

# Parental Incarceration, Termination of Parental Rights and Adoption: A Case Study of the Intersection Between the Child Welfare and Criminal Justice Systems

Charlene Wear Simmons and Emily Danker-Feldman\*



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*\*Charlene Wear Simmons is an Adjunct Faculty Member at the University of Southern California and consults on policy and organizational development; previously she was Assistant Director of the California Research Bureau. Emily Danker-Feldman is a graduate student at Washington University in St. Louis pursuing a dual degree in law and social work.*

## **Abstract**

*In this case study, we examine the intersection between the child welfare, judicial and correctional systems based on a review of all San Francisco child welfare adoption files from the years 2007 and 1997, when the federal Adoption and Safe Families Act was enacted. We found that less than a fifth of all parents, and only two percent with a history of incarceration, attended the dependency court hearings in which their children were detained, reunification requirements imposed, or parental rights terminated. Most were not represented by attorneys. In all cases, mothers were the primary caretakers. Nearly 70 percent had criminal records and 54 percent had been incarcerated. Eighty seven percent had substance abuse issues and many also had mental health issues. They were disproportionately African American. The majority of their children were detained at birth due to illegal drug exposure. On average, mothers with more than one child in foster care had had 3.3 children removed from their care. Improved access to the courts; priority substance abuse and other programming; intensive, supervised case management services, and; accountability for court-ordered service results could prove cost effective and beneficial for these mothers, their children and society.*

## **About the Authors**

Charlene Wear Simmons, Ph.D. is an Adjunct Faculty Member at the University of Southern California and a consultant in policy and organizational development at the Davis Consultants Network. She recently retired as Acting Director of the California Research Bureau in the State Library. Her policy research publications are available at <http://www.library.ca.gov/crb/CRBSearch.aspx>. Please address all correspondence to 645 Oak Avenue, Davis, California 95616, or [dc55simmons@yahoo.com](mailto:dc55simmons@yahoo.com).

Emily Danker-Feldman is a graduate student at Washington University in St. Louis pursuing a dual degree in law and social work. She has worked for a variety of feminist nonprofits and plans to continue advocating for women and children as a public interest lawyer. Please address all correspondence to 3404 Grass Hill Terrace, Falls Church, VA 22044 or [emily.dankerfeldman@gmail.com](mailto:emily.dankerfeldman@gmail.com).

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# **Parental Incarceration, Termination of Parental Rights and Adoption: A Case Study of the Intersection Between the Child Welfare and Criminal Justice Systems**

## **Introduction**

### ***Parental Rights Are Conditional***

Parents exercise primary authority over their children and bear responsibility for their well-being and development. However, parental rights are conditional upon protection of children's best interests. States establish standards to ensure that children are educated, healthy and safe, and have their basic needs met. When parents become dysfunctional and endanger their children, the state has the responsibility to intervene. The scope, direction, and timing of this intervention are structured by federal and state laws, law enforcement and child welfare agency actions, and judicial decisions (Simmons 2003).

When the state determines that a child's parents are either unable or unwilling to provide safe and appropriate care, the state assumes responsibility: "The courts hold the legal responsibility for children who have been removed from their homes, serving in effect as 'parent' and bearing the responsibility for their safety and well-being" (Blue Ribbon Commission 2009). In California, Child Welfare Service (CWS) agencies (also called Child Protection Services or CPS) assist the courts in providing neglected or abused children with appropriate care. These agencies are administered by county welfare departments with oversight from the California Department of Social Services.

Juvenile Courts—called Dependency Courts when hearing cases regarding dependent children—have legal responsibility for children who have been removed from their homes due to abuse or neglect. These courts direct and monitor child placement and establish the conditions for family reunification. Child welfare workers are charged with creating a case plan for each

child, assisting parents to secure court-ordered reunification services, such as substance abuse treatment, parenting classes or monitored visitation, evaluating the parents' progress, and informing the courts. Concurrently, child welfare workers create a permanency plan for the child which the court relies on in making its decisions.

If a parent fails to meet the court's conditions after being offered appropriate services, or if the parent has already had another child removed from his or her care due to abuse or neglect, the court may terminate parental rights. The child may be adopted, placed with relatives, or remain in long-term foster care.

### ***Parental Incarceration and Foster Care***

The impact of the criminal justice system on prisoners' families has grown along with the nation's federal and state correctional population, which increased from 130 inmates per every 100,000 residents in 1980, to 504 in 2008. At the end of 2008, one in every 133 U.S. residents was in the custody of state or federal prisons or local jails (Sabol, West, Cooper 2010). Incarcerated women (62 percent) were more likely than men (51 percent) to report being a parent. Parental incarceration is "...a childhood risk that is concentrated among black children and children of low-education parents" (Wildman 2009).

The number of children with a mother in prison increased 131 percent between 1991 and midyear 2007. Over 40 percent of these mothers were single parents prior to their incarceration and most of their children went to live with relatives, friends, or were placed in foster care. In contrast, 88 percent of children with incarcerated fathers continued to live with their mothers (Glaze and Maruschak 2008).

Children whose parents are involved in the criminal justice system have an above average likelihood of entering foster care (Phillips et al. 2004). This is particularly true when a mother is

incarcerated because many are single parents. Maternal incarceration can affect "...the length of time they [the children] spend in foster care, and the agencies' plans to reunite families or identify other permanent homes for the children" (Ehrensaft et al. 2003)..

Studies by the Vera Institute of Justice and by the Chapin Hall Center for Children have compared criminal justice and foster care placement records in New York City and Cook County, Illinois, respectively, and found that reunification was less likely, and adoption more likely, for the children of incarcerated mothers (Ehrensaft et al. 2003; Dworsky 2004). The Urban Institute reports a study in Alleghany County, Pennsylvania, which found that children in foster care whose mothers were incarcerated were more likely than other children to be assigned a placement goal of adoption (Brazzell 2008). In the Vera Institute of Justice study in New York City, the majority of mothers had children removed in the year before their arrest and incarceration, often reflecting a "...worsening spiral of substance abuse and involvement in the drug trade primarily due to substance abuse" (Ehrensaft et al. 2003).

In California, about 42 percent of the nearly 11,000 female offenders in state prisons in 1997 were incarcerated for drug offenses, compared to 29 percent of 11,100 offenders in 2007 (CDCR 2010). California's prisons are located in remote areas that are difficult for child welfare caseworkers to access and children to visit. For example, two large women's prisons, Valley State Prison for Women and Central California Women's Facility, are located in Chowchilla, about a four and a half hour drive from Los Angeles, where many of the women's families live.

