emotional withdrawal from friends and family.²¹ Studies show that children of prisoners are more likely than their peers to exhibit poor academic performance, drug and alcohol use, aggression, and

http://www.acf.hhs.gov/programs/cb/stats_research/afcars/trends_02-07.pdf. 84,000 of the 130,00 were both waiting for adoption and had their parental rights terminated. *Id.*

Similarly, in 2005, 51,000 were adopted during the year. CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., CHILD WELFARE OUTCOMES 2002-2005: REPORT TO CONGRESS Appx. E (2008) [hereinafter HHS Report], available at <http://www.acf.hhs.gov/programs/cb/pubs/cwo05/cwo05.pdf>. It took an average of 15.2 months after termination of parental rights for these children to be adopted. *Id.* The majority of the children who were adopted were 5 years old or younger. *Id.* (53%).

¹⁵ An increasing proportion of children who enter the foster care system remain in foster care until they reach the age of majority, which in most states is 18 years of age. RESEARCH DIVISION, COUNTY SERVS. DEP’T, NAT’L ASS’N OF COUNTIES, YOUTH AGING OUT OF FOSTER CARE: IDENTIFYING STRATEGIES AND BEST PRACTICES 3, 5 (2008) [hereinafter NACo Report], available at http://www.naco.org/Content/ContentGroups/Issue_Briefs/IB-YouthAgingoutofFoster-2008.pdf (citing several studies). Annually, an estimated 24,000 foster children age out of care. *Id.*

¹⁶ *Id.* at 3.

¹⁷ HHS Statistics, *supra* note 14, at 1; see also ROSS ET AL., HARD TIMES, *supra* note 9, at 2 (“Some of these children will not be adopted, which may lead to long term spells in foster care. For children who reside in group care facilities in particular, lengthy spells are very expensive.”).

¹⁸ See generally Ross, *Tyranny of Time*, *supra* note 7, at 177-79, 208-25 (criticizing the ASFA 15/22-month provision for being too rigid and not taking into account that some children may have an interest in continuing even a damaged relationship with an incarcerated parent).

¹⁹ Raeder, *Booker*, *supra* note 4, at 703.

²⁰ *Id.* at 702-703 (citing Philip M. Genty, *Procedural Due Process Rights of Incarcerated Parents in Termination of Parental Rights Proceedings: A Fifty-State Analysis*, 30 J. FAM. L. 757, 804 (1992)); Travis, *supra* note 3, at 38-39. See generally John Hagan & Ronit Dinovitzer, *Collateral Consequences of Imprisonment for Children, Communities, and Prisoners*, 26 CRIME & JUSTICE 121, 124-26, 137-48 (1999) (discussing various harmful effects of parental incarceration on families, including loss of the parent’s supervision, financial and social support, and mentor role as well as emotional and behavioral consequences on children).

²¹ Vainik, *supra* note 11, at 682; Solangel Maldonado, *Recidivism and Paternal Engagement*, 40 FAM. L.Q. 191, 195, 197-98 (2006) (citing Denise Johnston, *Parent-Child Visitation in the Jail or Prison*, in CHILDREN OF INCARCERATED PARENTS 136-37 (1995), Justice Brooks & Kimberly Bahna, *It’s a Family Affair-The Incarceration of the American Family*, 28 U.S.F. L. REV. 271, 280 (1994), and Stewart Gabel, *Behavioral Problems in Sons of Incarcerated or Otherwise Absent Fathers*, 31 FAM. PROCESS 303, 306-07 (1992)); Partnerships, *supra* note 9, at 8 (citing a 1993 report by the National Council on Crime and Delinquency). See generally Hagan & Dinovitzer, *supra* note 20, at 139, 138, 145-46 (surveying studies).

gang involvement.²² Moreover, children of prisoners are at a significantly higher risk than their peers of being involved with the criminal justice system themselves.²³ A policy fostering and facilitating family ties between prisoners and their children therefore is important for the children's development,²⁴ particularly in light of the fact that more than a third of the minor children of prisoners will reach the age of 18 while their parents are incarcerated.²⁵

Correctional facilities also benefit from facilitating family ties between prisoners and their children. Prisoners who maintain such ties may be less stressed about their family relationships,²⁶ have reduced disciplinary problems, and have improved mental health status and functioning.²⁷ Additionally, family ties between prisoners and their children have positive consequences for society. Studies show that prisoners who maintain family ties during incarceration have reduced rates of recidivism and increased likelihood of family reunification.²⁸ The opposite also is true: prisoners who do not maintain ties with their families during incarceration are more likely to engage in subsequent criminal behavior than prisoners who do maintain such ties.²⁹ The U.S. legal system as a whole should therefore take measures to ensure that parent-child relationships are maintained during the period of incarceration.

²² Vainik, *supra* note 11, at 682; Partnerships, *supra* note 9, at 8 (citing a 1993 report by the National Council on Crime and Delinquency). See generally Hagan & Dinovitzer, *supra* note 20, at 145-46 (surveying studies).

²³ Partnerships, *supra* note 9, at 8 (citing a 1993 report by the National Council on Crime and Delinquency). See generally Hagan & Dinovitzer, *supra* note 20, at 146-48 (surveying studies). "Children of offenders are five times more likely than their peers to end up in prison themselves. One in 10 will have been incarcerated before reaching adulthood." Partnerships, *supra* note 9, at 8 (citing a 1993 report by the National Council on Crime and Delinquency).

²⁴ Maldonado, *supra* note 21, at 194 (noting studies that show (1) children who retain ongoing parental contact with their nonresident father are better adjusted to separation, have higher self-esteem, and fewer behavioral problems, and (2) children who have positive relationships with their fathers are less likely to experience academic, social, and emotional difficulties, to drop out of school, to engage in early sexual activity, to abuse drugs, or to engage in delinquent activity).

²⁵ GLAZE & MARUSCHAK, *supra* note 1, at 3.

²⁶ Raeder, *Primer*, *supra* note 9, at 19.

²⁷ CLARE M. NOLAN, PREPARED FOR THE CAL. RESEARCH BUREAU, CHILDREN OF ARRESTED PARENTS: STRATEGIES TO IMPROVE THEIR SAFETY AND WELL-BEING 10 (2003), available at <http://www.library.ca.gov/crb/03/11/03-011.pdf>.

