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CHILD WELFARE

More Information and Collaboration Could Promote Ties Between Foster Care Children and Their Incarcerated Parents

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Why GAO Did This Study

Federal law sets timelines for states' decisions about placing foster care children in permanent homes, and, in some cases, for filing to terminate parental rights. Some policymakers have questioned the reasonableness of these timelines for children of incarcerated parents and expressed interest in how states work with these families. GAO was asked to examine: (1) the number of foster care children with incarcerated parents, (2) strategies used by child welfare and corrections agencies in selected states that may support contact or reunification, and (3) how the Department of Health and Human Services (HHS) and the Department of Justice (DOJ) have helped these agencies support affected children and families. GAO analyzed national data, reviewed federal policies, interviewed state child welfare and corrections officials in 10 selected states that contain almost half of the nation's prison and foster care populations, and visited local child welfare agencies and prisons.

What GAO Recommends

GAO recommends that HHS improve its data on the foster care children of incarcerated parents and that it more systematically disseminate information to child welfare agencies. GAO also recommends that DOJ consider ways to promote collaboration between corrections and child welfare agencies, including establishing protocols for federal prisons to facilitate communication between these entities. HHS and DOJ agreed with GAO's recommendations.

View [GAO-11-863](#). For more information, contact Kay E. Brown at (202) 512-7215 or brownke@gao.gov.

What GAO Found

Foster care children with an incarcerated parent are not a well-identified population, although they are likely to number in the tens of thousands. HHS data collected from states show that, in 2009 alone, more than 14,000 children entered foster care due at least partly to the incarceration of a parent. This may be an undercount, however, due to some underreporting from states and other factors. For instance, the data do not identify when a parent is incarcerated after the child entered foster care—a more common occurrence, according to case workers GAO interviewed. HHS is currently developing a proposal for new state reporting requirements on all foster care children; however, officials had not determined whether these new requirements would include more information collected from states on children with incarcerated parents.

In 10 selected states, GAO found a range of strategies that support family ties. Some state child welfare agencies have provided guidance and training to caseworkers for managing such cases; and local agencies have worked with dependency courts to help inmates participate in child welfare hearings by phone or other means. For their part, some corrections agencies ease children's visits to prisons with special visitation hours and programs. In several cases, corrections agencies and child welfare agencies have collaborated, which has resulted in some interagency training for personnel, the creation of liaison staff positions, and video visitation facilitated by non-profit providers.

HHS and DOJ each provide information and assistance to child welfare and corrections agencies on behalf of these children and families. For example, both federal agencies post information on their websites for practitioners working with children or their incarcerated parents, with some specific to foster care. The HHS information, however, was not always up to date or centrally organized, and officials from most of the state child welfare and corrections agencies GAO interviewed said they would benefit from information on how to serve these children. Further, DOJ has not developed protocols for federal prisons under its own jurisdiction for working with child welfare agencies and their staff, although GAO heard from some state and local child welfare officials that collaboration between child welfare and corrections agencies would facilitate their work with foster care children and their parents. This would also be in keeping with a DOJ agency goal to build partnerships with other entities to improve services and promote reintegration of offenders into communities.

Examples of Strategies to Support Family Ties



Video visit with incarcerated parent



Children's visiting room in women's prison

Source: © May 2011 The Osborne Association; photo by Jonathan Stenger (left); GAO (right).

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Abbreviations

ACF	Administration for Children and Families
AFCARS	Adoption and Foster Care Analysis and Reporting System
ASFA	Adoption and Safe Families Act of 1997
ASPE	Assistant Secretary for Planning and Evaluation
BJS	Bureau of Justice Statistics
BOP	Bureau of Prisons
CFSR	Child and Family Services Reviews
DOJ	Department of Justice
HHS	Department of Health and Human Services
PPW	Services Grant Program for Residential Treatment for Pregnant and Postpartum Women
RPG	Regional Partnership Grant
RWC	Residential Treatment for Women and their Children
SAMHSA	Substance Abuse and Mental Health Services Administration

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United States Government Accountability Office
Washington, DC 20548

September 26, 2011

The Honorable Jim McDermott
The Honorable Charles Rangel
House of Representatives

Some of our nation's most vulnerable children are those who have been removed from their homes and placed in foster care, often due to neglect or abuse.¹ At the end of fiscal year 2009, 423,773 children were in foster care, according to the most recent available data from the Department of Health and Human Services (HHS). Some researchers and advocates maintain that there has been a growth in the number of foster care children with an incarcerated parent, due in part to an increase in the number of incarcerated mothers over the years. While incarcerated fathers made up more than 90 percent of the 809,800 parents in prison in 2007, according to the most recent estimates from the Department of Justice (DOJ), the number of mothers in prison more than doubled from 1991 to 2007 (29,500 to 65,600, respectively). Some researchers and advocacy groups have also questioned whether child welfare and corrections systems have overlooked the rehabilitation of these parents and the assessment of opportunities to preserve family ties, when appropriate. They have further raised concerns about whether federal foster care timelines for filing to terminate parental rights—intended to place children more quickly into permanent adoptive homes—have inappropriately affected these families, given the length of time some parents are incarcerated. Meanwhile, although states and local agencies have primary responsibility for administering child welfare services, the federal government provides about \$8 billion annually to states for child welfare programs, including for foster care programs.² In addition, corrections agencies at the local, state, and federal level may play a role

¹Children also enter foster care for other reasons, such as their parents' illness, death, disability, or incarceration, or because of the children's delinquent behavior and truancy.

²Federal funding for state child welfare services and foster care programs is provided under Titles IV-B and IV-E of the Social Security Act. 42 U.S.C. §§ 621, 629, and 670. To be eligible for federal funding, states must comply with certain program requirements imposed by these laws. In fiscal year 2010, of the \$8 billion provided to states, \$7.2 billion was used for providing matching funds to states under Title IV-E of the Social Security Act, primarily to maintain eligible children in foster care, provide subsidies to families adopting children with special needs, and cover administrative and training costs.

in efforts to establish bonds between incarcerated parents and their children through their policies and programs.

In this context, you asked us to address the following questions: (1) How many children in foster care have an incarcerated parent? (2) What strategies have child welfare and corrections agencies in selected states used that could support contact or reunification, when appropriate, between these children and their incarcerated parents? (3) In what ways do HHS and DOJ help child welfare and corrections agencies in working with these children and their incarcerated parents?

To address these questions, we used several methodologies. First, we reviewed relevant national data on foster care children maintained by HHS and on incarcerated parents from surveys, administered by DOJ's Bureau of Justice Statistics (BJS), of inmates³ in state and federal prisons and local jails. We reviewed the methods and survey design used to produce the data from both of these sources, as applicable, and, through interviews with knowledgeable agency officials and our own analyses, we determined that the data we used were sufficiently reliable for our purposes. Second, we conducted structured telephone interviews with state administrators of child welfare and corrections agencies in 10 selected states⁴ to gather relevant information on the extent to which states collect data on our target population, state policies and programs, and officials' perspectives on challenges and areas in which additional federal assistance would be useful. States were selected to represent nearly half of the prison inmates and foster care children in the United States and for geographic variation. Some states were also selected because they had been identified by researchers and professionals knowledgeable on these topics as having strategies (policies, programs, or practices) aimed at supporting parent-child ties either statewide or in localities within the state. For these 10 states, we also reviewed selected child welfare statutes and other policies. Third, to gather more in-depth information at the local level, we conducted site visits in 4 of the 10 states and interviewed local child welfare officials and caseworkers; dependency

³Because these surveys are probability samples, the estimates are subject to sampling error. We disclose this sampling error as 95 percent confidence intervals and present this information along with the estimates in this report. See appendix I for more information on these surveys and estimates.

⁴The 10 selected states were Alabama, California, Colorado, Florida, Michigan, Nebraska, New York, Oregon, Pennsylvania, and Texas.

court judges;⁵ corrections staff primarily from prison facilities as well as a few jails; community service providers; and, in a few cases, incarcerated parents and former foster care youth. The information we gathered from our phone interviews and site visits is not generalizable to all states and localities. In addition, while we collected information about relevant strategies used in our selected states, we did not review how widespread these were practiced in each state. Fourth, we interviewed HHS and DOJ officials knowledgeable about pertinent agency activities and reviewed relevant federal laws, regulations, policies and other agency documentation. Last, we interviewed researchers and professionals from a range of national organizations, including family resource centers, corrections associations, and child welfare organizations, and reviewed available literature from these groups. See appendix I for additional information on our methodology.

Background

Foster Care Children and the Child Welfare System

A child generally enters foster care after a dependency court and a child welfare agency have determined that the child should be removed from his or her home, for reasons such as substantiated abuse or neglect.⁶ Children in foster care may be temporarily placed in various types of out-of-home care arrangements, including in a foster home with relatives, in a foster home with nonrelatives, or in a group residential setting. Federal law requires that state child welfare agencies consider giving preference to placing children with qualified relatives, if consistent with the best interest of the child.⁷ Approximately one-quarter of children in foster care in fiscal year 2009 lived with relatives, according to HHS data.⁸

⁵States may use different terms for the courts that handle foster care cases, including family court, juvenile court, and dependency court. In this report, we use the term “dependency court” to refer to all these types of courts.

⁶For the purposes of this report, foster care means substitute care for children outside their own homes for at least 24 hours, under the responsibility of the state child welfare agency.

⁷42 U.S.C. §§ 671(a)(19), 675(5)(A).

⁸Excluded from these numbers are children who are cared for by relatives in informal arrangements made by families outside of the child welfare system.

Sample elements in a case plan relating to parent-child contact or reunification

- Permanency goal (e.g., reunification)
- Services for child (e.g., counseling or health services)
- Services for parents (e.g., parenting classes or substance abuse or mental health treatment)
- Visitation/communication schedules (e.g., between parent and child)
- Target return dates, if reunification is the goal
- Plans for alternative placement if reunification goals are not met

Federal law also requires child welfare agencies to make “reasonable efforts” to preserve and reunify families in most cases,⁹ but leaves it to states to define what these efforts entail, on a case by case basis. However, at a minimum, child welfare agencies must make a diligent effort to identify and notify all adult relatives shortly after the child’s removal from the custody of the parent.¹⁰ They must also develop a case plan for each foster care child which, among other requirements, must describe the services that will be provided to the parents, child, and foster parents to facilitate the child’s return to his or her own home or permanent placement, and address the child’s needs while in foster care.¹¹ The plan may also specify goals for placing the child in a permanent home and the steps that a parent (or the principal caretaker) must take before a child can be returned home, if reunification is the goal.

In general, returning children to their home is the preferred goal of state child welfare agencies, but this goal is still dependent on various factors, such as the extent that a parent has completed rehabilitative treatment or maintained a meaningful role in the child’s life through visits or other forms of contact. In fiscal year 2009, about half of the nation’s children who exited foster care were reunified with their parent or primary caretaker (see table 1).

⁹42 U.S.C. § 671(a)(15)(B).

¹⁰42 U.S.C. § 671(a)(29). Some states may impose their own requirements to locate noncustodial parents as part of a child welfare agency’s reasonable efforts to preserve and reunify families.

¹¹42 U.S.C. §§ 671(a)(16), 675(1).

Table 1: Outcomes for Children Exiting Foster Care in Fiscal Year 2009

Outcome	Percentage of total	Number of children
Reunification with parent or primary caretaker	51%	140,061
Adoption	20	55,684
Emancipation ^a	11	29,471
Living with other relative	8	21,424
Guardianship ^b	7	19,290
Other	3	8,849

Source: GAO presentation of HHS data.

^aEmancipation occurs when the child exits foster care because he or she has reached majority under state law, such as by getting married or reaching a certain age, typically 18 to 21 years old. See 45 C.F.R. pt. 1355 app. A § II.

^bLegal guardianship is a court-ordered relationship which is intended to be permanent and involves transferring some parental rights to the guardian, such as protection, education, caretaking, and decision-making, but it does not require termination of all parental rights. It is considered a permanent care arrangement under federal child welfare law. See 42 U.S.C. § 675 (5)(C)(i), 675(7).

The Adoption and Safe Families Act of 1997 (ASFA) was passed, in part, in response to concerns about the length of time children were spending in foster care and included provisions to facilitate child welfare agencies' ability to place children more quickly into safe and permanent homes.¹²

For example, the law requires child welfare agencies to hold permanency hearings within 12 months of the child's entering foster care to determine the permanent placement for the child and requires child welfare agencies to file a petition to terminate parental rights when a child has been in foster care for 15 of the most recent 22 months¹³ (see fig. 1).

However, states are not required to file for termination of parental rights if a child is in the care of relatives, the state has not provided necessary services to the family consistent with the case plan, or the state agency documents a compelling reason why filing for termination is not in the best interests of the child.¹⁴ These timelines and possible exceptions are relevant for incarcerated parents who have children in foster care, as 44 percent of inmates released from state prisons in 2008 served sentences

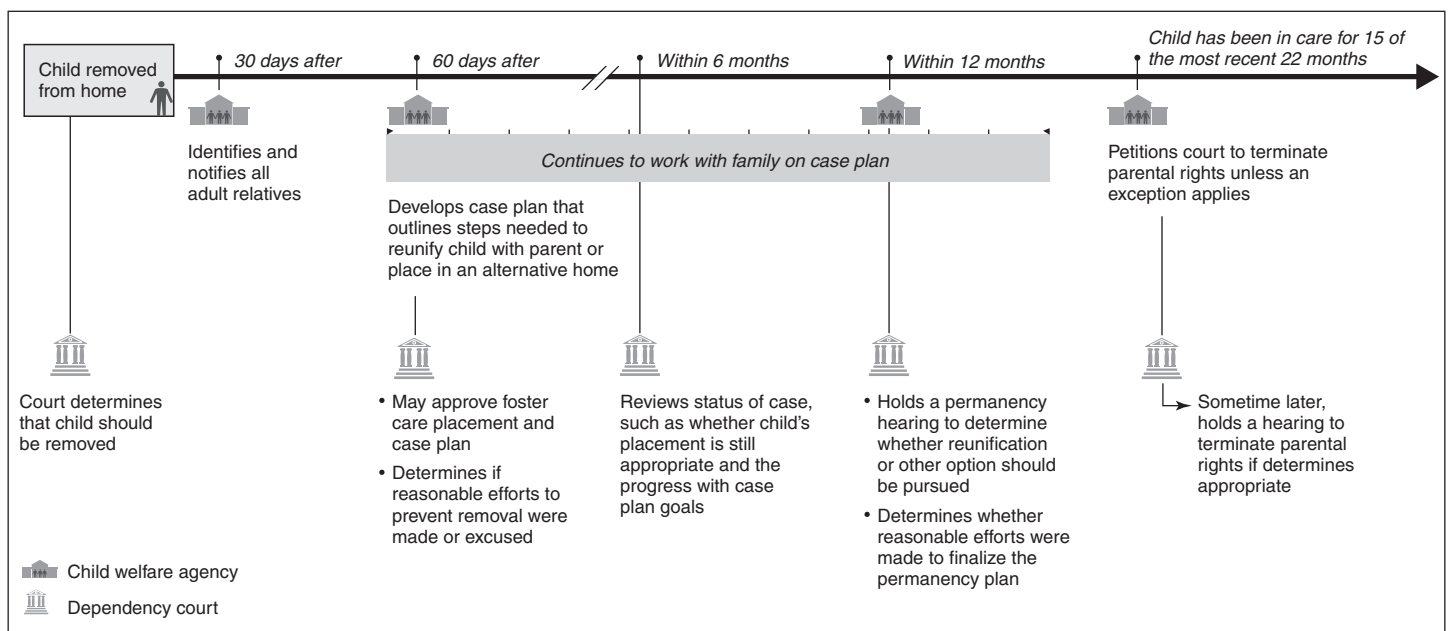
¹²Pub. L. No. 105-89, §§ 103(a), 302, 111 Stat. 2115, 2118, 2128.

¹³42 U.S.C. § 675(5)(C)(i), (E).

¹⁴42 U.S.C. § 675(5)(E)(i)-(iii).

longer than a year.¹⁵ Since the enactment of ASFA, the number of children in foster care nationwide has declined by more than 100,000, based on HHS data collected on children in care at the end of each fiscal year.

Figure 1: Sample Timeline for Child Welfare Agency and Dependency Court Actions after a Child Enters Foster Care



Sources: GAO analysis of federal laws and other information sources.

Note: This timeline is illustrative. For example, it does not include instances in which a court determines that reasonable efforts to reunify the family are not required or when a child is removed through a voluntary placement agreement with the child's parent or legal guardian. As a result, this timeline may vary based on a child's individual circumstances.

HHS administers federal grant programs and provides information, training, and technical assistance to state child welfare systems. It uses its Adoption and Foster Care Analysis and Reporting System (AFCARS) to capture, report, and analyze information collected by the states. On a semiannual basis, all states submit data to HHS concerning all foster care

¹⁵Of these inmates, about half served sentences of 1 to 2 years. These data are based on the published report by Heather C. West, William J. Sabol, and Sarah J. Greenman, *Prisoners in 2009*, Bureau of Justice Statistics, U.S. Department of Justice (December 2010).

children for whom state child welfare agencies have responsibility for placement, care, or supervision. HHS also uses its Child and Family Services Reviews (CFSR) to regularly evaluate state child welfare systems' conformity with federal requirements and help states improve their provision of child welfare services.¹⁶ These reviews examine a range of outcomes and actions to assess states' performance and enhance their capacity to ensure children's safety, permanency, and well-being. For example, among many other factors, HHS examines states' attempts to preserve parent-child relationships and involve parents in discussions about the child's case plan. To help states provide child welfare services, HHS offers states training and technical assistance through its Children's Bureau, as well as through its regional offices and various National Resource Centers. HHS also provides information and resources through its website, "The Child Welfare Information Gateway," which is meant to serve as a comprehensive information resource for the child welfare field.¹⁷

Children of Incarcerated Parents and the Corrections System

Many children, not only those in foster care, have an incarcerated parent, and this number has grown over time. Since the early 1990s, the number of individuals in prison almost doubled from a little fewer than 800,000 in 1991 to more than 1.5 million in 2009. Many of these individuals have children.¹⁸ As of 2007, an estimated 1.7 million children under the age of 18 had a parent in prison—an increase of almost 80 percent since 1991 (see fig. 2). Fathers comprise more than 90 percent of the parents in prison and their numbers increased about 75 percent between 1991 and 2007. Meanwhile, the number of incarcerated mothers, who were more likely to be primary caretakers before incarceration, more than doubled

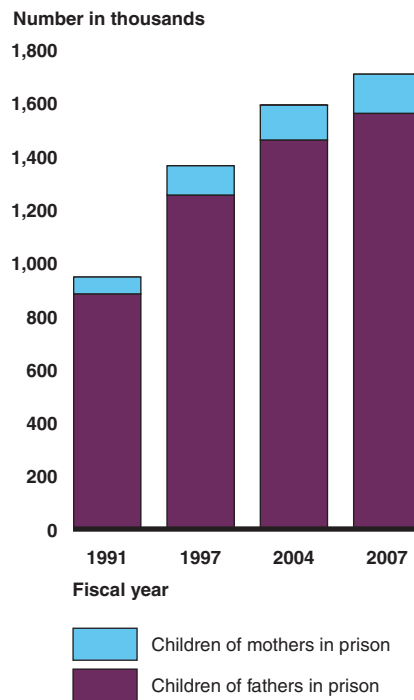
¹⁶CFSRs, which occur on a regular and recurring basis in every state (generally every 2 to 5 years depending on the results of the prior review), are the central and most comprehensive component of federal efforts to determine state compliance with federal child welfare requirements. HHS also reviews states' progress related to areas found not to be in substantial conformity with federal requirements based on the last CFSR, generally on an annual basis.