The average time served in California's prisons is two years (California Department of Corrections 2009). However incarcerated parents, like all parents, have a limited time to comply with Dependency Court orders to reunify with their children in foster care. Under the federal Adoption and Safe Families Act (ASFA ) of 1997, states must file petitions to terminate parental rights when children have been in foster care for 15 of the previous 22 months; California also

requires termination petitions when a child under three years old has been in care for six months. Concurrently, CWS agencies are required to identify, recruit, process and approve a qualified adoptive family. The goal is to expedite permanent placement for the children. Exceptions are allowed on a case-by-case basis if:

- (1) a child is being cared for by a relative;
- (2) the state shows a compelling reason why termination of parental rights is not in the best interests of the child; or
- (3) the state agency has not provided the services required by the case plan to return the child to a safe home, if “reasonable efforts” were required.

However, incarcerated parents often do not have access to the reunification services required by the courts, including parenting classes, substance abuse treatment, mental health therapy, or educational programs. They encounter procedural difficulties in receiving timely notice of court hearings and making arrangements to be transported to court. For all of these reasons, they are at risk of having their parental rights terminated.

Recognizing the difficulties that incarcerated and institutionalized parents and parents in a residential drug treatment programs have in meeting the AFSA timelines, recent California legislation (Chapter 482, Statutes of 2008) requires the courts to consider the barriers that those parents face in accessing court-ordered services and maintaining contact with their children. The court is also to consider a parent’s criminal history only to the extent that it is substantially related to parenting ability. Services may be extended up to 24 months if (1) the permanency plan is to return the child to the home; (2) reasonable services have not been provided; and, (3) it is in the best interests of the child.

## **Case Study Findings**

### ***Methodology***

This case study of San Francisco child welfare adoption case files and the corresponding Unified Family Court files from 1997 and 2007, examines parents who have had their parental rights terminated and children adopted and their interactions with the criminal justice system.

Until this year, California did not require child welfare workers to include information about parental incarceration in the child welfare services case management statewide database (SB 118 Liu, Chapter 338, Statutes of 2009). State correctional officials do not consistently maintain or report information on whether prisoners have children. For this reason, the significant relationship between these two large public systems of care has not been well understood.

We read all 1997 child welfare case files involving children adopted that year from foster care in San Francisco (61 cases, often with multiple files). The more recent 2007 cases (103 cases) were computerized; locating information relating to parental involvement in the criminal justice system and other issues required reading through multiple screens.<sup>1</sup> We also examined corresponding records at the Unified Family Court documenting termination of parental rights and adoption. Having the total N—number—of cases for each year made it unnecessary to employ statistical adjustments in the analysis, as would have been required by a

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<sup>1</sup> The research was enabled by the assistance from the office of the San Francisco City Attorney and a judicial order from Superior Court of San Francisco Unified Family Court Presiding Judge Donna J. Hitchens, and supported by a grant from the Zellerbach Family Foundation. We are grateful to the San Francisco Human Service Agency's Family and Children Services Division and Deputy Director Debby Jeter and her staff; without their helpful support and assistance this study would not have been possible.



smaller sample size. Information was coded using unique identification numbers to ensure confidentiality and anonymity.<sup>2</sup>

Mothers were the primary caregivers in all the cases reviewed, while information about fathers was uneven since the mothers were the source. We report information about fathers when the data allow.

We did not examine child welfare case files where parental rights were terminated but the children were not adopted nor placed in a legal guardianship, resulting in “legal orphans.” Other research suggests that these children are older or have special needs, and that many emancipate from foster care without a permanent family identity and do not fare well as adults (Macomber 2009).

### ***Parental Incarceration***

Children impacted by parental incarceration in San Francisco comprise an estimated 15 to 20 percent of the child welfare caseload at the Family and Children Services Division (Jeter 2009).<sup>3</sup> A national study found that 12.5 percent of the children reported as a victim of maltreatment had a recently arrested parent, 90 percent of whom were the children’s mothers (Phillips and Gleeson 2007). A study in Allegheny County, Pennsylvania, found that 17 percent of the children first placed in foster care between 2001 and 2004, had mothers booked at the county jail at least once between 1988 and 2007, “indicating a significant overlap between the populations involved in the child welfare and jail systems” (Brazzell 2008).

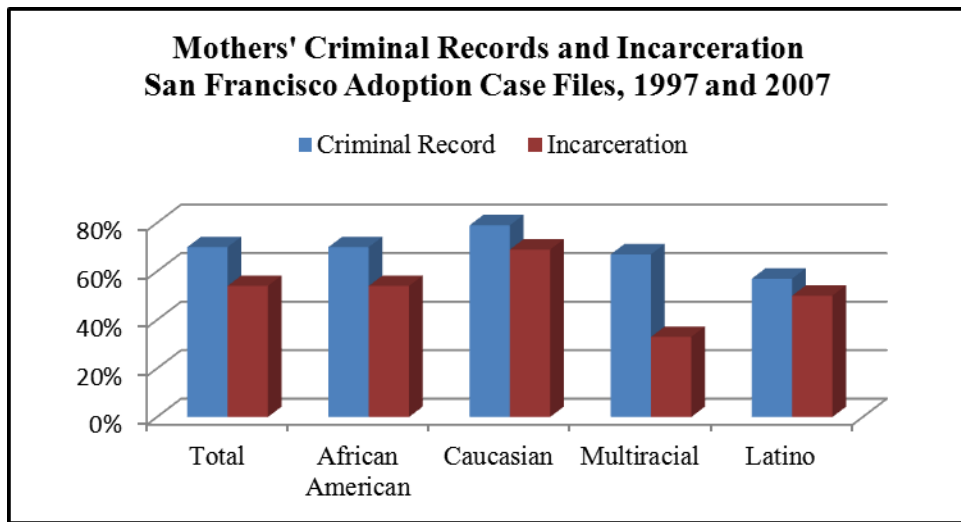
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<sup>2</sup> California *Penal Code* section 13202 requires that criminal offender material identifying individuals not be transferred or used any purpose other than research or statistical activities and reports.

<sup>3</sup> The estimate is approximate for many reasons: parents may not tell CWS about their incarceration; the length of time in custody may be short so it does not get recorded; and, child welfare workers do not regularly record prison addresses in the case files.

In contrast, over half of the children adopted from foster care in San Francisco in 1997 and 2007 had a mother with a history of involvement in the criminal justice system. Maternal incarceration was reported in 54 percent of the case files and criminal records were mentioned in 70 percent. The majority of mothers had been incarcerated in local jails, including seven percent in San Francisco's juvenile hall, while 43 percent were incarcerated in state prison.

**Chart 1**



Source: San Francisco Case File Study, 2009

The majority of fathers also had been involved in the criminal justice system. Sixty five percent had a criminal record and 58 percent had been incarcerated. Two thirds of the incarcerated fathers served time in county jails; the rest were in state prisons, including out-of-state.

