

RYAN A. BIZZARRO, CHAIRMAN

414 MAIN CAPITOL BUILDING
P.O. BOX 202003
HARRISBURG, PENNSYLVANIA 17120-2003
(717) 772-2297
FAX: (717) 780-4767



HOUSE DEMOCRATIC POLICY COMMITTEE

WEBSITE: WWW.PAHOUSE.COM/POLICYCOMMITTEE

EMAIL: POLICY@PAHOUSE.NET

   @PADEMPOLICY

HOUSE OF REPRESENTATIVES

COMMONWEALTH *of* PENNSYLVANIA

House Democratic Policy Committee Hearing
Subcommittee on Progressive Policies for Working People
Roundtable: Dignity for Incarcerated Parents

Friday, March 19, 2021 at 12:30 pm

Representative Elizabeth Fiedler, Chair
House Subcommittee on Progressive Policies
Representative Rick Krajewski | Representative Summer Lee

ROUNDTABLE PARTICIPANTS

Rachel Lynn Santiago

Dignity Act Now Collective

Kathleen Creamer, Managing Attorney, Family Advocacy Unit

Community Legal Services

Naomi Blount, Community Activist and Commutation Specialist

Pennsylvania Board of Pardons

Dr. Yodit Betru, Program Director & Clinical Assistant Professor

School of Social Work at University of Pittsburgh

Dr. Jeffrey Shook, Associate Professor of Social Work

University of Pittsburgh

Anna Hollis, Executive Director

Amachi Pittsburgh



House Democratic Policy Committee
March 19, 2021
Hearing on the Rights of Incarcerated Parents

Testimony of Kathleen Creamer,
Managing Attorney, Family Advocacy Unit,
Community Legal Services of Philadelphia
Kcream@clsphila.org

Introduction

Thank you for including me in this very important hearing about the experiences of families in the age of mass incarceration. I manage the Family Advocacy Unit at Community Legal Services of Philadelphia, which uses a holistic model of family defense to represent parents in child welfare proceedings. Prior to this role, I served as a Stoneleigh Foundation Fellow dedicated to Improving Reunification Outcomes for Children of Incarcerated Parents. I am also a member of the Incarcerated Women's Working Group, a project overseen by Community Legal Services and the ACLU of Pennsylvania, which invests in the leadership of formerly incarcerated women to guide recommendations for policy and practice reform.

In all of these roles, I have seen first-hand the harm to families, particularly Black families, of family bonds being devalued and discarded due to outdated laws and policies. The pain caused by Pennsylvania's punitive approaches are profoundly felt by our children, families, and communities.

Pennsylvania Leads the World in Mass Incarceration

As you are likely aware, Pennsylvania leads the world in mass incarceration.ⁱ Our incarceration rate consistently outpaces the United States' dismal national rate of incarceration, and compared to other modern democracies we are an extreme outlier: for example, Pennsylvania incarcerates six times more of our citizens per capita than Canada.

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Our incarceration rates also reflect chilling racial disparities: in our Commonwealth a Black person is nearly ten times more likely to be incarcerated than a white person.ⁱⁱ

Children are the Silent Victims of Mass Incarceration

Today, I would like to highlight the need for legislative relief for children of incarcerated parents, who may be understood as the “silent victims” of mass incarceration. Across the country, most people in our jails and prisons are parents, and 5.7 million children in the United States have experienced the incarceration of their mother or father.ⁱⁱⁱ Mothers who become incarcerated are likely to have been the primary caregiver for their children, and women are the fastest growing segment of our prison population.^{iv}

There is a growing understanding of the developmental needs of children to maintain lifelong bonds with their own families,^v and the extraordinary harm that we inflict upon children when we separate them from their parents. Family separation is a toxic intervention in the lives of children, one that causes extraordinary trauma^{vi} and is associated with lifelong negative outcomes.^{vii} Given what we know about the needs of children, we must act urgently to protect and preserve the bonds between children of incarcerated parents and their mothers and fathers.^{viii}