¹⁷See www.childwelfare.gov (accessed Aug. 24, 2011).

¹⁸According to BJS, an estimated 52 percent of state inmates and 63 percent of federal inmates were parents of children under the age of 18 in 2007. Information on incarcerated parents in this section is from the published report by BJS: Lauren E. Glaze and Laura M. Maruschak, *Parents in Prison and Their Minor Children*, Bureau of Justice Statistics, U.S. Department of Justice (August 2008; revised in March 2010). See appendix I for additional information on estimates from that report.

during this time.¹⁹ Children who are minorities are disproportionately more likely to have an incarcerated parent than white children. In 2007, compared to non-Hispanic white children, non-Hispanic black children were more than seven times more likely to have a parent in prison and Hispanic children were more than two times more likely.

Figure 2: Estimated Number of Children under 18 of Inmates in Federal and State Prisons between 1991 and 2007



Sources: BJS estimates using data from surveys of inmates in federal and state prisons in 1991, 1997, and 2004 and data from the prisoner custody populations by gender in each year.

Note: BJS estimated the number of parents and children in 2007 based on findings from the 2004 surveys and counts of the prisoner population in 2007 by gender.

Incarcerated parents may have a history of complex problems, such as substance abuse, mental illness, or past trauma. For instance, in 2004, about two-thirds of parents in state prisons met clinical criteria for having

¹⁹According to BJS estimates, between 1991 and 2007, male inmates with children under the age of 18 grew from 423,000 to 744,200. Meanwhile, female inmates with children under the age of 18 grew from 29,500 to 65,600 during this time.

substance dependence or abuse based on BJS's most recent available estimates. The federal government supports a number of residential treatment programs that focus specifically on the treatment of parents with substance abuse problems. Although these programs may require parents with substance abuse problems to live away from home, they generally serve nonincarcerated parents. (See app. II for more information.) Mental health and medical problems were also common for incarcerated parents, although women reported these at higher rates. Incarcerated mothers were also much more likely than fathers to report past physical or sexual abuse (64 percent for mothers in state prison versus 16 percent for fathers).

The Second Chance Act of 2007²⁰ was enacted to, among other goals, reduce recidivism and provide for services to assist people transitioning back into the community from prisons and jails. The act amended existing federal grant programs and established new grant programs for state agencies and nonprofit organizations to provide a variety of programs or services that include employment assistance, substance abuse treatment, and help in maintaining or reestablishing family ties.

DOJ's Federal Bureau of Prisons (BOP) oversees and establishes central policy for 116 federal prison facilities, but it does not have authority over or establish policies for state or local corrections agencies or facilities (see table 2). Nevertheless, DOJ provides assistance to these entities in the form of discretionary grants, technical assistance, and information.

²⁰Pub. L. No. 110-199, 122 Stat. 657 (2008).

Foster Care Children with an Incarcerated Parent Are Not a Well-Identified Population, but Available Data Suggest They Number in the Thousands

Table 2: Types of Correctional Facilities

Facility	Description	Overseeing body	Number of inmates at year-end 2009
Federal prisons	Typically, inmates charged with or convicted of federal crimes ^a	BOP	208,118
State prisons	Typically, inmates sentenced for state crimes	State department of corrections	1,405,622
Jails	Typically, inmates who are pending trial, awaiting sentencing, or serving a sentence that is less than a year	Typically, local law enforcement ^b	760,400

Source: GAO analysis of federal laws and information from DOJ.

^aFederal crimes are acts made illegal by federal law. In 2009, the majority of federal inmates were in prison for drug-related and public-order offenses, including those involving immigration and weapons, according to data from DOJ.

^bSome state corrections departments oversee some jail facilities in their state, such as by having integrated systems which combine prisons and jails.

The complete number of foster care children with an incarcerated parent cannot be identified in the database that HHS employs as part of its oversight of state programs, but their numbers can be reasonably estimated as being in the many thousands. HHS has proposed changes to state reporting requirements that would shed more light on these children; however, the department is currently in the process of revising that proposal and officials had not yet determined if collecting additional data on incarcerated parents will be included in the new proposed requirements. Also, some states are attempting to better identify them and to determine their needs.

The National Foster Care Data System Offers Limited Information, but Shows Thousands of These Children Enter Foster Care Annually

HHS data provided by states identified at least several thousand children nationwide who entered foster care due to the incarceration of a parent in a recent year, but this does not include the total population of foster care children with incarcerated parents. Through its national data system, AFCARS, HHS collects information about the characteristics and experiences of children in the foster care system, such as their age, race, and the factors associated with their removal from the home and placement into foster care.²¹ One potential reason for a child's removal, among many others listed in AFCARS, is the incarceration of a parent.²² From this information, it is possible to identify some foster care children with an incarcerated parent—those who have entered foster care solely or in part for the reason of parental incarceration—but it is not possible to identify these children in other circumstances (see figure 3). Our analysis of AFCARS information identified approximately 14,000 children who entered foster care at least partly because of parental incarceration in 2009 alone (about 8 percent of all children entering foster care in 2009);²³ however, this is an undercount of foster care children with an incarcerated parent for several reasons. First, this number does not include children who enter foster care in other circumstances, such as:

- When a parent is incarcerated sometime before the child enters foster care. For example, a child welfare official and a researcher told us that some children are placed with a relative when a parent is incarcerated, and then enter foster care when this relative-care situation places the child at risk of abuse or neglect.

²¹Additional information collected by AFCARS includes the length of stay in foster care, a child's most recent case plan goals, outcomes for children exiting foster care (such as reunification with parent or adoption), and whether parental rights have been terminated.

²²AFCARS lists 15 actions or conditions associated with the child's removal. The two most common reasons in 2009 were neglect and drug abuse of the parent, while incarceration was the seventh most common.

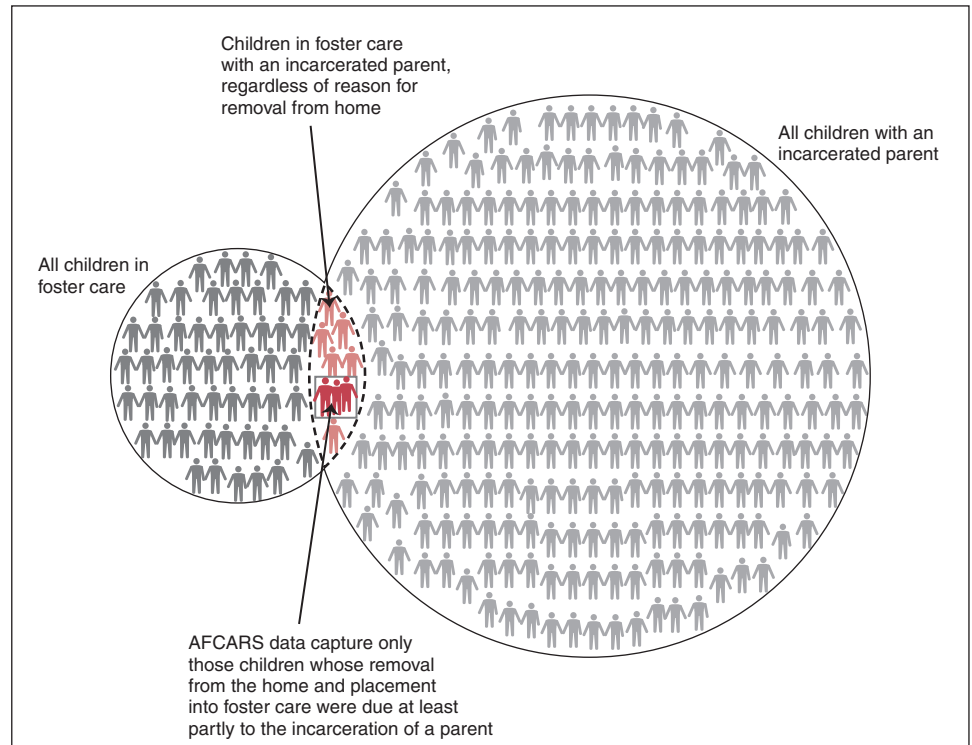
²³We also analyzed data on all children who were in foster care in 2009 (615,040 children had an open foster care case at some point in 2009) and had entered such care in 2007 or 2008. Of these, parental incarceration was reported as a reason for approximately 30,000 children who had entered foster care in 2007, 2008, or 2009. While some of those parents will not be incarcerated throughout their child's stay in foster care, child welfare agencies may need to work with those incarcerated parents at points during the child's time in foster care. For more information on our methodology, see appendix I.

-
- When a parent is incarcerated sometime after the child enters foster care.²⁴
 - When an incarcerated parent, such as a noncustodial father, was not the child's caretaker at the time of removal.

Researchers and local officials we interviewed noted that these circumstances were more common than placement in foster care specifically due to parental incarceration. While such additional information about a parent's incarceration may be in the child's individual child welfare case file, it is not reported in the data conveyed to HHS and incorporated into AFCARS.

²⁴Some studies have found it more common for a mother to be incarcerated after the child entered foster care. For example, DOJ's National Institute of Justice funded a series of studies that, in part, examined the timing and incidence of foster care placements for Illinois children with incarcerated mothers. The study found that many foster care placements preceded their mother's arrests or incarcerations. See Haeil Jung, Robert LaLonde, and Rekha Varghese, *Incarcerated Mothers, Their Children's Placement into Foster Care, and its Consequences for Reentry and for Labor Market Outcomes*, The University of Chicago (2007). This finding was consistent with another study, of New York mothers, which found that the vast majority of maternal arrests and incarcerations that overlapped child placement started after the child's placement in foster care. The study reviewed children entering foster care from July 1996 to June 1997. See Timothy Ross, Ajay Khashu, and Mark Wamsley, *Hard Data on Hard Times: An Empirical Analysis of Maternal Incarceration, Foster Care, and Visitation*, Vera Institute of Justice (New York, August 2004). While these studies were not recently completed, their findings were consistent with what we heard from state officials we spoke with for this report.

Figure 3: AFCARS Data Capture Only Those Children Who Are Removed from the Home and Placed into Foster Care Due at Least Partly to the Incarceration of a Parent



Sources: GAO analysis of DOJ and AFCARS data.

Second, state reporting on these children for AFCARS is not necessarily as complete as HHS requires. For example:

- HHS's AFCARS regulations require state child welfare caseworkers to report all applicable actions or conditions associated with a child's removal from the home, but staff sometimes enter only one reason. One state official and one local official told us that, even if incarceration were involved, a case worker may opt for a more general reason, such as neglect.²⁵

²⁵We also saw significant variety among states that regularly report this information. Based on our review of fiscal year 2009 data, some states said that a child's removal was due solely or in part to parental incarceration in 1–2 percent of the cases, while some other states selected this reason in about 20 percent of the cases. We do not know if this variation reflects true variation in the underlying circumstances of removal or variation in choices made by caseworkers when coding reasons for data collection purposes.

-
- New York, which has the second largest foster care population in the United States, has historically not reported data on any reasons for removal due to some localities' older data systems, according to HHS officials.²⁶
 - Similarly, a few states can report information on only one reason for removal due to older data systems and, therefore, have not regularly reported instances in which a second reason might apply.

HHS officials noted that the department assists state efforts to comply with AFCARS reporting requirements in several ways. For example, HHS has assessed most states' AFCARS information systems to determine states' abilities to collect, extract, and transmit AFCARS data accurately, as well as to review the timeliness and accuracy of data entry by caseworkers. When an HHS review team determines that a state does not fully satisfy the AFCARS standards, the state must make corrections identified by that team. HHS regional offices also work with states to improve their reporting by implementing training, supervisory oversight, and quality assurance, according to HHS officials.

The fact that foster care children of incarcerated parents are not a well-identified population nationally precludes analyzing those children's characteristics and experiences, or determining whether they differ from other foster care children in terms of their backgrounds, case management, or outcomes.

Acknowledging that much of AFCARS information on the family's circumstances is gathered only at the time a child enters foster care—when child welfare workers know the least about the family's situation—HHS, in January 2008, proposed changing its state reporting requirements to require both additional and more current information.²⁷ Specifically, the department proposed collecting additional data on circumstances that affect the child and family, such as a caretaker's

²⁶New York is in the process of updating its case management system, according to HHS officials, and started reporting a small amount of data on removal reasons in 2008. Based on AFCARS data for fiscal year 2009, New York reported that 27 percent of its cases include any removal reason and a little more than 1 percent of its cases included the reason of parental incarceration. HHS does not currently assess penalties for a state not reporting AFCARS data.

²⁷73 Fed. Reg. 2,082 (Jan. 11, 2008).

incarceration, at multiple times throughout a foster care case.²⁸ However, due to significant statutory amendments made in October 2008 to the federal foster care and adoption assistance programs,²⁹ in 2010, HHS announced plans to publish a new proposal to revise AFCARS and solicited suggestions about what case-level data would be important for agencies to collect and report to HHS.³⁰ HHS officials told us that they are currently developing the new proposal for reporting requirements and estimated that it would be issued for public comment in February 2012. Officials had not yet determined whether the new proposed rule would include the same requirements on gathering additional information on a caretaker's incarceration at multiple times throughout the foster care case as had been included in the 2008 proposal. Officials also said that they did not know when a final set of reporting requirements would be issued, as such timing is, in part, dependent on the comments received in response to the proposed rule.

DOJ Survey Data Suggest Thousands of Foster Care Children Have an Incarcerated Parent

Although HHS data do not identify the complete number of foster care children with an incarcerated parent, BJS inmate surveys from 2004 and 2002—the most recent years available—suggest that there are many thousands of these children. Specifically, based on the 2004 survey of federal and state prison inmates, we estimate that about 19,300 inmates (about 13,700 men and 5,600 women)³¹ had at least one child in foster or agency care in 2004 and that the total number of these children likely

²⁸HHS also proposed collecting additional information on whether a parent or caretaker is in prison (AFCARS currently explicitly asks only about parents or caretakers in jail), though according to HHS officials we interviewed, caseworkers generally do not distinguish between incarceration in jail or prison when deciding to enter incarceration as a reason for removal from the home. Therefore, this part of the proposal may simply clarify current practice.

²⁹The Fostering Connections to Success and Increasing Adoptions Act of 2008 made amendments to Title IV-B and IV-E to support relative caregivers, improve outcomes for foster care children, and improve incentives for adoption, among other purposes. Pub. L. No. 110-351, 122 Stat. 3949.

³⁰75 Fed. Reg. 43,187 (Jul. 23, 2010).

³¹The 95 percent confidence interval for this estimate is between 14,997 and 23,545 inmates. The 95 percent confidence interval for the estimate of fathers is between 10,058, and 17,258 inmates, and the confidence interval for the estimate of mothers is between 3,281 and 7,939.

exceeded 22,800.³² Similarly, a 2002 survey of inmates in local jails estimated that approximately 12,000³³ of these parents in jail had at least one child in foster care or cared for through an agency in 2002.³⁴ These surveys asked a nationally representative sample of inmates about their children, the care arrangements for those children, and other questions regarding their families' circumstances and experiences.³⁵ The surveys also found that a higher percentage of mothers have at least one child in foster care; some state officials said that this is because fewer incarcerated mothers, compared to incarcerated fathers, have the option of having the other parent take care of the child (see figure 4). Nevertheless, close to 90 percent³⁶ of all parents in state and federal prison (mothers and fathers) with a child in foster care reported that they had shared or had been providing most of the care for their child prior to their incarceration, based on the 2004 survey.

³²Based on our analysis of the 2004 surveys, we are 95 percent confident that the number of state and federal inmates' children in foster care in 2004 exceed about 22,800. Please see appendix I for additional information.

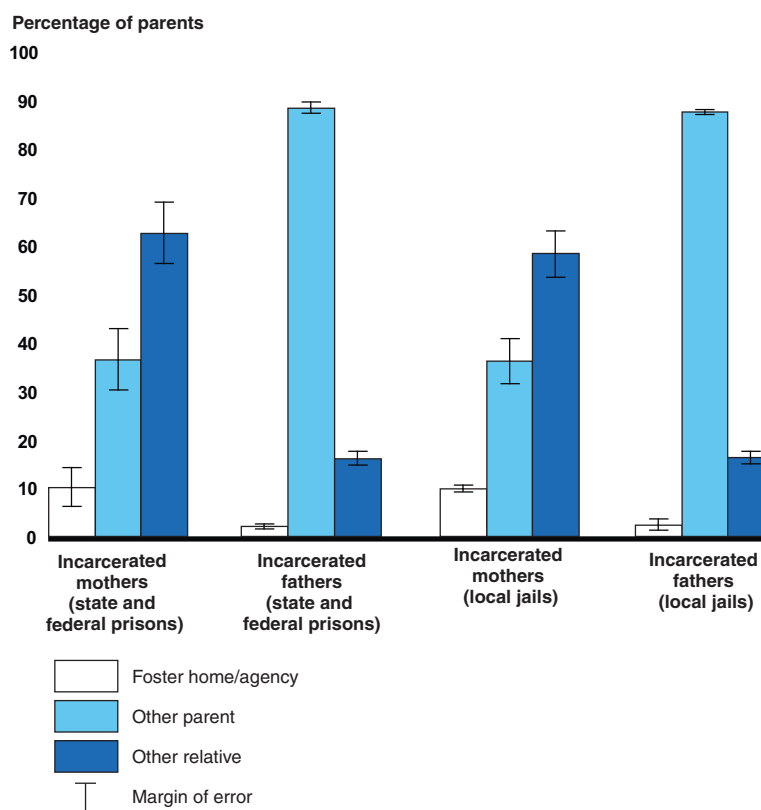
³³The 95 percent confidence interval for this estimate is between 4,634 and 19,060 inmates.