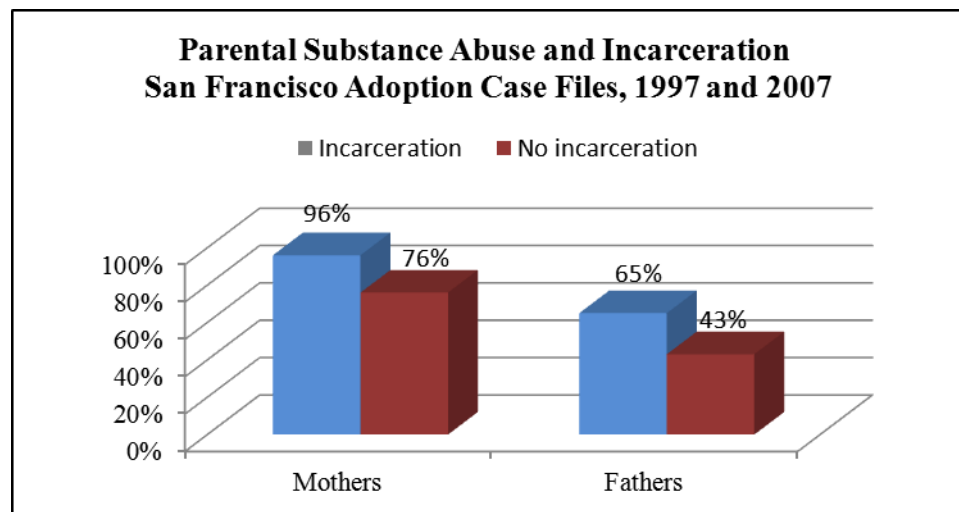
### *Incarceration and Substance Abuse*

Parents incarcerated in state prisons have multiple problems which affect the lives of their children before, during and after their incarceration, and are major factors contributing to the removal of children from their homes due to neglect or abuse (Glaze and Maruschak 2008):

- 57% of incarcerated parents meet the criteria for a mental health problem
- 67% report having abused alcohol or drugs
- 14% lived in foster care at some time during their youth
- 16% of incarcerated mothers were homeless the year before their arrest and 54% had experienced physical or sexual abuse

An overwhelming 87 percent of the mothers in the San Francisco case files struggled with substance abuse issues, including 93 percent of the Caucasian mothers, 90 percent of the African American mothers, 71 percent of the Latina mothers and 67 percent of the Asian mothers. The incidence of maternal substance abuse was consistent over the decade—86 percent in 1997 and 87 percent in 2007. The intersection between parental substance abuse and incarceration is overwhelming--96 percent of the mothers with a history of incarceration had substance abuse problems, as did 65 percent of the fathers.

**Chart 2**



Source: San Francisco Case File Study, 2009

Twenty formerly incarcerated San Francisco women were interviewed for this case study. Nineteen of the twenty women had a substance abuse problem and had either completed or were enrolled in drug treatment programs. Each woman stated that her incarceration was a result of substance abuse and that she had not been in trouble prior to using drugs. Some of the women were in residential programs, while others were living with relatives or spouses.

*Mental Health.* Research increasingly finds that substance abuse is related to the relatively high prevalence of trauma, violence and abuse in women's lives, which affects their overall well-being and mental health. For example, the National Violence Against Women Survey reported that:

Having a history of violence, trauma, or abuse is associated with increased risk of depression, PTSD, panic disorder, and a tendency toward risk behaviors such as smoking, binge

drinking, cocaine use, self-injury, unhealthy weight control, risky sexual behavior, and serious consideration of suicide (SAMHSA 1999).

According to data cited by Bloom and Covington (Gido and Dalley 2009), "...as many as 80% of incarcerated women meet the criteria for at least one lifetime psychiatric disorder."

Over half (56 percent) of the mothers in the San Francisco adoption case files struggled with mental health issues. Over half had experienced abuse as children and/or as adults and nearly a quarter had been in foster care themselves as children. Over half of the mothers had been homeless at some point. The incidence of these experiences is likely higher than reported since this information is not uniformly collected and reported in the case files. Seven percent of the mothers had engaged in sex work to support themselves. Three of the mothers had died.

Despite their serious issues, relatively few of the mothers in the San Francisco case file study—17 percent—received any government assistance. This is a low number since many of the mothers were probably eligible for Temporary Assistance to Needy Families (TANF) or Food Stamps. We are unable to resolve this question with case file data, but mothers with a history of incarceration may have been disqualified. This is because under federal law, a state is barred from providing TANF assistance or Food Stamps to an individual convicted of a drug-related felony (possession, use, or distribution of a controlled substance) unless the state opts out or narrows the scope of the prohibition. California has not done so, leaving the federal prohibition in place.

### ***Parental Interactions with the Dependency Court***

In 2007, there were over 5,000 referrals in San Francisco alleging child abuse or neglect, 21 percent of which were substantiated.<sup>4</sup> Neglect was the most common reason, followed by physical abuse. Forty percent of the children in substantiated cases entered into foster care (Needell et al.).

When a case of possible child abuse or neglect is reported to CWS and is investigated and substantiated, the agency seeks a court order placing the child in temporary care. In a detention hearing, the Dependency Court hears evidence and decides whether the child should be placed under the court's jurisdiction ("detained"). The court may also enter a disposition at that or a subsequent hearing ordering the parent to participate in services to reduce the risk of future child maltreatment, and establishing conditions for reunification if the child has been removed to foster care or placed with a relative. Absent parental testimony, court decisions are based on the record presented by the child welfare worker.

The goals for children in foster care established by ASFA are safety, permanency with caring parents, and well-being. If efforts to reunify are unsuccessful, the goal may be changed to another permanent arrangement such as adoption. Dependency courts establish the conditions and timeframe for reunification and oversee the children, their families and parents' services.

*Reunification.* At the disposition hearing, the court reviews the case plan prepared by the social worker and orders the social worker to provide specified child welfare services to the child and the child's parents. Parents must participate in services as a condition of reunification with their children. *Welfare & Institutions Code* section 16501.1 (a) (1) provides that the case plan is the foundation and central unifying tool in child welfare services, and *Welfare and Institutions Code* section 319 (d) (1) authorizes a number of reunification services for parents including

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<sup>4</sup> A substantiated referral means that there has been a prima facie showing that the child falls within the provisions of *Welfare & Institutions Code* section 300, which defines child abuse and neglect.

“...case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services [and] referral to public assistance services.”

Reunification services can be denied if the parent or guardian of a child has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem. These are among 15 conditions that exempt CWS from making reasonable efforts to provide reunification services, more exemptions than in any other state. [*Welfare & Institutions Code* section 361.5 (b) (13)]. There is considerable variation among California counties in the provision of reunification services to parents, resulting in a severe “...inequity of decision making...” (Golden and Macomber 2009).