²⁸ *Id.*; Maldonado, *supra* note 21, at 196-97 (citing Kim Harrison, *Parental Training for Incarcerated Fathers: Effects on Attitudes, Self-Esteem, and Children's Self-Perceptions*, 137 J. SOC. PSYCH. 588, 588 (1997), and Ginger L. Wilczak & Carol A. Marstrom, *The Effects of Parental Education on Parental Locus of Control and Satisfaction of Incarcerated Fathers*, 43 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 90, 92 (1999)); see also Hagan & Dinovitzer, *supra* note 20, at 142 (stating that low rates of contact between incarcerated mothers and their children "may have further negative consequences given that the maintenance of strong family relationships during incarceration may lower recidivism rates, and that 'on the whole, prison prisoners with family ties during imprisonment do better on release than those without them'") (quoting Creasie Finney Hairston, *Family Ties During Imprisonment: Important to Whom and for What?*, 18 J. OF SOC. & SOC. WELFARE 87, 99 (1991)); cf. Travis, *supra* note 3, at 39-40 (discussing the importance of family support in rehabilitating prisoners after release).

²⁹ Maldonado, *supra* note 21, at (citing Hairston, *supra* note 28, at 99, and Tiffany Jones, *Neglected by the System: A Call for Equal Treatment for Incarcerated Fathers and Their Children*, 39 CAL. W. L. REV. 87, 93, 100 (2002)).

THE RESOLVED CLAUSE

The first resolved clause is designed to reaffirm and expand A.B.A. Resolution 140B, approved in 1996, which “supports initiatives that seek to preserve and promote healthy relationships between children and their parents in correctional custody.”³⁰ Evidence suggests that prisoners continue to face barriers to contacting and communicating with their minor children, thus justifying reaffirmation and expansion of Resolution 140B.

Prisoners and their minor children continue to face barriers to visitation. Minor children benefit from visits to the jail or prison where their parent is housed: visitation has been found to lead to “greater well-being, emotional adjustment, and improved behavior.”³¹ Recent statistics, however, show that 58.5% of parents in state prison and 44.7% of parents in federal prison have never received a personal visit from their children.³² This Resolution urges the consideration and expansion, as appropriate, of several initiatives that address some of the major obstacles to visitation.

Subsections (a) and (b)

States, territories, and the federal government should be urged to consider family accessibility to the facility in making assignment of prisoners and should be urged to make available low cost public transportation between urban areas and prisons.³³ The travel distance to the correctional facility of an incarcerated parent and economic costs associated with such travel often are cited as the main reasons for the infrequency of parent-child visitations.³⁴

³⁰ **104B (CJS) Approved August 1996**

RESOLVED, that the American Bar Association supports initiatives that seek to preserve and promote healthy relationships between children and their parents in correctional custody. Such initiatives would consider family accessibility to the facility in making assignment of prisoners; would assist parents in correctional custody in developing parenting skills; would allow extended contact visitation by such parents and children; and would support the emotional well-being of children.

³¹ Maldonado, *supra* note 21, at 197-98 (citing Johnston, *supra* note 21, at 138, 140); *see also Partnership*, *supra* note 9, at 9, 16-17 (“[R]egular visits are key to helping children deal with the trauma they have experienced. The frequency of visits is the most important factor in determining the prospects of reunification once the mother is released.”); U.S. GEN. ACCOUNTING OFFICE, REPORT TO THE HON. ELEANOR HOLMES NORTON HOUSE OF REPRESENTATIVES, WOMEN IN PRISON: ISSUES AND CHALLENGES CONFRONTING U.S. CORRECTIONAL SYSTEMS 55 (1999) [hereinafter GAO Report], *available at* <http://www.gao.gov/archive/2000/gg00022.pdf> (discussing benefits of parent-child visitation to both incarcerated parents and their children).

³² GLAZE & MARUSCHAK, *supra* note 1, Appx. table 10. With respect to state prisons, 58.6% of incarcerated fathers and 57.7% of incarcerated mothers have never received a personal visit from their children. *Id.* With respect to federal prisons, 44.7% of incarcerated fathers and 44.6% of incarcerated mothers have never received a personal visit from their children. *Id.*

³³ *See generally* Partnerships, *supra* note 9, at 20 (advocating for assignment of incarcerated parents as close to their homes as possible and free or affordable transportation to facilities).

³⁴ GAO Report, *supra* note 31, at 57; *see also* Vainik, *supra* note 11, at 679; Travis, *supra* note 3, at 36; Partnerships, *supra* note 9, at 16. The cost of visiting remotely located prisons may include transportation, overnight accommodation, and meals. *See* Travis, *supra* note 3, at 36.

102E

Prisons often are located in remote areas, “far from the urban centers from which most prisoners come and in which most of the families of prisoners continue to live.”³⁵ This is a particular problem for incarcerated mothers; women often are placed in a prison that is farther away from home than men due to the fewer number of female correctional facilities.³⁶ Additionally, “[r]elatively few volunteer organizations exist to fund or coordinate travel by visitors.”³⁷ Although corrections officials are not constitutionally required to consider the distance between the prison and the location of an inmate’s minor children in making placement decisions,³⁸ they should be encouraged to do so in light of the benefits to the criminal justice system of facilitating family ties between incarcerated parents and their children that were discussed above. Local governments also should be encouraged to provide no cost or low cost public transportation between urban centers and prisons to facilitate visitation by the minor children and poor families of prisoners.

Subsection (c)

States, territories, and the federal government should be urged to revise visitation rules to facilitate extended contact visits between parents and their minor children. This Resolution naturally follows from Standard 23-6.2(c) of the A.B.A. Legal Status of Prisoner Standards, which urges “[e]xtended visits between prisoners and their families.”³⁹ Most corrections departments have official policies that deem contact between prisoners and their families desirable because it improves behavior among prisoners.⁴⁰ Correctional officials, however, also have an interest in controlling visitation by children because of internal security concerns (e.g., controlling the number of visitors and limiting the disruption caused by children) or a desire to protect the children from exposure to sexual or other misconduct or from accidental injury.⁴¹ As a result, correctional departments may have regulations that discourage visitation by minor children, such as an absolute ban on visitation by certain children⁴² or a requirement that children be accompanied by a family member or a legal guardian.⁴³ The latter requirement is

³⁵ Genty, *Damage*, *supra* note 4, at 1680; Maldonado, *supra* note 21, at 198 (citing MUMOLA, *supra* note 3, at 5).

