

Moms in Prison: The Impact of Maternal Incarceration on Women and Children

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ABSTRACT

This article examines the impact of maternal incarceration on women and children in a case-study format. The author's former clients provide insight into their experiences while incarcerated in federal prison, their re-entry into society upon their release, and the impact of their incarceration on their children. Their children then provide their perspective on visiting their mothers in prison and how their mother's incarceration impacted their lives. Statistics are discussed regarding the impacts of maternal incarceration in the United States and Canada. Finally, suggestions are provided for ways to lessen the impact of maternal incarceration on children and more effectively support drug-addicted parents.

I. INTRODUCTION

Our society has slowly been waking up to the reality that far too many citizens are being incarcerated for non-violent crime. Millions of children are being exposed to this reality as rates of incarceration for non-violent crime have skyrocketed since the 1980s. In 1980, 40,900 Americans were incarcerated; by 2017, that number rose more than ten-fold to 452,964.¹ Many people are being incarcerated for drug use and drug dealing, which often go hand in hand. Women are being imprisoned at

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¹ "Criminal Justice Facts" (December 2019), online: *The Sentencing Project* <www.sentencingproject.org/criminal-justice-facts/> [perma.cc/PH8L-3USV] [The Sentencing Project, "Facts"].

higher rates than ever before: the rate of incarcerated women has increased by 750% since 1980 in the United States,² while in Canada, the population of women in federal prison has increased by 37% in the past ten years.³

Many of the women being imprisoned have young children and are their children's primary caregiver. There are more than 2,700,000 children with an incarcerated parent in the United States.⁴ About half of these children are under ten years old. One in nine African American children have an incarcerated parent, while one in 57 white children do.⁵ In Canada, Indigenous women are vastly over-represented in prisons, making up 42% of the prison population despite being only 5% of the Canadian population.⁶ The impact on the person being sentenced to prison is considered in great detail during the sentencing process in both countries, but the impact on their children is often overlooked, leading to unforeseen generational trauma in many cases.

This article examines the impact of incarceration on women and their children through a case-study format. First, two mothers who have been federally incarcerated for drug crimes are interviewed regarding their history, their crime, their time behind bars, and how their relationship with their children has been impacted by their prison sentence. Then, the children of those two mothers provide their perspective on having an incarcerated mother and how they have adjusted to their mother's release from prison. The benefits and detriments of child visitation with incarcerated parents are then examined, as are the differences between the visitation process in the United States and Canada. The mothers and

² "Incarcerated Women and Girls" (6 June 2019), online: *The Sentencing Project* <www.sentencingproject.org/publications/incarcerated-women-and-girls/> [perma.cc/TA6L-QWT2].

³ Vicky Mochama, "Treatment of Women in Canadian Prisons a Human Rights Travesty", *The Star* (4 January 2018), online: <www.thestar.com/opinion/star-columnists/2018/01/04/treatment-of-women-in-canadian-prisons-a-human-rights-travesty.html> [perma.cc/7CFL-PJ9X].

⁴ "Children and Families of the Incarcerated Fact Sheet" (2014) at 1, online (pdf): *Rutgers University National Resource Center on Children & Families of the Incarcerated* <nrccfi.camden.rutgers.edu/files/nrccfi-fact-sheet-2014.pdf> [perma.cc/VGQ8-E4YG] [Rutgers, "Fact Sheet"].

⁵ *Ibid.*

⁶ Public Safety Canada, *Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge* (News Release) (Ottawa: PSC, 21 January 2020), online: <www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx> [perma.cc/7MUY-ASM6] [PSC, *Federal Custody*].

children then provide suggestions for how to help maintain the integrity of families while parents are incarcerated. Finally, potential policy changes in the United States and Canada are examined as methods for reducing the trauma of maternal incarceration on children.