Incarcerated and institutionalized parents may receive reunification services for up to 18 months, or for 24 months if there is a substantial probability that a child will be reunified with his or her parents in that time period (*Welfare and Institutions Code* section 361.5). The court is obligated to consider the barriers these parents face to accessing court-ordered services and maintaining contact with their children. Parents may be required to attend counseling, parenting classes or vocational training programs if they are available. Services may include, but are not limited to, all of the following:

- Maintaining contact between the parent and child through collect telephone calls; these can be expensive, with costs generally falling on the family of the incarcerated parent
- Transportation services, where appropriate.
- Visitation services, where appropriate.
- Reasonable services to extended family members or foster parents.

The parents in the 1997 and 2007 San Francisco adoption case files were ordered by the court to fulfill a combination of reunification requirements, as displayed on a pre-printed form:

1. Cooperate with the child welfare worker to develop and execute a case plan
2. Complete a substance abuse treatment program and test clean (most common)
3. Visit the child regularly (generally under supervision)
4. Complete a parenting class
5. Obtain suitable housing for a reasonable period of time
6. Participate in mental health therapy/psychotherapy<sup>5</sup>
7. Sign a consent form to monitor compliance
8. Participate in obtaining medical care for the child
9. Obtain appropriate medical care
10. Remain arrest free, not engage in criminal activity and comply with probation/parole

Since few of the parents in these case files attended the hearings in which reunification requirements were imposed (see below), the case plan compiled by the social worker was the basis for the court orders.

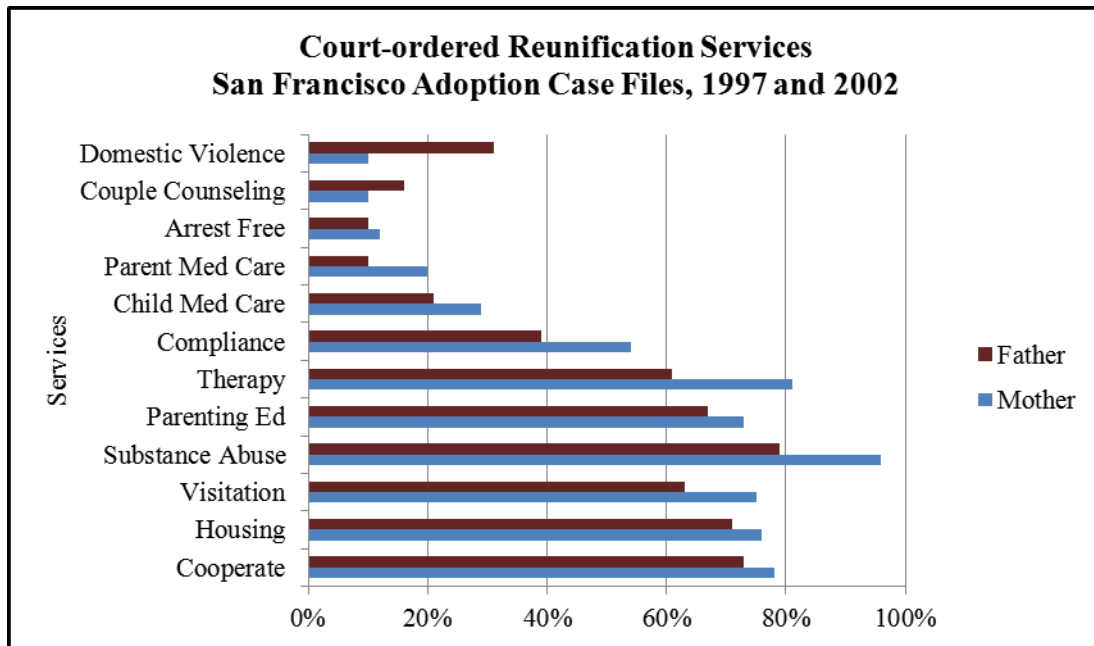
Given the parents' extensive substance abuse and mental health issues, it is not surprising that substance abuse treatment and mental health therapy were the most commonly ordered reunification services by San Francisco courts.

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<sup>5</sup> Reasons cited by the court for requiring the mothers to participate in therapy included childhood trauma, anger, domestic violence, depression, anxiety, bipolar disorder, and parenting issues; for the fathers, the court cited anger, sexual issues, co-dependency, violent/abusive behavior, depression, illness, and parenting issues.



**Chart 3**



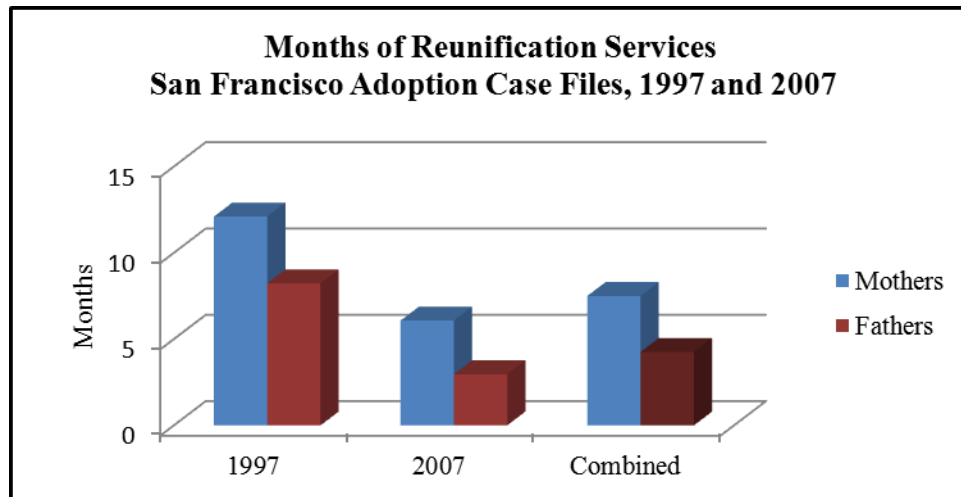
Source: San Francisco Case File Study, 2009

Following the court order, child welfare workers generally refer a parent to an appropriate service provider or providers. For example, parents ordered to find suitable housing are referred to the housing authority. San Francisco has an unusually broad array of nonprofit, community-based service providers that offer specialized residential and outpatient drug programs, transitional housing, mental health therapy, anger management, and alcohol treatment, among other services.

However the average period of time during which San Francisco mothers in the adoption case files received reunification services declined from 12 months in 1997, to six months in 2007. Two-thirds of the fathers did not receive any court-ordered services, primarily due to

unknown identity or location, and the average time period for the services they did receive decreased from eight months in 1997, to three months in 2007. Information about reunification services was absent from one third of the case files.