³⁴It is possible that inmates represented in the 2004 survey of federal and state prisoners may also be represented in the 2002 survey of jail inmates, since inmates may progress from pretrial jail to prison.

³⁵For more information on these surveys and their methodologies, see appendix I.

³⁶The 95 percent confidence interval for this estimate is between 87.8 and 91.5 percent.

Figure 4: Estimates of the Percentage of Incarcerated Parents Reporting Care Arrangements for Children in 2002 and 2004 from BJS Surveys



Sources: GAO analyses of data from BJS's 2004 surveys of inmates in federal and state prisons and 2002 survey of inmates in local jails.

Notes: Statistics may sum to more than 100 percent because some prisoners had multiple minor children living with multiple caregivers, including friends (not included in this chart). Error bars in this figure display 95 percent confidence intervals for estimates.

Estimates of the number of inmates with children in foster care may be a conservative indicator of the number of children of inmates that are in foster care settings. This is because the inmate surveys do not fully account for inmates who have more than one child in foster care.³⁷ Also, some of the children reported as living with relatives may be in relative care that is supervised by the child welfare system, according to two

³⁷See appendix I for additional information on calculating the number of these children not captured in the prison and jail estimates.

researchers we interviewed. Finally, prisoners may be generally reluctant to report that they have children or provide information on their children for various reasons, according to DOJ and several state and local officials.³⁸ On the other hand, it is possible that incarcerated parents surveyed could report on the same child, since both mothers and fathers were survey subjects, though DOJ officials overseeing the survey and data said this situation was probably rare.

Some States Are Gathering Additional Data to Understand the Population Better

Several state child welfare and corrections agencies are collecting additional data on foster care children with incarcerated parents to better understand such children and their parental circumstances. Officials from several states said that their state information is too limited to understand the population and that more data would be useful to help policymakers decide on policies or programs that might affect these children. Of the 10 state child welfare agencies we interviewed, three said they were collecting additional data not required by AFCARS that could help identify these children. For example, officials in New York's child welfare agency said the agency has begun to collect more information in its state child welfare information system that would indicate whether the parent is in a correctional facility, based on the parent's address.³⁹ Moreover, officials at two corrections agencies in states we interviewed said they were collecting information on inmates' children and their care arrangements while the parent is incarcerated.⁴⁰ Oregon's Department of Corrections, for example, currently collects data on all prisoners regarding whether they have children and their children's living arrangements, though this information is not housed in an automated system. Officials from

³⁸Officials we interviewed noted several reasons for prisoners' reluctance, including a concern that such disclosure could endanger their parental rights or create child support payment obligations.

³⁹Although New York has begun to collect this information in its foster care data system, caseworkers are not necessarily reporting this information, according to state officials we interviewed. Officials said that the information is being collected in a new drop-down menu and suggested it is not being used extensively because it is a new system.

⁴⁰In addition to states, federal prisons have initiated similar data collection efforts. Specifically, the Second Chance Act provided that DOJ and BOP shall coordinate to establish a federal prisoner reentry strategy to help prepare prisoners for release and successful reintegration. As part of this strategy, BOP is required to collect information about a prisoner's family relationships, parental responsibilities, and contacts with children. 42 U.S.C. § 17541(a)(1)(F). A BOP official said that BOP has entered this data on more than 80 percent of the prison population.

Oregon's Department of Corrections said that, based on surveys and interviews of offenders in Oregon state prisons in 2000, 2002, and 2008, about 10 percent of incarcerated mothers and about 6 percent of incarcerated fathers had children living in foster care.⁴¹

Child welfare officials from California informed us that they have done some limited analysis of the parental address information the state collects, in response to a request from the California legislature to provide numbers on the foster care children of incarcerated parents.⁴² At our request, California officials updated and expanded this research, and said that 2,288 of California's 52,561 children in foster care (about 4 percent) had an incarcerated parent as of January 1, 2011. Of those children, 1,268 had an incarcerated father and 1,020 had an incarcerated mother, according to the California officials. Officials also said that children with a case plan goal of adoption were slightly more likely to have an incarcerated parent than children with a goal of reunification.⁴³

⁴¹An Oregon state official said that the state is planning another series of interviews with incarcerated women and men beginning in late 2011.

⁴²In addition, in October 2009, California passed a law requiring social workers to make reasonable efforts to collect and update data regarding a child's incarcerated parent(s), once the appropriate data entry fields are established in the statewide child welfare database. Cal. Welf. & Inst. Code § 16501.8.

⁴³About 5 percent of children with a case plan goal of adoption had an incarcerated parent, versus about 4 percent of children with a goal of reunification, according to the officials.

Strategies for Preserving Families Include Flexibility in Timelines for Terminating Parental Rights, Programs for Parents, and Interagency Collaboration

In our examination of 10 states and their child welfare and corrections agencies, we found states employed a number of strategies to support family ties for all children of incarcerated parents, including some strategies designed specifically for children in foster care.⁴⁴ These strategies are intended to address some of the challenges incarcerated parents may face related to maintaining their parental rights and contact with their children or to aid caseworkers in managing such cases.⁴⁵ While state and local officials discussed examples of these strategies, we did not review how widely these strategies were used in each state, nor did we evaluate the effectiveness of these strategies.

Several State Child Welfare Statutes Specifically Address the Special Circumstances of Incarcerated Parents

Termination of Parental Rights Provisions

Federal law allows for exceptions on a case-by-case basis to the requirement that states file to terminate parental rights when a child has been in foster care for 15 of the most recent 22 months.⁴⁶ In addition to

⁴⁴As noted earlier, some of the 10 states were selected, in part, because they were identified by researchers and professionals as having strategies (policies, programs, or practices) aimed at supporting parent-child ties either statewide or in localities within the state. Therefore, the presence of programs in these states is not, necessarily, indicative of the prevalence of strategies in other states.

⁴⁵Unless noted otherwise, we did not review outcome studies for these strategies or examine other sources of information to evaluate effectiveness.

⁴⁶Specifically, states are not required to comply with this requirement if a child is in the care of relatives, the state has not provided necessary services to the family consistent with the case plan, or the state agency documents a compelling reason why filing such a petition is not in the best interests of the child. 42 U.S.C. § 675(5)(E).

these federal exceptions, some of the 10 states included in our review⁴⁷ have enacted explicit statutory provisions⁴⁸ that could prevent or delay filing for termination of parental rights for incarcerated parents in certain circumstances.⁴⁹ For example:

- Nebraska prohibits filing for termination of parental rights solely on the basis that the parent is incarcerated.⁵⁰
- California and New York require child welfare agencies and courts to consider the particular barriers faced by incarcerated parents—such as whether parents are able to maintain contact with their children or whether they lack access to rehabilitative services that would support reunification—when making certain decisions regarding termination.
- New York and Colorado include provisions related to the requirement to file for termination of parental rights when a child has been in foster care for 15 of the most recent 22 months. New York allows child welfare agencies to delay filing for termination beyond standard timelines in certain cases where a parent is incarcerated. Specifically, in 2010, New York amended its statute to provide that the child welfare agency need not file for termination when a child has been in foster care for 15 of the most recent 22 months if, based on a case-by-case determination, the parent is incarcerated and maintains a meaningful role in the child's life. Colorado does not require courts to consider the fact that the child has been in foster care for 15 of the most recent 22 months when deciding whether to terminate parental

⁴⁷See appendix III for summaries of selected provisions from the child welfare statutes of the 10 states that pertain to termination of parental rights and reasonable efforts to preserve and reunify families. Citations to the state law provisions discussed in this report are available in appendix III. In cases where state officials or other experts identified other relevant statutes or case law outside the scope of our review, but relevant to the issues, citations are included as footnotes in the text of the report.

⁴⁸Some states may impose similar requirements as a result of developments in case law rather than through statute. Researching state case law was not within the scope of this report. For more information about the methodology we used to research state law, see appendix III.

⁴⁹However, some of the states in our review also have statutes providing that parental incarceration can be a factor in establishing grounds for terminating parental rights, for example, if the parent's sentence is for longer than a specified period of time.

⁵⁰Some states may impose a similar prohibition as a result of developments in case law rather than through statute. For the purposes of this report we did not examine state case law.

rights if the reason for the child's length of stay is due to circumstances beyond the parent's control, such as the parent's incarceration "for a reasonable period of time."⁵¹

While many of the state child welfare officials we spoke to said that federal timelines were difficult to meet for parents serving lengthier sentences, many state and local child welfare officials as well as child advocacy representatives did not think that such timelines should be changed specifically for incarcerated parents. Officials we spoke with said these timelines are important for being able to place children, especially younger children, as soon as possible into permanent homes.⁵² On the other hand, several local child welfare officials and caseworkers in New York and California told us these exceptions can make the difference in whether some parents can meet requirements in a case plan needed to reunify with their children.

Reasonable Efforts Provisions

Federal law requires that child welfare agencies make reasonable efforts to reunify foster care children with their families before filing for termination; however, these efforts are subject to certain exceptions.⁵³ In managing a foster care case involving an incarcerated parent, child welfare agency staff may work with both the parent and corrections officials at several junctures, as shown in figure 5.

⁵¹However, Colorado statute also provides that a parent's long-term incarceration, such that the parent is not eligible for parole for at least 6 years (or 36 months in certain cases) after the child was declared dependent or neglected, may be a factor in establishing grounds to terminate parental rights.

⁵²In addition, states may establish timelines for permanency decisions that are shorter than federal timelines. A few state officials said that their state timelines were more problematic for incarcerated parents than federal timelines. State timelines for permanency decisions were not included in our review of state law.

⁵³Specifically, a state is not required to make reasonable efforts to reunify the family if a court determines that the parent has subjected the child to aggravated circumstances (as defined in state law), the parent has committed certain enumerated crimes (such as murder, voluntary manslaughter, or felony assault on the child), or the parental rights to a sibling have been involuntarily terminated. 42 U.S.C. § 671(a)(15)(D).

```
graph TD
    A[Child removed from home] --> B[Identifies and notifies all adult relatives]
    B --> C[In trying to locate adult relatives, child welfare staff may find that a noncustodial parent is incarcerated or need to speak to an incarcerated parent to get information about possible relatives]
    C --> D[Develops a case plan which may include:  
• Services to provide to parents (e.g. parenting classes, substance abuse treatment, counseling)  
• Reunification goals are set (e.g. visitation schedules and target return dates)]
    D --> E[Child welfare staff may need to offer services to an incarcerated parent and ask corrections staff about available services and the parent's participation in such services]
    D --> F[Child welfare staff may need to facilitate visits or other communication between an incarcerated parent and child]
    E --> G1[Court determines child should be removed]
    E --> G2[May approve foster care placement and case plan]
    E --> G3[Reviews status of case]
    E --> G4[ Holds a permanency hearing]
    E --> G5[ Holds hearing to terminate parental rights if appropriate]
    G1 --> H[Child welfare staff may facilitate the participation of incarcerated parents in court hearings regarding the foster care case]
    G2 --> H
    G3 --> H
    G4 --> H
    G5 --> H
```

The flowchart illustrates the process for terminating parental rights for an incarcerated parent. It begins with a box labeled "Child removed from home" with a person icon. An arrow points down to a box labeled "Identifies and notifies all adult relatives" with a family icon. From there, an arrow points down to a blue box: "In trying to locate adult relatives, child welfare staff may find that a noncustodial parent is incarcerated or need to speak to an incarcerated parent to get information about possible relatives". An arrow points down to a box: "Develops a case plan which may include:" with a family icon. This box lists two bullet points: "Services to provide to parents (e.g. parenting classes, substance abuse treatment, counseling)" and "Reunification goals are set (e.g. visitation schedules and target return dates)". Two arrows point down from this box to two separate blue boxes: "Child welfare staff may need to offer services to an incarcerated parent and ask corrections staff about available services and the parent's participation in such services" and "Child welfare staff may need to facilitate visits or other communication between an incarcerated parent and child". From the first blue box, an arrow points down to a box: "Court determines child should be removed" with a court icon. From the second blue box, an arrow points down to a box: "May approve foster care placement and case plan" with a court icon. From the first blue box, an arrow points down to a box: "Reviews status of case" with a court icon. From the second blue box, an arrow points down to a box: "Holds a permanency hearing" with a court icon. From the first blue box, an arrow points down to a box: "Holds hearing to terminate parental rights if appropriate" with a court icon. All five of these boxes have arrows pointing down to a final blue box: "Child welfare staff may facilitate the participation of incarcerated parents in court hearings regarding the foster care case". A legend at the bottom identifies the family icon as "Child welfare agency" and the court icon as "Dependency court".

Child removed from home

Identifies and notifies all adult relatives

In trying to locate adult relatives, child welfare staff may find that a noncustodial parent is incarcerated or need to speak to an incarcerated parent to get information about possible relatives

Develops a case plan which may include:

- Services to provide to parents (e.g. parenting classes, substance abuse treatment, counseling)
- Reunification goals are set (e.g. visitation schedules and target return dates)

Child welfare staff may need to offer services to an incarcerated parent and ask corrections staff about available services and the parent's participation in such services

Child welfare staff may need to facilitate visits or other communication between an incarcerated parent and child

Court determines child should be removed

May approve foster care placement and case plan

Reviews status of case

Holds a permanency hearing

Holds hearing to terminate parental rights if appropriate

Child welfare staff may facilitate the participation of incarcerated parents in court hearings regarding the foster care case

Child welfare agency

Dependency court

Federal law does not define what constitutes “reasonable efforts,” leaving it to states to define, on a case-by-case basis. Among our selected states, California and New York specify in statute⁵⁴ what such efforts may entail with regard to incarcerated parents,⁵⁵ such as:

⁵⁵However, some of the states in our review, including California and New York, also have statutory provisions that may excuse the state child welfare agency from making reasonable efforts for incarcerated parents in certain circumstances.

-
- *Maintaining the parent-child relationship.* New York law directs the child welfare agency to arrange for transporting the child to visit the correctional facility, if it is in the best interests of the child. California law provides examples of services that may be provided to incarcerated parents, which may include such things as facilitating parent-child telephone calls and transportation services, where appropriate.
 - *Involving the parent in the child's case.* Both states have statutes that may permit the use of videoconference or teleconference in certain circumstances, when such technology is available.⁵⁶ In New York an incarcerated parent may use such technology to participate in developing the family service plan, including the child's permanency plan. In California, courts may allow incarcerated parents to use it to participate in certain court hearings.⁵⁷
 - *Identifying rehabilitative services for the parent or documenting if such services are not available.* New York requires child welfare agencies to provide incarcerated parents with information on social or rehabilitative services, including wherever possible transitional and family support services in the community to which they will return upon their release. California requires the caseworker to document in the case plan the particular barriers faced by incarcerated parents in accessing court-ordered services (such as counseling, parenting classes, or vocational training).

In 2008, California amended its law to allow courts to extend court-ordered services for recently released parents who are making significant progress in establishing a safe home for the child, if there is a substantial probability that the child will be returned to the parent within the extended period or if reasonable services were not provided to the parent. A few

⁵⁶Some states may provide for alternative means for incarcerated parents to participate in court hearings under state court rules or case law, which were beyond the scope of our review.

⁵⁷In California, courts may allow incarcerated parents who have waived their right to be physically present at a hearing, or who have not been ordered by the court to be present at a hearing, to participate in the hearing via videoconference, or if that technology is not available, by teleconference. In addition, California officials told us that an incarcerated parent's job placement, participation in court-ordered classes, or privileges should not be jeopardized when the parent's absence is due to participation in a juvenile court hearing. See Cal. Penal Code § 2625(d),(g), (h).

caseworkers we spoke to considered this extension unfair to parents who had not been incarcerated. On the other hand, a dependency court judge we interviewed did not consider the law a “free pass” for incarcerated parents, since her decision would, as in other foster care cases, balance the likelihood that a parent could improve over time with a child’s immediate need for stability.

Some State Agencies Provide Guidance and Training, and Some Local Agencies Make Additional Efforts to Involve Parents in the Case or Contact Their Children

Agency Guidance and Training

Five of the 10 state child welfare agencies we spoke to have developed either statewide guidance or training on managing cases with children of incarcerated parents. California and New York officials said their general statewide training includes specific information for caseworkers on how to work with incarcerated parents in accordance with their state laws. New York officials said they also recently provided training on the new law that excuses filing for termination of parental rights under the standard timelines for certain incarcerated parents. Additionally, Michigan and Florida state child welfare officials said that new guidance to local agencies had resulted from recent state court cases involving incarcerated parents who had successfully appealed the termination of their parental rights. For example, Michigan officials reported holding a statewide webinar and providing information to local agencies after the Michigan Supreme Court reversed the termination of parental rights for an incarcerated parent because, among other reasons, the child welfare agency failed to provide sufficient reunification services.⁵⁸

Involving Parents and Increasing Contact with Their Children

State and local officials we interviewed reported a number of local initiatives that have been undertaken by child welfare agencies, dependency courts, and correctional facilities to address the logistical

⁵⁸*In re Mason*, 782 N.W.2d 747, 748 (Mich. 2010). While we did not independently research case law, we did review state cases that were specifically mentioned to us by state officials or other experts, as appropriate.

barriers, expense, and disincentives involved when including an inmate in a child's foster care case. For example, when the prison facility is located far from a county dependency court, transportation can be costly and require an extended absence from the facility. In the latter case, the parent can lose certain privileges or programming opportunities, according to child welfare and corrections officials. To address these barriers, dependency courts and several state prisons in Los Angeles, California, initiated, under a recently enacted state law,⁵⁹ a pilot program that allows an inmate to participate in certain child welfare hearings via videoconference. Additionally, a few counties in Florida and Pennsylvania,⁶⁰ while not guided by legislation, have begun to hold child welfare hearings via video or telephone for incarcerated parents, according to state officials. State officials we interviewed in Nebraska, Florida, and Michigan and local officials in California also described holding a child's case planning meetings at the jail or including the parent by phone in some situations. Further, to address some of the logistical barriers to contact between these parents and their children, several local child welfare agencies in New York and California said they used assistants to help drive children to prisons or to supervise parent-child visits. State child welfare officials in a few other states also said that they had policies to provide prepaid phone cards to incarcerated parents or policies to accept collect calls from the parents to discuss their child's case.