II. THE MOTHERS

A. Lindsey

Lindsey was incarcerated on December 3, 2016 for possession and distribution of methamphetamine. Lindsey was a methamphetamine addict who got mixed up with a dangerous group of people. Her boyfriend/dealer was importing meth from Las Vegas, Nevada and had a penchant for shooting at people who disagreed with him. He shot at Lindsey after an argument in their bedroom, the bullet missing her head by less than an inch. Shortly after shooting at her, Lindsey's boyfriend threatened to harm her 9-year-old son if Lindsey did not accompany him on a drug run to Las Vegas. She went. During the trip, they were in a car accident during a snowstorm that debilitated their vehicle. Rather than calling a tow truck, her boyfriend set the car on fire and shot at it multiple times. Her boyfriend picked up five pounds of meth while in Las Vegas, and although Lindsey had little to do with it, she was legally on the hook for drug distribution.

Lindsey and her boyfriend were indicted federally in Butte, Montana shortly thereafter, and she was sentenced to 36 months in prison on March 17, 2017. She was sent to a Federal Prison Camp at Alderson, West Virginia, which happens to be the same prison where Martha Stewart spent her time in custody. While in custody, Lindsey completed the 500-hour Residential Drug and Alcohol Program ("RDAP"), got her GED, and worked 20–25 hours per week as a carpenter. Lindsey completed every program available to her at the prison, including parenting classes, mental health treatment, and even recreational sports like volleyball.

Lindsey's son Robbie⁷ was taken by Child and Family Services the day before she was incarcerated. Robbie was placed with his father, who also struggled with chemical dependency. Lindsey was terrified that she would lose her parental rights while in prison. She contacted her lawyer daily and did everything she could to maintain her parental rights and ensure Robbie's safety. With a lot of determination and a little luck, Lindsey

⁷ Names have been changed as needed for confidentiality.

retained her parental rights during the two years that she was in custody and obtained physical custody of her son shortly after returning to Montana from prison. This is particularly noteworthy when one considers the federal and Montana laws presuming that a parent's rights should be terminated if their child is in foster care for 15 out of 22 months.⁸

Lindsey could not have maintained her parental rights without the assistance of her attorney. In Canada, many parents are not provided with court-appointed counsel when their children are removed from their custody.⁹ The Ontario Office of Attorney General stresses that parents should have a lawyer due to the complexity of child removal cases, but parents are not appointed counsel automatically as they are in Montana and most of the United States.¹⁰ Parents in Canada must retain their own counsel or they can apply for counsel through Legal Aid. As many of the parents in child removal cases are indigent, and Legal Aid resources are overburdened, many parents are forced to navigate the court system on their own. If children are removed due to the parent's incarceration, maintaining parental rights becomes even more difficult.

B. Jamie

Jamie is a 35-year old mother to Sophie, aged 12. On November 10, 2016, Jamie was sentenced to 40 months in federal prison for possession and distribution of methamphetamine. Jamie was dating a man who was selling large amounts of meth in Northwestern Montana. One snowy night, Jamie and her boyfriend were arguing in a borrowed car. Her boyfriend got out of the car, and she took off down the highway. The car got stuck in the snow, and a highway patrolman arrived on scene. Jamie voluntarily gave the officer marijuana that was in the vehicle and told him she did not know what else might be in the car because it was not hers. She was arrested for possession of marijuana, and the vehicle was seized.

Upon a search, a large quantity of meth and several guns were found in the car. Jamie was on the hook for the drugs and the guns even though it

⁸ See Mont Code Ann § 41-3-604(1) (2019); Adoption and Safe Families Act of 1997.

⁹ Canadian Association of Elizabeth Fry Societies (CAEFS), Native Women's Association of Canada (NWAC), "Women and the Canadian Legal System: Examining Situations of Hyper-Responsibility" 26:3/4 Can Women Studies 94, online <cws.journals.yorku.ca/index.php/cws/article/viewFile/22118/20772> [perma.cc/C9SE-QXNC].

