Cuffed Love: Do Prison Babies Ever Smile?

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What? Prison babies? Since when are babies put in prison? Prison nurseries you say? You have to be kidding? No one has ever heard of such a ridiculous idea, let alone actually supported it. Wrong. In fact, prison nurseries date as far back as 1858 and by 1950, 13 states allowed incarcerated mothers to keep their infants with them. Yet, less then 20 years later, most laws had been repealed and all but one prison nursery had been closed. Today, five prison nurseries and one jail nursery exist in four states.

This paper explores whether children placed in prison nursery programs avoid the devastating effects separation has on children of incarcerated parents. If so, do children raised behind bars fair better later in life compared to those children separated from their parents?

The typical profile of an incarcerated female, along with the scope of the problem, is identified in Part I. Part II analyzes the extent and effect a parent’s incarceration will have on the child. Part III details the legal, social, and political background of prison nurseries starting in the 1800s and ending in 2002. The pros and cons of prison nursery programs are debated in Part IV. Part V discusses the possible equal protection violation when incarcerated

1 Special thanks to Professor Ann Britton at Widener University School of Law for all her expertise and support as well as to Andie Moss and Mary Whitaker, at the National Institute of Corrections. This article is dedicated to Rebekah Pojman, my sister by chance, inspiration by example.


5 Programs where the inmate and infant remain at the institution.

6 Including New York (2 prison nurseries, 1 jail nursery), Nebraska, Washington, and Ohio.
men and women, who are the primary caretakers of their children, are treated differently. Part VI concludes, although prison nursery programs are successful in promoting the mother-child bond and avoiding the effects of separation, it is unknown whether a child raised behind bars is better off in the long term. How Congress and the Department of Justice have addressed the issues of children of incarcerated parents is also reviewed in Part VI.

I. FEMALE OFFENDERS

Insight into the typical profile of an incarcerated female highlights two very important facts concerning mothers and their children. First, five percent of females are pregnant when they enter prison and second, 80% of all incarcerated women are mothers, who are usually the primary caretakers. Additionally, the female is usually incarcerated for predominately non-violent offenses such as property and drug crimes, is around 31 years of age, and is an ethnic or racial minority from an urban background. Prior to incarceration, more then one-third have been victims of sexual abuse and more then one-half have been physically abused. Fifty-three percent were unemployed at the time of their arrest and most have low levels of education. Their recidivism rate is high and most have at least one prior conviction.

Still, why should prison nurseries even be an issue? Last year females accounted for approximately 6.6% of the total inmate population and for slightly over half of the U.S. current population of approximately 285, 437, 841 people. In 1980,

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9 Id.
10 See Amnesty, supra note 3.
11 See Mauskopf, supra note 8.
14 Id.
there were only 13,420 incarcerated females in state and federal prisons. This number increased over 200% by the year 1990, with female inmates accounting for 5.7% of the total inmate population in 1990. Since 1990, the number of incarcerated females in state and federal prisons has increased 108%, from 40,566 to 91,612 in the year 2000. Lost in this explosion of female inmates are their children.

In 1999, there were 72 million minor children in the U.S.; 1.5 million of those had a parent in a state or federal prison, an increase of over 500,000 since 1991. An estimated 721,500 state and federal prisoners were parents to those 1.5 million children, the majority under the age of 18 with 22% under the age of five.

Statistics warn us that a significant number of children are separated by parental incarceration. What price do these children pay when mommy or daddy goes to prison?

II. EXTENT AND EFFECTS OF PARENTAL INCARCERATION

Undoubtedly, children are affected by a parent’s incarceration. In fact, in 1999, an estimated 336,300 U.S. homes had minor children affected by the incarceration of a parent. How these children are affected and to what extent is under explored and difficult to evaluate. Not only is existing research in this area scarce, but it is methodologically limited as well. Nevertheless, by combining our empirical and theoretical knowledge of similar populations, we are able to gain some understanding of the emotional, physical, and psychological

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15 See Bureau of Justice Statistics, U.S. Dep’t of Justice, Office of Justice Programs, Women in Prison (Special Report, Mar. 1991) [hereinafter Women].
16 Id.
17 See Prisoners, supra note 12.
18 See Women, supra note 15.
19 See Prisoners, supra note 12.
20 Id.
21 See Bureau of Justice Statistics, U.S. Dep’t of Justice, Office of Justice Programs, Incarcerated Parents and Their Children (Special Report, Aug. 2000).
22 Id.
struggles children of incarcerated parents experience as a result of the child-parent separation.  

A. EXTENT

Researchers and professionals are not only uncertain as to what extent a child will be affected by a parent’s incarceration, but they are also unclear as to whether the problems experienced by children of incarcerated parents are the direct result of incarceration or a result of factors prior to incarceration.

The extent to which parental incarceration will affect the child is unique to each child, as such hinges on numerous extraneous variables, including: the age at which the parent-child separation occurs; length of separation; stability of the family; disruptiveness of the incarceration; the child’s familiarity with the new caregiver or placement; strength of the child-parent relationship; result and number of previous separation experiences; nature of the parent’s crime; length of parent’s separation, the availability of community or family support, and degree of stigma associated with incarceration.

To understand the effects of parental incarceration on the child (see discussion below), a child’s familial, cultural, and social experiences prior to and during parental incarceration must be taken into consideration. The Working With Children and Families Separated by Incarceration handbook highlights the following risk factors that may occur both before and during incarceration: parental arrest and incarceration; poverty; crime; drugs and alcohol; previous separation; parent’s history of abuse; child maltreatment; and intra-familial violence.