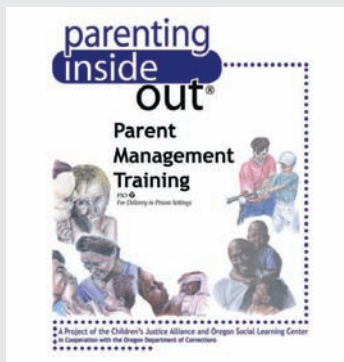
⁵⁹Cal. Penal Code § 2625(d),(g), 2626. The law authorized the state corrections agency to accept technology donations for the purpose of implementing a program to facilitate incarcerated parents' participation in court hearings regarding their children.

⁶⁰The Administrative Office of Pennsylvania Courts began efforts in 2008 to promote the use of videoconference in the state's courtrooms, by providing training and installing hardware. As of 2010, the Office has provided video conferencing equipment to all courts in the state. Based on a recent survey it conducted in 2011, the Administrative Office of Pennsylvania Courts reported that many court proceedings in the state were held via videoconference each month and have resulted in cost savings from reduced court costs associated with transporting inmates to proceedings.

Corrections Agencies Provided Programs and Facilitated Parent-Child Visits and Communication

Parenting and Rehabilitation Programs

Parenting Inside Out Program



Source: Children's Justice Alliance.

Parenting Inside Out (PIO) is a behavioral parent training program developed by the non-profit Oregon Social Learning Center and used by prisons and jails in Oregon. PIO is offered for incarcerated or formerly incarcerated parents in jails, prisons, and community corrections programs. Oregon's child welfare department has approved PIO as a parenting program for their clients with open child welfare cases. In addition, PIO was the subject of a five year randomized controlled study funded by the National Institute of Mental Health. The study reviewed if participating parents had more visits from children and families during their incarceration and if they were more likely to have an active role parenting their children than the control group. (See *A Randomized Controlled Trial of a Parent Management Training Program for Incarcerated Parents: Proximal Impacts* by J. Mark Eddy and Charles R. Martinez, Jr. in *Relationship Processes and Resilience in Children with Incarcerated Parents*. Poehlmann & J.M. Eddy (Eds.), Submitted for Publication.).

Officials with correctional departments we interviewed offered a range of services to their general inmate populations relevant to parent rehabilitation, such as parenting programs and substance abuse treatment. However, the extent of such services varied among states and facilities. Officials at all 10 state departments of correction we interviewed reported having parenting classes in at least at a few facilities, although most said such classes sometimes had wait lists and some were only at women's facilities. These parenting classes have been aimed at the general inmate population, although officials from a few facilities we visited told us that their parenting classes have covered the topic of parental rights, which may be more applicable to parents with children in foster care. Further, state corrections officials from Nebraska and Oregon told us that their agencies had taken steps to align their parenting curricula to meet child welfare standards and prevent parents from having to retake these classes to satisfy child welfare requirements upon release.

Some corrections agencies we interviewed also administered treatment programs that allow incarcerated mothers to live with their young children who were not in foster care. For instance, some BOP facilities allow incarcerated women who are pregnant and meet certain criteria to go to a community program outside the facility for 3 months after the child is born in order to promote bonding and parenting skills. Likewise, officials in five states reported having in-prison nurseries or similar programs in at least one of their correctional facilities. In these programs, mothers live with their infants at the facility for a period of time after birth, up to 18 months, often receiving treatment and services, such as pre- and post-natal care, parenting classes, and counseling. Eligibility criteria for mothers may include being classified as a low security risk or having a limited amount of remaining time on their sentence. A state prison official commented that their facility's 18-month nursery program affords mothers time to make amends with family members who may be more willing to care for the children while the mother completes her sentence. According to this official, most of these mothers give their infants to family caregivers without involving the child welfare system. In addition, state corrections agencies in California and Nebraska have allowed young children to live with their parents in residential drug treatment programs as an alternative

Visitation and Communication Strategies

Videoconferencing visits in New York



Source: © May 2011 The Osborne Association; photo by Jonathan Stenger.

The Osborne Association (Osborne), a nonprofit community provider, working with the New York Department of Corrections recently set up video conferencing for children to ‘visit’ with their incarcerated parents. Osborne currently has an agreement to conduct tele-visits with one state women’s prison. Fifteen to 20 children from 2–17 years of age currently participate to varying levels in tele-visits lasting 45 minutes to an hour, according to Osborne staff. During visits, parents and children usually participate in activities or crafts together similar to an in-person visit.

to incarceration. For example, since 1999, California’s corrections department has administered the Family Foundations Program which provides substance abuse treatment and other services to mothers with nonviolent convictions and sentences of 36 months or less.⁶¹

Some corrections agencies had general policies or programs to mitigate the distance between prisoners and their families. Experts, advocates, and officials from both child welfare and correctional agencies we interviewed noted that the distance between incarcerated parents and their families was a major challenge for preserving family ties, particularly as prisons tend to be located far from urban areas. State corrections agencies in California, Pennsylvania, and Florida have formal policies to consider the location of an inmate’s family when assigning the inmate to a facility. Circumstances such as mental health or security needs take precedent over proximity to family, according to officials, and such policies were generally not realizable for women due to the limited number of female prison facilities. In addition, some corrections agencies provided free bus transportation for families to visit inmates. For example, New York and Pennsylvania’s departments of correction provide free or subsidized bus transportation between large cities and prison facilities hours away for children and adults visiting inmates.

Further, because on-site visits were not always possible, a few correctional facilities in California, New York, and Pennsylvania were starting to use technology so that incarcerated parents could visit virtually with their children. Children participate through video equipment located at community service organizations or other sites such as local parole offices.

⁶¹In September 2011, California began implementing a new program called the “Alternative Custody Program” which is aimed at reuniting low-level offenders with their families. The program, which is currently offered only to eligible women, allows non-serious, non-violent, and non-sex offenders to serve the remainder of their sentence in certain community settings, such as a residential home, a residential substance abuse treatment program, or a transitional care facility that offers individualized services. Cal. Penal Code § 1170.05. See appendix II for more information on our review of family based residential drug treatment programs for women who are not incarcerated.

**Visitation areas for children:
three different facilities in
the same state.**



A designated child visiting area in a state correctional facility for men.



A child friendly visitation area in a female state correctional facility where children can visit parents.



A visitation area where any visitor, including children, can visit inmates who are not permitted contact visits. This area is in located in the same facility as the above photo.



A child friendly visitation area within a federal female facility.

Source: GAO.

Also, most corrections agencies had strategies to make visiting prisons more comfortable for children, sometimes specifically for foster care children. Officials representing seven different state departments of correction, as well as federal BOP officials, said that some of their facilities (often at least half) had special child-friendly visiting areas—particularly for women’s facilities. Several corrections agencies also had special procedures and trained staff to meet visiting children at the correctional facility entrance and guide them through a separate screening process. Also, corrections agencies in New York, California, Nebraska, and Colorado had specific policies for caseworkers and foster care children, such as visiting hours on weekdays in addition to usual weekend visitation so that caseworkers can transport the children.

Extended visitation programs that allow parents and children to visit within the prison for longer periods of time, such as a full day or week, were offered in at least a few facilities within 8 of our 10 states. Some of the programs have bonding activities where parents work on reunification and parenting strategies with their children. For example, corrections officials from 3 of our 10 states told us that the Girls Scouts Beyond Bars program occurred in one or more of their women’s prisons.⁶² This program, originally developed by DOJ, typically provides regular visits and interaction between incarcerated mothers and their daughters.⁶³

⁶²Corrections officials from two other states told us that have had the Girl Scouts Beyond Bars program in the past in at least one of their women’s facilities but these programs were eliminated due to reasons including budget cuts and limited numbers of volunteers.

⁶³The Girl Scouts Beyond Bars program began in 1992 as a demonstration project of DOJ’s research and evaluation branch, the National Institute of Justice. Currently, this program operates in a number of locations nationally, supported by various funding sources, which in some locations may include grants administered by DOJ’s Office of Juvenile Justice and Delinquency Prevention. Girl Scouts of the USA commissioned a national evaluation of the program in 2008 that looked at whether program participants reported improved mother-daughter relationships, among other things. See CSR, Inc. *Third-Year Evaluation of Girl Scouts Beyond Bars Final Report*, Girl Scouts of the USA (New York, Mar. 31, 2008). GAO social scientists did not review the methods or results of this study.

Some Corrections and Child Welfare Agencies Have Collaborated to Align Their Program Requirements and Assign Liaisons

State Level Collaboration

Child welfare and corrections officials in 6 of our 10 states collaborated at the state level to clarify policies, develop procedures, and provide information to staff. For example, in response to a recent state supreme court case reversing the termination of parental rights for an incarcerated parent, Michigan's child welfare agency worked with state corrections officials to draft a memorandum to prison supervisors on ways to support child welfare staff who are working with incarcerated parents. Specifically, the memorandum required that corrections staff allow inmates to participate via phone in court hearings and planning meetings with child welfare officials, when requested, and any programs that will help improve their parenting skills. In New York, according to state officials, the recent legislation on filing for termination of parental rights for incarcerated parents was, in part, the impetus for the joint development of protocols for ways state corrections and child welfare agencies should coordinate. Per these protocols, child welfare staff must contact corrections staff to schedule meetings with parents and arrange children's visits while corrections staff should return such calls within one week. The agencies also collaborated to develop training on the protocols for their respective staffs. New York's state child welfare office also developed materials on the legal rights and responsibilities of parents that child welfare staff can use with incarcerated parents (see fig. 6).

Figure 6: Flyer on Legal Rights and Responsibilities of Incarcerated Parents

You don't have to stop being a parent while you are incarcerated

If your child is in foster care, you have the right to:

- Identify an appropriate person you would like to care for your child, such as a relative or friend.
- Be informed about the foster care agency responsible for your child's care, the name of your child's caseworker, and how to contact the caseworker and his/her supervisor.
- Know how to reach your family caseworker, if that person is different from your child's caseworker.
- Participate in planning for your child.
- Take advantage of services to help you address the issues that led to your child's placement in foster care (parenting classes, substance abuse treatment, etc.).
- Participate in meetings about your Family Service Plan, which should address the special challenges facing you and your family due to your incarceration.
- Receive information about family visiting and other services that can help you build a meaningful relationship with your child while you are incarcerated and after your release.
- Visit with your child, unless a court order prohibits visits. Ask about video/teleconferencing if in-person visits are not possible.
- Be kept up to date on your child's health, development, and progress in school.
- Be informed about court proceedings and attend them, if possible.
- Be assigned an attorney, if you are financially eligible.

You have the responsibility to:

- Make regular contact with your child and/or the foster care agency. Although this can be difficult while you are incarcerated, you are expected to make efforts to communicate with your child unless a court order prevents this. You must be able to show your caseworker and the judge that you have made this effort.
- Show that you're planning for your child's future. Identify someone who can care for your child while you are away.
- Stay in touch with your child's caseworker, your family caseworker, and your attorney. If you haven't had contact with the caseworker, Social Services, or the foster care agency for six months, it can be considered abandonment of your child and a petition could be filed to terminate your parental rights.
- Complete any programs your Family Service Plan requires.
- Participate in Family Court proceedings. Contact your attorney if you are unable to attend a court proceeding. Make sure your attorney has copies of all of your relevant documents.

Your parental rights

When a child is in foster care for an extended period of time, a social services or foster care agency can file a petition to terminate a parent's rights and free the child for adoption. However, the law allows the agency to decide not to file for termination of parental rights under certain circumstances, such as when the child is living with a relative foster parent, when there is a compelling reason why termination is not in the child's best interests, and when the parent is incarcerated or in a residential substance abuse treatment program and has maintained a meaningful role in the child's life. These decisions are made on a case-by-case basis, with a focus on the best interests of the child.



New York State
Office of
Children &
Family Services
www.ocfs.state.ny.us

Pub. 5113.1P (6/11) (male facility)

Source: New York State Office of Children & Family Services.

In some instances, state legislation directed government agencies to collaborate to meet the needs of children with incarcerated parents. In Oregon, according to officials, legislation passed in 2001 led corrections and child welfare agencies to collaborate to gather and share data, conduct joint training and outreach sessions, and better coordinate

Liaisons for Communication between Local Agencies

services for released inmates.⁶⁴ More recently, officials from Pennsylvania told us about a 2009 legislative resolution that directed the creation of an advisory committee to study children of incarcerated parents and recommend ways to assess their needs, the services available to them, and the barriers to accessing those services.⁶⁵

Many of the child welfare caseworkers we interviewed cited difficulty reaching staff at correctional facilities and navigating prison or jail policies as a challenge. However, we were told in interviews about examples of liaisons, in 5 of our 10 states, who facilitate communication between the agencies. These liaisons understand the procedures and operations of both agencies and work with officials to navigate each system and serve as a single point of contact. For example, in California, Texas, and Alabama, one or more state women's prisons have employed a social worker who helps child welfare caseworkers locate offenders or helps inmates enroll in classes or services that the child's case plan requires. More commonly, we heard of examples of cooperation between county jails and local welfare agencies due to their shared county jurisdiction and being geographically close. For example, in San Francisco, California, a liaison based at a county jail was responsible for notifying parents about their case; facilitating parent-child visits; and providing updates to parents, child welfare caseworkers, and jail staff about the visits. On a larger scale, staff of New York City's Children of Incarcerated Parents Program, supported by the city's child welfare agency, facilitate visits to 24 correctional facilities within New York. Such staff also prepare child welfare staff and foster parents for visits with incarcerated parents. Officials from agencies with liaison-type positions noted that they found the relationship helpful.

⁶⁴The law created a planning and advisory committee for the years 2001 through 2003 composed of various government agencies, including child welfare and corrections, which was charged with issuing recommendations on how to increase family bonding for children with incarcerated parents. 2001 Or. Laws ch. 635 § 16. The legislature established a similar committee from 2005 through 2007 on the well-being of children whose parents are involved in the criminal justice system. 2005 Or. Laws ch. 497 § 1.

⁶⁵H.R. Res. 203, 2009-2010 Gen. Assem., Reg. Sess. (Pa. 2009).

HHS and DOJ Provide Some Relevant Information and Assistance, but State Agencies Are Not Always Aware of These Resources

HHS and DOJ each provide information and assistance to child welfare and corrections agencies related to children with incarcerated parents, albeit not usually focused on foster care children in particular. In the course of its on-site reviews of state and local foster care systems, however, HHS assesses whether state agencies have taken steps to work with incarcerated parents. Both HHS and DOJ post information on their websites relevant to practitioners working with children or their incarcerated parents. However, some state child welfare and corrections agencies we interviewed were not necessarily aware of these resources or told us that more information would be useful. Although the Second Chance Act gives DOJ discretionary authority to collect and disseminate information on best practices in collaboration between state corrections and welfare agencies, DOJ has not taken initiative in this area.

HHS Encourages Child Welfare Agencies to Work with Incarcerated Parents but Has Not Promoted Available Information about Such Families

HHS examines how state and local child welfare agencies work with incarcerated parents in the course of its regular and recurring state performance reviews, the CFSRs.⁶⁶ For instance, one of HHS's CFSR instruments assesses whether agencies have "encouraged and facilitated contact with incarcerated parents (where appropriate) or with parents not living in close proximity to the child," as part of its examination of a state's effort to strengthen parent-child relationships.⁶⁷ HHS's most recent CFSR reports for our 10 selected states (conducted between 2007 and 2010) also afford evidence of this oversight.⁶⁸ For three states, HHS reviewers cited instances in need of improvement, such as when child welfare agencies in the state had not tried to facilitate visits between parents and

⁶⁶As of 2011, HHS had conducted the second round of CFSRs for all states, the District of Columbia, and Puerto Rico. The timing of each state's next CFSR is dependent, in part, on the results of the last review. However, HHS examines, at least annually, states' progress toward addressing areas found not to be in substantial conformity with federal requirements.

⁶⁷This is specified as a component in item 16 of HHS's CFSR on-site review instrument. Item 16 looks at the "relationship of child in care with parents (interviews with child, parent(s), foster parent(s), service provider(s))."

⁶⁸For each of the 10 selected states, we looked at the final reports of the second round of reviews. To write these reports, HHS examines a "statewide assessment" that includes state data on safety and permanency outcomes for children in child welfare, and findings from an on-site review. The on-site review is conducted by a joint federal-state team and includes review of a sample of case records from multiple local child welfare agencies in the state; interviews with children and families who have received services; and interviews with caseworkers, foster parents, service providers, and community stakeholders, such as the courts and community agencies.

their children or needed to improve their efforts to locate and involve a noncustodial incarcerated parent in case planning. HHS reviewers commended agencies in six states for their efforts to work with incarcerated parents, citing agencies in New York for facilitating parent-child visits, in Pennsylvania for enabling incarcerated parents to participate in group decision-making meetings by phone, and in Alabama for coordinating with other government agencies to help incarcerated mothers reenter communities and reconnect with their children.⁶⁹

Most of HHS's support for foster care children with incarcerated parents is in the form of informational resources across multiple websites that are not centrally organized. HHS's Child Welfare Information Gateway posts reports under topic areas labeled "Children in Out-of-Home-Care With Incarcerated Parents" and "Services to Children & Families of Prisoners."⁷⁰ When we reviewed these websites, most publications listed under these topic areas were from prior to 2006. Further, these topic area websites did not cross-reference other HHS-supported websites with more recent information. For example, HHS's Office of the Assistant Secretary for Planning and Evaluation has a list of citations on its website under "Research and Promising Approaches" for families with incarcerated parents. Additionally, the HHS-funded National Resource Center for Permanency and Family Connections posts research studies as well as various state-produced resources on how to work with foster care children of incarcerated parents.⁷¹ Although the Gateway is meant to serve as a comprehensive informational resource for the child welfare field, its relevant topic areas, such as "Children in Out-of-Home-Care With

⁶⁹In the CFSR reports for two selected states, HHS reviewers mentioned instances related to working with incarcerated parents in which agencies could improve as well as instances commended as strengths. In the reports of 3 of the 10 selected states, while reviewers mentioned child welfare agencies' efforts to work with incarcerated parents, they were not clearly identified as a strength or an area for improvement.