³⁶ Genty, *Damage*, *supra* note 4, at 1673, 1681; Hagan & Dinovitzer, *supra* note 20, at 142 (citing John C. Coughenour, *Separate and Unequal: Women in the Federal Criminal Justice System*, 8 FED. SENT’G REP. 142-44 (1995)).

³⁷ Raeder, *Primer*, *supra* note 9, at 18. Programs include Aim to Imprisoned Mothers, www.takingaim.net. *Id.*

³⁸ See, e.g., *Froehlich v. Wis. Dep’t of Corrections*, 196 F. 3d 800, 801 (7th Cir. 1999).

³⁹ **Standard 23-6.2(c) of the Legal Status of Prisoners.**

Subject to the provisions of standard 23-1.1, institutional visiting facilities should promote informal communications and afford opportunities for physical contact. Extended visits between prisoners and their families in suitable accommodations should be allowed for prisoners who are not receiving home furloughs.

⁴⁰ Maldonado, *supra* note 21, at 205 (citing Hairston, *supra* note 28, at 122).

⁴¹ See *Overton v. Bazzetta*, 539 U.S. 126, 133 (2003); Maldonado, *supra* note 21, at 205.

⁴² *Overton*, 539 U.S. at 129-130, 132 (upholding a ban on visitation by children as to whom the inmate’s parental rights have been terminated).

⁴³ *Id.* at 130, 132 (upholding such a requirement); see also Travis, *supra* note 3, at 37 (describing the Michigan corrections department regulations that were at issue in *Overton*). The Supreme Court also upheld a two-year ban on non-contact visits for prisoners with two substance abuse violation. *Overton*, 539 U.S. at 130, 132.

difficult to meet where the parent's correctional facility is located in a remote area, visits are permitted only during inconvenient hours, the inmate must notify the correctional facility of the name of the accompanying adult beforehand, or the parent is frequently transferred among prisons.⁴⁴ Although corrections security and safety concerns may warrant some limits on visitation by the minor children of prisoners, these concerns should be balanced against the benefits to the criminal justice system and other positive consequences to such visitation described above. Additionally, visitation rules should permit contact between parent and child to the extent consistent with safety and security concerns because touch is an important part of parent-child bonding.

Subsection (d)

States, territories, and the federal government should be urged to modify visitation areas to accommodate visits by young children. This Resolution naturally follows from Standard 23-6.2(c) of the A.B.A. Legal Status of Prisoner Standards, which urges that family visitation occur in "suitable accommodations."⁴⁵ In correctional facilities where visitation by minor children is permitted, visiting rooms often do not accommodate visitation by young children.⁴⁶ Visiting a prison or a jail may be a frightening experience for young children. Without taking measures to ease their fears, very young children may be deterred from visiting at all or may be unable to communicate with their parents if they do visit. Additionally, the incarcerated parent and the current caregiver of her child may unwilling to allow the child to visit the correctional facility unless suitable accommodations are available because of concerns about the wellbeing of the child.⁴⁷ Correctional facilities therefore should set aside a child-oriented area where an incarcerated inmate can, for example, read an age-appropriate book to or play a board game with her young child.⁴⁸

Subsection (e), (f) and (g)

In addition to visitation, prisoners and their minor children also face barriers to other forms of communication, such as telephone and mail service. States, territories, and the federal government therefore should be urged to provide to prisoners reasonable opportunities to call and write their minor children at no cost or at the lowest possible rates. This Resolution

⁴⁴ See NOLAN, *supra* note 27, at 10 (noting, among other things, "distance of the prison from a child's home, costs associated with transportation and overnight accommodations, disinclination of caregivers to facilitate visits" as obstacles to visitation by an inmate's minor children); Maldonado, *supra* note 21, at 205 (noting that children may find no one willing to bring them to their fathers' prison for a visit, and if they manage to arrive at the facility, the children may be turned away because "they do not have proper identification, proof of paternity, or are not accompanied by their mothers, as some prisons require" (citing Hairston, *supra* note 28, at 118, 124)).

⁴⁵ See *supra* note 39 (text of the relevant standard).

⁴⁶ Jim Mustin & Ann Adalist-Estrin, Children of Prisoners Library, CPL 106: Jail and Prison Procedures: Information for Families 4, <http://www.fcnetwork.org/cpl/CPL106-JailandPrison.pdf> (last visited May 12, 2009); *cf.* Maldonado, *supra* note 21, at 201, 203 (noting that courts have denied visitation to incarcerated fathers where there was no showing that the fathers' correctional facility could accommodate young children).

⁴⁷ See Vainik, *supra* note 11, at 679.

⁴⁸ See Partnerships, *supra* note 9, at 20 (advocating for making visiting rooms child-friendly and creating "a special children's visiting room with a rug and toys").

102E

naturally follows from A.B.A. Resolution 115B, approved in 2005, which encourages providing “prison and jail prisoners reasonable opportunity to maintain telephonic communication with the free community, and to offer telephone services in the correction setting with an appropriate range of options at the lowest possible rates.”⁴⁹ Most corrections departments provide prisoners with communication via telephone and letters to the free community.⁵⁰ With respect to telephone service, many prisoners in state prisons and their families find phone calls prohibitively expensive.⁵¹ Prisoners typically must call collect and, in many jurisdictions, the cost of these calls is higher than in free society because prison telephone service is a profit center for facilities.⁵² One author from an article in 2003 states that phone calls from prison often cost between \$1 and \$3 per minute even though most phone companies charge less than 10 cents per minute for phone calls made in the free society.⁵³ Moreover, prisoners are charged an additional \$1.50 and \$4 for the placing of a collect call even though a similar fee is not charged for collect calls in free society.⁵⁴

In contrast to the state system, “the federal system ensures that telephone services will be reasonably priced.”⁵⁵ This pricing differential between the state and federal system may drastically impact whether an inmate contacts her child by telephone. In 2004, 46.6% of parents in state prisons had never used the prison telephone service to speak with their children.⁵⁶ That number is only 14.9% among parents in federal prison.⁵⁷ Not only have the vast majority of parents in federal prison used the prison telephone service to maintain ties with their children,

⁴⁹ **115B (CJS) Approved August 2005**

RESOLVED, That the American Bar Association encourages federal, state, territorial and local governments, consistent with sound correctional management, law enforcement and national security principles, to afford prison and jail prisoners reasonable opportunity to maintain telephonic communication with the free community, and to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates.