B. EFFECT

25 Id.
26 See Seymour, supra note 23.
27 See Handbook, supra note 24. See also Seymour, supra note 23.
Despite the limitations in our knowledge of this population and the difficulty establishing cause-effect relationships amid the potential multiplicity of risk factors, we do have a body of knowledge about some of the negative consequences. Studies have indicated some child difficulties that may be related to incarceration itself and that distinguish this group of children.\textsuperscript{29}

Therefore, the negative consequences children of incarcerated parents experience are both general (effects similar to other forms of trauma) as well as specific (effects linked specifically to parental crime, arrest, and incarceration).\textsuperscript{30} General findings reveal that children are always traumatized by separation (e.g. parental incarceration, divorce, or military service) and that their responses and reactions will vary over time and according to age.\textsuperscript{31} When a child experiences trauma, his or her ability to cope is hindered by uncertainty and they are sidetracked from developmental tasks.\textsuperscript{32}

By analyzing research from over ten sources, authors Wright and Seymour\textsuperscript{33} provide insight into some of the behavioral, cognitive, emotional, and physical reactions specifically exhibited by children of incarcerated parents. A wide range of emotions is experienced by these children, including: guilt; emotional withdrawal; depression; abandonment; resentment; loneliness; anger; sadness; fear; low self-esteem; and embarrassment. Behavioral difficulties include: aggression; acting out inappropriately; anti-social behavior; and early crime involvement.\textsuperscript{34}

Often their academic performance deteriorates and they are disruptive in the classroom.\textsuperscript{35} There is likelihood some will develop sleeping, eating, or attention disorders.\textsuperscript{36} Due to the lack of contact, many will experience separation anxiety and have

\textsuperscript{29} Id at 20.
\textsuperscript{30} See Handbook, supra note 24.
\textsuperscript{31} Id.
\textsuperscript{32} Id.
\textsuperscript{33} Id.
\textsuperscript{34} Id.
\textsuperscript{35} Id.
\textsuperscript{36} Id.
trouble identifying with the incarcerated parent. Typically, these children are preoccupied with their uncertain futures as well as how to live without a mother. The stigma children suffer when a parent is incarcerated is detrimental as well.

III. PRISON NURSERIES

Before getting to the heart of the prison nursery debate, a debate that may decide the future footsteps of innocent children, it is important to understand the past, present, and future status of prison nurseries; as support for prison nursery programs continues to be shaky at best.

1858: Female inmates were allowed custody of their children until the age of 18 months from 1858 until 1958 at the Massachusetts Correctional Institute in Farmington. In 1989, the Neil J. Houston House was opened. Here, the incarcerated pregnant mother is removed from the prison to live on the grounds of a local community health treatment center and remains there with her child for up to one year.

Late 1800s: Incarcerating babies with their mothers in the American Colonies and England was a common practice, however, because of the horrific conditions, many mothers and children died. The focus then shifted to improving conditions for women in prison. The women’s traditional role as a mother and wife was considered important to her reformation. Consequently, early programs began to emphasis the bonding between young children and their mothers.

37 Id.
38 Id.
39 Id.
40 See Boudouris, supra note 2.
43 Id.
44 Id.
45 Id.
New York opened its first prison nursery at the Bedford Hills facility.\textsuperscript{46} Bedford Hills is the only prison nursery in the nation to survive into the 21st century. The success of Bedford is in a large part due to the dedication of Sister Elaine Roulet who has worked at Bedford for over 30 years.\textsuperscript{47} The program includes seven major departments: The Parenting Center; Prenatal Center; Infant Day Care Child Advocacy Office; The Taping Room; The Children’s Center; and The Nursery.\textsuperscript{48}

Infants born to mothers can reside at the prison until they are one year of age.\textsuperscript{49} Nevertheless, if the mother’s release date is within the upcoming six months an extension may be granted.\textsuperscript{50} Most mothers and infants leave together; however, women serving lengthy sentences may apply to keep their babies with them for the first year, even though they have little chance of ever being their children’s primary caretaker again.\textsuperscript{51}

New York’s original 1909 legislation, concerning children and incarcerated mothers, is still on the books. Current through 2001 legislation, is New York’s Correction Law Statute Section 611 states:

(2) A child so born may be returned with its mothers to the correctional institution in which the mother is confined unless the chief medical officer of the correctional institution shall certify that the mother is physically unfit to care for the child, in which case the statement of the said medical officer shall be final. A child may remain in the correctional institution with its mother for such period as seems desirable for the welfare of such child, but not after it is one year of age, provided, however, if the mother is in a state reformatory and is to be paroled shortly after the

\textsuperscript{46} See JAMES BOUDOURIS, PH.D., PARENTS IN PRISON: ADDRESSING THE NEEDS OF FAMILIES (Alice Fins ed., Am. Correctional Ass’n 1996) [hereinafter Parents].

\textsuperscript{47} See Paul La Rosa, Babies Behind Bars In 3 New York Prisons, inmates who give birth may keep their babies with them. Dr. Spock endorsed the idea, but critics are queasy, THE LOS ANGELES TIMES, May 12, 1992, at 1.

\textsuperscript{48} See Parents, supra note 46.

\textsuperscript{49} See Kauffman, supra note 4.

\textsuperscript{50} Id.