¹⁰ Ontario, Ministry of the Attorney General, *What You Should Know About Child Protection Court Cases* (Report) (last modified 23 May 2018), online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/child_protection.php> [perma.cc/KB86-GV7E].

was not her car and she did not know what was in there. She knew that her boyfriend dealt drugs and carried guns and that knowledge, along with being in a vehicle full of drugs and guns, was enough to land her in federal prison.

Jamie was initially sent to Waseca Federal Correctional Institution in Minnesota. Waseca is a medium security federal prison. Although Jamie had no prior felonies, she had three Driving Under the Influence of Alcohol convictions and an outstanding misdemeanor theft warrant when she went to prison. This led to her “points”, or security classification, being high enough for the Bureau of Prisons (BOP) to send her to a medium security facility, despite her never spending more than a night or two in jail prior to her arrest.

In Canada, the classification system for designating female prison inmates has come under scrutiny because it is the same designation system that was designed for male inmates – it has never been altered to accommodate for the differences presented by female inmates.¹¹ Some critics argue this leads to more women being sent to maximum-security prisons than is necessary.¹² This is particularly true for Indigenous women, who are vastly over-represented in the Canadian Women’s prisons.¹³ As was stated previously, but is worth repeating, Indigenous women make up 42% of the Canadian prison population although they make up just 5% of the entire Canadian population.¹⁴ Indigenous peoples are incarcerated at six or seven times the national average.¹⁵ Despite many policy changes directed at addressing this overrepresentation, rates of Indigenous incarceration continue to rise, while the national incarceration average declines in Canada.¹⁶ Substance abuse treatment is one of the key areas being examined as part of this effort.

Jamie has struggled with substance abuse from a young age. She believes that her drug use began as an attempt to numb the pain she felt after being abused while her mother was in prison. Jamie’s mother went to prison in Montana when Jamie was 6 years old and served approximately three years.

¹¹ Mochama, *supra* note 3.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ PSC, *Federal Custody*, *supra* note 6.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

Jamie visited her mother frequently and recalls staying overnight with her mother while she was in prison:

I remember going into the prison and staying with my mother for a weekend with my little sister. We got to bring a few things of food that we wanted, and it was a room, a big jail cell room, with a queen-sized bed and a little kitchenette. We still had to go stand out there at count time, we got counted with everybody in there, we were in there with criminals, but we still got to spend time with our mother. It was amazing. We got to walk to a little ice cream shop... The hardest part was leaving. Coming from the life I came from, it wasn't scary at all. They were all women, they were all nice. They were getting help... They had a big barbeque that weekend and we played volleyball and badminton.¹⁷

This remarkable memory begs the question: is visitation between incarcerated parents and children at prison beneficial for children? If so, could these visits occur overnight, like Jamie and her sister's visit in the 1990s?

III. IS IT GOOD FOR CHILDREN TO VISIT THEIR PARENT IN PRISON?

Some parents do not want their children to see them in the orange jumpsuit and handcuffs. This can be a product of their own shame or an effort to protect their children's innocence. The vast majority of parents, however, desperately want to see their children while they are in prison and do everything in their limited power to make it happen. But are these visits good for the kids?

The answer, as usual, is that it depends. It depends on two primary factors: (a) the environmental setting of the prison and visitation process and (b) the parental attachment between parent and child.¹⁸ The visits also depend on having an adult willing to bring the child to visit in the first place.

A. Transportation to Visits

The majority of prisoners are housed far away from their families, with 62% of state parent-inmates and 84% of federal parent-inmates housed

¹⁷ Interview of Jamie (11-20-19) 18:45-20:45.

¹⁸ US, Department of Justice, "It's Not All Cupcakes and Lollipops": An Investigation of the Predictors and Effects of Prison Visitation for Children during Maternal and Paternal Incarceration, by Melinda Tasca, Doc No 248650 (May 2014), online: < www.ncjrs.gov/pdffiles1/nij/grants/248650.pdf > [perma.cc/5JWV-U777] [Tasca, *Prison Visitation*].

more than 100 miles from their residence.¹⁹ Most prisons are not accessible by public transportation, so families must drive long distances for parental visitation. And once there, many prisons have a punitive process that visitors, including children, must endure to see their incarcerated loved ones. The outside of the prison is often surrounded by tall gates covered with barbed wire and watch towers, depending on the security level of the prison facility.