⁷⁰See <http://www.childwelfare.gov/outofhome/casework/children/incarcerated.cfm> (last accessed, Aug. 24, 2011) and <http://www.childwelfare.gov/famcentered/overview/approaches/prisoners.cfm> (last accessed, Aug. 24, 2011), respectively for these two sites under the Child Welfare Information Gateway.

⁷¹See http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/children-of-incarcerated-parents.html (last accessed, Aug. 24, 2011) and http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/download/Working%20with%20incarcerated%20parents%20CWIG%20Bibliography.pdf (last accessed, Aug. 24, 2011).

Gender Informed Practice Assessment



Source: DOJ.

DOJ's National Institute of Corrections is developing a "Gender Informed Practice Assessment" designed to help correctional facilities develop policies and practices that are appropriate for female offenders; improve the safety and welfare of women; and, ultimately, reduce recidivism. Several items in the assessment recognize the role of children in female offenders' lives such as designing visitation areas that are friendly and respectful to families, providing programming that facilitates healthy parent-child relationships, and informing women of their legal rights, including those involving custody of their children. According to the National Institute of Corrections, the assessment was developed based on evidence-based practices, standards in the field, and expert recommendations. The institute is developing the assessment in collaboration with the Center for Effective Public Policy, a nonprofit organization that provides training and technical assistance to practitioners in criminal and juvenile justice issues.

Incarcerated Parents," did not cross-reference these other websites where we found more recent information.

Moreover, we found that some of the state child welfare agencies we interviewed were not aware of the HHS resources for working with foster care children and their incarcerated parents. Officials from few of our 10 selected states had used or were aware that the Child Welfare Information Gateway website had relevant information. Officials from four states said that, while they had used this website for other resources, they were not aware that it had any information about working with children in child welfare and their incarcerated parents. Additionally, state child welfare officials in 8 of the 10 states said they would like to have more information for working with incarcerated parents.⁷² In particular, officials from several states said that they would like examples of what might constitute "reasonable efforts" with such parents. Similarly, a number of state child welfare officials we interviewed said that they would like to know of promising practices used by other states or localities such as how to better work with corrections agencies.

HHS has also administered two discretionary grant programs aimed at all children with incarcerated parents or the incarcerated parents, themselves. One is the Mentoring Children of Prisoners program, authorized in 2002 in response to the growing number of children with an incarcerated parent. Through one-on-one community-based mentoring, the program was intended, in part, to help alleviate some of the behavioral and academic risks that these youth face, as a result of their parent's incarceration and other related factors.⁷³ Until fiscal year 2010, HHS received about \$50 million annually to administer grants to public and private entities operating the mentoring programs.⁷⁴ However, this

⁷²Specifically, state child welfare officials in 8 of the 10 states we interviewed said that additional information on strategies to address permanency for children in foster care with incarcerated parents used by other state or local child welfare agencies would be moderately or very useful.

⁷³An HHS official who oversees the mentoring program said that children in foster care are among the youth served by this program, but the agency does not track the extent to which they are served.

⁷⁴In fiscal year 2003, it received initial funding of \$10 million.

program was not funded for fiscal year 2011, according to HHS officials.⁷⁵ The other program, known as the Healthy Marriage Promotion and Responsible Fatherhood grant program, funds some projects which offer parenting and family strengthening services for incarcerated and formerly incarcerated fathers and their partners. HHS is currently evaluating 12 such grant projects for incarcerated fathers to determine their effectiveness on outcomes such as marital stability, recidivism, and family financial well-being.⁷⁶

DOJ Provides Some Assistance and Information to Corrections Agencies to Help Families, but Not on Ways to Work with Child Welfare Agencies

DOJ's relevant information and assistance to corrections agencies largely focuses on all offenders and their children. The department's National Institute of Corrections has provided information and technical assistance to state corrections agencies, for example, on setting up in-prison nursery programs, developing corrections training curricula about offenders' children and families, and developing practices specifically for female offenders, according to DOJ and state officials we interviewed.⁷⁷

Officials with 8 of the 10 corrections agencies we interviewed reported using the National Institute of Corrections' general resources related to offenders with children. In addition, the National Institute of Justice—DOJ's research, development, and evaluation branch—has published and funded research on children of incarcerated parents, some of which has looked specifically at children in foster care.

DOJ has engaged in some activities related to children of incarcerated parents under the Second Chance Act. For example, according to DOJ

⁷⁵In its budget request for fiscal year 2012, HHS noted that this program should be reduced because many of the program's mentoring matches were not sustained and because research indicates that short term mentorships (e.g., less than 6 months) can actually be detrimental for children.

⁷⁶According to HHS officials overseeing this evaluation, none of these grants is specifically aimed at incarcerated fathers of children in foster care. For additional information on HHS's evaluation, see <http://aspe.hhs.gov/hsp/08/MFS-IP/> (last accessed, Aug. 24, 2011). For information on the Healthy Marriage Promotion and Responsible Fatherhood grant program, see GAO, *Healthy Marriage and Responsible Fatherhood Initiative: Further Progress Is Needed in Developing a Risk-Based Monitoring Approach to Help HHS Improve Program Oversight*, [GAO 08-1002](#) (Washington, D.C.: Sept. 26, 2008).

⁷⁷The National Institute of Corrections is housed within the BOP and provides federal, state, and local corrections agencies with information, training, and technical assistance. Its online library lists some resources under "Children of Inmates."

officials, the department administered about \$7.4 million in grants in fiscal year 2010 to state and local government agencies serving incarcerated adults to incorporate family-based treatment practices in their facilities.⁷⁸ A local sheriff's department in California, for instance, reported using grants from this program to support its jail-based parenting class program among other activities to promote family relationships for incarcerated parents who will reenter their communities. DOJ has also led the Federal Reentry Interagency Council that supports reentry efforts by enhancing communication, coordination, and collaboration across the federal government. Other federal departments represented on the council include HHS and the U.S. Departments of Labor, Education, and Housing and Urban Development. The council recently undertook an education campaign to clarify federal policies regarding the families of incarcerated or formerly incarcerated individuals, by producing one-pagers entitled, "Reentry Myth Busters." One such leaflet, developed through collaboration between HHS and DOJ, cites as "myth" the belief that child welfare agencies are required to terminate parental rights for incarcerated parents and explains that federal law gives child welfare agencies and states "discretion to work with incarcerated parents, their children and the caregivers to preserve and strengthen family relationships."⁷⁹ (See figure 7.)

⁷⁸These grants were awarded as part of the Family-Based Prisoner Substance Abuse Treatment grant program created by the Second Chance Act, which authorized DOJ to make grants to states for family-based substance abuse treatment programs as alternatives to incarceration, and to provide prison-based family treatment programs for incarcerated parents of minor children. 42 U.S.C. § 3797s.

⁷⁹See www.nationalreentryresourcecenter.org/.../Reentry_Council_Mythbuster_Parental_Rights.pdf (last accessed, Aug. 24, 2011).

Figure 7: Reentry MythBusters Flyer

REENTRY
MYTH

On Parental Rights

BUSTER!

A Product of the Federal Interagency Reentry Council

MYTH: Child welfare agencies are required to terminate parental rights if a parent is incarcerated.

FACT: Important exceptions to the requirement to terminate parental rights provide child welfare agencies and states with the discretion to work with incarcerated parents, their children and the caregivers to preserve and strengthen family relationships.

The Adoption and Safe Families Act (ASFA) requires state child welfare agencies to initiate termination of parental rights if a child is in foster care for 15 out of the previous 22 months, unless one of several exceptions apply. The ASFA exceptions to the mandatory filing rule that are most relevant to incarcerated parents include:

- at the option of the State, the child is being cared for by a relative; and
- the State agency has documented in the case plan... a compelling reason for determining that filing such a petition would not be in the best interests of the child.

These exceptions provide child welfare agencies with flexibility to work within the requirements imposed by ASFA by recruiting relatives as caregivers for children and by developing carefully written case plans that document, as circumstances warrant, that the severance of the parent-child relationship would be contrary to the child's best interests.

Because they are in federal statute, the exceptions provided in the law are available to every state, though not all use them in practice. Some states and the District of Columbia repeat the exceptions in their state statutes, emphasizing their applicability. These states include (as of February, 2010): Alabama, Alaska, California, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, Tennessee, Utah, Vermont, Washington, West Virginia, and Wyoming.

For More Information:

Child Welfare State Policies
http://www.childwelfare.gov/systemwide/laws_policies/state/

Child Welfare Statutes
http://www.childwelfare.gov/systemwide/laws_policies/statutes/groundtermin.cfm

What is a REENTRY MYTH BUSTER?

This Myth Buster is one in a series of fact sheets intended to clarify existing federal policies that affect formerly incarcerated individuals and their families. Each year, more than 700,000 individuals are released from state and federal prisons. Another 9 million cycle through local jails. When reentry fails, the social and economic costs are high -- more crime, more victims, more family distress, and more pressure on already-strained state and municipal budgets.

Because reentry intersects with health and housing, education and employment, family, faith, and community well-being, many federal agencies are focusing on initiatives for the reentry population. Under the auspices of the Cabinet-level interagency Reentry Council, federal agencies are working together to enhance community safety and well-being, assist those returning from prison and jail in becoming productive citizens, and save taxpayer dollars by lowering the direct and collateral costs of incarceration.

For more information about the Reentry Council, go to: www.nationalreentryresourcecenter.org/reentry-council

Source: Federal Interagency Reentry Council.

However, beyond this activity, DOJ has not taken initiative to act on a provision of the Second Chance Act that authorizes DOJ, at its discretion, to collect and disseminate information on best practices for collaboration between child welfare and corrections agencies to support children of incarcerated parents, including those in foster care, and to support

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parent-child relationships, as appropriate.⁸⁰ According to officials from the National Institute of Justice, which would be responsible for implementing this provision, no specific activities are planned. Officials said that no funds have been appropriated specifically for this provision, and although DOJ did receive a \$10 million research appropriation in fiscal year 2010 that could have been used to fund activities under this provision, that money was primarily used to fund three evaluation research grants related to reentry programs. These officials maintained that the National Institute of Justice has long supported research on children of incarcerated parents, typically in collaboration with HHS; nevertheless, neither it nor the National Institute of Corrections has taken steps to identify and disseminate examples of successful collaboration between child welfare and corrections agencies, as authorized by the act.

BOP has also not developed any protocols to the federal prisons under its own jurisdiction for working with child welfare agencies and their staff. BOP has established some national standards and protocols for all of its facilities, such as for parenting classes and visiting areas. However, it has not set such protocols for how its facilities should deal with child welfare agencies trying to meet the needs of inmates with children in foster care, according to officials from BOP's Central Office. Although we found a few state and local corrections agencies that had taken initiative to facilitate communication with child welfare agencies, such as by having a designated point of contact, we did not find these efforts in the two federal prisons we visited. Moreover, a number of child welfare officials, local caseworkers, and dependency court judges told us that it can be particularly difficult to establish appropriate contact with federal prisons and several said that more collaboration from federal prisons would help facilitate their work with foster care children with incarcerated parents. Several judges we interviewed said that it could be difficult to have federal inmates participate in child welfare dependency hearings, for example, because prison officials were unresponsive. Several local child welfare officials said that it was challenging to reach staff at a federal prison to get information on an incarcerated parent. Neither of the two federal facilities we visited had a designated staff position or a process for handling child welfare inquiries. Officials from one facility said that, at any one time, a different official might field questions from child welfare workers or inmates with children who are involved in child welfare. A few

⁸⁰42 U.S.C. § 17553.

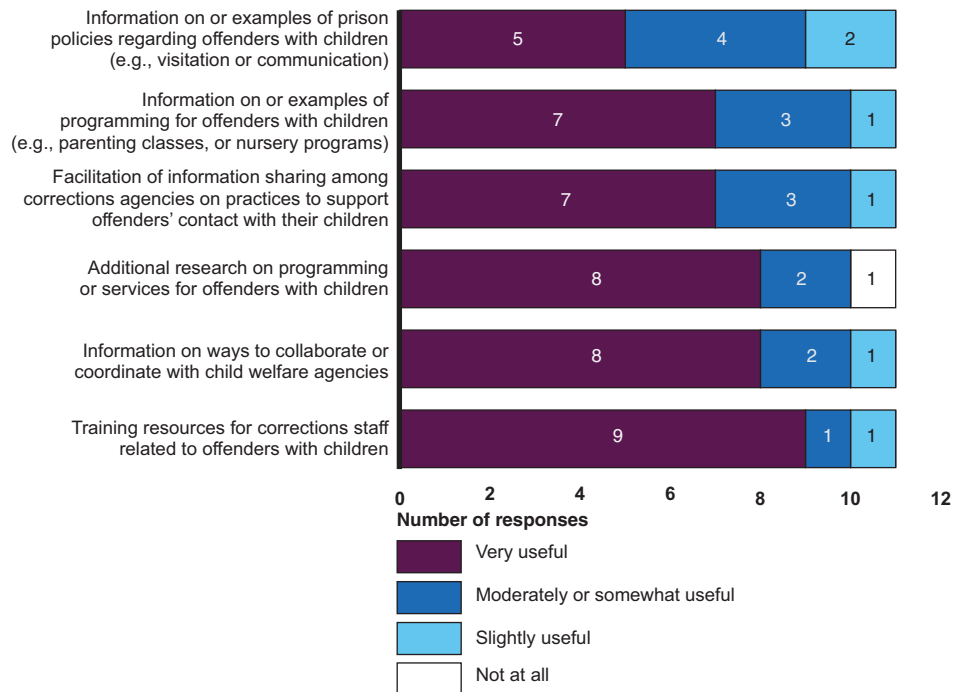
incarcerated mothers with whom we spoke said corrections staff vary as to how helpful they are, and they expressed the view that a designated position would be helpful. Further, BOP Central Office officials said that establishing protocols on how its facilities should deal with child welfare agencies could enhance or facilitate communication between the two parties. This is in keeping with one of BOP's strategic planning goals that aims to build partnerships with other entities to help improve the effectiveness of its services and promote reintegration of offenders into communities.⁸¹

Moreover, among the officials from the 10 state corrections agencies and the BOP who we interviewed, 8 said that additional information from DOJ on how child welfare and corrections could better collaborate to address these children and their families would be very useful. Officials said that corrections agencies would benefit from practices that could improve prison visits for foster care children, tools that could facilitate communication between child welfare and corrections staff, and ways to share their data on affected families. State corrections and BOP officials we interviewed told us that they could use additional information from DOJ on other practices, programs, or policies that would support family ties between offenders and their children. (See fig. 8.)

⁸¹One of BOP's strategic planning goals is to build partnerships with community, local, state, and federal agencies to improve the effectiveness of the services it provides to offenders and constituent agencies. Part of this goal involves the "active participation by BOP staff to improve partnerships," which "will allow the BOP to carry out its mission within the criminal justice system and to remain responsive to other agencies and the public." BOP states that these partnerships will help establish a supportive environment that promotes the reintegration of offenders into the community.

Figure 8: Responses from Selected State Corrections Agencies and BOP on the Extent that Additional Assistance from DOJ Would Be Useful

Responses



Source: GAO structured interviews with officials of 10 state corrections agencies and the BOP.

Conclusions

For children in foster care with an incarcerated parent, reunification is often not possible or appropriate, especially if the prison sentence is long or the parent-child tie is already compromised by abuse, neglect, or other complex problems such as substance abuse. Yet, for children and parents who have the potential for reunification or who would benefit from maintaining their parent-child ties, the lack of information about these cases may affect policymakers' decisions and limit opportunities to improve these families' outcomes. Given concerns about whether incarcerated parents can maintain their parental rights under federal child welfare timelines, as well as state legislation to address the special circumstances of children with incarcerated parents, the lack of complete data leaves legislators less able to assess the impact of these policies on this group of children.

Meanwhile, although not seemingly widespread, pockets of activity among child welfare agencies, corrections departments, courts, and community providers are occurring that may support children in foster care and their incarcerated parents. As evidenced by the Second Chance Act, there is growing attention in the field of corrections on keeping offenders connected with their families to facilitate reentry and, ultimately, lower recidivism. Many parties may be interested in learning about new ways to serve the often invisible children in child welfare with incarcerated parents and to help address some of the serious challenges that these children face. Given fiscal constraints and competing demands placed on agencies at every level, however, initiatives made on behalf of these families are likely to be hindered without information about existing practices and available resources that they could leverage. Moreover, while this group of children and their parents are likely a relatively small part of the larger systems of child welfare and corrections, they are greatly affected by these systems and their practices. Without more proactive efforts to create awareness and share information about these families, opportunities to improve their future may be easily overlooked.

