



Judge Leonard Edwards
Santa Clara Superior Court (Ret.)

Children Of Incarcerated Mothers

Thousands of California children live without daily care provided by their mothers because their mothers are in jail.¹ These children are innocent victims. Some of these mothers are incarcerated for weeks, others for many months. Because about 80% of women prisoners are parents of at least two children, the mothers' incarceration impacts thousands of children daily.²

Some of these children are dependent children of the juvenile court, while others receive informal services from the Department of Children's Services. Contact between these mothers and their children is limited to weekly visits in an impersonal environment. Because of transportation difficulties, many children are not able to participate in these visits. A few jails have developed contact visit programs with higher quality visits, but those programs serve only a small percentage of the impacted children.

Children of incarcerated mothers do not fare well. Studies show that their schooling is impacted: they are less likely to go to college (40% normal rate vs. 2% with an imprisoned mother) and more likely to be expelled. Many of these children are stigmatized by peers and neighbors who know the child's mother is in jail. Studies also show that the mother's incarceration impacts children's

poor health, behavioral or conduct problems, learning disabilities, anxiety, and developmental delays.³ The impact on babies and infants, who must develop attachments in order to thrive, can be even more profound because these children lose the precious time with their mothers at the beginning of their lives.

We can do better for these children. We must think both about why so many women are incarcerated and about effective programs to mitigate the harm to children that is associated with having an incarcerated parent. Some in-prison training programs focus on parenting skills, but few focus on meeting the needs of the children during the time parents are in jail.

It is well known that the United States incarcerates more people than any other country in the world.⁴ Many counties in California have high incarceration rates. Leaders in some counties have begun to rethink incarceration policies. Several counties have made impressive strides towards reducing incarceration rates. Santa Cruz County, for example, became a model site for the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) in 1999. Their efforts in reducing incarceration rates saved millions of dollars and resulted in dramatic reductions to unnecessary adult and juvenile incarceration.⁵ Santa Clara County

has already implemented policies to reduce the incarceration of youthful offenders. Effective alternatives to incarceration have demonstrated that many youthful offenders can be safely released from incarceration and returned to the community. Using creative supervision programs, the numbers of incarcerated youth has dropped from approximately 500 to less than 100 in fewer than 5 years. Criminal activity has not increased as a result of these policy changes.⁶

Counties throughout California could employ these same policies with many currently incarcerated women. The vast majority have been incarcerated for low level, nonviolent offenses and many are victims of trauma. In Santa Clara County leaders recently formed a working group to devise programs and supervision models similar to those created for the incarcerated juvenile population. The goal is to enable many mothers to live safely in the community with their children.

The working group includes a member of the Board of Supervisors, Pretrial Services, Probation, the Sheriff's Office, the Director of the Behavioral Health Department, First Five of Santa Clara County, the Department of Family and Children's Services, the Neo-Natal team at Valley

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Medical Center, the Office of Women’s Policy, the Public Health Department, Head Start, Dependency Legal Services, The Commission on the Status of Women, and Early Head Start.

The basic strategy is to release incarcerated women into the community so they can be with their child. Placing the mothers with their child and intensifying services gives the mother an opportunity to focus upon her child. This enables the mother to learn better parenting skills and to disengage from her previous life style that may have included drug addiction and unsafe relationships. Results of work in family drug treatment courts demonstrate that this strategy works.⁷ The working group partners are devising strategies to increase supervision of the women and provide an enriched environment for them and their child.

The working group has identified categories of women who are at different stages of the criminal process. The categories include the following: (1) the mother has been arrested, but has not been taken to jail. The arresting officer will refer her to a coordinator who will link her to a Family Resource Center and/or a Behavioral Health System of Care for screening and referral to service providers as indicated by the screening. (2) The mother has been arrested and is in custody. Within hours of the arrest, she will meet with Pretrial Services who will screen her and, with a judge’s approval, release on her own recognizance (O.R.). Before release, jail personnel will refer her to a Navigator or Coordinator who will link her to a Family Resource Center or a Behavioral Health System of Care. (3) If she does not qualify for release on her O.R., Pretrial Services will create a plan to present to a judge for release under a Supervised Own Recognizance Plan (SORP). The plan will include