Admission into the prison can be a laborious process; nearly all prisons require visitors, including children, to provide identification such as birth certificates and photo ID to be an approved visitor. Some facilities only allow parents or guardians to bring children to visit, which is problematic when a child's only parent is the person that they are trying to visit in prison. Once admitted, nearly all prisons have invasive search procedures, requiring the child to remove their shoes, belts, and coats, walk through a metal detector, and possibly be patted down by a guard. Most prisons have strict dress codes and will not allow entry if the codes are not obeyed, meaning some families may travel many hours to see a loved one, only to be turned away for wearing the wrong clothing. Jamie recalls her daughter having to drive to the nearest store to buy new pants after she was turned away from a visit in Arizona for wearing jeans with holes in them.

B. Visit Environment

The environment in which the visitation takes place is a key factor for how the child will react to visiting a parent in prison. Once the child finally arrives at the visitation room, the room itself can cause distress. Many visitation rooms are windowless, echoing, concrete rooms with tables, vending machines, and posted guards who monitor physical contact between the inmate and child. All of the inmates in a given prison often have visitation at the same time, so the rooms can be crowded and noisy. Some facilities do not allow "contact visits" so children must speak to their parent through a telephone separated by a glass wall.

Needless to say, the setting of most prison visitation rooms is not ideal for maintaining or rekindling a healthy parent-child bond. 69% of children were reported to have negative emotional reactions to visiting their incarcerated parents by caregivers.²⁰ For the 31% of children who had a positive reaction to visiting their parent, most visited at minimum security

¹⁹ Rutgers, "Fact Sheet", *supra* note 4 at 2.

²⁰ Tasca, *Prison Visitation*, *supra* note 18 at 106.

facilities that had more family-sensitive rooms and protocols.²¹ One of the persistent themes was that “food visits”, or visits where family was permitted to bring food and eat with the inmate, were strongly associated with positive reactions from the visiting child.

C. Parent-Child Bond

Expectedly, children who have strained or limited parental relationships exhibit more negative responses to visiting their parent in prison than children who have good relationships with their incarcerated parent.²² Many incarcerated parents have mental health and/or chemical dependency issues that damaged their relationship with their child prior to their incarceration. These situations, where the parent-child bond is lacking prior to incarceration, result in more behaviors from children after visits, including anxiety, crying, tantrums, and behavioral regression.²³

Jamie believes that it is crucial for children to maintain contact with their incarcerated parent – both for the parent’s and the child’s well-being. Jamie was permitted in-person visitation with her daughter from 8-3 on Saturdays, Sundays, and some holidays. This occurred after she was transferred to a minimum-security federal prison in Phoenix, Arizona, after serving nearly one year at Waseca. Interestingly, Jamie was allowed to take a greyhound bus from Minnesota to Arizona for her transfer on a furlough status.

Jamie agreed with what is reflected in the literature – that the method used to welcome (or not welcome) visitors at the prison made a huge difference in how children react to visiting their incarcerated parent: “The visitation system at the camp was great for the people coming in because they were not treated like inmates, they were treated like family members.... We were able to hug, kiss, hold hands.”²⁴

Jamie’s visitation room was one big room, and she was allowed to hug and kiss her daughter and spend the entire time with her if possible. Other inmates visited their family at the same time in the room, and guards were posted inside and outside the visitation area. There were not any activities or games to play with the children, so younger children often became bored

²¹ *Ibid* at 108–09.

²² *Ibid.*

²³ *Ibid* at 115.

²⁴ Interview of Jamie, *supra* note 17, 17:00-17:30.

quickly during visits. Not Sophie though. Jamie said Sophie would sit with her as long as she allowed and would get upset when it was time to leave.