Recommendations

We are making two recommendations to the Secretary of Health and Human Services:

1. To better understand the magnitude of the population and inform federal or state initiatives that affect children in foster care with incarcerated parents, the Secretary of HHS should identify ways to strengthen the completeness of state-reported data on those children. For example, in implementing new reporting requirements for the AFCARS system, the agency could take into consideration its 2008 proposed changes in which states would be required to provide additional information on each foster care child and his or her family circumstances, including a caretaker's incarceration, at several times during the child's stay in foster care and not only when a child first enters care.
2. To improve outcomes for these children, the Secretary of HHS should take steps to more systematically increase awareness among state and local child welfare agencies about available resources for children in child welfare with incarcerated parents. For example, HHS could
 - take steps to update and more centrally organize relevant information posted on the Child Welfare Information Gateway, which is meant to serve as a comprehensive information resource

for the child welfare field, such as by regularly updating the information listed under the Gateway's relevant topic areas (e.g., "Children in Out-of-Home-Care With Incarcerated Parents") with links to more recent material posted on other HHS-supported websites;

- identify or provide additional information on promising approaches, such as those listed by the Office of Assistant Secretary for Planning and Evaluation;
- use relevant findings from the CFSR process as an opportunity to remind states about available resources and post information on promising approaches identified in the reviews; or
- facilitate awareness among all child welfare agencies about HHS's available resources through an e-mail or a teleconference/webinar that would allow state and local agencies to share information on practices or strategies.

We are also making two recommendations to the U.S. Attorney General:

1. To better address the needs of children with incarcerated parents, including those in foster care, the U.S. Attorney General should consider including—among DOJ's ongoing and future information collection and dissemination efforts—activities that would assist state and local corrections agencies share promising practices for these children, including those that involve communication and coordination with child welfare agencies. For example, using some of the informational resources it already makes available to state and local corrections agencies, DOJ could compile and publicize examples of successful collaboration between corrections and child welfare agencies.
2. To improve collaboration between federal correctional facilities and state and local child welfare agencies and help federal inmates maintain important family relationships, the U.S. Attorney General should direct BOP to consider developing protocols for facilities regarding offenders who have children in the child welfare system. These protocols could include:
 - responses/actions when child welfare agency workers contact BOP facilities to confirm an inmate's location, request to communicate directly with inmates, or inquire about inmates'

current or future participation in programs or services that may be part of a child welfare case plan;

- processes for responding to requests for inmates' participation in child welfare hearings or ways to facilitate participation when desired by the inmate, such as setting up teleconferencing abilities; or
- whether facilities could designate a specific staff position to address all such inquiries or questions, including those from child welfare agencies, dependency courts, or offenders.

If developed, these protocols could be shared with states and local corrections agencies as examples.

Agency Comments and Our Evaluation

We provided a draft of this report to HHS and DOJ for review and comment. HHS' comments are reproduced in appendix IV. DOJ did not provide written comments; however, in an e-mail dated September 13, 2011, from the agency liaison, DOJ agreed with our two recommendations for the department. HHS and DOJ also provided written technical comments which we incorporated as appropriate.

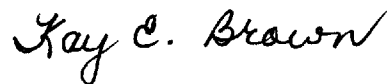
In its comments, HHS concurred with our two recommendations for the department. Specifically, HHS agreed that it was important to better understand the circumstances and needs of foster care children with incarcerated parents and would consider our recommendation on strengthening state-reported data in developing the final rule for AFCARS. HHS also agreed with our recommendation to more systematically increase awareness of available resources to improve outcomes for these children. For example, HHS said it would take steps to update and more centrally organize relevant information posted on the Child Welfare Information Gateway, as well as facilitate awareness among child welfare agencies and states about available resources, such as through newsletters or links to new information. HHS also agreed that it would use relevant findings from the CFSR process as an opportunity to remind states about available resources and post information about promising approaches.

Finally, both HHS and DOJ noted that, as part of their participation on the Federal Interagency Reentry Council, they would continue to collaborate to clarify policies, remove barriers, and promote promising practices in order to help ex-offenders reintegrate into their communities. Both

agencies noted that addressing issues on children and families with an incarcerated parent was a core part of this collaboration and that they would work together to help criminal justice and child welfare systems make well-informed decisions for affected families.

We will send copies of this report to appropriate congressional committees and the Secretary of HHS, the U.S. Attorney General, and other interested parties. The report also will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or brownke@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix VI.



Kay E. Brown
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and Income Security Issues

Appendix I: Scope and Methodology

To address the objectives of this study, we used a variety of methods. Specifically, we

- examined pertinent data from two federal data sources;
- conducted phone interviews with 10 state child welfare and corrections agencies and the Federal Bureau of Prisons (BOP), and reviewed relevant state laws and policies pertaining to children in foster care with incarcerated parents;
- conducted site visits in 4 of the 10 phone interview states; and
- conducted interviews with federal agencies, as well as professionals from a range of national organizations, including family resource centers, corrections associations, and child welfare organizations.

HHS and DOJ Data Sources

To examine the extent to which the Department of Health and Human Services (HHS) collects information on the number of foster care children with incarcerated parents, we reviewed relevant national data on children in foster care from HHS's Adoption and Foster Care Analysis and Reporting System (AFCARS). HHS uses AFCARS to capture, report, and analyze information collected by the states concerning all foster care children for whom the state child welfare agency has responsibility for placement, care, or supervision, and all adopted children who were placed by the state agency or for whom the state agency is providing adoption assistance, care, or services. We looked at the AFCARS variable that denotes "parental incarceration" as a reason for a child's removal from the home and entry into foster care, which is the only variable in AFCARS that captures information about parental incarceration.

We reviewed AFCARS data for all cases that were active in fiscal year 2009 and had useable information on reason codes (615,040 in all), the most recent data available, and identified cases in which children had been removed from their home and entered foster care for reasons including a reason of parental incarceration.¹ For all of these cases active

¹Rather than analyze data from only those cases active at the end of fiscal year 2009 (423,773), which HHS does in some of its annual reports, we analyzed data from all cases that were active in fiscal year 2009 in order to review a larger number of cases.

in 2009—regardless of when the child most recently entered foster care—42,890 cases (about 7 percent) were children who were removed solely or in part due to the incarceration of a parent. We analyzed active 2009 cases by the year that the child entered foster care, to get an indication of how prior years' cases that involved an incarcerated parent as a reason for entry could accumulate.² (See table 3.)

Table 3: Children Removed from Home Due At Least Partly to Parental Incarceration, 2009 Open Cases, by Year of Removal, 2007–2009

Year removed from home	Total number of children with active cases at some point in 2009	Number of these children for whom parental incarceration was a reason for removal
2009	189,921	14,346
2008	143,795	9,736
2007	87,255	5,956
Total	420,971	30,038

Source: GAO analysis of AFCARS data.

We excluded from our analyses any case that did not contain data on the reason the child was removed from the home, those cases with problematic entry dates (such as entry dates occurring subsequent to exit dates), and data from three states that contained almost no cases that identified “parental incarceration” as a reason.³ Taken together, we excluded about 11 percent of all cases from our analyses. To confirm the reliability of these data, social science methodologists at GAO reviewed documentation about the collection and reporting of AFCARS data and conducted electronic testing of AFCARS data. We also interviewed relevant HHS officials to clarify data elements, procedures, and reasons for missing information. The AFCARS data were found to be sufficiently reliable for the purposes of this engagement.

In addition to our review of the AFCARS data, we also reviewed relevant national data on incarcerated parents and their children from surveys of

²As mentioned in the body of this report, sentence lengths vary, so we do not know how many of these parents continued to be incarcerated.

³In fiscal year 2009, Illinois, Oregon, and Wyoming listed less than 1 percent of their cases as children being removed from their homes due at least partly to parental incarceration. We could not confirm if these states had very low incidences of these cases or if the low rate was related to data reliability issues.

inmates in state and federal prisons and local jails, administered by the Department of Justice (DOJ) through its Bureau of Justice Statistics (BJS). We used these surveys to estimate inmate characteristics, such as the percentage of inmates with minor children reported to be in foster care or in other placement settings.⁴ Specifically, we estimated numbers and characteristics of inmate populations using the 2004 Survey of Inmates in Federal Correctional Facilities, the 2004 Survey of Inmates in State Correctional Facilities, and the 2002 Survey of Inmates in Local Jails.⁵

We also used these surveys to estimate a conservative lower bound on the number of children of inmates who are in foster care.⁶ Based on our analysis of the 2004 surveys, we are 95 percent confident that the number of state and federal inmates' children in foster care in 2004 exceeded about 22,800. Further, based on the 2002 survey of jail inmates, we are 95 percent confident that between 4,634 and 19,060 inmates had at least one child in a foster care setting in 2002. While the jail inmate survey covers a different time period than the federal and state inmate survey, it does provide an indication that additional children of inmates (beyond what was found in the state and federal inmate surveys) may be in foster care settings.

⁴Because these estimates are derived from probability samples, this particular sample is only one of a large number of samples that could have been drawn. Since each sample could have provided different estimates, we express our confidence in the precision of these particular samples' results as a 95 percent confidence interval (i.e., plus or minus a certain number of percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. The 95 percent confidence intervals are provided along with estimates in this report.

⁵In each case, the survey was the most recent data available. We calculated confidence intervals from standard errors developed using generalized variance estimates as described in the prison surveys' documentation, and BJS calculated these intervals on our behalf for the jail surveys, due to certain data restrictions.

⁶We conservatively estimated the number of children in foster care based on inmate responses to questions about how many minor children they had and whether any were in a foster home or in an agency. For example, the survey asks how many children the inmate has, but does not collect information on the number of children in each of the possible care locations. So, if a respondent had several children and also reported that some children were living with a relative and that some were in a foster home, we would conservatively count just one child in a foster care location. The one-sided 95 percent confidence interval for this estimate provides a conservative lower bound on the number of state and federal inmates' children in foster care in 2004.

In addition, for background purposes, we present BJS published estimates of the number of inmates and children of inmates for 1991, 1997, 2004, and 2007.⁷ Although the BJS report describes its estimation methodology and several adjustments⁸ that were made to produce estimates that would be comparable over several years, it does not include estimates of sampling error for those estimates. However, we were able to calculate and report the confidence intervals for other estimates produced from the 2004 surveys elsewhere in this report. Since the 1991–2007 estimates are based on similar surveys and on information developed from the 2004 survey, we report these BJS estimates for background purposes only and without accompanying confidence intervals.

BJS data are limited because they do not distinguish between children's temporary or permanent living arrangements, including various types of relative care, such as relatives who provide foster homes overseen by the child welfare system, relatives who are informally caring for children with no involvement of the child welfare system, and relatives who serve as permanent legal guardians. BJS data also do not fully distinguish children's current living arrangements when inmates are reporting on multiple children. Additionally, as noted in this report, some prisoners may be inclined to under report how many minor children they have for various reasons, such as avoiding having to pay child support, according to several state and DOJ officials we interviewed. Finally, BJS surveys are conducted intermittently, limiting our ability to compare results across years. A GAO social science analyst with expertise in survey methods and a statistician reviewed the methods and survey design used in these studies and, through interviews with knowledgeable DOJ and BJS officials and our own analyses, we determined that the data we used were sufficiently reliable for the purposes of this engagement.

State Phone Interviews

We administered structured telephone interviews to both the state child welfare and corrections agencies in 10 selected states. We selected these states based on several criteria (see table 4). First, states were selected to represent nearly half of the total foster care and prison

⁷Lauren E. Glaze and Laura M. Maruschak, *Parents in Prison and Their Minor Children*, the Department of Justice (August 2008).

⁸Because of estimation methods used in that report, those estimates produced may not be comparable to other published BJS estimates.

populations in the United States (47 and 48 percent, respectively). We selected the six states with the largest child welfare population, which are also among the highest in terms of state prison populations.⁹ Other states with smaller populations of foster care children and prisoners were selected for variation. Additionally, selected states differed in their geographic location and whether child welfare services in the state were administered at the state or local level. Finally, some states were selected because they were identified in our interviews with researchers and professionals knowledgeable on these topics as having policies, programs, or practices aimed at supporting parent-child ties at the state level or in localities within the state. We also administered the corrections phone interview to officials from BOP's Central Office.

Table 4: Information on Selected States

State	Percentage of total U.S. foster care population ^a	Percentage of total U.S. prison population ^b	Type of child welfare administration ^c
California	15%	12%	Local
New York	6	4	Local
Texas	6	12	State
Florida	5	7	State
Michigan	4	3	State
Pennsylvania	4	4	Local
Oregon	2	1	State
Colorado	2	2	Local
Alabama	2	2	State
Nebraska	1	0.3	State

Sources: HHS data, DOJ data, and American Public Human Services Association information.

^aOn September 30, 2008.

^bOn June 30, 2009.

^cLocal means child welfare services are administered by localities, usually counties, and supervised by the state. State means that child welfare services are administered and supervised at the state level.

For our interviews, we developed two structured protocols—one for child welfare officials and one for corrections officials. Using these protocols,

⁹California, Florida, New York, and Texas have the highest, and Michigan and Pennsylvania have the 7th and 8th highest prison populations of all states.

we asked officials about the extent their agencies track whether foster care children have an incarcerated parent or whether inmates have children and if their children are in foster care. Additionally, we asked about relevant statewide policies, challenges to supporting family contact or reunification, and strategies employed in their state that may help address challenges. Last, we inquired about relevant types of federal assistance received and areas in which additional assistance might be useful. We developed our protocols by interviewing researchers, professionals, and associations, as well as reviewing their documents and other literature. In addition, we asked several researchers and professionals we interviewed to review our protocols and pretested these protocols with child welfare and corrections officials in one state. We asked these parties for input on the clarity and objectivity of the questions and whether respondents could provide the information we sought and revised the protocols, accordingly.¹⁰

In addition to our interviews with state officials, we reviewed selected child welfare statutes and policies of our 10 selected states. For example, we examined whether state child welfare statutes related to federal requirements, such as efforts to reunify children in foster care with their families and timelines to file for termination of parental rights, included specific guidelines for incarcerated parents. Our review was limited to state child welfare statutes pertaining to termination of parental rights and reasonable efforts to preserve and reunify the family; we did not examine other statutes, regulations, or case law, unless specifically identified as relevant by state officials or other experts. See appendix III for summaries of the selected provisions of the 10 states' child welfare statutes and more detailed information on our methodology in conducting and verifying this research. We also verified other relevant corrections and child welfare policies identified through our state phone interviews by reviewing agency documents.

¹⁰For each phone interview, one team member entered officials' responses into a web-based data collection tool. Another team member who also participated in the interview would subsequently review the information entered for accuracy. As needed, we also conducted follow-up with officials to clarify responses, seek additional information, and request agency documents.

Site Visits

To gather more in-depth information from local child welfare agencies, correctional facilities, and others, we conducted site visits to four of the ten states we interviewed: California, New York, Oregon, and Texas. We selected these states because they capture a large portion of the foster care and prison populations nationally, represent geographic variation, and include some states with promising or innovative strategies at the state or local level, as identified by researchers and professionals knowledgeable on the subject. We also based these selections on the type of child welfare program administration (state administered and locally administered with state supervision); the number of children in foster care; the number and security level of inmates in the facility; and recommendations from experts we interviewed.

In each state, we spoke with local child welfare officials from at least two localities, one large urban area and one non-urban county when possible. Specifically, we met with local child welfare officials and staff in San Francisco and Stanislaus counties in California; Dutchess county and New York City in New York; Marion, Multnomah, and Washington counties in Oregon; and Bell and Harris counties in Texas. During these interviews, we collected information on state and local processes for collecting and reporting data, policies and procedures, and challenges and strategies related to cases specifically involving children in foster care with incarcerated parents. We also interviewed several dependency court judges, attorneys, and community organizations that provided services for foster care children. Across the states, we interviewed officials at nine state prisons (seven women's and two men's), two federal women's prisons, and three local city or county correctional facilities or jails.¹¹ At most correctional facilities we were able to tour the facility, and in a few instances we observed their implementation of strategies such as nursery programs and parenting classes. At a few facilities, we also interviewed inmates about contact with their children and, if children were in foster care, their interactions with child welfare agencies or the courts.

On the basis of our site visit information, we cannot generalize our findings beyond the states or localities we visited. Information we gathered on our site visits represents only the conditions present in the states and local areas at the time of our site visits. We cannot comment

¹¹We visited more female facilities because of the greater likelihood that female inmates have children in foster care.

on any changes that may have occurred after our fieldwork was completed.

Interviews with Agencies, Researchers, and Others

We interviewed officials from HHS and DOJ about their programs pertaining to foster care children with incarcerated parents, and reviewed relevant federal laws, regulations, guidance, and other agency documentation. Additionally, we interviewed researchers and professionals from a variety of national organizations, including family resource centers, corrections associations, and child welfare organizations, and reviewed available literature from these groups. These included the American Bar Association Center on Children and the Law, the American Public Human Services Association, the Annie E. Casey Foundation, the National Association of Social Workers, American Correctional Association, the National Center on Substance Abuse and Child Welfare, the National Council of Juvenile and Family Court Judges, the National Resource Center for Children and Families of the Incarcerated, National Resource Center on Permanency and Family Connections, the Rebecca Project for Human Rights, and the Sentencing Project, among others. We also interviewed two former foster care youth whose parents had been incarcerated. In addition, two analysts, one with specialized expertise in social science, reviewed several studies (one unpublished) and found them to be sufficiently reliable for our purposes.

Children with Parents in Residential Drug Treatment Programs

To describe the approaches and outcomes of residential drug treatment programs that may support family reunification presented in appendix II, we interviewed staff from four family-centered residential drug treatment programs. We conducted site visits to three of the programs and their community partners in Maryland and Illinois and interviewed officials with the fourth program in California via telephone. During the site visits, we toured program facilities; spoke with representatives from the programs' community partners, such as social services agencies and transitional housing providers; and also spoke with some program clients. In selecting these four family-centered residential drug treatment programs, we considered criteria including expert recommendations, receipt of federal grants, and geographic location. We obtained expert recommendations on specific programs to interview from a number of federal and nonprofit organizations. Those organizations include several offices within HHS—such as the Substance Abuse and Mental Health Services Administration (SAMHSA), the Administration for Children and Families (ACF), the Assistant Secretary for Planning and Evaluation (ASPE)—and nonprofit organizations, such as the Rebecca Project for Human Rights. Staff with

SAMHSA, ACF, ASPE, and the Rebecca Project for Human Rights provided examples of family-centered treatment programs that emphasized family reunification or program evaluation. In addition, during our interviews with officials from SAMHSA, ACF, ASPE, and the Rebecca Project for Human Rights, we discussed the practices of family-centered residential drug treatment programs and federal efforts to fund and evaluate them.