\textsuperscript{51} Id.
child becomes one year of age, such child may remain at the state reformatory until its mother is paroled, but in no case after the child is eighteen months old.52

1917: Kansas allowed the State Industrial Farm for Women to house a child up to the age of two, pursuant to statute 76-2506.53 The legislature repealed this statute in 1974.54 Currently, at the Topeka Correctional Facility, minimum custody mothers are permitted a two-day retreat with their children under the age of seventeen, contingent on completing a ten-hour parenting course.55

1918: Virginia allowed mothers to keep their children up to the age of four until 1930 when the statute was amended.56 The new statute gave authority to the Department of Corrections to determine whether a child should remain in the institution with his or her mother.57 Despite the Department of Corrections’ new statutory authority, women were still allowed to keep their children until the age of two from 1943 through the 1970s.58 This policy was finally discontinued in 1976.59

1919: California passed Section 3401 of the California Code, allowing incarcerated mothers to keep their children up to the age of two.60 However, in 1980, the California Legislature passed Sections 3410-3424 of the California Penal Code,61 establishing instead the Community Prisoner Mother Program.62 To qualify for the program, an incarcerated mother must first have

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52 NY CLS CORRECTION § 611 (2001).
53 See Parents, supra note 46.
54 Id.
55 Id.
56 Id.
57 Id.
58 Id.
59 Id.
60 Id.
61 Stating:

The Department of Corrections shall....establish and implement a community treatment program under which women inmates sentenced to state prison...who have one or more children under the age of six years, whether born prior to or after...shall be eligible to participate...

CA PEN CODE 3411.
62 See Parents, supra note 46.
less than six years of her sentence remaining and second, she must be pregnant or prior to incarceration she must have been the primary caretaker of her children under the age of six.\textsuperscript{63}

In 1994, California passed a second statute, Pregnant and Parenting Woman’s Alternative Sentencing Program Act, which authorized the development of community-based residential programs for incarcerated mothers with a history of substance abuse.\textsuperscript{64} The Family Foundations Program, which opened its first facility in 1999, is the only program developed under this act.\textsuperscript{65} Under this program, rather than going first to a state prison, mothers are sentenced directly to the residential facility for one to three years.\textsuperscript{66}

1927: Mothers in the Dwight Correctional Center in Illinois could keep their babies up until the age of one from 1927-1973.\textsuperscript{67} In 1973, a new statute (Ch. 38-1003-6-3) was passed permitting the Department of Corrections discretionary authority to oversee the births of infants at the facility.\textsuperscript{68} As a result, infants were not returned to Dwight upon birth.\textsuperscript{69} Dwight currently offers a variety of programs for mothers and children. In 1993, a children’s visitation center was opened allowing children from infancy to the age of 12 to visit.\textsuperscript{70} Dwight also offers weekend camping during the summer and a one-day picnic lunch that includes recreational activities for mothers and their children.\textsuperscript{71}

1950s: There were 13 prison nurseries throughout the United States.\textsuperscript{72}

1957: In Florida babies could remain in both the Broward Correctional Institute and the Florida Correctional

\textsuperscript{63} See Heidi Rosenberg, \textit{California’s Incarcerated Mothers: Legal Roadblocks to Reunification}, 30 GOLDEN GATE U.L. REV 285 (Spring 2000).
\textsuperscript{64} Id.
\textsuperscript{65} Id.
\textsuperscript{66} Id.
\textsuperscript{67} See Parents, supra note 46.
\textsuperscript{68} Id.
\textsuperscript{69} Id.
\textsuperscript{70} See ILLINOIS DEP’T OF CORRECTIONS at http://www.idoc.state.il.us/Institutions/Adult/dwi/
\textsuperscript{71} Id.
\textsuperscript{72} See Amnesty, supra note 3.
Institute for up to 18 months from 1957-1975. Around 1975, this policy changed and infants born to women prisoners were placed directly in foster homes and not brought to the prisons. The statute was amended in 1979, giving sole discretionary authority to the courts to decide whether a child should remain at the institutions. Finally, in 1981, this legislation was repealed and Florida closed their prison nurseries. A statement by a correctional spokesman in Florida reflects this decision: "[t]here [is] a concern about the well-being of the child. We wanted to make sure they had proper nutritional and emotional environment as well as a safe and secure environment. A women’s prison does not provide all those factors to an optimum degree." Florida has yet to re-open a prison nursery, although Florida’s current statute, the Corrections Equality Act, states:

(6) Any woman inmate who gives birth to a child during her term of imprisonment may be temporarily taken to a hospital outside the prison for the purpose of childbirth...The department shall provide for the care of any child so born and shall pay for the child’s care until the child is suitably placed outside the prison system.

1960s: The possible negative effects of separation between adults and children from society and family, combined with the high cost of institutional care and civil rights movements, began a period of deinstitutionalization.

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73 Pursuant to Florida Statute:

(2) If any women received by or committed to said institution shall give birth to a child while an inmate of said institution, such child may be retained in the said institution until it reaches the age of 18 months, at which time the Department of Offender Rehabilitation may arrange for its care elsewhere; and provided further, that at its discretion, in exceptional cases, the department may retain such child for a longer period of time.

74 See Parents, supra note 46.
75 Id.
76 Id.
77 See Mauskopf, supra note 8, at 5.
1970s: Fewer than 6,000 women were in prison\(^{\text{80}}\) and only one prison nursery remained, compared to the 13 in 1950.\(^{\text{81}}\) The twisted backlash of the women’s movement (which caused judges to treat women as harshly as men) and society’s desire to be more punitive,\(^{\text{82}}\) may explain why prison nurseries had become almost extinct. At this same time, correctional experts believed women ended up in prison because they lacked “femininity”.\(^{\text{83}}\) As a result, rehabilitation programs focused on helping women get in touch with their “feminine side”.\(^{\text{84}}\)

1981: Administrators at four federal institutions and 44 state institutions for women were surveyed on the subjects of prison nurseries and whether children should live in the institution.\(^{\text{85}}\) The results indicated 25% strongly agreed children should never be allowed to stay overnight in prison with their psychological mothers, whereas 31% strongly agreed children should be allowed to visit with their psychological mothers overnight.\(^{\text{86}}\) Twenty-five percent also agreed that prisons should not have prison nurseries and 31% agreed prisons should have prison nurseries.\(^{\text{87}}\)