In Montana, the Montana Women's Prison has Kid's Day one Saturday per month, when parents who are participating in the Prison's parenting program can have supervised visitation with their children to promote child-bonding and reunification efforts.²⁵ However, all children must be brought to the prison by a parent or guardian according to the Prison's policy manual. As such, it is unclear how children who are in foster care or living with other relatives are permitted to visit.²⁶ The parent is required to provide a copy of the child's birth certificate and proof of guardianship prior to any visits as well.²⁷

D. Parenting in Prison

Interestingly, Canadian facilities permit young children to remain with their mothers in provincial prisons, where women who receive sentences of less than two years reside.²⁸ Children under the age of four can stay with their mothers in federal prisons in Canada, but the mother-baby program permitting this is rarely used.²⁹ In 2007, a woman named Lisa Whitford gave birth to a child while awaiting trial for manslaughter in Canada. Lisa was an Indigenous woman who was a victim of domestic violence and suffered from substance abuse issues.³⁰ Lisa was sentenced to a four-year prison term and, through zealous advocacy by her counsel, was able to utilize the mother-baby program and bring her child with her to federal prison in Vancouver.³¹ The United States has no such law permitting children to remain with their mothers in prison.

²⁵ Montana Department of Corrections, *Montana Women's Prison Recovery & Re-entry Program* (last visited 15 January 2020), online: <cor.mt.gov/Adult/MWP#rr> [perma.cc/6KEQ-MYGP].

²⁶ Montana Department of Corrections, Montana Women's Prison, *Visitor Information Pamphlet* (last visited 20 January 2020), online: <cor.mt.gov/Portals/104/MWP/MWPVisitation%20Pamphlet%203-24-15.pdf> [perma.cc/7JS9-33RR].

²⁷ *Ibid.*

²⁸ Rebecca Johnson, "Mothers, Babies and Jail" (2008) 8:1 U Md LJ Race, Religion, Gender & Class 47 at 51

²⁹ *Ibid.*

³⁰ *Ibid* at 49.

³¹ *Ibid* at 51.

E. Phone and Video Contact with Children

Jamie was permitted 300 minutes of phone time per month while in prison, or about ten minutes per day. She paid \$3.00 for every 15 minutes of phone time and could only make calls at certain times. To use her full phone time, she had to pay \$60.00 per month. While that may sound like a reasonable amount, consider what Jamie was paid for the various jobs that she held while in prison: \$35/month for doing labour-intensive concrete work or \$30/month for sorting recycling. Thus, Jamie's entire monthly salary paid about half of what her monthly phone bill would cost.

Consider also that inmates must pay for everything apart from the most basic of necessities with their own money, including, until recently, feminine hygiene products. It was not until August 2017 that a federal law was passed in the United States requiring the BOP to provide women with feminine hygiene products while incarcerated.³² So, many inmates have had to choose between speaking to their children or having products necessary for basic human health and dignity. Those unfortunate women who do not receive financial support from outside the prison cannot even earn enough to use their full phone time.

The only contact Lindsey had with her son while she was incarcerated was weekly phone calls and letters. She did not speak to her son for ten months after she was taken into custody because his father refused her calls. She had to go through her attorney and get a court order requiring his father to allow her to speak with Robbie. She wrote him weekly and sent the letters to Child and Family Services, who was supposed to provide the letters to Robbie after reviewing them. She found out after her release that Robbie never received any of her letters.

Similar to Jamie, Lindsey's phone calls cost about \$3.00 per 15 minutes, so two phone calls used up her entire month's paycheck. Lindsey was paid \$5.25 per month for her work as a carpenter. Allowing free calls to family members would go a long way toward helping inmates maintain family connections, Lindsey says. Many of Lindsey's fellow inmates had no one helping them financially, and they felt hopeless and had a hard time engaging in the rehabilitation programs because it all felt pointless when no one on the outside cared about them. This was particularly true for women who lost their parental rights.