Foster Care Compounds the Trauma and Loss for Children of Incarcerated Parents

These bonds experience a particular threat when children of incarcerated parents are placed in foster care. The good news is that most children of incarcerated parents do not enter foster care; most are able to stay with another parent, or with relatives. But for the estimated 1 in 10 children of incarcerated parents who do not have a family resource, foster care is the only option. Children in foster care are uniquely vulnerable because they face the most serious of consequences: the permanent severance of their relationship with their incarcerated parent through termination of parental rights.

These children are subject to the mandates of the federal Adoption and Safe Families Act (ASFA) of 1997, which requires, with few exceptions, that the child welfare agency seek termination of parental rights after the child has been in foster care for 15 months. Yet the



average state prison stay in the United States is 2.6 years.^{ix} This means that for incarcerated parents who have children in foster care, termination of parental rights is a strong likelihood, if not an inevitability. Termination of parental rights has been called the civil death penalty, and with good reason: children who experience termination of parental rights not only lose their right to see, speak with, or even know the identity of their own parents; they are also legally severed from all known relatives including siblings, grandparents and extended family.

The Joint State Government Commission’s Recommendations for Legislative Reform

The reality is that despite a parent’s strong commitment to caring for her child and a loving parent-child bond, children in foster care are forever losing relationships with their incarcerated parents due solely to the passage of time. Indeed, a recent investigation by the Marshall Project found that incarcerated parents were more likely to have their parental rights terminated by the child welfare system than parents who physically or sexually abused their children.^x

The good news is that there is a solution, one that has been discussed at length in the Commonwealth. In 2011, I was honored to be included in the Joint State Government Commission’s Task Force on Children of Incarcerated Parents, which produced a report highlighting the need for legislative change for children of incarcerated parents.^{xi} Our committee looked carefully at the law and how it impacts children of incarcerated parents in foster care. Many states, recognizing the potentially devastating impact the ASFA timeline can have on a child, have clarified in their statutes that incarceration alone cannot be a basis to terminate parental rights. Still other states have changed their statutes to offer the child welfare agency flexibility in the 15 month timeline when it is in the best interest of the child.^{xii} Our report recommends legislation that follows both of these approaches, by modifying the Adoption Act to clarify that incarceration alone is not a basis to terminate parental rights, and also by modifying the Juvenile Act to clarify that parental incarceration may, consistent with the best interests of the child, be an exception to the 15 month termination of parental rights filing requirement.



The late Senator Stewart Greenleaf championed these changes, introducing this legislation repeatedly in the Pennsylvania Senate over the past decade. Most recently, SB 63 of 2016 received a unanimous vote in the Pennsylvania Senate, but failed to move forward in the House.^{xiii}

Today, the need for legislative reform is as urgent as ever. I am grateful to Representative Krajewski for taking up where Senator Greenleaf left off, by championing legislation to protect the rights of children and incarcerated parents.^{xiv} Community Legal Services stands ready to offer our support for these efforts so that children of incarcerated parents are able to receive the long-overdue relief that they deserve.

ⁱ Prison Policy Initiative, Pennsylvania Profile, <https://www.prisonpolicy.org/profiles/PA.html>

ⁱⁱ Prison Policy Initiative, Pennsylvania Profile, <https://www.prisonpolicy.org/profiles/PA.html>

ⁱⁱⁱ Families and Mass Incarceration, Sentencing Project, <https://www.sentencingproject.org/publications/6148/>

^{iv} The Gender Divide: Tracking Women's State Prison Growth, Prison Policy Initiative, https://www.prisonpolicy.org/reports/women_overtime.html

^v Achieving Permanency for the Well-being of Children and Youth, Information Memorandum, Children's Bureau, Administration for Children and Families, January 2021, <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2101.pdf>