We reviewed relevant HHS reports on substance abuse and child welfare, family-centered treatment for women with substance abuse disorders, and best practice guidance for substance abuse treatment. We reviewed grant documentation for two federal grant programs that fund and evaluate family-centered residential drug treatment programs: the Services Grant Program for Residential Treatment for Pregnant and Postpartum Women administered by SAMHSA and the Regional Partnership Grant Program administered by ACF. We chose to focus on these programs because they target family-based treatment for parents and their children, as opposed to other grant programs that provide funds for different treatment types and populations. To describe the outcomes that these programs track and assess, we reviewed grant documentation, including the notices of funding availability, grant evaluations, and the Regional Partnership Grant program's First Annual Report to Congress. We also reviewed documents from the four residential treatment programs that we contacted, which included descriptions of program rules, practices, and outcome studies.

We conducted this performance audit from July 2010 through September 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Children with Parents in Residential Drug Treatment Facilities

HHS estimates that approximately one-third to two-thirds of children involved in the child welfare system have at least one parent with a substance abuse problem, such as alcohol abuse or drug addiction.¹ In addition, a study of 2,639 clients from 44 drug treatment programs in California reported that 29 percent of these parents had one or more children removed from their custody by child welfare services.² Children whose parents have substance use disorders may experience parental neglect and be at risk of social, emotional, and behavioral disorders. Parents with substance use disorders, including those who come to the attention of the child welfare system—predominately mothers—may face additional challenges such as co-occurring mental disorders and involvement with the criminal justice system. Successfully addressing the multiple needs of these parents and their children takes time, which, as with children with incarcerated parents, can conflict with the timelines set by the Adoption and Safe Families Act of 1997 to make decisions about a child's permanent placement and to file for termination of parental rights.

Historically, women with children have faced barriers to entering substance abuse treatment programs. In our past work, we noted that state child welfare directors were dissatisfied with the low level of services, including substance abuse treatment services, provided to at-risk families in the child welfare system.³ In addition, we noted that, according to state child welfare directors, families living in impoverished neighborhoods often do not have access to substance abuse treatment services, which can in turn influence their children's entry into the child welfare system.⁴ HHS has funded programs that allow eligible parents

¹See, The Department of Health and Human Services, *Blending Perspectives and Building Common Ground* (April 1999). In addition, researchers at Chapin Hall at the University of Chicago drew upon National Survey of Child and Adolescent Well-Being data from 2000 to estimate that 61 percent of infants and 41 percent of older children placed in foster care had at least one caregiver affected by substance abuse. See F. Wulczyn, M. Ernst, and P. Fisher, "Who Are the Infants in Out-of-Home Care? An Epidemiological and Developmental Snapshot," *Chapin Hall Issue Brief*, (May 2011).

²See, University of California, Los Angeles, *California Treatment Outcome Project Final Report* (2003).

³GAO, *Child Welfare: Additional Federal Action Could Help States Address Challenges in Providing Services to Children and Families*, [GAO-07-850T](#) (Washington, D.C., May 15, 2007).

⁴GAO, *African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care*, [GAO-07-816](#) (Washington, D.C.: July 11, 2007).

with substance use disorders to bring their children into treatment with them, such as SAMHSA's Services Grant Program for Residential Treatment for Pregnant and Postpartum Women (PPW). According to SAMHSA officials, this program is designed to expand the availability of sustainable, comprehensive quality treatment, recovery support, and family services for pregnant and postpartum women and their children age 17 and under. This program, which SAMHSA funds and oversees, is implemented by private nonprofit and public drug treatment providers and targets low-income women.⁵

In contrast to corrections facilities, some residential drug treatment programs allow mothers to bring at least some of their children to live with them during treatment.⁶ Some of these programs employ a family-centered treatment approach, more formally known as the Comprehensive Substance Abuse Treatment Model for Women and their Children, which SAMHSA describes as:

- often long-term and residential;
- focusing on an individualized treatment plan for each woman;
- addressing the full range of each woman's needs, in addition to substance abuse;
- focusing on the relationships in the woman's life, including her role as mother;
- including a wide variety of integrated services, some of which may be available to children and other family members; and
- sensitive to culture and gender.

⁵According to SAMHSA, although implemented by private nonprofit and public drug treatment providers, each PPW project uses a comprehensive service system, which consists of multiple memoranda of agreements with key agencies and organizations that have a role to play in prevention, treatment, and recovery.

⁶The number of children a woman can bring with her to treatment varies, as does the age range of the children permitted by the centers.

Family-centered residential drug treatment programs use a variety of approaches to strengthen and reunite families.⁷ Officials from four family-centered residential drug treatment programs we interviewed told us that these programs help strengthen and reunite families by, among other things:

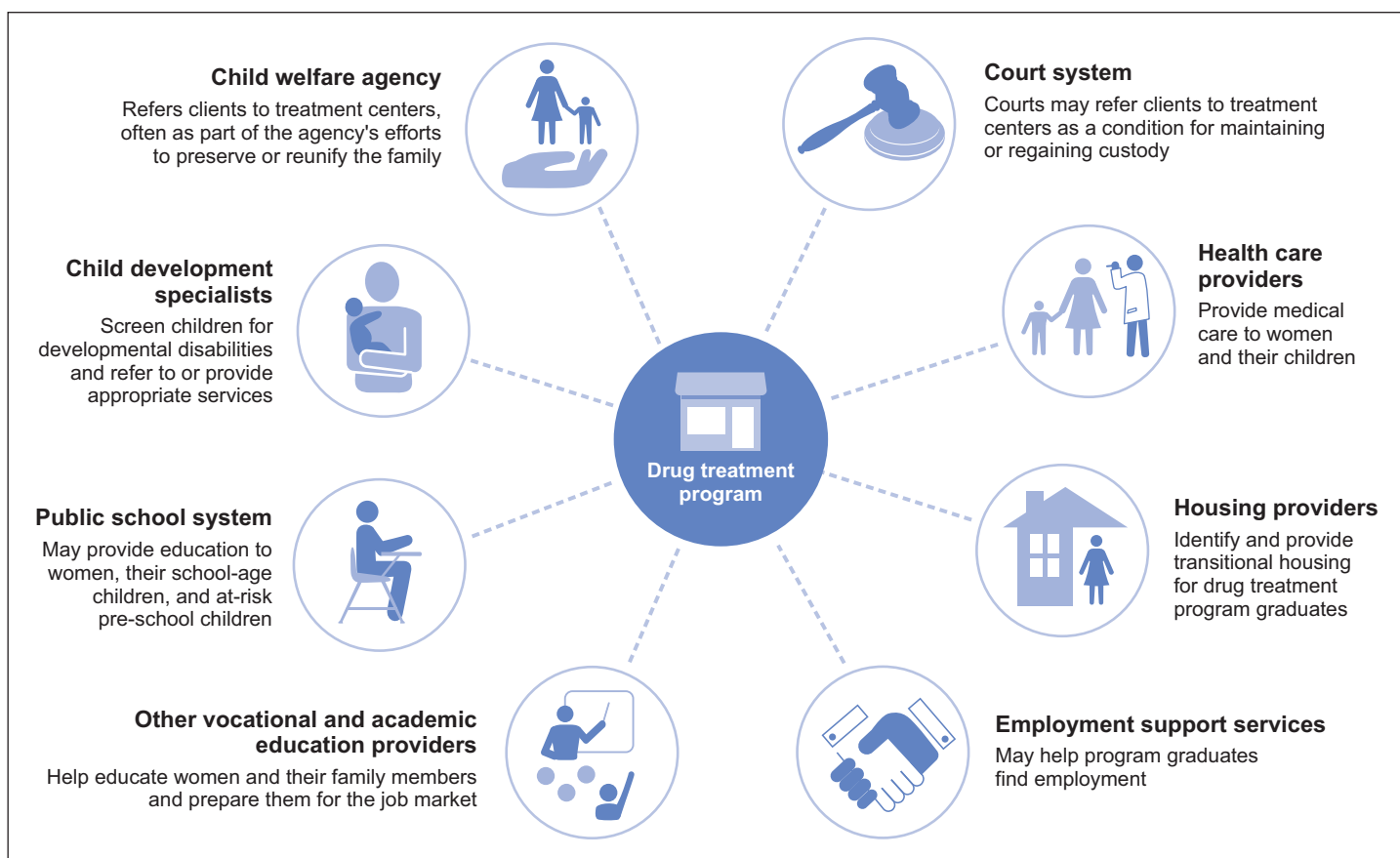
- *Allowing children to reside with their mothers.* According to drug treatment program officials, the possibility that women can bring at least some of their children with them removes a significant barrier to treatment: reluctance to enter treatment if their children do not have a safe place to stay. In addition, some women are reluctant to enter treatment because they fear that as a result of doing so, they will lose custody of their children. Having them close by, such as at an on-site childcare center, decreases these fears and makes it more likely that a woman will stay in treatment and overcome her substance abuse, according to program officials.
- *Focusing on long-term recovery.* In contrast to short-term drug treatment programs, which may consist of a brief, hospital-based inpatient phase and some outpatient follow-up, family-centered residential drug treatment programs can last up to 24 months. During this extended time, the programs attempt to address long-term, underlying issues in an effort to foster lasting recovery and thus heighten the chances of family reunification. In this effort, these programs aim to help women build new coping strategies and social networks, as well as strengthen their relationship with their children by teaching them parenting skills. By recognizing that addiction is cyclical and chronic, these programs help women learn how to overcome relapses and move toward long-term recovery. In addition, once the women graduate, some programs continue to provide extended assistance to help them transition out of the program, such as temporary housing or access to ongoing support networks and therapy.
- *Addressing mental health needs, including trauma.* Extensive mental health services offered by the family-centered treatment programs we examined better position women for the work needed to help them recover and rebuild their families, according to program officials. For

⁷See appendix I for additional information on the methods we used to describe these programs.

example, such programs help women identify, acknowledge, and appropriately respond to traumatic events in their lives. According to treatment program staff and federal officials, many women in long-term residential drug treatment have experienced some form of trauma or suffer from other mental health problems, which in turn can influence their substance use. Programs may also help children, who may also be traumatized from living in an environment where there is substance abuse or from having been removed from their homes by child welfare officials.

- *Offering a variety of supportive services to children and other family members.* According to federal and drug treatment program officials, offering a variety of services to family members can help promote a more stable recovery since a woman's recovery is often dependent on the health of her family, broadly defined. Some programs offer services specifically aimed at children, such as early intervention programs for preschool children and parenting programs that enable both mothers and fathers to hone their parenting skills. Other services, such as education and employment programs, aim to help families by making family members stronger and more self-sufficient.
- *Collaborating extensively with other state and local agencies.* Because family-centered residential drug treatment programs collaborate extensively with other agencies and organizations with which women come into contact (see fig. 9), they are able to better address complex family needs, according to program and federal officials.

Figure 9: Potential Partners of Residential Drug Treatment Programs



Source: GAO analysis of data from HHS, drug treatment programs, and drug treatment program partners.

According to an official from one treatment program, the program's collaboration—joint monitoring and assessment of women's progress—with a local family dependency court helps heighten the prospects for family reunification. Drug treatment program staff and state officials also told us that drug treatment programs and child welfare agencies frequently collaborate, and that child welfare and court officials tend to view a woman's participation in the family-centered treatment programs positively for the woman. In addition to collaborating around the needs of the women and their children, treatment programs may work closely with child welfare agencies to educate them about the nature of substance abuse and to provide insight into the extent to which a woman's relapse may endanger her children. Finally, program officials told us that their collaboration with other service providers, such as the public school

system and agencies specializing in children's developmental disabilities, also helps them better leverage their own skills and resources to support the whole family.

Outcomes for Women in Residential Drug Treatment Programs

The federal government has funded a number of grants that support and assess family-centered residential drug treatment programs. For example, SAMHSA's PPW grants support the development of treatment programs, including residential treatment programs, to serve mothers with substance use disorders and their children aged 17 and under. In the PPW program, grantees are required to track information about, among other things, the woman's substance use, involvement with the criminal justice system, mental health, and living arrangements. Grantees also collect limited information on the women's children, including the total number of children per woman, the number of children living with someone besides the woman due to a child protection order, and the number of children for whom the woman's parental rights have been terminated.

SAMHSA funded a cross-site analysis of the PPW program and an earlier grant program, the demonstration grant program for Residential Treatment for Women and Their Children (RWC), that examined data collected from 1996 to 2001 from more than 1,000 women at 50 RWC and PPW programs.⁸ To assess the treatment outcomes, the study compared women's responses at admission interviews to their responses at follow-up interviews, which were administered 6 months after their treatment ended. The study found that 6 months after treatment ended women reported fewer instances of substance use, fewer arrests, fewer mental health problems, and higher rates of employment. Regarding child outcomes, the study found fewer children living in foster care and that most of the children who accompanied their mothers to the RWC or PPW programs were still living with their mothers 6 months after treatment. Although these findings suggest that RWC- and PPW-funded drug treatment programs may lead to some positive outcomes for women and

⁸Between 1993 and 1995, HHS awarded 5-year grants for 70 PPW and RWC projects, which provided residential treatment for mothers and their children. From 2003–2009, HHS continued the PPW program, providing 3-year grants for up to \$500,000 each for 55 projects. In fiscal year 2011, HHS anticipates awarding up to 19 PPW grants. See Center for Substance Abuse Treatment, *RWC/PPW Cross-site Evaluation*, Caliber Associates (Rockville, MD, 2003).

their children, according to study's authors, the cross-site study was not designed to demonstrate that the treatment actually caused those effects.

In 2006, ACF began implementing the Regional Partnership Grant (RPG) program, which provides 3- or 5-year grants to support partnerships among child welfare and other organizations, including drug treatment agencies, to increase well-being, enhance safety, and improve permanency outcomes for children placed in or at risk of being placed in out-of-home care because of a parent's substance abuse.⁹ Among the 53 partnerships that received RPG funding in 2007, 21 include programs that provide family-centered residential drug treatment services. The drug treatment programs that received RPG funding must also collect information related to a subset of 23 performance indicators pertaining to the women, children, and families in their programs (see table 5). HHS uses those performance indicators to gauge grantees' progress on meeting their programs' intended goals.

Table 5: RPG Performance Indicators

Child performance indicators
Children at risk of removal remain in home
Occurrence of child maltreatment
Average length of stay in foster care
Re-entries to foster care placement
Timeliness of family reunification
Timeliness of child permanency actions
Improved child well-being
Prevention of substance-exposed newborns
Access to supportive services
Adult performance indicators
Access to treatment
Retention in treatment
Substance use level
Access to supportive services
Employment status

⁹In 2007, HHS awarded grant funds ranging from \$500,000 to \$1,000,000 to 53 RPG grantees for 3-year or 5-year projects.

Child performance indicators

Criminal behavior

Mental health status

Family performance indicators

Increased parental capacity

Improved parent-child/family interactions

Decreased child maltreatment risk factors

Access to coordinated case management

Substitute caregiver access to services

Regional partnership capacity indicators

Increased service collaboration

Increased service capacity

Source: HHS.

Note: Adult performance indicators include parents and/or caregivers.

HHS requires RPG grantees to conduct evaluations to determine program outcomes, and most grantees designed evaluations that use treatment and comparison groups, allowing them to compare outcomes of families in family-centered residential treatment to outcomes of families in other forms of substance abuse treatment. Of the 21 RPG grantees that provide family-centered residential drug treatment services, 16 designed evaluations that use treatment and comparison groups. Since the grant period for the RPG program began in 2007 and may last up to 5 years, ACF officials anticipate that all RPG grantees will submit final evaluation results by December 31, 2012. Subsequently, the agency plans to present the evaluation results in a series of reports to Congress.¹⁰

¹⁰ACF's report entitled *Targeted Grants to Increase the Well-Being of, and to Improve the Permanency Outcomes for, Children Affected by Methamphetamine or Other Substance Abuse: First Annual Report to Congress* contains additional information about the RPG program, including the process for selecting outcome measures and program evaluation design.

Appendix III: Provisions from Selected State Statutes on Termination of Parental Rights and “Reasonable Efforts” That Specifically Address Incarcerated Parents

This appendix provides summaries of selected statutory provisions that specifically address termination of parental rights and reasonable efforts to preserve and reunify families for child welfare cases involving incarcerated parents for the 10 states included in our study. The 10 selected states were Alabama, California, Colorado, Florida, Michigan, Nebraska, New York, Oregon, Pennsylvania, and Texas. The information contained in this appendix is not intended to be an exhaustive summary of all laws, regulations, or case law related to children in foster care with incarcerated parents for these states.

To compile this appendix, we searched legal databases for state statutes on termination of parental rights and reasonable efforts that specifically refer to incarcerated parents.¹ The provisions we identified are summarized briefly in tables 6 and 7. These summaries may omit some details from the cited provisions and are not intended to reflect all aspects of state law. In addition, these summaries do not reflect the federal requirements for states that receive federal child welfare funding. They also do not include the requirements of other state statutes, regulations, or case law that may directly or indirectly apply to families with incarcerated parents. We provided these summaries to knowledgeable state officials in each state for their verification, and the information in this table was verified to be accurate as of August 2011.

¹During the course of our work, state officials or other experts we interviewed occasionally identified additional statutes or cases that, though related generally to issues involving incarcerated parents, were outside the scope of our review. We incorporated discussions of these laws and cases, as appropriate, in the body of the report, but they are not reflected in this appendix.