services for the mother and her child (children) and will involve First Five should the mother have a child under six years of age.⁸ (4) If the court has placed the mother on formal probation, the probation officer will refer her to services for her and her child. (5) Incarcerated women with children will be identified and evaluated for release. The court has previously denied them release on O.R., but the judge will now reconsider the report once Pretrial services has included additional services and supervision. Those services will be provided by First Five, Probation, Behavioral Health, and other providers. These additional services and supervision may persuade the judge to release the mother to the community to live with her children.

Working with mothers in each of the above involves different strategies. In categories (1) and (2), the arresting officer or Pretrial Services will refer the mother to services. No one will force her to accept the services, but they will be offered the opportunity to learn more about them. In category (3) in order Pretrial Services to present the plan to the judge, the mother will have to agree to the conditions of the SORP. In category (4) the referral to services may be a part of the conditions of probation ordered by the judge. In category (5) the incarcerated mother’s case will have to return to court for reconsideration of her status with the added services and supervision that was not contained in the Pretrial Services report when the mother was denied release at an earlier hearing. Behavioral Health representatives will screen each of these mothers to determine whether she is ready to be released and parent her child in the community.

The plan anticipates that a coordinator or navigator will be available at the time of booking to talk with the mother about her

options. Many mothers ask family members to post their bail, using scarce family resources in order to be released from custody. The coordinator will try to persuade the mother to try for release on her own recognizance with services before asking family members to bail her out.

The project hopes to include custodial fathers who are incarcerated. Their inclusion presents some logistical problems as there are no treatment beds for fathers and their young children in the Santa Clara County community, and many more fathers than mothers are currently incarcerated. Nevertheless, many of these fathers can provide quality care for their children.

Juvenile court judges should have an interest in this project. Standard of Judicial Administration 5.40(e) directs judges of the juvenile court to (1) “Provide active leadership in determining the needs of and obtaining and developing resources and services for at-risk children and families.” Further, judges of the juvenile court are encouraged to (5) “Exercise a leadership role in the development and maintenance of permanent programs of interagency cooperation and coordination among the court and the various public agencies that serve at-risk children and their families.” By convening the public agencies that serve at-risk children and families, juvenile court judges can start a process that will improve outcomes for the children of incarcerated mothers. Some of these children are already under the jurisdiction of the juvenile dependency court.

No one loves a child like a parent. As a community we should attempt to make it possible for these children to have more and better quality contact with their parents. A child needs a caretaking parent, and the community

working together can change the trajectory of a child’s life. 🌱

Endnotes:

- 1 The majority of caretakers in the country are mothers. Family Caregiver Alliance (2012, November). Selected Caregiver Statistics (Fact Sheet). Retrieved from <https://www.caregiver.org/selected-caregiver-statistics>
- 2 <http://www.library.ca.gov/crb/00/notes/v7n2pdf>; Moreover, this is an emerging national issue. See <http://www.safetyandjusticechallenge.org/wp-content/uploads/2016/08/overlooked-women-in-jails-report-web.pdf>.
- 3 March 2000 Greene et al., “CYCLES OF PAIN CYCLES OF PAIN: RISK FACTORS IN THE LIVES OF INCARCERATED MOTHERS AND THEIR CHILDREN”, THE PRISON JOURNAL, Vol. 80 No. 1, March 2000 3-23. Additional references are available. Contact me at judgeleonardward@gmail.com
- 4 https://en.wikipedia.org/wiki/List_of_countries_by_incarceration_rate
- 5 They have reduced their total jail population to 453, 396 males and 57 females as of March, 2017.
- 6 Annual Report, Juvenile Justice Court, Santa Clara County.
- 7 Edwards, L., “Family Drug Courts: A Best Practice That Works,” California Collaborative Justice Courts Foundation (website), March, 2015.
- 8 First Five is a county-based program serving children under 6 years of age and their families. In Santa Clara County First Five works closely with the Department of Family and Children’s Services to provide preventive and other services for these children.