

## **Incarcerated Parents' Contact with their Children: The Best Interest of the Child, Rather than the Best Interest of the Incarcerated Parent**

Having an incarcerated parent is no longer an anomaly in life or in family court. Over 2.7 million American children have at least one incarcerated parent. A parent's incarceration is a game-changer in terms of time-sharing, parental responsibility, the level of conflict, and contact between the child and the incarcerated parent.

Family court professionals must consider an incarcerated parent's desire to maintain contact with his/her child, against the best interests of the child. The type/frequency of contact that is in the best interest of the child may not be obvious; and it must be differentiated from the best interest of the incarcerated parent.

We offer family court professionals guidelines to establish the best interest of the child in determining the type/frequency of contact with an incarcerated parent. We emphasize that reactions to parental incarceration and contact with the incarcerated parent may be exacerbated during a high-conflict family court case.

### **Is Contact with an Incarcerated Parent in the Best Interest of the Child?**

Given the diversity of cases of incarcerated parents, it is important to recognize that a child's best interest does not have a 'cookie cutter' solution. Because of the uniquely harmful components of parental incarceration and the potential for causing more harm than good, it is important to weigh carefully whether any contact should be granted, and if so, what type and with what frequency.

A best interest consideration regarding contact with an incarcerated parent should include an evaluation of: (a) the trauma of having an incarcerated parent; (b) whether contact with the incarcerated parent can cause more harm than good; (c) factors about the parent's incarceration; and (d) the child's age and developmental stage.

### ***The Trauma of Parental Incarceration: Shame and Stigma***

Parental incarceration can be harmful to children - an "adverse childhood experience" even more so than a parent's death or divorce. Research shows that having a parent in prison is so stressful that it contributes to significant, long-lasting negative effects on a child's mental health, physical health, education, and social relationships. Parental incarceration is uniquely harmful because it comprises elements of trauma, shame, and stigma, per the Annie E. Casey Foundation.

The trauma, shame and stigma ought to be a primary consideration in family court professionals' determination of the optimal type/frequency of contact, and whether contact with an incarcerated parent is in the best interest of the child. Put yourself in the shoes of little Joe, who is re-traumatized over and over again with his father's incarceration via court-ordered contact; or how Johnny must explain to friends that he missed school due to visiting his mother in jail; or what happens at home when the phone rings with a recording "a call from Random Correctional Treatment Facility"; or Jane, whose friends cannot come over because she is stigmatized due to an imprisoned parent.

Children of incarcerated parents (and their families) did not commit a crime. They should not be forced into a childhood of repeated trauma, endless shame and constant stigma.

### ***Contact with Incarcerated Parents Can Cause More Harm than Good***

Contact with an incarcerated parent might cause more harm than good. Although it might appear that contact may mitigate the psychological harm to the child, some research indicates that contact can lead to even more harm to the child.

Also, research about the benefits of contact to the child is inconclusive. Only 58% of the studies showed benefits to the child, according to Poehlmann et al.

### ***Factors about the Parent's Incarceration and their Impact on Type/Frequency of Contact***

Family court professionals should consider:

#### 1) Type of crime

While violent crimes can be indicative of the incarcerated parent's sociopathic traits, white collar crimes are also quite telling about morality, possible personality disorder(s) and character pathology. Thus, it is important to consider the moral character of the incarcerated parent and the possibility that he/she may manipulate, poison, guilt, or otherwise harm a child via contact from prison.

#### 2) Length of sentence

The length of the sentence represents the many months that the incarcerated parent will be absent from the child's day-to-day life and special occasions.

A prison sentence of several months should not be given the same consideration as an incarceration for years. Extra consideration - including what type of

parental contact, if any, is appropriate - should be given to a child who will have a parent incarcerated for the majority of that child's remaining childhood.

### 3) Location and Rules of Prison

The location and rules of the prison may pose issues with maintaining contact. The prison may be far from where the child resides, making face-to-face visitations less feasible due to logistical and financial constraints. Some prisons charge a fee for first-time visitors, others have rules on the type of letters (e.g., postcard) which incarcerated parents can send, thus limiting the ability to communicate with age-appropriate drawings/letters.

Visiting procedures vary, but many prisons utilize a glass window or video, which may be daunting for a child. Frisk and search procedures, the visuals of barbed wire, and just seeing an incarcerated parent in prison clothes could traumatize a child, per De Masi and Bohn.

Phone calls from prison are costly, and are limited per call (e.g., 10 minutes) and per minutes per month. These rules could result in abrupt termination of a phone conversation.

### ***Child's Age and Developmental Stage***

These are key factors in determining the type, form, and frequency of contact with the incarcerated parent. Specifically, family court professionals should consider the child's age and developmental stage at: (a) the time of incarceration; and (b) the duration of incarceration.

Children's cognitive capacity to process and conceptualize separation varies with their age and developmental stage. Letters, phone calls, and face-to-face visitations will trigger different responses in different age groups.

Letters are least intrusive, although they could leave the child with unanswered questions and ambivalent attachment. Phone calls from prison may seem benign, but they could trigger a highly emotional reaction of fear or anxiety in a toddler or school age child. Visits to prison might not impact an infant, but a school-age child might react with intense fear, and a teen might experience significant shame and guilt.

## **Conclusion**

Parental incarceration constitutes a major trauma to the child, and contact with an incarcerated parent could pose more emotional pain. In determining the type/frequency of contact with the incarcerated parent, family court professionals must sensitively weigh each case, primarily focusing on the best interest of the child, rather than the incarcerated parent. The most important factors are: (a) the trauma, shame and stigma, considering the child's age and developmental stage; and (b) whether contact can cause more harm than good, considering factors about the parent's incarceration. Lastly, one ought to consider what happens to the child (and the family) "the morning after" - *after* the phone call or visit to prison ends.

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## **BIOS**

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