1985: Five states had community facilities for mothers and children, while still only one prison nursery remained.\(^{\text{88}}\)

1988: New York’s Rikers Island jail opened a nursery (opposed to a prison nursery) for mothers who are awaiting trial.\(^{\text{89}}\) Once sentenced, mothers will be placed in either Bedford Hills or the Taconic Correctional Facility.\(^{\text{90}}\)

The Federal Bureau of Prisons also began its Mothers and Infants Together program (MINT), where low security-risk

\(^{\text{80}}\) See Kauffman, supra note 4.
\(^{\text{81}}\) See Amnesty, supra note 3.
\(^{\text{82}}\) See La Rosa, supra note 47.
\(^{\text{84}}\) Id.
\(^{\text{85}}\) See Parents, supra note 46.
\(^{\text{86}}\) Id.
\(^{\text{87}}\) Id.
\(^{\text{88}}\) See Bouduris, supra note 2. California, Massachusetts, New York, North Carolina, and Washington had community facilities while New York was still the only state with a prison nursery.
\(^{\text{89}}\) See La Rosa, supra note 47.
\(^{\text{90}}\) Id.
females are placed in a community based facility two months prior to delivery and remain there for three months after delivery.  

1990: Matching funds from the state of New York, combined with a grant from the Anti-Drug Abuse Act, created New York's second prison nursery at the Taconic Correctional Facility.

1993: Women prisoners in Niantic, Connecticut unsuccessfully campaigned for a prison nursery. Tens year prior, inmates in the Connecticut Correctional Institution for Women in Niantic filed a class action suit alleging the following: violation of the Equal Protection Clause for intentionally failing to provide programs, care, and facilities for women inmates that were comparable to those provided to male inmates; violation of the plaintiffs' right to family as guaranteed by the First, Ninth, and Fourteenth Amendments; the inmates' right to be free from cruel and unusual punishment; violation of the Due Process Clause; and a violation of the inmates' constitutional right to access courts.

1994: Nebraska was the second state to open a prison nursery. The Nebraska Correctional Center for Women expanded their 1974 Parent Program to include a prison nursery. Incarcerated mothers who give birth are able to keep their children with them in prison only if the mother is due for release before the child is 18 months old, ensuring the child and mother leave together.

1996: Delaware unsuccessfully legislated for a prison nursery. Despite this, advocates, such as Janet Leban, Executive Director of the Delaware Center for Justice, still advocate today for

91 See UNITED STATES GENERAL ACCOUNTING OFFICE, WOMEN IN PRISON, ISSUES AND CHALLENGES CONFRONTING U.S. CORRECTIONAL SYSTEMS, GAO/GGD-00-22, Dec. 1999 [hereinafter GAO].
92 See John J. Sheridan, Inmates May be Parents, too, CORRECTIONS TODAY, Aug. 1996.
93 See Randall Beach, Mothers in Prison, babies in the arms of state, N.Y. TIMES, Oct. 31, 1993.
95 See Parents, supra note 46.
97 See Kauffman, supra note 4.
98 See Parents, supra note 46.
a mother-baby program, stating: "The Delaware Center for Justice believes this state needs to act to...and secure a better future for children and our communities."\(^{99}\)

New York and Nebraska were still the only two states with prison nurseries; however, seventeen states now had community facilities.\(^{100}\)

1998: Twenty-three states now had community facilities.\(^{101}\)

1999: A third prison nursery was opened. The Residential Parenting Program at the Washington Correctional Center for Women in Gig Harbor opened their prison nursery\(^{102}\) allowing minimum custody pregnant mothers, who give birth while incarcerated, to keep their child for 18 months.\(^{103}\) Thereafter, the child and mother may go to one of two prerelease centers for an additional 18 months.\(^{104}\) Accordingly, after the baby is born, if a mother has less than three years left of her sentence she can keep her baby.\(^{105}\) This program is unique in two ways. First, it is the only prison nursery to include an Early Head Start component\(^{106}\) and second, participation is not limited to non-violent offenders.\(^{107}\) Any mother with the appropriate release date, who retains custody of her child, and who will be the primary caretaker when released is eligible.\(^{108}\)

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\(^{100}\) See Parents, *supra* note 46, (including: California, Connecticut, Iowa, Indiana, Kansas, Kentucky, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, North Carolina, New Hampshire, New York, Oregon, Pennsylvania, and Texas).

\(^{101}\) See Amnesty, *supra* note 3, (adding: Illinois, Ohio, Rhode Island, Vermont, Virginia, and Washington to the states that now had community correctional facilities).

\(^{102}\) See Kauffman, *supra* note 4.


\(^{104}\) See Kauffman, *supra* note 4.

\(^{105}\) Id.

\(^{106}\) See WASHINGTON STATE, *supra* note 103.

\(^{107}\) See Kauffman, *supra* note 4.

\(^{108}\) Id.
2001: Pursuant to Ohio Revised Statute,\textsuperscript{109} the Ohio Reformatory for Women opened the newest prison nursery in June.\textsuperscript{110} Under section 5120.651, Eligibility, a female inmate is eligible to participate in the prison nursery program if:

...she is pregnant at the time she is delivered into the custody of the department of rehabilitation and correction, she gives birth on or after the date the program is implemented, she is subject to a sentence of imprisonment of not more than 18 months, and she and the child meet any other criteria established by the department.\textsuperscript{111}

Prior to this statute the mothers gave up their infants within two days of birth.\textsuperscript{112}

2002: Pursuant to Section 210.875, of Missouri’s Revised Statutes, the Missouri children’s services commission will conduct a study on incarcerated parents and their children. The commission shall:

(1) ...evaluate current state law and policies that affect incarcerated parents and their children. The commission shall place particular emphasis on the areas of child custody and visitation.