**Chart 4**



Source: San Francisco Case File Study, 2009

We interviewed 20 formerly incarcerated women in San Francisco whose children had been placed in foster care. They were all struggling to reunify with one or more of their children. Access to services emerged as a central concern. The majority of the women stated that they had received no help or services after receiving their reunification plans. Most said that they had to locate their own programs and services and get them approved by CWS. Specifically, they voiced the following concerns:

- No one asked me about domestic violence.
- Why do they take the child away instead of getting the parent help?
- CWS didn't connect with me in jail—they didn't know where I was.

- The court's requirements are too overwhelming and it's difficult to take advantage of services.
- We need child support, job training, housing, and employment assistance.
- The court refused to give me a reunification plan due to prior history.
- We need help in understanding the legal system.
- There are no resources available in jail on how to connect with CWS or about court hearings.
- Information should be in Spanish.
- We need therapeutic assistance to alleviate the pain of having children removed instead of turning to drugs.

Given the challenges of reunification, declining services, and the difficult issues experienced by these parents, it is not surprising that the number of adoptions from foster care in San Francisco increased by one third from 1997 to 1998, when the ASFA timelines were implemented. By the end of 2007, the number of adoptions was 40 percent higher than in 1997. At the same time, the number of children living in San Francisco decreased (from almost 143,000 to 132,800) and the rate of substantiated child abuse decreased (Needell et al. 2008). National research also finds that since ASFA, children are spending less time in care and are more likely to be adopted (Golden and Macomber 2009)., a key goal of the legislation.

Given the difficult life situations of many of the mothers in the San Francisco case files, it may be unrealistic to expect them to fulfill court-ordered reunification requirements within the statutory time frame. For example, in arguing for more effective and available treatment for parents with substance abuse issues, Nancy Young and Sid Gardner comment that:

The six month review for younger children and the 15/22 [ASFA] requirements have an obvious impact on the timetable for treatment services. The issue is two-fold: (1) how long it takes for parents to enroll in treatment, and (2) how much progress toward recovery has been made by the time the court reviews the case (2009).

Other research has found a “significant overall increase” in the number of incarcerated parents whose parental rights were terminated following passage of ASFA (Allard and Lu 2006). According to one of the authors, “It is a very rare situation where a woman prisoner with a child in foster care has not been confronted with this [termination of parental rights]” (Bernstein 2000).

In October and November 2007, Legal Services for Prisoners with Children in San Francisco interviewed formerly incarcerated women, youth (children of incarcerated or formerly incarcerated parents) and care providers about reunification timelines and custody and parenting needs. The interviewer found that:

Although no one had ever heard of the Adoption and Safe Families Act, every person interviewed had been affected by it. Most interviewees referred to the ASFA as “that new law.”... Some were still involved in custody battles, parental rights restoration and foster care issues...they needed someone to help them (such as an advocate) but there was no one available. All felt that they were railroaded through processes and paperwork without being able to express their wants and needs regarding the care of their children (Rederford 2007).

*Parental Attendance at Court Hearings.* Parents who do not attend dependency court hearings or are not represented cannot present their cases to the court and thus may be more likely to have their parental rights terminated. Review of the San Francisco adoption case files indicates that relatively few parents attended the court hearings in which reunification requirements were ordered or parental rights terminated. For the 163 children in the San Francisco 1997 and 2007 case files, there were 392 recorded detention (49 percent) and disposition hearings (48 percent). Each case also had a hearing in which parental rights were

terminated (a 366.26 hearing) and a hearing in which adoption was finalized (on average one year after termination).

Under state law, 12 month review hearings are also required following the initial disposition, as are six month reviews for children under three years old. These hearings were rarely documented in the case files. The incomplete information is perhaps not surprising given that the Blue Ribbon Commission on Children in Foster Care found that "...dependency courts are able to gather only limited data on their ability to meet statutory timelines for hearings and requirements regarding safety, permanency, and well-being" (Blue Ribbon Commission 2009).

Mothers in the 1997 case files were recorded as present in nine percent of the hearings and as represented by an attorney in 22 percent of the hearings. Their attendance increased to 27 percent in 2007, with an attorney present at 28 percent of the time. Fathers were recorded as present in 14 percent of the hearings for both years and were represented by an attorney in 17 percent of the hearings. Relatives attended four percent of all hearings.

In comparison, incarcerated parents were recorded as present in only seven percent of the dependency court hearings, all in 1997, even though the majority were serving time in county jails in San Francisco or Alameda, a relatively short transport distance from San Francisco's dependency courts. Since the majority of parents in the case files had a history of incarceration, they were disproportionately absent from the court hearings in which their children were removed, reunification requirements imposed, and parental rights terminated.

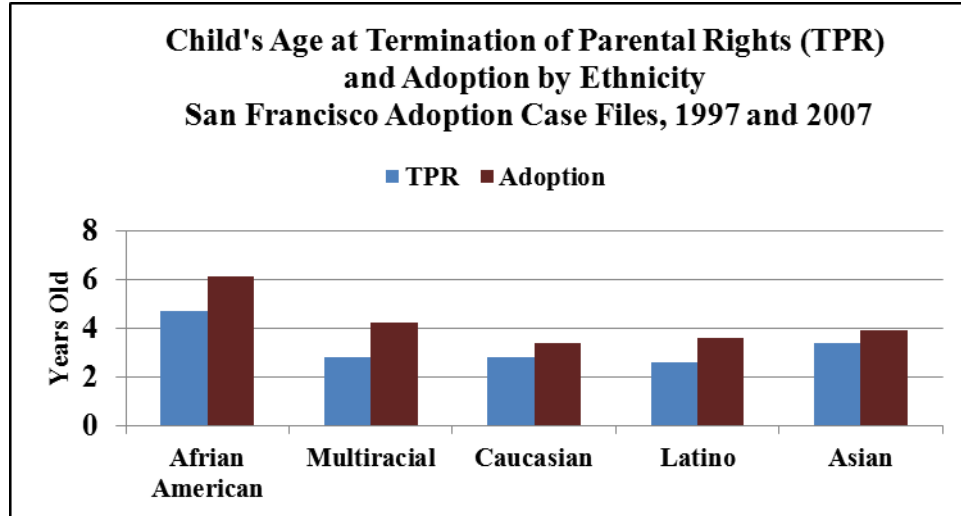
Under *Penal Code* section 2625, an incarcerated parent (with the exception of those sentenced to death) has a right to be present at a hearing seeking to adjudicate his or her child as a dependent of the court and at a hearing to terminate parental rights. However, incarcerated parents may not receive notice of a hearing (especially if the child welfare worker is unaware of

their location), and they face many barriers to attendance. Under *Penal Code 2625*, the superior court of the county in which the dependency proceeding is pending must order that the prisoner receive notice. The prisoner (or his or her attorney) must send a statement to the court indicating a desire to be present, after which the court will issue an order for the prisoner's temporary removal from the correctional institution to attend the proceeding. However, the parent, the warden, superintendant or other person in charge of the correctional institution, or the parent's representative may waive the prisoner's physical presence if the parent has "...by express statement or action," indicated an intent not to appear.