The A.B.A. also has standards relevant to this Resolution but that apply only to indigent prisoners. See Standard 23-6.1(e)-(f) of the A.B.A. Legal Status of Prisoners Standards.

⁵⁰ Maldonado, *supra* note 21, at 205.

⁵¹ *Id.* One organization states, “It is not unusual for a prisoner’s family to have monthly long distance bills as high as \$250.” Mustin & Adalist-Estrin, *supra* note 46, at 2.

⁵² Raeder, *Primer*, *supra* note 9, at 19; see also Travis, *supra* note 3, at 37 (describing how the “monopolistic arrangement between phone companies and prisons” has limited or deterred contact between families and their relatives in prisons).

⁵³ Travis, *supra* note 3, at 37 (citing article by Joan Petersilia). Another author notes in an article from 2001 that phone calls from prison facilities cost approximately \$15 for thirty minutes while calls from a residential phone cost about \$1.50. Maldonado, *supra* note 21, at 205 (citing Hairston, *supra* note 28, at 125).

⁵⁴ Travis, *supra* note 3, at 37.

⁵⁵ Raeder, *Primer*, *supra* note 9, at 19.

⁵⁶ GLAZE & MARUSCHAK, *supra* note 1, Appx. table 10.

⁵⁷ *Id.*

40.9% speak with their children by telephone at least once a week.⁵⁸ In contrast, only 17.5% of parents in state prison speak with their children by telephone at least once a week.⁵⁹

With respect to mail service, many more prisoners use the mails to communicate with their children than the telephone but the number of prisoners who have never used the prison mail service to communicate with their children is still significant: 30.4% of parents in state prisons and 16.0% of parents in federal prisons.⁶⁰ Several states are also recognizing that efforts need to be taken to encourage the visitation of children in foster care. For example, Cal. A.B. 2070 allows parents who are incarcerated or otherwise institutionalized to receive family reunification services to the greatest extent possible, and permits extension of the ASFA timing for termination of parental rights. The statute requires courts to take into account the barriers that these parents face in accessing services and maintaining contact with their children, ensuring that such prisoners have access to their children who are in foster care.

Parenting classes are included in the resolution because many incarcerated parents have had poor role models and substance abuse problems which add to the challenges of successful parenting from prison.

Subsection (h)

The list of initiatives in this Resolution is not exclusive. Rather, this Resolution expressly encourages states, territories, and the federal government to consider, experiment with, and adopt innovative initiatives that facilitate contact and communication between prisoners and their minor children. Currently, parental status is usually not a factor in sentencing.⁶¹ The U.S. Sentencing Guidelines Manual does not consider family ties and responsibilities as “ordinarily relevant” to sentence determinations and generally requires exceptional circumstances for sentence departures on that basis.⁶² In practice, courts have generally granted family ties departures only where the sentence “either results in no incarcerative sentence or one that is

⁵⁸ *Id.* The percentage remains almost the same when mothers and fathers are treated separately. Among incarcerated fathers, 40.7% communicate with their children by phone at least once a week. *Id.* Among incarcerated mothers, 43.7% communicate with their children by phone at least once a week. *Id.*

⁵⁹ *Id.* The percentage differs slightly when mothers and fathers are treated separately. Among incarcerated fathers, 17.1% communicate with their children by phone at least once a week. *Id.* Among incarcerated mothers, 14.7% communicate with their children by phone at least once a week. *Id.*

⁶⁰ *Id.*

⁶¹ TIMOTHY ROSS, ET AL., VERA INST. OF JUSTICE, *HARD DATA ON HARD TIMES: AN EMPIRICAL ANALYSIS OF MATERNAL INCARCERATION, FOSTER CARE, AND VISITATION* 14-15 (2004), available at http://www.vera.org/publication_pdf/245_461.pdf; see also Raeder, *Primer supra* note 9 at 15 (noting that, in practice, the family ties departure is awarded only where the sentence is one that “either results in no incarcerative sentence or one that is sufficiently short so that the departure is not viewed as benefiting the mother more than the child”).

⁶² U.S. SENTENCING GUIDELINES MANUAL § 5H1.6 (2008). In order for a caretaking loss to satisfy this standard, the loss must be “‘essential,’ exceeding the harm that ordinarily occurs, the parent must be ‘irreplaceable,’ and the departure must effectively address the loss of caretaking.” Raeder, *Booker supra* note 4 at 718.

102E

sufficiently short so that the departure is not viewed as benefiting the mother more than the child.”⁶³

United States v. Booker,⁶⁴ however, established that the Guidelines are advisory only⁶⁵ and various social policy considerations militate for greater use of variances for family ties to permit the use of community correctional facilities, and of alternatives to incarceration in many cases, including where the defendant or offender is pregnant⁶⁶; where the offense was nonviolent, the offender has a minor child, was the primary caregiver to the child just prior to arrest, and incarceration would result in substantial disruption of the child’s living circumstances.⁶⁷ Defendants charged with crimes such as writing bad checks to feed their children should also be considered for such alternatives, so long as they have not previously been convicted of any crime relating to children. Such alternatives should be available to state as well as federal defendants and prisoners. The lives of minor children experience disruption due to parental incarceration. This disruption may be particularly acute where the parent was providing the child with most of her daily care just prior to incarceration. In 2000, the A.B.A. adopted policy to urge the immediate funding of the Family Unity Demonstration Project which would have created community correctional alternatives for nonviolent women and their children under seven years of age. The project was designed specifically to alleviate harm to children and primary caretaker parents caused by separation and reduce recidivism of prisoners by encouraging family relationships.⁶⁸ While the federal program was never funded, California followed this model in its Pregnant and Parenting Women’s Alternative Sentencing Program Act.