**Appendix III: Provisions from Selected State
Statutes on Termination of Parental Rights and
“Reasonable Efforts” That Specifically
Address Incarcerated Parents**

Table 6: Selected State Statutory Provisions Related to Incarcerated Parents and the Termination of Parental Rights

State	Provisions related to incarcerated parents and the termination of parental rights
Alabama	One factor the court shall consider when determining whether to terminate parental rights is the parent’s conviction of and imprisonment for a felony. Ala. Code § 12-15-319(a)(4).
California	Courts are directed to consider the barriers faced by incarcerated parents when deciding whether to set a hearing to consider terminating parental rights. For example, if the child was initially removed because the parent is incarcerated and cannot arrange for the child’s care, and the court finds that the parent has failed to contact and visit the child, the court may schedule a hearing to terminate parental rights. The court shall take into account any particular barriers to a parent’s ability to maintain contact with his or her child due to the parent’s incarceration. Cal. Welf. & Inst. Code § 366.21(e).
Colorado	<p>The court may find one of the following as the basis for unfitness of the parent (which is one factor for finding grounds to terminate parental rights):</p> <p>Long-term confinement such that the parent is not eligible for parole for at least 6 years after the date the child was adjudicated dependent or neglected; or</p> <p>If the child is under 6 years old at the time the petition to terminate parental rights is filed in response to reported child abuse, long-term confinement such that the parent is not eligible for parole for at least 36 months after the child was adjudicated dependent or neglected.</p> <p>Colo. Rev. Stat. § 19-3-604(1)(b)(III).</p> <p>In determining whether there are grounds to terminate parental rights, the court shall consider the fact that the child has been in foster care for 15 of the most recent 22 months, unless the reason for the length of the child’s stay in foster care was due to circumstances beyond the control of the parent, such as incarceration of the parent for a reasonable period of time. Colo. Rev. Stat. § 19-3-604(2)(k)(IV).</p>
Florida	<p>Grounds to terminate parental rights may be established when the parent is incarcerated and:</p> <p>the parent is expected to be incarcerated for a substantial portion of the period of time before the child turns 18;</p> <p>the parent has been determined by the court to be a violent career criminal, habitual violent felony offender, or sexual predator, has been convicted of 1st or 2nd degree murder or felony sexual battery, or has been convicted of any substantially similar offense in another jurisdiction; or</p> <p>the court determines that continuing the parental relationship would be harmful to the child and, for this reason, termination of parental rights is in the best interest of the child.</p> <p>Fla. Stat. § 39.806(1)(d).</p>
Michigan	The court may order termination of parental rights if it finds that the parent is imprisoned for such a period that the child will be deprived of a normal home for more than 2 years, the parent has not provided for the child’s proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age. Mich. Comp. Laws § 712A.19b(3)(h).
Nebraska	A petition to terminate parental rights shall not be filed on behalf of the state if the sole factual basis is that the parent or parents are incarcerated. Neb. Rev. Stat. § 43-292.02(2)(b).
New York	The child welfare agency is not required to file for termination of parental rights when the child has been in foster care for 15 of the most recent 22 months if, based on a case by case determination—the parent or parents are incarcerated, or the parent’s prior incarceration is a significant factor in why the child has been in foster care for 15 of the most recent 22 months—provided that the parent maintains a meaningful role in the child’s life and the agency has not documented a reason why it would otherwise be appropriate to file for termination of parental rights. N.Y. Soc. Serv. Law § 384-b(3)(l)(i).

Appendix III: Provisions from Selected State Statutes on Termination of Parental Rights and “Reasonable Efforts” That Specifically Address Incarcerated Parents

State	Provisions related to incarcerated parents and the termination of parental rights
	The court shall consider the special circumstances of incarcerated parent(s) when determining whether a child is a “permanently neglected child” (one factor in establishing grounds to terminate parental rights), including the particular constraints that may impact the parent’s ability to substantially and continuously or repeatedly maintain contact with the child and plan for the future of the child. These include limitations placed on family contact and the unavailability of social or rehabilitative services to aid in the development of a meaningful parent-child relationship. N.Y. Soc. Serv. Law § 384-b(7)(a).
Texas	The court may order termination of parental rights if it finds that the parent knowingly engaged in criminal conduct resulting in the parent’s conviction of an offense and imprisonment and inability to care for the child for 2 years or more from the date of filing the petition. Tex. Fam. Code Ann. § 161.001(1). The court must also find that termination of parental rights is in the best interests of the child. Tex. Fam. Code Ann. § 161.001(2).

Source: GAO analysis of selected state child welfare statutes, as verified by state officials.

Notes: For the remaining two states included in this review (Oregon and Pennsylvania), we were unable to identify any specific statutory provisions related to incarcerated parents and the termination of parental rights. However, that does not mean that requirements related to this issue have not been developed through other sources, such as state regulations, case law, or policy.

Because the following provisions are federal requirements for every state that receives federal funds under Titles IV-E and IV-B of the Social Security Act, this table does not include: (1) the provisions of the Adoption and Safe Families Act of 1997 (ASFA) which require state agencies to file for termination of parental rights when a court has determined that the parent has committed specified crimes or the child is an abandoned infant, 42 U.S.C. § 675(5)(E); and (2) the three exceptions under ASFA to the requirement for states to file for termination of parental rights when the child has been in foster care for 15 of the most recent 22 months—when the child is in the care of relatives, the state has not provided necessary services to the family consistent with the case plan, or the state agency documents a compelling reason why filing for termination is not in the best interest of the child, 42 U.S.C. § 675(5)(E)(i)-(iii). Similarly, because the following provisions are federal requirements for every state that receives federal funds under the Child Abuse Prevention and Treatment Act, this table also does not include the provisions which require every state to include as grounds for termination a conviction of the parent for specifically enumerated crimes, 42 U.S.C. § 5106a(b)(2)(B)(xvii).

**Appendix III: Provisions from Selected State
Statutes on Termination of Parental Rights and
“Reasonable Efforts” That Specifically
Address Incarcerated Parents**

Table 7: Selected State Statutory Provisions Related to Incarcerated Parents and Reasonable Efforts to Preserve and Reunify the Family

State	Provisions that describe how reasonable efforts^a can or should be made or excused for an incarcerated parent
Alabama	Reasonable efforts are not required to be made with respect to a parent if the court determines that the parent has subjected the child or a sibling to an aggravated circumstance, and the risk of abuse or neglect is too high for the child to safely remain or return home. An aggravated circumstance may include when a parent is incarcerated and the child is deprived of a safe, stable, and permanent parent-child relationship. Ala. Code § 12-15-312(c)(1)(f).
California	<p>When counseling or other treatment services are ordered, the parent is not required to participate in those services if the parent is incarcerated and the corrections facility does not provide access to the treatment services ordered by the court. Cal. Welf. & Inst. Code Ann. § 361.5(a)(3).</p> <p>Court-ordered reunification services may be extended for up to a total of 18 months if the court finds there is a substantial probability that the child will be returned to the parent within the extended time period, or reasonable services have not been provided. In deciding whether to extend the period of reunification services, courts shall consider the special circumstances of incarcerated or institutionalized parents, including the barriers to the parent's access to services and ability to maintain contact with the child. Cal. Welf. & Inst. Code § 361.5(a)(3).</p> <p>Court-ordered reunification services may be extended for up to a total of 24 months for parents who are recently discharged from incarceration and making significant progress in establishing a safe home for the child's return. This extension may be granted if the court finds it is in the child's best interest and there is a substantial probability that the child will be returned to the parent within the extended time period, or reasonable services have not been provided. Cal. Welf. & Inst. Code §§ 361.5(a)(4), 366.22(b).</p> <p>In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated parent's access to court-ordered services and ability to maintain contact with the child, and shall document this information in the child's case plan. Services may include: maintaining contact between the parent and child through collect telephone calls, transportation and visitation services where appropriate, and reasonable services to extended family members or foster parents if the services are not detrimental to the child. An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the reunification service plan, if actual access to these services is provided. The social worker shall document in the case plan the particular barriers to an incarcerated parent's access to court-ordered services and ability to maintain contact with the child. Cal. Welf. & Inst. Code § 361.5(e)(1).</p> <p>The court is not required to order reasonable services if it determines that reasonable services would be detrimental to the child, considering the age of the child, degree of parent-child bonding, length of the sentence, length and nature of the treatment, nature of the crime, degree of detriment to the child if services are not offered, and for children 10 years or older, the child's attitude toward family reunification services, likelihood of the parent's discharge within reunification time limitations, and any other appropriate factors. Cal. Welf. & Inst. Code § 361.5(e)(1).</p>
Colorado	<p>Reasonable efforts are not required to prevent the child's removal from the home or to reunify the child and the family when the court finds that the parent has subjected to the child to aggravated circumstances, which can include, among other factors:</p> <ul style="list-style-type: none"> • long-term confinement such that the parent is not eligible for parole for at least six years after the date the child was adjudicated dependent or neglected; or • if the child is under six years old at the time the petition to terminate parental rights is filed in response to reported child abuse, long-term confinement such that the parent is not eligible for parole for at least 36 months after the child was adjudicated dependent or neglected. <p>Colo. Rev. Stat. §§ 19-1-115(7)(a), 19-3-604(1)(b)(III).</p>

**Appendix III: Provisions from Selected State
Statutes on Termination of Parental Rights and
“Reasonable Efforts” That Specifically
Address Incarcerated Parents**

State	Provisions that describe how reasonable efforts ^a can or should be made or excused for an incarcerated parent
	<p>The court shall approve an appropriate treatment plan, except where termination of parental rights is proposed. However, the court may find that an appropriate treatment plan cannot be devised due, among other factors, to the unfitness of the parent, which may be based on:</p> <ul style="list-style-type: none"> • long-term confinement such that the parent is not eligible for parole for at least 6 years after the date the child was adjudicated dependent or neglected; or • if the child is under 6 years old at the time the petition to terminate parental rights is filed in response to reported child abuse, long-term confinement such that the parent is not eligible for parole for at least 36 months after the child was adjudicated dependent or neglected. <p>When the court finds that an appropriate treatment plan cannot be devised, the court shall conduct a permanency hearing unless a motion for termination of parental rights has been filed within 30 days.</p> <p>Colo. Rev. Stat. §§ 19-3-508(1)(e), 19-3-604(1)(b)(III)</p>
New York	<p>Evidence of “diligent efforts” by the state agency is not required when:</p> <ul style="list-style-type: none"> • the parent has failed to keep the agency apprised of his or her location for 6 months, provided that the court may consider the particular delays or barriers faced by an incarcerated parent in keeping the agency apprised of his or her location; or • an incarcerated parent has failed more than once while incarcerated to cooperate with an authorized agency in its efforts to assist the parent to plan for the future of the child, or to plan and arrange visits with the child. <p>N.Y. Soc. Serv. Law § 384-b(7)(e).</p> <hr/> <p>The state agency is not required to make arrangements for an incarcerated parent to visit the child outside the correctional facility unless reasonably feasible and in the best interest of the child. N.Y. Soc. Serv. Law § 384-b(7)(f)(2).</p> <hr/> <p>The state agency is not required to provide services and other assistance to an incarcerated parent so that problems preventing the discharge of the child from foster care may be resolved or ameliorated. N.Y. Soc. Serv. Law § 384-b(7)(f)(3).</p> <hr/> <p>The state agency must make “diligent efforts” to encourage and strengthen the parental relationship. Diligent efforts requirements apply equally to incarcerated parents and include:</p> <p>Making suitable arrangements for a parent to visit the child within the correctional facility, if such visiting is in the best interests of the child. Such arrangements include transporting the child to the facility, and providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the parent’s ability to maintain contact with the child.</p> <p>Providing information on the legal rights and obligations of an incarcerated parent and on social or rehabilitative services available in the community to aid in the development of a meaningful parent-child relationship, including wherever possible transitional and family support services located in the community to which the parent shall return.</p> <p>N.Y. Soc. Serv. Law § 384-b(7)(f)(5)-(6).</p> <hr/> <p>If the parent is incarcerated, the family service plan shall reflect the special circumstances and needs of the child and the family. The plan generally must be prepared and revised in consultation with the child’s parent or guardian, but if in-person participation is impracticable, they may participate via technology such as videoconference or teleconference.</p> <p>N.Y. Soc. Serv. Law § 409-e(2)-(3).</p>

Source: GAO analysis of selected state child welfare statutes, as verified by state officials.

Notes: For the remaining six states included in this review (Florida, Michigan, Nebraska, Oregon, Pennsylvania, and Texas), we were unable to identify any specific statutory provisions related to incarcerated parents and reasonable efforts to preserve and reunify the family. However, that does not mean that requirements related to this issue have not been developed through other sources, such as state regulations, case law, or policy.

Because the following provisions are federal requirements for every state that receives federal funds under Titles IV-E and IV-B of the Social Security Act, this table does not include the provisions in ASFA which excuse a state agency from conducting reasonable efforts if a court has determined that the parent has committed specified crimes, see 42 U.S.C. § 671(a)(15)(D).

^aIn implementing the federal reasonable efforts requirements, states may use various related terms such as “reasonable services” or “diligent efforts.”

Appendix IV: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

Kay Brown, Director
Education, Workforce and Income Security Issues
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

SEP 20 2011

Dear Ms. Brown:

Attached are comments on the U.S. Government Accountability Office's (GAO) draft report entitled, "CHILD WELFARE: More Information and Collaboration Could Promote Ties between Foster Care Children and Their Incarcerated Parents" (GAO-11-863).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

A handwritten signature in black ink that reads "Jim R. Esquea".

Jim R. Esquea
Assistant Secretary for Legislation

Attachment

GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED, "MORE INFORMATION AND COLLABORATION COULD PROMOTE TIES BETWEEN FOSTER CARE CHILDREN AND THEIR INCARCERATED PARENTS" (GAO-11-863)

The Department appreciates the opportunity to review and comment on this draft report.

Secretary Sebelius is a member of the Federal Interagency Reentry Council, chaired by Attorney General Eric Holder. The Reentry Council is working across Federal departments to clarify policies, remove barriers, and promote innovative and tested programs to increase the potential for individuals returning from jail and prison to return to their families, when appropriate, and to become productive members of their community. Addressing issues that affect children and families with an incarcerated parent is part of the core reentry mission of the collaboration. As a part of that collaboration, HHS and the Department of Justice are committed to working together to ensure that both the criminal justice and child welfare communities have the information they need to make the best decisions for incarcerated and reentering parents and for their children. As GAO noted, one of the first activities of the Reentry Council was to produce a "Reentry Mythbuster" to clarify the discretion that states have in working with incarcerated parents rather than terminating parental rights. This is the first in an ongoing series of policy clarifications and best practices information on family involvement and family strengthening that will be directed to both criminal justice and child welfare/human services audiences under the leadership of the Council. The staff working group supporting the Council will work with the Administration for Children and Families (ACF) and National Institute of Justice, the National Institute of Corrections and the Federal Bureau of Prisons in the development and dissemination of these materials.

GAO Recommendations

To better understand the magnitude of the population and inform Federal or State initiatives that affect children in foster care with incarcerated parents, the Secretary of HHS should identify ways to strengthen the completeness of state-reported data on those children. For example, in implementing new reporting requirements for the Adoption and Foster Care Analysis and Reporting System (AFCARS), the agency could take into consideration its 2008 proposed changes in which States would be required to provide additional information on each foster child and his or her family circumstances, including a caretaker's incarceration, at several times during the child's stay in foster care and not only when a child first enters care.

To improve outcomes for these children, the Secretary of HHS should take steps to more systematically increase awareness among State and local child welfare agencies about available resources for children in child welfare with incarcerated parents. For example, HHS could:

- *Take steps to update and more centrally organize relevant information posted on the Child Welfare Information Gateway (Gateway), which is meant to serve as a comprehensive information resource for the child welfare field, such as by regularly updating the information listed under the Gateway's relevant topic*

GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED, "MORE INFORMATION AND COLLABORATION COULD PROMOTE TIES BETWEEN FOSTER CARE CHILDREN AND THEIR INCARCERATED PARENTS" (GAO-11-863)

areas (e.g., 'Children in Out-of-Home-Care With Incarcerated Parents') with links to more recent material posted on other HHS-supported websites;

- *Identify or provide additional information on promising approaches, such as those listed by the Office of the Assistant Secretary for Planning and Evaluation;*
- *Use relevant findings from the Child and Family Services Review (CFSR) process as an opportunity to remind States about available resources and post information on promising approaches identified in the reviews; and*
- *Facilitate awareness among all child welfare agencies about HHS's available resources through an email or a teleconference/webinar that would allow State and local agencies to share information on practices or strategies.*

ACF Response

We appreciate the information and analysis provided by GAO, and shares the view that it is important to better understand the circumstances and needs of children in foster care with incarcerated parents, and to increase awareness of available resources to improve outcomes for these children.

While ACF cannot specifically comment on decisions relating to AFCARS proposed rule, ACF appreciates receiving the GAO's recommendations relating to data concerning children in foster care with incarcerated parents, and will take these recommendations into consideration as the final rule is developed.

Concerning the recommendation that ACF take steps to more systematically increase awareness among State and local child welfare agencies about available resources for children in child welfare with incarcerated parents, ACF's Administration on Children, Youth and Families (ACYF) and the Children's Bureau (CB) aim to accomplish many of the examples stated in the recommendation through the Child Welfare Information Gateway. We will work with the Gateway on the following items:

- Making information on children of incarcerated parents and related topics more centrally located on the Child Welfare Information Gateway website, with multiple links from various pages and updating resources regularly to include State data and examples, as they are available; and
- Providing opportunities to make child welfare agencies and States more aware of the resources available to them about children of incarcerated parents such as articles in the CB Express, links to new or updated information on the 'Highlights' and 'What's New' sections of the Information Gateway website, and references in Training & Technical Assistance Network organizations' newsletters.

**GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN
SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO)
DRAFT REPORT ENTITLED, "MORE INFORMATION AND COLLABORATION
COULD PROMOTE TIES BETWEEN FOSTER CARE CHILDREN AND THEIR
INCARCERATED PARENTS" (GAO-11-863)**

In terms of the recommendation to use relevant findings from the CFSR process as an opportunity to remind States about available resources and post information on promising approaches identified in the reviews, we agree and are currently in the process of revising the CFSR.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Kay E. Brown, (202) 512-7215 or brownke@gao.gov

Staff Acknowledgments

Gale Harris, Assistant Director, and Theresa Lo, Analyst-in-Charge, managed this assignment. Sara Schibanoff Kelly and Eve Weisberg managed the portion on residential drug treatment centers presented in appendix II. Analysts Miriam Hill, Melissa Jaynes, Andrew Nelson, and Rebecca Rose made important contributions to this report. James Bennett and Mimi Ngyuen provided graphic assistance, and Susan Bernstein and David Chrisinger provided writing assistance. Kirsten Lauber, Jean McSween, Mark Ramage, Beverly Ross, and Shana Wallace provided data analysis and methodological assistance, and Sarah Cornetto provided legal assistance.

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