(2) ...inform legislators and policymakers about the problems facing children of incarcerated parents and the value of coordinating penal policies and child welfare goals.

(3) ...may develop and recommend specific legislative proposals and propose state and local programs to respond to the needs of children of incarcerated parents

\textsuperscript{109} Stating:

(A) The department of rehabilitation and correction may establish in one or more of the institutions for women operated by the department a prison nursery program under which eligible inmates and their children born to them while in custody of the department may reside together in the institution.


\textsuperscript{111} ORC ANN. 5120.651 (Anderson 2001).

including, but not limited to, alternative sentencing laws and the establishment of community-based care facilities to maintain custody in the incarcerated parent and promote the welfare of such parent’s children.\textsuperscript{113}

The children’s service commission will submit their second report on alternative sentencing and its impact on children of incarcerated parents.\textsuperscript{114} The first report, evaluating current state policies and laws that affect children and their incarcerated parents, was to be delivered on December 1, of 1999.\textsuperscript{115}

IV. THE GREAT PRISON NURSERY DEBATE

The cold hard statistics also remind us five percent of female offenders give birth while incarcerated. What should be done with these babies born in prison? Should he or she be separated from his or her mother, suffering the effects discussed above? Or should infants be placed in prison nursery programs? If so, is parenting behind bars worth the risk?

A. ADVOCATES

Mother-child bonding and attachment are at the crux of the prison nursery debate. This mother-child bond and attachment are so crucial that the specific philosophy behind prison nursery programs centers on just that. As mentioned previously, Ohio just recently opened the newest prison nursery (Achieving Baby Care Success) citing “child development experts have determined that infants must bond with their mother in the first few months of life or their emotional and intellectual functioning is impaired”.\textsuperscript{116} The rationale behind Washington’s prison nursery program is “to promote mother-child bonding and attachment that research has

\begin{itemize}
  \item \textsuperscript{113} § 210.875 R.S.MO (2000).
  \item \textsuperscript{114} § 210.879 R.S.MO (2000).
  \item \textsuperscript{115} \textit{Id.}
  \item \textsuperscript{116} \textit{See} STATE OF OHIO, \textit{supra} note 110.
\end{itemize}
shown is essential to healthy, intellectual, social and psychological development."

For advocates, promoting this crucial mother-child bond is the driving force behind their belief in the success of prison nurseries. Since the mother and child must leave the prison together, in order to participate in the program, many advocates feel prison nurseries are the only rationale way to foster this bond; a bond that is so vital for emotional growth and healthy development that it must be maintained throughout early development.

Although, research specifically measuring the long-term impact of nurseries on children is virtually non-existent, there is research to support the position that prison nurseries foster and help maintain the mother-child bond. During the first year of life the foundations for emotional, social, and intellectual qualities are formed. Additionally, within those first weeks and months, attachment to the primary caretaker is also formed. Prison nursery programs not only have a strong impact on the mother-child bond, but are necessary for the development of that bond, as most mothers will continue to be the primary caretaker of that child once released.

If within the first year a newborn infant is deprived of nurturing and love from his or her mother, empirical evidence strongly indicates that the ability to sympathize or show concern for others is drastically impaired later in life. Since nursery programs ensure infants are in constant contact with his or her mother, infants are not deprived of love and nurturing.

If this mother-child bond is disrupted between the ages of six months and four years, a child’s development may be greatly effected. Under stable conditions, such as a prison nursery, the attachment between infants and his or her primary caretaker are

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117 See Washington State, supra note 103.
118 See Parents, supra note 46.
119 Id.
120 See Scientific, supra note 41.
121 Id.
122 Id.
123 See Sheridan, supra note 92.
believed to develop within the first weeks and months of life.\textsuperscript{124} Generally, children over the age of six months who are separated from his or her primary caretaker exhibit distress and fear.\textsuperscript{125} Although the child becomes attached to the new caregiver, the child may become very “clingy”, anxious, and angry.\textsuperscript{126} As a result, once a child is reunited with his or her primary caretaker, re-establishing the bond is difficult.\textsuperscript{127} Prison nurseries avoid any separation between the mother and infant, as not only must the infant be born in prison but the infant and mother must leave together.

An infant (under the age of four) who is directly placed with a relative or in foster care immediately after birth, or an infant who in the months immediately following birth is returned to his or her mother after her release from prison, may not only experience developmental problems\textsuperscript{128} but behavioral problems as well.\textsuperscript{129} This disorganized attachment relationship during infancy is the strongest predictor of excessive hostile behaviors toward peers in preschool.\textsuperscript{130} When a child is placed directly in the nursery program with his or her mother this chaotic situation is avoided, possibly decreasing the likelihood of behavioral problems later in life.

The Council on Scientific Affairs’ report on “Bonding Programs for Women Prisoners and Their Newborn Children,” states the available scientific and anecdotal research suggests when nursery programs are carefully implemented there are few detrimental effects on the children.\textsuperscript{131} In fact, a 1992 study indicated there was a strong, healthy attachment between mothers and their infants in prison nurseries versus those infants who are immediately separated from their mothers and placed with caregivers after birth.\textsuperscript{132}

\textsuperscript{124} See Scientific, supra note 41.
\textsuperscript{125} Id.
\textsuperscript{126} Id.
\textsuperscript{127} Id.
\textsuperscript{128} Id.
\textsuperscript{129} Id.
\textsuperscript{130} Id.
\textsuperscript{131} Id.
\textsuperscript{132} Id.
In 1979, the overall importance of the mother-child bond was raised in *Wainwright v. Moore*. Several issues were cited in support of incarcerated mothers keeping their children:

In recognition of the importance of the mother-child bond, the mother should not be deprived of her right to maintain physical custody of her child.

The bonding process is important to the mother’s identity and self-image as a woman.