The *Incarcerated Parents Manual* authored by Legal Services for Prisoners with Children advises that jail mail moves slowly and that parents should keep track of their children's hearing dates. A court order to transport a parent to a hearing must be received by the warden at least 15 days prior to the date of the hearing. Copies of the judicial order must be sent to the warden or sheriff where the parent is incarcerated and to the county sheriff where the court is located (Legal Services 2007). This is a cumbersome process and likely contributes to the parents' limited attendance at dependency court hearings.

*Termination of Parental Rights and Adoption.* San Francisco's Family and Children Services Division has a practice of terminating parental rights when an adoptive family has been identified and deemed appropriate, which may be a year or more before the adoption is finalized. (Not all California counties follow this practice.) Thus the average age of a child in the San Francisco adoption case files was four years and 11 months when parental rights were terminated, but six years and one month when the adoption was finalized. African American children remained in care longer before being adopted.

Chart 5



Source: San Francisco Case File Study, 2009

*CWS Referrals for Multiple Children.* Once a parent has had a child permanently removed from his or her care, if a sibling is subsequently found by a preponderance of the evidence to fall within the provisions of California *Welfare & Institutions Code* section 300 (abuse and neglect), the court can deny reunification services to the parent, expediting termination of parental rights (California *Welfare & Institutions Code* section 361.5).

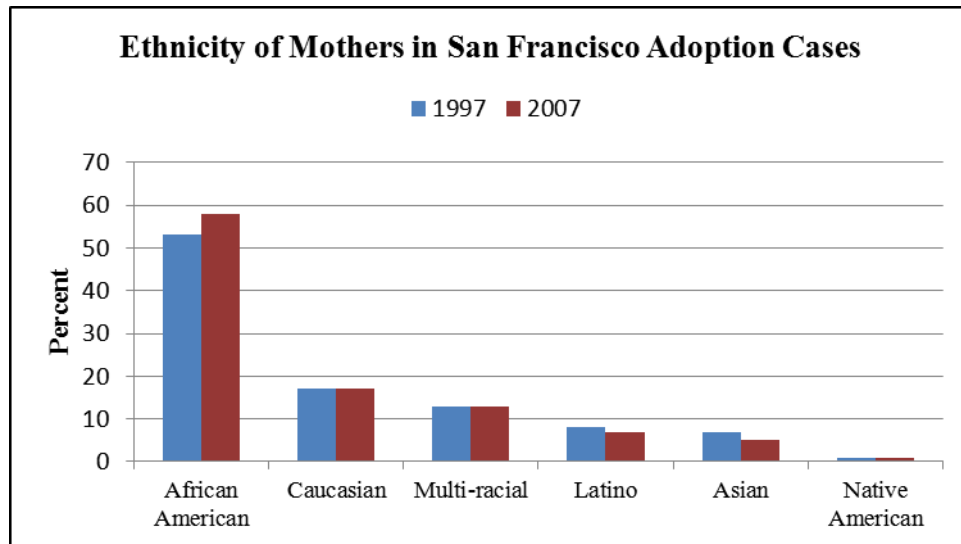
Many mothers in the San Francisco adoption case files had experienced more than one CWS referral for the child in this case study--the average was just under two referrals. Forty-five percent of the mothers also had received CWS referrals for the child's sibling(s). These mothers averaged 4.3 CWS referrals each. On average, these mothers had 3.3 children removed from their care, including into voluntary placement with relatives.

### ***Characteristics of the Mothers and Children***

*Race.* Mothers whose parental rights were terminated and whose children were adopted were disproportionately African American, as shown in chart 6. In contrast, African American

adults comprise less than seven percent of San Francisco’s population (U.S. Census Bureau 2009).

**Chart 6**



Source: San Francisco Case File Study, 2009

*Family size:* The mothers had an average of four children, with families ranging from one to nine children. Their average age was 28. African American and Latina mothers were somewhat younger and had the most children, on average over four.

*Prenatal care and Newborn Health:* Mothers reported as having received prenatal care (one visit or more) increased from 23 percent in 1997, to 34 percent in 2007. However, one fifth of all the mothers were reported as having received no prenatal care.

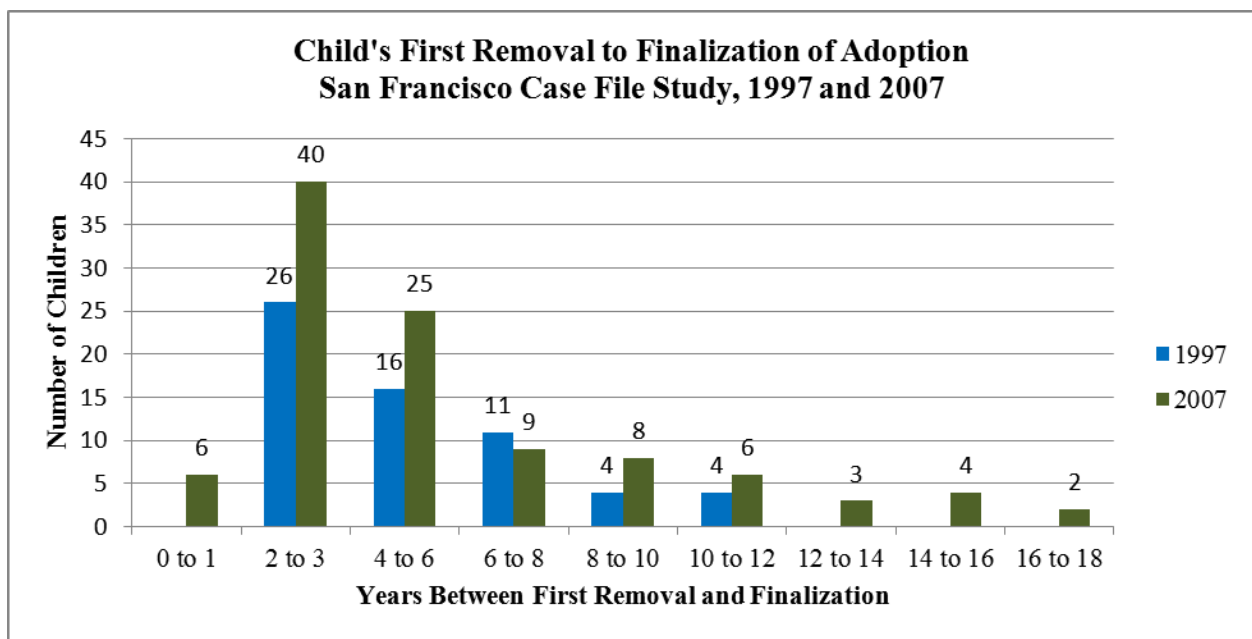
Inadequate prenatal care might account for shorter gestation periods and lower birth weight. The preterm average gestation period for the babies was 36 weeks, compared to a normal 37 to 40 week. African American mothers had the shortest average gestation period at 34.8 weeks. On average, the babies were small—less than six pounds compared to a national



average birth weight of seven pounds eight ounces. Low birth weight and premature babies are at risk for health problems (March of Dimes 2010).