^{vi} Trauma Caused by Separation of Children from Parents, American Bar Association, <https://www.americanbar.org/groups/litigation/committees/childrens-rights/trauma-caused-byseparation-of-children-from-parents/>

^{vii} The Evidence Base for Avoiding Family Separation in Child Welfare Practice, Alia, 2019, <http://www.thetcj.org/wp-content/uploads/2019/10/Alia-Research-Brief-2019.pdf>

^{viii} A landmark report released last week by Connecticut Voices for Children and Yale Law School details at length the harm to children of policies that undermine family bonds. Incarcerated Parents and Termination of Parental Rights in Connecticut. <https://law.yale.edu/yls-today/news/clinic-releases-report-preservingparental-rights-incarcerated-parents>

^{ix} Bureau of Justice Statistics, Time Served in State Prisons, 2016, <https://www.bjs.gov/content/pub/press/tssp16pr.cfm>

^x How Incarcerated Parents are Losing their Children Forever, the Marshall Project, December 2, 2018, <https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-childrenforever>

^{xi} *The Effects of Parental Incarceration on Children: Needs and Responsive Services*, http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=267

^{xii} "New York, California, Colorado, Washington, and Illinois have all passed bills over the last decade giving foster care agencies more flexibility when it comes to filing orders terminating the parental rights of



incarcerated parents. Nebraska, Oklahoma, and New Mexico have passed legislation explicitly including exceptions to termination for parents who are incarcerated.” How a Trip to Prison Cost Kenneth Clark His Right to Be a Parent, *The Nation*, July 20, 2020 <https://www.thenation.com/article/society/prison-parents-children-asfa/>

xiii <https://legiscan.com/PA/bill/SB163/2015>

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<https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20210&cosponId=33603>

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Rachel Lynn Santiago

A Mother, Advocate, Coordinator, Advisor, Administrator and Organizer. Rachel Santiago believes in righting the wrong and providing resources and informational education to impacted individuals, Families, and communities stuck by the Judicials system. She assists many to overcome obstacles. She empathizes on being a powerful support access to her community in providing resources and information, whether accessing services by being an active Peer Parent advocate to help in navigating the child welfare system through her gain experiences as well as providing input information to assistance in obtaining justice reform. She's a member of Dignity Act NowPA, a newcomer official advocate for Prison Society, A Independent Consultant Advocate/Facilitator for the Incarcerated Women's Working Group for A.C.L.U. (American Civil Liberties Union), C.L.S. (Community Legal Services). She believes in Advocating for impacted individual to obtain Second Chances in today's society. She Speaks out about Judicials Injustices about poor conditions and treatments. She, Herself was an impacted individual, who came home to navigate the court system and the child welfare system to obtain reunification with her children and exposed the injustices and wrong doings of the agencies who duties were to provide an assist in keeping families together. She has Advocated for better medical and care treatment for those still incarcerated at RCF. Her Education consists of Providing services to individuals with drug and alcohol dependents and providing medical services to the elderly. It has been Rachel's Life mission to utilize her Educations and past Experiences to assists individuals to overcome issues impacted by Addictions, failing health, Trauma or Social services involvement due to past mistakes to succeed in self-sufficient and reentry into society.

Rachel Lynn Santiago – Testimony for 3/19/21 House Democratic Policy Committee Hearing on Dignity for Incarcerated Parents

11/24/2016 to 01/23/2018 incarcerated

11/24/2016 to 03/09/2019 my children were in the child welfare system.

05/14/18 my eldest child passed away due to terminal illness (cancer).

Throughout my ordeal since the situation to be then stated it was an accident, I served jail time and had to fight for my two babies to reunify ASAP because they were pushing for TPR (termination of parental rights) and adoptions. I lost a child and couldn't stop fighting the system, CUA (Community Umbrella Agency), and DHS or they would have used it to terminate my rights. Now I advocate for others to understand procedures of the child welfare system and the child displacements system because they do more displacements then reunification.