Ten percent of women who enter prison were pregnant at the time of their admission to prison.⁶⁹ Although no exact numbers are available on how many of these women give birth during their incarceration, some have estimated that 2,000 babies are born to incarcerated women each year.⁷⁰ Pregnancy imposes physical and psychological demands on a woman.⁷¹ However,

⁶³ Raeder, *Primer*, *supra* note 9, at 15 (citing *United States v. Jebara*, 313 F. Supp. 2d 912 (E.D. Wis. 2004)); *see also* Raeder, *Booker*, *supra* note 4, at 718-23 (surveying family ties case law).

⁶⁴ 543 U.S. 220 (2005).

⁶⁵ *See generally* Raeder, *Booker*, *supra* note 4, at 705-13, 717-23 (discussing the effect of *Booker* generally and on family ties departures specifically).

⁶⁶ *See generally* Kelly Parker, *Pregnant Women Prisoners: Evaluating Their Rights and Identifying Opportunities for Improvements in their Treatment*, 19 J.L. & HEALTH 259, 292-93 (2005) (advocating for greater use of alternatives to incarceration in cases of pregnant offenders).

⁶⁷ *Cf.* *United States v. White*, 301 F. Supp. 2d 289, 295 (S.D.N.Y. 2004) (granting a family ties departure where defendant was sole caregiver for six children and such children would likely be placed in foster care upon defendant’s incarceration). *See generally* Raeder, *Booker*, *supra* note 4, at 723-26 (arguing for greater use of the family ties departure post-*Booker*).

⁶⁸ *See* Myrna S. Raeder, *Creating Correctional Alternatives for Nonviolent Women Offenders and their Children*, 44 ST. LOUIS UNIV. L.J. 377 (2000).

⁶⁹ Vainik, *supra* note 11 at 676. In 1999, 6% of women admitted to prison were pregnant at the time of their admission to prison.

⁷⁰ Geraldine, Note, *Hard Labor: The Legal Implications of Shackling Female Prisoners During Pregnancy and Childbirth*, 14 WM. & MARY J. WOMEN & L. 363, 364-65 (2008). In 1998, out of approximately 1900 women admitted to prison while pregnant, 1400 birth. Parker, *supra* note 36, at 264-65. “Between September, 1991 and September, 1992, female offenders gave birth to 1,445 babies.” Mary Catherine McGurrin, Note, *Pregnant Prisoners’ Right to Health Care*, 20 New Eng. J. ON CRIM. & CIV. CONFINEMENT 163, 181 (1993).

the conditions and practices at most jails and prisons fail to account for the unique needs of pregnant prisoners. Some conditions that may be appropriate for other prisoners can cause a pregnant woman extreme physical discomfort and pain. Some corrections practices that may be appropriate for other prisoners, such as shackling, endanger the woman and her fetus as well as pose an affront to the woman's dignity. Where the offender is pregnant at the time of conviction, incarceration may mean giving birth while in a correctional facility. In such cases, most jurisdictions require the newborn to be immediately separated from her mother.⁷² States, territories, and the federal government should be urged to use extended furloughs and nurseries in correctional facilities to permit mothers of newborns to keep their child for a reasonable time after childbirth.⁷³ Female prisoners in federal and state correctional facilities who give birth during their incarceration are routinely separated from their children.⁷⁴ Only four states operate prison nursery programs.⁷⁵ Prison nursery programs allow qualifying prisoners to keep their newborns for a period of time after childbirth.⁷⁶

The immediate and automatic separation of a newborn from her mother after childbirth negatively impacts the mother and the child. If the child cannot be placed with a relative, the foster care system takes the child, triggering the ASFA timeline that can lead to the termination of parental rights.⁷⁷ The permanent severance of the parent-child relationship in these cases is a harsh result: the vast majority of incarcerated women are in prison for non-violent drug, property, or public-order offenses.⁷⁸ "Denying a woman her constitutional right to raise and care for her children because she committed a petty drug crime is an abnormally stiff penalty."⁷⁹ Moreover, immediate separation policies prevent the newborn from experiencing the touch of her mother during a critical stage in the newborn's development.⁸⁰

Use of furloughs and prison nurseries benefit the criminal justice system and society. As discussed above, family ties during the period of incarceration reduces rates of recidivism. With respect to prison nurseries in particular, studies have shown that mothers who participate in prison nursery programs have particularly low recidivism rates.⁸¹

⁷¹ *Id.* at 164 (noting that the energy that a pregnant woman must expend is fifteen times that of a non-pregnant woman.)

⁷² Vainik, *supra* note 11 at 679.

⁷³ See generally Vainik, *supra* note 11, at 682-85 (advocating for greater use of halfway houses and prison nurseries).

⁷⁴ *Id.* at 679.

⁷⁵ *Id.*

⁷⁶ *Id.* at 679, 684.

⁷⁷ ASFA § 103.

⁷⁸ Women in Prison Project, Women in Prison Fact Sheet, http://www.correctionalassociation.org/publications/download/wipp/factsheets/Women_in_Prison_Fact_Sheet_2008.pdf (last visited Sept. 24, 2009) ("As of 2000, more than 70% of women prisoners were incarcerated for non-violent drug, property or public order offenses.")

⁷⁹ Vainik, *supra* note 11, at 682 (advocating for greater use of halfway houses and prison nurseries).

⁸⁰ See Cindy McGaha, The Importance of the Senses for Infants, <http://www.acei.org/it.vol.16.1%20infantsenses.htm> (last visited Sept. 24, 2009).

⁸¹ Vainik, *supra* note 11, at 683.