The mother-child bond is critical to the infant’s mental health and development.

The future relationship between the mother and the child depends on the development of a bond during the child’s first eighteen months. A breach in the bond may be irreparable.

Encouraging close relationships between a mother and child is not the only benefit of a prison nursery. The supportive environment of prison nurseries also helps reduce recidivism rates and provides motivation for prisoners to complete rehabilitation programs.

B. OPPONENTS

Prison nurseries are not free from criticism by any means. Even though prison nursery programs foster and maintain the mother-child bond, opponents adamantly believe children should not be raised behind bars for the following reasons.

Opponents argue prison nursery programs subject innocent children to imprisonment because of a parent’s crime. Some opponents hope children of incarcerated parents will actually

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133 374 So. 2d 586 (Fla. Dist. Ct. App. 1979). Shortly before giving birth, an inmate mother petitioned the courts to force the Broward Correctional Institution to comply with the existing state statute, that allowed an inmate mother to keep her new-born child with her in the prison for the first 18 months. The court reversed the trial court decision that the statute gave the plaintiff the right to decide whether her child would remain with her in the institution. That same year the statute was amended and discretionary authority was given to the court to decide whether a child could be kept at the institution.

134 See Amnesty, *supra* note 3.

135 See Parents, *supra* note 46.
benefit from their mother's absence,\textsuperscript{136} noting the advantage of separation:

For some mothers, an additional impact of the separation is to heighten their understanding of their own behavior and its effects on their children. Especially for mothers who had been involved in drugs or alcohol for prolonged periods, incarceration provides them with a chance to step back and take stock of the experiences their children have endured.\textsuperscript{137}

Opponents also argue prison is an inappropriate environment for children. Only at the risk of basically imprisoning the child do prison nurseries foster sufficient contact with an incarcerated parent.\textsuperscript{138} Whether such contact is “sufficient” or not is also highly controversial:

Incarcerated mothers exaggerate their maternal solicitude and often express very unrealistic and ideological perceptions of their maternal role. Inmate mothers have exaggerated self images as loving and concerned mothers and unrealistic expectations for positive reunification with their children.\textsuperscript{139}

This notion, that children should not be raised behind bars, is pervasive among some correctional officials as well. In addition to their concern surrounding the adverse effects of being raised in prison, many simply do not sympathize with an incarcerated mother and feel mothers should not be given special treatment.\textsuperscript{140} Some officials are also concerned mothers will use their children as an excuse to qualify for better activities or programs for themselves.\textsuperscript{141}

Not surprising, many of the reasons cited by those states that repealed their legislation and/or closed their prison nurseries\textsuperscript{142}

\textsuperscript{136} See Kauffman, supra note 4.
\textsuperscript{137} See Parents, supra note 46, at 2.
\textsuperscript{138} See Kim, supra note 7.
\textsuperscript{139} See Parents, supra note 46, at 2.
\textsuperscript{140} See Mauskopf, supra note 8.
\textsuperscript{141} Id.
\textsuperscript{142} See Parents, supra note 46. By the early 1980s California, Florida, Illinois, Kansas, Massachusetts, and Virginia had repealed their legislation and/or closed their prison nurseries.
are analogous to those given by researchers and correctional officials. These reasons included: overcrowding; healthcare and management problems (such as disciplinary actions, segregation of inmate mothers, and pre-release placement of the mother); inadequate facilities; and liability concerns.\textsuperscript{143}

Several of the above states adamantly expressed their belief prisons were not the proper place to raise a child and because prison was not a normal environment, children missed the opportunity for everyday activities (e.g. visits to the grocery store) and lacked contact with males.\textsuperscript{144} Some states also felt separation would be less traumatic if it was made before the mother and child became attached.\textsuperscript{145}

There were also concerns for the infant’s safety/security and concerns the programs centered around what was in the best interest of the inmate mother.\textsuperscript{146} Women began expecting special privileges in caring for their children, leading to resentment and animosity between inmates.\textsuperscript{147} A concern there was no time for rehabilitation was also cited.\textsuperscript{148}

Observational studies of infants and mother-infant interaction in prison nurseries also raised concerns. In 1990, the social-emotional and cognitive attachment of infants in the Bedford Hills facility in New York was assessed.\textsuperscript{149} The study reported 50% of the infants showed lack of stranger wariness and seemed to be insecurely attached to their mothers.\textsuperscript{150} This study also evaluated the developmental effects on the infants,\textsuperscript{151} finding prison infants were at risk for developmental problems and that 33% were greater than one standard deviation below the mean in overall development.\textsuperscript{152}

\textsuperscript{143} Id.
\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} Id.
\textsuperscript{147} Id.
\textsuperscript{148} Id.
\textsuperscript{149} See Scientific, supra note 41. The strength of the mother-infant attachment was examined after videotaping the mothers and their infants and observing their behavior.
\textsuperscript{150} Id.
\textsuperscript{151} Id. Using the Bayley scale.
\textsuperscript{152} Id.
In a 1992 study, short-term detrimental effects were evident in infants who spent more than four months in the nursery, although no long-term effects on the infant’s development were found. As soon as the infants were placed in a non-prison environment deficits disappeared, indicating even though prison nurseries were able to foster basic skill development, they were unable to promote the extended use of skills necessary to the developmental growth of a child. The infant’s inability to build on their basic skill set was attributed to the constraints in the design of the prison nurseries.

As a direct result of the prison nursery’s restricted environment, cognitive and locomotor development was also delayed in infants who remained in the nurseries for extended amounts of time. A child’s cognitive ability to respond, including problem solving and developmental skills, is partially developed through interaction with educational toys, which were missing at the nursery. Spending long amounts of awake time in physically confined space contributed to the lack of locomotor development.