³² US, Bill S 1524, *Dignity for Incarcerated Women's Act of 2017*, 115th Cong, 2017.

Both Lindsey and Jamie reported that video or Skype calls were allowed at their prisons, but the setup process was too onerous for their families to be able to use it. The child or guardian is required to set up a Skype account and follow the prison's protocols for video calls, and neither Jamie nor Lindsey were able to have video contact with their children. All of the women and children interviewed believed that video calls would help maintain the parent-child connection better than telephone calls, and they hoped that the prisons would find a way to make the process more user-friendly.

IV. RE-ENTRY AND REUNIFICATION WITH CHILDREN

Jamie was set to get out of prison in January 2019 and enter a halfway house in Phoenix for six to nine months. The halfway house was designed to help Jamie reintegrate into society by helping her find employment, housing, and reestablish visitation with Sophie. That release did not happen though. Jamie explained that her release paperwork was misplaced somewhere along the chain of command within the Bureau of Prisons, and when it was redone and set to be processed, the U.S. government shut down. This led to lengthy delays during which time Jamie got into a verbal altercation with another inmate, and she was sent to FCI Dublin in California.

At Dublin, Jamie had no family nearby and no way to look for housing or employment prior to her release, which would occur in Arizona. Jamie was finally released to a halfway house in May 2019, and she was at the halfway house for two weeks before finishing her time on house arrest. Jamie did not receive any assistance with finding employment or housing during this time and did not receive any help toward reunifying with Sophie.

Lindsey was released from FPC Alderson in West Virginia on July 9, 2018 and took a 76-hour bus ride back to Great Falls, Montana. She lived at the Great Falls Prerelease for four months upon her release. During that time, she got a job at Great Harvest Bread Company, did aftercare chemical dependency treatment, and found housing. Lindsey did not have as difficult a time finding housing or employment as she anticipated. She attributed this to the low unemployment rate and willingness of the people in Great Falls to give people with criminal records a chance, as well as the tax breaks businesses can receive for employing felons.

Lindsey believes that maintaining custody of her son and the RDAP program are two primary reasons for her success. The other key to her successful reentry was that she did not return to her hometown of Butte, Montana upon her release. Lindsey lived in Butte for most of her life, and she was released to the Great Falls Prerelease, where she stayed for four months. Nearly all of the other inmates Lindsey knows who returned to their hometown upon release have relapsed and ended up back in prison. Federal felons are almost always placed on supervised release after release from prison, and they must follow strict rules governed by a federal probation officer for many years in order to stay out of prison.

Lindsey thinks making a fresh start in a new city is critical to staying clean and out of prison: “People, places, and things. Do not go back to them because you will not make it. There is a 99% chance that you will not make it out. And that’s scary. That is scary. A lot of the women I graduated RDAP with are back in prison because they went home. Because they went home.”³³

Lindsey was apprehensive about leaving the Prerelease and half-jokingly told people she was not ready to leave after four months. She left, though, and her son Robbie came to live with her. She is still working at Great Harvest Bread Company one year later and is happier than she has been in a long time: “It has to do with myself and Robbie and the boys (her two older children). I’m more focused on that, and I’m happy now. Whereas, before, I was not happy because I was using (methamphetamine) every day. And now, I’m happy and I have a good life. I know what it’s like to be sober.”

V. CHILDREN’S PERSPECTIVE

Sophie, Jamie’s daughter, provided her perspective on visiting her mother at the prison. Her grandfather typically brought her to the prison for visits, and she recalled having to fill out a form, leave her wallet and keys outside, and go through a screening process before entry. Sophie loved visiting Jamie and said that “visits made me happier but it was hard to say goodbye.” She was allowed to do phone calls with Jamie as well, but said that the cost was prohibitive and made it hard to stay in contact with her mom as much as she would have liked. Sophie said she would have stayed

³³ Interview of Lindsey (1-6-20) 21:30-21:53.

the night at the prison with her mom if that was an option: “anything to be with my mom.”