Policies that place offenders closer in proximity to their minor children, such as probation and community correctional facilities,⁸² facilitate visitation and communication between parent and child.⁸³ Policies that allow offenders to reunify with their minor children on shortened timelines, such as reduced sentences, encourage parents to maintain strong ties with their minor children.⁸⁴ These measures would help ensure that parental rights are not improvidently terminated on the sole basis of parental incarceration. Greater use of alternatives to incarceration, community correctional facilities, and reduced sentences also benefits the criminal justice system. These policies would foster family ties among prisoners, leading to reduced disciplinary problems during the incarceration period and improved mental health status and functioning.⁸⁵ Additionally, family ties among prisoners have been linked to reduced recidivism and increased likelihood of family reunification and thus, environmental stability upon release.⁸⁶ The criminal justice system also may see cost savings: “incarceration is more costly than community corrections and seven times more expensive than supervision by probation officers.”⁸⁷

Prisoners serving a federal sentence may be located in a state other than where their children reside. In some circumstances a state may be willing to contract with the federal government to house the inmate in a facility where visiting would be more practical. In such cases inter-governmental contracts should be explored. Prosecutorial agencies should also consider their role in sentencing alternatives. The District Attorney’s Office in Brooklyn, New York, has created the Regina Drew House, an innovative community based facility in which women offenders and their children can reside. A wide range of services are provided to support the families’ reunification and eventual re-entry into the community, including parenting skills programs; alcoholism and substance abuse services; mental health services; activities of daily living programming; educational and vocational training; medical care; and appropriate social and recreational activities.

⁸² Raeder, *Booker*, *supra* note 4, at 752-54 (arguing for greater use of community correctional facilities).

⁸³ See Report of the A.B.A. Justice Kennedy Commission (August 2004). These recommendations encourage shorter sentences and alternatives to incarceration. These resolutions expand such judicial considerations to correctional authorities.

⁸⁴ Glaze & Maruschak, *supra* note 1 at 6. One study found that, as the length of prison sentences increases, the level of contact (of all kinds-calls, letters, and visits) between incarcerated parents and their children decreases. Travis, *supra* note 3 at 36 (citing research by the Center for Children of Incarcerated Parents).

⁸⁵ Nolan, *supra* note 27 at 10.

⁸⁶ See Maldonado, *supra* note 21 at 196-97 citing Kim Harrison, *Parental Training for Incarcerated Fathers: Effects on Attitudes, Self-Esteem, and Children’s Self-Perceptions*, 137 J. SOC. PSYCH. 588, 588 (1997), and Ginger L. Wilczak & Carol A. Marstrom, *The Effects of Parental Education on Parental Locus of Control and Satisfaction of Incarcerated Fathers*, 43 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 90, 92 (1999)); see also Hagan & Dinovitzer, *supra* note 20 at 142 (stating that low rates of contact between incarcerated mothers and their children “may have further negative consequences given that the maintenance of strong family relationships during incarceration may lower recidivism rates, and that ‘on the whole, prison prisoners with family ties during imprisonment do better on release than those without them’”) (quoting Creasie Finney Hairston, *Family Ties During Imprisonment: Important to Whom and for What?*, 18 J. OF SOC. & SOC. WELFARE 87, 99 (1991)); cf. Jeremy Travis, *supra* note 3 at 39-40 (citing research by the Center for Children of Incarcerated Parents), (discussing the importance of family support in rehabilitating prisoners after release)..

⁸⁷ Raeder, *Booker*, *supra* note 4, at 752.

If incarcerated, efforts should be made to ensure continued parental communication with their children. One such initiative is televisitation (or “virtual visits”).⁸⁸ Televisitation involves the use of video teleconferencing technology to permit communication between prisoners and their children⁸⁹ and is not available at most prisons.⁹⁰ Televisitation offers a number of benefits. Some state laws or regulations require local child welfare agencies “to make reasonable efforts to facilitate visitation between foster children and their incarcerated parents.”⁹¹ However, some claim that the agencies often ignore this requirement.⁹² Individual caseworkers may be prevented from facilitating visits between foster children and their incarcerated parents because arranging such visits is costly and time-consuming.⁹³ In particular, caseworkers must arrange for transportation of the foster children to often distant correctional facilities and for caseworkers or staff to accompany the children during the visits.⁹⁴ Televisitation provides local child welfare agencies with an alternative to costly and time-consuming visitation. It has the advantage of greater interaction between parent and child than phone calls and letters.

Correctional facilities also benefit because televisitation avoids the problems inherent in visitation, such as corrections security concerns and the protection of the physical well-being of the children. Moreover, setting up televisitation in correctional facilities may be quick and inexpensive. Many correctional facilities already set aside and equip a room where prisoners can make court appearances by teleconference,⁹⁵ a practice that saves these facilities the cost of transporting the prisoners to the courthouses and eliminates the security risk that result from such transportation.⁹⁶ The same room can be used for conducting a teleconference between prisoners and their children. At least three organizations have worked with prisons to provide prisoners

⁸⁸ The term “televisitation” comes from Project Impact, a program established by the Cleveland Eastside Ecumenical Consortium. Project Impact Online, Home Page, <http://www.projectimpactonline.com/index.htm> (last visited Feb. 15, 2009). The term “virtual visit” comes from a program established by The Pennsylvania Prison Society in partnership with the Pennsylvania Department of Corrections. The Pennsylvania Prison Society, Virtual Visitation, http://www.prisonersociety.org/progs/ifs_fvv.shtml (Mar. 21, 2009).

⁸⁹ See generally Travis, *supra* note 3, at 37, 41 (advocating for increased use of video links and Internet connections to permit prisoners to communicate with their children).

⁹⁰ Maldonado, *supra* note 21, at 206.

⁹¹ See ROSS ET AL., *HARD TIMES*, *supra* note 9, at 1 (citing NY SOC. SERV. LAW § 384-b(7), and *Implementation of the Adoption and Safe Families Act, Part III: ACS Best Practice Guidelines for Family Visiting Arrangements for Children in Foster Care*, ACS Comm’r Mem. to the Executive Directors of Foster Care Agencies (Dec. 19, 2000)); see also Raeder, *Booker*, *supra* note 4, at 701 (citing CAL. WELFARE & INST. CODE § 361.5(e)(1), N.Y. SOC. SERV. LAW 384-b(2)(b), (7)(f), and Cristine H. Kim, Note, *Putting Reason Back Into the Reasonable Efforts Requirement in Child Abuse and Neglect Cases*, 1999 U. ILL. L. REV. 287 (1999)).