*Child's Age Entry into Care:* Compared to 1997, more children were detained at birth and entered foster care as newborns in 2007. On average, those children also spent less time in foster care.

**Chart 7**



Source: San Francisco Case File Study, 2009

*Drug Exposed Babies and Child Health:* Many of the newborn babies tested positive for exposure to illegal drugs (primarily cocaine) and experienced severe to moderate symptoms of withdrawal. Other medical issues listed in the case files included failure to thrive, erratic sleep, heart murmurs, hole in the heart, asthma, “blue and floppy,” and jaundice.

As mandated reporters, medical workers must immediately report suspected child abuse or neglect. They refer the case to CWS and in some instances to the police, who may place a hold on the child while CWS completes an investigation/assessment and seeks a judicial order.

California *Penal Code* section 11165.13 specifies that the positive toxicology screen of an infant at delivery is not a sufficient basis for reporting child abuse or neglect, but does generate an assessment under the *Health and Safety Code*. If other factors are present that indicate a risk to the child, the *Penal Code* requires that a report of suspected neglect be made to a county welfare or probation department if the risk is solely due to the parent's substance abuse and inability to provide the child with regular care.

California *Health and Safety Code* section 123605 requires counties to establish protocols between county health departments, welfare departments and hospitals for the assessment of a substance-exposed infant before the child leaves the hospital. The purpose is to determine the level of services needed by the mother, baby or family, and the level of risk in releasing the baby to the home. If necessary for the child's health and safety, a referral must be made to the county welfare department pursuant to *Penal Code* section 11165.13. However, according to the Department of Social Services, no county protocols have been developed due to a lack of state funding (Department Letter to Senator Liu 2010).

The federal government funds adoption incentive payments for families who adopt children from foster care. Review of the San Francisco case files suggests that this assistance is warranted. Special needs noted frequently include developmentally delayed speech, ADD, dyslexia, hyperactivity, sexual acting out, delays in motor skills, learning disabilities, mental health issues, aggressive behavior and attachment issues.

### *Characteristics of Fathers*

Fathers are peripheral figures in the case files and often there is very little information about them. In 15 percent of cases, we found no information at all. Since the mothers were the children's primary caretakers, they were the source of information—or lack thereof—about the fathers.

*Relationships:* Mothers were either married to the child's father or in a relationship with him in 13 percent of the cases. In 35 percent of the cases, the mothers were neither married nor in a relationship with the father. Paternity was unclear in a significant number of cases. Seventeen percent of the fathers had contested paternity but it was substantiated.

The average age of the fathers at the birth of the child in the case file was 32.

Like the mothers, some of the fathers had been in foster care as children, but information was limited—only five percent of case files specifically mentioned it. Notes indicate that 13 percent of the fathers suffered from mental health issues and 24 percent had experienced homelessness. In 27 percent of cases, the fathers were reported as being abusive to the children and/or their mothers. Over half the fathers (56 percent) were reported as struggling with an often severe substance abuse problem. Four of the fathers had died.

### *Adoptive Families*

California law places a premium on siblings being adopted together whenever possible. Over a third of the children in the San Francisco case files (35 percent) were adopted with one or more of their siblings. If a child was placed in care with a sibling, they were usually adopted together.

Most adoptive parents were either couples (46 percent) or single mothers (46 percent). Single fathers were adoptive parents in nine percent of cases. Half the files contained

information about the adoptive parents' ethnicity: African Americans were adoptive parents of 41 percent of the children; Caucasians adopted 20 percent; interracial couples adopted 18 percent; and Latinos adopted 12 percent of the children. Over a third (35 percent) of the adoptive parents were relatives, generally aunts, uncles or grandparents.

The number of relative adoptive parents increased from 14 percent in 1997, to 48 percent in 2007, an increase of 362 percent, indicating a successful effort by San Francisco's Family and Children Services Division to increase the number of relative adoptions. Over half of the Latino children in the case files were adopted by relatives, compared to 22 percent of the Caucasian children and 14 percent of the African American children.

San Francisco has a unique contract with Friends Outside<sup>6</sup> to provide two case managers who work with incarcerated parents. One case manager is stationed in County Jail 2 and travels to the other jails to facilitate family contact with incarcerated parents. The second Friends Outside case manager maintains contact with San Francisco parents in state prison. They help incarcerated parents maintain contact with their children in foster care, explore family reunification and, if that is not possible, work with the parents to identify potential kinship placements. The data suggest that this is a cost effective program, given the increased number of relative adoption over the decade under study.

### **Conclusion and Recommendations**

Parents in San Francisco whose parental rights were terminated and children adopted in 1997 and 2007 struggled with serious issues including abuse as a child, domestic violence, mental illness, homelessness, and substance abuse. Substance abuse was often related to their involvement with the criminal justice system. An overwhelming 87 percent of the mothers, and

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<sup>6</sup> Friends Outside is a California nonprofit organization that has been providing services to inmates, ex-offenders, their families and communities since 1955.

96 percent of the mothers with a history of incarceration, suffered from substance abuse issues, as did two thirds of the fathers. Seventy percent of all mothers and 65 percent of the fathers had a criminal record, and over half had been incarcerated.

Parents have a limited time to reunify with their children in foster care under federal and state law, a particular challenge for incarcerated parents. However the length of time that parents received services required by the courts for reunification, such as substance abuse treatment, decreased from 1997 to 2007. Access to reunification services was the primary concern of the mothers interviewed for this case study.

For many mothers, involvement with the child welfare system involved multiple referrals for child abuse and neglect, with an average of nearly two referrals. Forty-five percent of the mother had more than one child removed from their care. These mothers experienced an average of 4.3 CWS referrals and had an average of 3.3 children removed from their care.

Mothers whose parental rights were terminated and children adopted were disproportionately members of San Francisco's relatively small African American community.

Children were increasing removed from parental care as newborns due to exposure to maternal substance abuse. Over the decade under study, more children were adopted and they were adopted at a younger age. The number of relative adoptions increased considerably.