At least one custodial father has expressed his apprehension to the courts regarding his six-year-old son spending the night in prison with his ex-wife, who is serving two life sentences for a double murder. After learning his son was going to spend the night in the prison, the father sent his attorney to the facility to get his son back, fearing for his child’s safety. The father’s

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153 Id. Using a standardized infant test, the Griffiths Mental Development Scales, which provides developmental norms for social, cognitive, and locomotor development.
154 Id.
155 Id.
156 Id.
157 Id.
159 Id. Prison officials had to return the child back to his father as they could not interfere with the wishes of the boy’s legal guardian.
160 Id.
biggest concern was how the overnight visits would affect his son.  

V. **WHAT ABOUT DAD?**

Of the 25% of fathers living with their minor child prior to incarceration, only 9% lived alone with their minor child. This percentage seems minuscule compared to 50% of incarcerated mothers who lived with their minor child before incarceration. Surprisingly, the reality is, homes where single fathers care for children under the age of 18 are the fastest-growing family group in America. Statistics report when dads go to prison, 90% of the children live with mom versus when mothers are incarcerated, only one quarter of the children live with dad. What if dad goes to prison and mom is gone? Prison nurseries are not an option, so where do the children of single incarcerated fathers go? Should those children have to remain separated from their incarcerated fathers? Should those fathers be denied parent-child training and education?

Incarcerated mothers, who are the primary caretakers, not only enjoy the privileges of prison nursery programs (e.g. living with their children, education, parent-child training, and health care), but benefit directly from those services as well. As a result of the special job training and drug rehabilitation programs associated with prison nursery programs, mothers are more likely to successfully provide emotional and economic support to their children and are less likely to be recidivists.

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161 Id.
163 Id.
164 Id. A 1991 study estimated there were over two million children living in single-father-headed homes.
166 See Patton, supra note 162.
167 Id.
On the other hand, fathers, who are the primary caretakers, remain separated from their children and are not entitled to the same privileges of parenting classes or reunification services. Although it has been determined women and men are not similarly situated in the context of prisons (it is possible to have separate but equal facilities for women and men), such disparate treatment might be a violation of the Equal Protection Clause. Arguments for and against the equal protection issue follow.

One could argue the cost would be minimal to provide reunification programs for fathers who are the primary caregivers, as only a small percentage of incarcerated fathers are the primary caregivers. One could also argue it is more important to provide women's reunification programs as more children would benefit. The fact incarcerated fathers see their children more often than incarcerated mothers, supports arguments in favor of women's reunification programs.

Not only are incarcerated fathers treated differently, but mothers who do not give birth to their children while incarcerated, mothers who do not have children, or mothers whose children are too old for the program are affected as well.

VI. CONCLUSION

What to do with the lives of innocent children who fall victim to their parent's crime is a tough call. For most of these children separation is the only option, but for infants born in some prisons there are two choices: the infant can spend his or her first year in a prison nursery or the infant can be separated from his or her mother. Which is the lesser of the two evils? A 1996 study, by

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168 Id.
169 See Mauskopf, supra note 8.
170 See Patton, supra note 162.
171 See Mauskopf, supra note 8. Ten to thirty percent of fathers compared to 70-90% of mothers who are the primary caregivers.
172 See Patton, supra note 162.
173 See Mauskopf, supra note 8.
174 Id.
the Department of Health and Human Services, confirms the reality that this is a highly controversial and debated issue:

The prospect that routine nonmaternal care in the first year of life might adversely affect the security of the infant's attachment to mother has been a subject of much discussion and debate for over the past decade and a half, and discussion and debate continue to this day.\textsuperscript{175}

Despite their flaws, I believe prison nursery programs are successful in promoting the mother-child bond, avoiding the effects of separation. Infants fortunate enough to be born in prison should be placed in the prison nursery program, as mothers are usually the primary caretakers. Still, I am not thoroughly convinced the mere opportunity for a mother-child to bond is \textit{less traumatic} than separating the mother and child in the long run. I am not suggesting by any means, just because children raised in prison nurseries might not fare better in life, they should be denied the initial mother-child bond.

Do infants separated, then re-united with their mothers fare better later in life versus those raised in prison and released into a non-prison environment with their mothers? Are the effects of being separated from the caregiver more or less traumatic than the initial parental separation? What about those children who are never re-united? How do they fare later in life? One theory is as good as another, as existing research is silent.

What if the success of a child who participated in other programs for children of incarcerated parents\textsuperscript{176} was the same for a child raised in a prison nursery? Research, although conflicting, does shed some light on whether child-parent visitations in general are beneficial.

A 1995 report, on the children of incarcerated parents, detailed the following positive outcomes from child-parent visitations: increase in the chances of a successful reunification because children and parents are able to maintain their existing

\textsuperscript{175} See \textit{Parents}, supra note 46, at 1.

\textsuperscript{176} \textit{Id}, (including: overnight visits with children; family visits/conjugal visits; children's and day care centers; parenting classes for inmates; furloughs; and community facilities for mothers and children).
relationship; children are able to express their emotional reactions to the separation; parents are able to provide support to caregivers and model appropriate interactions for misbehaving children; by dealing with their own feelings, parents are able to help their children deal with the issues of loss and separation; and children’s unrealistic fantasies and irrational fears are calmed when able to see their parents realistically.\footnote{177 See GAO, supra note 91.}

Nevertheless, research also indicates when young children experience sudden or repeated separations from his or her primary caretaker, they are more likely to develop psychiatric problems as children and as adults.\footnote{178 See Scientific, supra note 41.} These children are also more likely to have learning difficulties, relationship problems, parenting difficulty as an adult, and disruptions in personality developments (which may lead to aggression).\footnote{179 Id.} So, whether alternative programs are more or less beneficial then prison nursery programs is unknown.