⁹² Raeder, *Booker*, *supra* note 4, at 701.

⁹³ Partnerships, *supra* note 9, at 14; see also ROSS ET AL., *HARD TIMES*, *supra* note 9, at 3, 9 (noting that caseworkers may be deterred by the “elaborate and time-consuming procedures regarding visits to prisoners,” the requirement of “prior notification of a visit to insure the parent’s presence in the visiting room,” and the “need to prepare children for what they will experience when entering a jail or prison”).

⁹⁴ ROSS ET AL., *HARD TIMES*, *supra* note 9, at 3; see also Genty, *Damage*, *supra* note 4, at 1680 (noting that the remote location of prisons makes it difficult for agencies that provide services to children “to do meaningful family work”).

⁹⁵ Susan Haigh, *Prisons Beef Up Teleconferencing to Save Money*, USA TODAY, Nov. 23, 2008, available at http://www.usatoday.com/news/nation/2008-11-23-prison-teleconference_N.htm.

⁹⁶ *Id.*

and their families with teleconference visitation.⁹⁷ In addition, correctional facilities in Arizona and Florida have implemented teleconference visitation to varying degrees.⁹⁸

THE FURTHER RESOLVED CLAUSE

The FURTHER RESOLVED clause is designed to facilitate the tracking by child welfare agencies of the incarceration status of the parents of foster children so that the agencies can tailor their services to parent and child accordingly. Information on whether the parent of a child in foster care is currently in correctional custody is critical for child welfare agencies to properly engage in permanency and reunification planning.⁹⁹ Moreover, some states laws require child welfare agencies “to make reasonable efforts to facilitate visitation between foster children and their incarcerated parents.”¹⁰⁰ Currently, however, many child welfare agencies do not track parental incarceration status or categorize cases according to whether the parents are in correctional custody.¹⁰¹ Additionally, foster children and their parents may be reluctant to voluntarily provide the child welfare agencies with information on parental incarceration status.¹⁰²

⁹⁷ The first organization is a non-profit, faith-based organization called the Cleveland Eastside Ecumenical Consortium. Project Impact Online, Home Page, <http://www.projectimpactonline.com/index.htm> (last visited Feb. 15, 2009). This organization provides televisitation to the Ohio Reformatory for Women in Marysville. *See generally* Olivera Perkins, *Women Get Teleconference Prison Visits*, THE PLAIN DEALER, Jan. 3, 2005, at B3, available at 2005 WLNR 106096 (discussing the program).

The second organization is called The Pennsylvania Prison Society and works in partnership with the Pennsylvania Department of Corrections. The Pennsylvania Prison Society, Virtual Visitation, http://www.prisonsociety.org/progs/ifs_fvv.shtml (Mar. 21, 2009). The organization provides virtual visits to prisoners in eight state prisons. *Id.*

The third organization is Hope House, an organization in Washington, D.C. Hope House, Home Page, <http://hopehousedc.org/programs.html> (Mar. 21, 2009). The organization has created a teleconference hookup with federal prisons in North Carolina, Ohio, and New Mexico. Travis, *supra* note 3, at 37.

⁹⁸ Associated Press, *Video Jail Visits Becoming Common at Phoenix Jail*, Nov. 3, 2005, <http://www.policeone.com/police-products/corrections/articles/120510-Video-jail-visits-becoming-common-at-Phoenix-jail/> (describing two Phoenix jails that permit video visits); Press Release, Fla. Dep’t of Corr., Program to Strengthen Inmate Family Ties, Nov. 23, 1999, <http://www.dc.state.fl.us/secretary/press/1999/familyties.html> (describing the “Reading Family Ties – Face to Face” program in which incarcerated mothers read a storybook with their children via teleconferencing).

⁹⁹ ANNIE E. CASEY FOUND. & THE WOMEN’S PRISON ASS’N, PARTNERSHIPS BETWEEN CORRECTIONS AND CHILD WELFARE: COLLABORATION FOR CHANGE, PART TWO 11, 15 (2001) [hereinafter Partnerships], <http://www.aecf.org/upload/publicationfiles/partnerships%20between%20corrections.pdf> (discussing the various obstacles that child welfare agencies face in working with incarcerated parents); Philip M. Genty, *Damage to Family Relationships as a Collateral Consequence of Parental Incarceration*, 30 FORDHAM URB. L.J. 1671, 1682 (2003) (noting the absence of reliable data on the what portion of the child welfare caseload involves parental incarceration, data important to assessing the particular needs of foster children with incarcerated parents and to policymaking).

¹⁰⁰ *See* TIMOTHY ROSS, ET AL., VERA INST. OF JUSTICE, HARD DATA ON HARD TIMES: AN EMPIRICAL ANALYSIS OF MATERNAL INCARCERATION, FOSTER CARE, AND VISITATION at 2 (2004), available at http://www.vera.org/publication_pdf/245_461.pdf. (citing NY SOC. SERV. LAW § 384-b(7), and *Implementation of the Adoption and Safe Families Act, Part III: ACS Best Practice Guidelines for Family Visiting Arrangements for Children in Foster Care*, ACS Comm’r Mem. to the Executive Directors of Foster Care Agencies (Dec. 19, 2000)).

¹⁰¹ Genty, *Damage*, *supra* note 1, at 1677, 1682; *see also* Partnerships, *supra* note 1, at 11-12 (noting the lack of data regarding how many foster children currently have an incarcerated parent).

¹⁰² ROSS ET AL., HARD TIMES, *supra* note 2, at 2

Even when child welfare agencies are aware of parental incarceration, they still face a general lack of coordination between the child welfare system and the corrections system.¹⁰³ For example, some claim that child welfare agencies (1) have difficulty locating incarcerated parents in the criminal justice system¹⁰⁴ and once located, are not timely informed of transfers,¹⁰⁵ (2) have difficulty obtaining information on visiting procedures from correctional facilities,¹⁰⁶ and (3) have difficulty working effectively with incarcerated parents because of policies and practices in the criminal justice system that hinder contact with incarcerated parents or arrangements for contact between these parents and their children.¹⁰⁷ Additionally, some caseworkers have difficulty engaging in permanency and reunification planning for the children of incarcerated parents because they lack information about the parents' length of sentence, release date, and prospects for parole.¹⁰⁸ Moreover, because the child welfare and corrections systems often work with the same families, the lack of collaboration between the two systems leads to wasted resources: for example, one family could be receiving the same service from "a drug treatment agency, a program alternative to incarceration, a family foster care agency, and the department of probation."¹⁰⁹ This Resolution encourages greater coordination between these two systems to the extent consistent with security, safety, and privacy concerns.