### ***A Theory of Change***

Incarcerating mothers and removing children into foster care is an expensive policy response that treats symptoms, not underlying causes. A recent literature review by the National Conference in State Legislatures concludes that:

...intervening in the lives of incarcerated parents and their children to preserve and strengthen positive family connections can yield positive societal benefits in the form of reduced recidivism, less intergenerational criminal justice system involvement, and promotion of healthy child development (Christian 2009).

An effective public health approach would assess a mother's needs and provide intensive services the first time she interacts with the child welfare system. For example, Michigan has developed a screening and assessment tool for evaluating parents of children in foster care that has improved timely access to substance abuse services (Young and Gardner 2009). Adopting such a tool in California to facilitate early assessment and intervention with substance abusing mothers of children in foster care could facilitate reunification and improve the health and well-being of any future children. It might also reduce parental involvement in the criminal justice system.

To assist in this outcome, specialized social workers could be assigned responsibility for evaluating parental needs and identifying the course of action/treatment with the most potential for successful long-term family reunification. These case managers would be responsible for locating culturally qualified and effective providers, scheduling treatment, monitoring the parents' outcomes, and coordinating with child welfare workers and the courts. The parents with the most serious mental health and substance abuse issues would be placed with their children in supervised residential or rehabilitative care settings where they could receive drug treatment, mentoring, housing, education, employment assistance, and mental health services. Cameo House in San Francisco has a residential program for mothers who have recently been released from prison and their children, for example.

Home visiting nurses have proven effective at improving family functioning. They or trained community members could provide continuing support and follow-up care in the community after parents complete more intensive programming. For example, the city of Berlin, Germany has an award-winning program, "Neighborhood Mothers," that might be a promising

approach. In-home services such as mentoring, parenting education, and addiction treatment support could be available in the home after reunification, as established in a treatment plan.

### *Case Managed Services*

The troubled parents charted in these case files are unlikely to consistently follow through on CWS referrals to multiple service providers or to attend appointments in different locations in order to receive court-ordered reunification services. Some San Francisco service providers offer wrap-around services and case management, but most focus on one type of service, such as substance abuse treatment.

A case management approach would improve how clients are engaged and retained in treatment by establishing a single point of contact responsible for helping parents' access court-ordered services. In addition, it could hold service providers accountable for results. Service providers would be regularly evaluated on their client outcomes and that information could be used to make effective client referrals, as well as provided to the dependency courts for consideration when formulating reunification plans.

For example, family drug courts provide court-supervised treatment for parents with substance abuse issues. Evaluations of those courts find that children of these parents spend less time in the child welfare system and are reunified with their parents at higher rates than comparable children (Young and Gardner 2009).

Incarcerated parents in particular require specialized services including assistance with family visitation, funding for phone calls, priority for court-ordered treatment programs, child placement with relatives, and expedited transportation to dependency court hearings. San Francisco's contract with Friends Outside for two dedicated case workers who work with parents in the county jails and the state prisons offers one successful model.

An intensive, graduated case management approach could be cost effective compared to current policy responses, which include expensive and repeated CWS, dependency court and adoption services/subsidies; the physical and emotional impact of parental substance abuse and removal on children; the expense of arresting and incarcerating the parents; and the intergenerational damage to children, families and neighborhoods. If parents prove unable to reunify with their children, open adoptions, relative adoptions, and legal guardianships are positive alternatives. There is value to the child and the extended family in maintaining a relationship that would otherwise be severed by adoption.

### ***Interagency Coordination and Data Sharing***

The California Blue Ribbon Commission on Foster Care found that, “Families are often involved with more than one system, yet the courts and other agencies do not easily share data or information that may be critical to the families’ circumstances” (Blue Ribbon Commission 2009). Criminal courts do not take prisoners’ families into consideration when sentencing; probation reports often lack information about children; and, many child welfare workers do not know where parents are incarcerated. Dependency courts may not be informed about parental incarceration and impediments to accessing reunification services, and correctional facilities often lack information about prisoners’ families, limit family visitation, and do not support parental attendance at dependency court hearings.

Other states have required that public systems jointly assess the effects of their policies, programs and practices on children in foster care and their incarcerated parents in order to better understand and respond to their needs (Christian 2009). Better information-gathering and sharing and improved communication and coordination might improve parental and child health and assist these fragile families to succeed. Establishing interagency agreements and cross-



training staff require a relatively small investment and can result in significant benefits. The California Judicial Council could form a working group with the Departments of Social Services, Public Health, Mental Health, Drug and Alcohol, and Corrections and Rehabilitation to develop and coordinate state policies in support of family reunification.

Similarly, county-level working groups that bring together law enforcement, the courts, CWS and local service providers could improve timely access to treatment and enhance the prospects for successful family reunification. For example, several counties have developed protocols between CWS and law enforcement to ensure the safety and well-being of children when a parent is arrested (Puddefoot and Foster 2007). More counties could follow their lead. Also, counties have not adopted protocols between health and welfare departments and hospitals to assess substance-exposed infants and determine the service needs of the mother, baby and family as required by California *Health and Safety Code* section 123605.

In addition, state and local correctional facilities could inquire whether a newly committed inmate is a parent and consistently record that information in the case files. This would help ensure that when a parent is assigned to a state prison, the prison is proximate to family for visits whenever possible, as is currently required by state law. It could also alert correctional officials to a prisoner's need for court-ordered programming or transportation to dependency court hearings.

### ***Parental Incarceration and Termination of Parental Rights***

At the time of their sentencing, arrested and incarcerated parents are not informed about the likely impact on their parental rights. Moreover, they experience significant barriers to accessing timely reunification services and attending dependency court hearings. When sentencing, criminal court judges should know if a prisoner has children and what the impact

might be on them. Probation could compile information about the children, their care arrangements, and their service needs and include it in the Family Impact Statement presentence report submitted to the judge (2009 California Rules of the Court, Rule 4.411). San Francisco is currently developing such a proposal. After sentencing, on behalf of the criminal court, probation officers could provide parents with a likely calendar of dependency court hearings and general information about how to secure civil legal representation.

Child welfare workers need training on how to be better informed about parental incarceration. They need to know how to locate incarcerated parents, when to alert them about dependency court hearings, and how to facilitate family visits and access to reunification services inside correctional institutions. Counties could contract for specialized social workers to visit parents in jail/prison and offer assistance with relative care, visitation, reunification services, and court hearings (San Francisco-Friends Outside model).

Finally, county jails and state prisons could explore teleconferencing as a cost effective means of facilitating inmates' attendance at dependency court hearings, as authorized by the recently enacted SB 962 (Liu 2010). Incarcerated parents who do not attend dependency court hearings are at disproportionate risk of having their parental rights terminated.

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