I believe the requirement a mother and child must leave the prison together ensures the time, money, and effort invested into the program is not fruitless. This is why Bedford Hills’ policy of allowing mothers serving lengthy sentences to apply to keep their babies with them for the first year, despite the fact they have little chance of ever being their children’s primary caretaker again,\footnote{180 See Kauffman, supra note 4.} is a bit puzzling. Granted, the majority of infants and mothers do leave Bedford Hills together, but for the percentage that do not, what could be worse than establishing a mother-child bond just to destroy it?

Of course, the mother-child bond may be destroyed even if the mother and child leave together. However, to deliberately put a child through unnecessary separation, especially after the mother and child have already bonded, seems to defeat the purpose of fostering the mother-child bond in the first place, as the child’s only choice is to then bond with someone else.

The history of prison nurseries notes several reasons why only four states have prison nurseries while all states have at least
one of the various alternative programs for incarcerated mothers and their children,\textsuperscript{181} including political, economical, and social differences. Those aside, I believe the attitude "if you do the crime, you do the time" and without any privileges, still runs deep in society. Specifically, why should mothers in prison be able to raise their babies for free, in a safe environment, and with 24-hour help no less? The average mother is not entitled to free specialized parenting classes and educational programs. Additionally, I believe the lack of reliable and valid research, to indicate whether raising a baby behind bars is in the best interest of the child, is a concern for legislators, correctional officials, and society as well.

I agree the above issues are debatable, but when discussing prison nurseries the emphasis should focus on what is best for the child, not what benefits the mother may reap. It is undisputed that a parent's incarceration dramatically affects a child; but whether a child will suffer when raised in a prison nursery is where opponents and advocates disagree. Whether prison nurseries are successful in fostering long-term positive outcomes is the real unknown.

There is no empirical research to indicate the long-term consequences children suffer, whether in nurseries or due to separation. Prison nursery programs need continual research and follow-up to determine whether existing prison nursery programs achieve their goal. There is some hope for future research.

In 1994, Congress passed the Family Unity Demonstration Project\textsuperscript{182} to help address concerns surrounding children of single incarcerated mothers.\textsuperscript{183} In fact, funding for nearly $20 million was authorized for yearly appropriation from 1996-2000.\textsuperscript{184} This

\textsuperscript{181} See Parents, supra note 46, (including: overnight visits with children; parenting classes for inmates; children's and day care centers; family/conjugal visits; furloughs; or community facilities for mothers and children).


\textsuperscript{183} Id. See also Myrna S. Raeder, Creating Correctional Alternatives for Nonviolent Women Offenders and Their Children, 44 ST. LOUIS L.J. 377 (Spring 2000).

\textsuperscript{184} See Kim, supra note 7.
legislation allowed certain eligible mothers\(^{185}\) to live in residential facilities with their child under the age of seven.\(^{186}\) Reducing recidivism, minimizing parent-child separation harm, and exploring the cost effectiveness of community correction facilities were all motivating factors behind this legislation.\(^{187}\) Unfortunately, congress failed to provide funding and the statute was never implemented.\(^{188}\)

Although Congress has failed to fund the Family Unity Demonstration Project, they did appropriate $4 million in December of 2000 to the Department of Justice (DOJ), National Institute of Corrections (NIC), to address issues concerning children of incarcerated parents.\(^{189}\) As a result, in 2001, NIC awarded five different cooperative agreements within the area of children of incarcerated parents.\(^{190}\) Specifically, funding was awarded for children with parents in prison and for children with parents in jail.\(^{191}\) The awardees\(^{192}\) will focus on improving the parent-child relationship and reducing the stress, stigmatization, and trauma of separation that children face.\(^{193}\)

During this same year, the Office of Justice Programs (DOJ) held the first ever National Symposium on Women Offenders to help address the many concerns unique to women offenders.\(^{194}\) How to deal with children of incarcerated single

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\(^{185}\) See Kim, supra note 7, (including non-violent mothers, serving a sentence less then seven years, who were the primary care-taker of the child prior to incarceration or who had just given birth).

\(^{186}\) Id.

\(^{187}\) Id. See also Raeder, supra note 183.

\(^{188}\) See Raeder, supra note 183. Despite the February 5, 2000, A.B.A House of Delegates, resolution urging the immediate reauthorization and funding of this legislation.

\(^{189}\) Telephone Interview with Mary Whitaker, Correctional Program Specialist, National Institute of Corrections (Oct. 1, 2001).

\(^{190}\) Id.

\(^{191}\) Id.

\(^{192}\) Id, (including: Families in Crisis, Inc. (Connecticut), Centers for Youth and Families (Arkansas), Catholic Community Services (Alaska), and Community Works (California)).

\(^{193}\) Id.

females was a major concern of not only former Attorney General Janet Reno, but of the various probation/parole officers, service providers, legislators, defense counsel, prosecutors, judges, sheriffs, and correctional officials who attended.\textsuperscript{195}

More recently, in mid-February of 2001, Senate Bill 304 was introduced that would provide $25 million for programs for children of incarcerated parents, $30 million for community residential treatment centers for drug addicted women with minor children, and money for reentry programs.\textsuperscript{196}

Finally, President George W. Bush is the first U.S. president to propose services specifically for children of prisoners.\textsuperscript{197} As part of the Federal Government's faith-neutral social policy stance, federal competitive grants will be provided for those services reaching children of prisoners.\textsuperscript{198}

Not only are Congress and the Department of Justice attempting to address the issues of children of incarcerated parents, advocacy groups such as Legal Services for Prisoners with Children, the Child Welfare League of America, and the Center for Children of Incarcerated Parents have increased awareness as well.

\textsuperscript{195} See Raeder, supra note 183.