Respectfully submitted,

Charles Joseph Hynes
Chair, Criminal Justice Section
February 2010

¹⁰³ See Genty, *Damage*, *supra* note 1, at 1681-82; ROSS ET AL., *HARD TIMES*, *supra* note 2, at 15. See generally Partnerships, *supra* note 1, at 8-10, 14-17 (discussing the lack of coordination and communication between the child welfare and the criminal justice systems).

¹⁰⁴ Partnerships, *supra* note 1, at 15.

¹⁰⁵ *Id.*; ROSS ET AL., *HARD TIMES*, *supra* note 2, at 15.

¹⁰⁶ Partnerships, *supra* note 1, at 15; Jeremy Travis, *Families and Children*, *FED. PROBATION*, Jun. 2005, at 36 (citing The Women's Prison Association).

¹⁰⁷ Partnerships, *supra* note 1, at 9-10, 14-17. One organization noted the following barriers that child welfare agencies face in working effectively with incarcerated mothers:

- The distance between the community and facilities; variations in policies and practices, and visitation rules; and general telephone restrictions;
- A lack of private space for caseworkers to meet with mothers;
- The difficulty in making referrals for incarcerated mothers to programs inside the prison or getting information on these programs; and
- A lack of notification about transfers of incarcerated parents and difficulty in finding any incarcerated parent in the criminal justice system.

Id. at 15.

¹⁰⁸ *Id.* at 15, 17.

¹⁰⁹ *Id.* at 14.

102E

GENERAL INFORMATION FORM

Submitting Entity: American Bar Association Criminal Justice Section

Submitted By: Charles Joseph Hynes, Section Chair

1. Summary of Recommendation(s).
The recommendation urges jurisdictions to undertake eight enumerated initiatives to facilitate contact and communication between parents in correctional custody and their children in the free community, through visits, telephonic and written communications, and improved parenting skills. To ensure that such initiatives extend to incarcerated parents with foster children, the recommendation also promotes policies and procedures to improve communications between child welfare agencies and correctional agencies.
2. Approval by Submitting Entity.
The proposed resolution was approved on November 7, 2009 by the Criminal Justice Section Council.
3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?
See #4 below for 1996 resolution. The proposed Criminal Justice Standards on *Treatment of Prisoners* that will be before the House at this meeting include some recommendations similar to (and consistent with) some of the initiatives in the first "Resolved" clause.
4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?
The proposed resolution would reaffirm and expand the following resolution approved at the 1996 Annual Meeting:
RESOLVED, that the American Bar Association supports initiatives that seek to preserve and promote healthy relationships between children and their parents in correctional custody. Such initiatives would consider family accessibility to the facility in making assignment of inmates; would assist parents in correctional custody in developing parenting skills; would allow extended contact visitation by such parents and children; and would support the emotional well-being of children.
5. What urgency exists which requires action at this meeting of the House?
Action at this meeting will allow proponents to promote the various recommendations immediately.
6. Status of Legislation. (If applicable.)
None that we are aware of.
7. Cost to the Association. (Both direct and indirect costs.)
None.
8. Disclosure of Interest. (If applicable.)
No known conflict of interest.
9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)

Concurrently with the submission of this report to the ABA Policy Administration Office for calendaring on the February 2010 House of Delegates agenda it is being circulated to the following:

Section, Divisions, Forums

Individual Rights and Responsibilities Section
Health Law Section
Family Law Section
Standing Committee on Legal Aid & Indigent Defendants
Coalition for Justice
Council on Mental and Physical Disability Law
Commission on Youth at Risk
Young Lawyers Division
Judicial Division
Litigation Section
State and Local Government Law
Government and Public Sector Lawyers Division

10. Contact Person. (Prior to the meeting. Please include name, address, telephone number and email address.)

Jane Harris Aiken, Co-Chair, CJS Committee on Women in Criminal Justice
Georgetown University Law Center
600 New Jersey Avenue NW
Washington DC 20001-2075
PH: 202/662-9580
Jha33@law.georgetown.edu

Prof. Myrna Raeder
Southwestern University School of Law
3050 Wilshire Boulevard
Los Angeles CA 90010-1106
PH: 213/738-6775
mraeder@swlaw.edu

11. Contact Person. (Who will present the report to the House. Please include email address and cell phone number.)

Stephen A. Saltzburg, Section Delegate
George Washington University law School
2000 H Street NW
Washington DC 20052-0026
PH: 202/994-7089; 202 /489-7464 (cell)
E-mail: ssaltz@law.gwu.edu

William Shepherd, Section Delegate
Statewide Prosecution
1515 N Flagler Drive, Suite 900
West palm Beach FL 33401-3432
PH: 561/837-5025, ext. 226; 561/723-9669 (cell)
E-mail: William.shepherd@myfloridalegal.com

102E

EXECUTIVE SUMMARY

A. Summary of Recommendation.

The recommendation urges jurisdictions to expand their efforts to facilitate contact and communication between parents in custody and their children in the free community by considering eight enumerated initiatives relating to visitation, telephonic and written communications, and improved parenting skills. To ensure that such measures extend to incarcerated parents whose children are in foster care, it also promotes policies and procedures to improve communications between child welfare agencies and correctional agencies.

B. Issue Recommendation Addresses.

The recommendation seeks to ameliorate the adverse impact of parental incarceration on the parent/child relationship generally and with respect to parent/foster child in particular.

C. How Proposed Policy Will Address the Issue.

The proposed policy suggests eight specific steps for jurisdictions to consider in order to improve the parent/child relationship both while the parent is in custody and after the parent is released.

D. Minority Views or Opposition.

No opposition to this recommendation is known to exist at this time.