Sophie has struggled with substance use and disciplinary issues during her mother’s absence. Approximately 30% of children whose parents are incarcerated end up in prison themselves, and Jamie is desperate to break the cycle with Sophie. Jamie is working on getting custody of Sophie, but she has been struggling to maintain her sobriety and attended an inpatient treatment program for 30 days as part of her supervised release program. Despite these struggles, Jamie remains hopeful: “I’m the most hopeful person you’ll ever meet. I know that things are going to get better. But I have to put in the work.”

Lindsey’s son was never able to visit her while she was in prison. Before she was sentenced, his father refused to bring him to the jail to see Lindsey. After Lindsey was placed in West Virginia, the trip across the country was not feasible. Robbie enjoyed talking to his mom on the phone, but often felt abandoned when weeks would go by without a phone call. Robbie did not realize that his father was screening calls from Lindsey and he never received the letters she wrote him. Robbie and Lindsey were both very emotional when they were finally reunited at the bus terminal in Montana after over two years. “It was emotional. He cried, I cried, his dad cried, his dad’s friend cried.”³⁴ Lindsey’s son is still living with her in Great Falls, and their bond remains strong despite the two-year break in contact.

VI. REDUCING THE IMPACT OF INCARCERATION

Jamie and Lindsey both agreed that reducing the price of phone calls or allowing free calls for immediate family would help maintain the parent-child relationship while parents are incarcerated. Simplifying the process for video calls was another recommendation for improved relationships. Treating visitors like family rather than inmates goes a long way toward allowing children to relax and enjoy their visit as well. Prisons can ensure security with metal detectors while still allowing children to bring gifts, toys, or food to visits to help normalize the environment.

Making the visitation room comfortable, allowing for some level of privacy, contact visits, and allowing the parents and children to share food are all other ways to make visits less stressful on children. Placing parents in prisons or facilities close to home is one of the crucial steps to allowing for

³⁴ *Ibid.*, 19:15-19:25.

visitation to occur in the first place. This is simply not feasible in many federal cases, however. There are no federal prisons in Montana, or many other states, so it is impossible to keep federal inmates close to home in many cases. These are all considerations courts, legislators, and voters need to keep in mind when making policy decisions on criminal justice issues and including the children of incarcerated people needs to be part of the analysis.

Eliminating the law-presuming termination of parental rights if children are in foster care for 15/22 months would be another step toward maintaining the integrity of families. Proponents of the law cite to the importance of permanency for children. However, many children are removed because of their parent's drug use and incarceration for drug crimes. The time it takes for the parent's criminal case to be processed and for the parent to successfully complete a treatment program is frequently longer than 15 months. Thus, many parents successfully complete drug treatment only to have permanently lost their children upon their release. While permanency for children is important, 15 months simply is not long enough for many parents to get the help they need to successfully parent.

These are all thoughtful suggestions worthy of attention and action. Perhaps, though, we should first ask the question of whether all of these people need to go prison in the first place. Is it possible as a society to go back to the days where prison is used as a last resort for only the most violent and irredeemable among us? Or must we continue to use prisons as a housing place for the mentally ill and chemically dependent?

VII. POSSIBLE ALTERNATIVES TO INCARCERATION

The Sentencing Project sets forth several potential methods for reducing incarceration for non-violent offenders:

- Eliminating mandatory minimum sentences and cutting back on excessively lengthy sentences by setting a maximum length for non-violent offenses.
- Shifting resources to community-based prevention and treatment for substance abuse.
- Investing in interventions that promote strong youth development and respond to delinquency in age-appropriate and evidence-based ways.
- Examining and addressing the policies and practices, conscious or not, that contribute to racial inequity at every stage of the justice system.

- Removing barriers that make it harder for individuals with criminal records to turn their lives around, including eliminating the box requiring felon-status notification on housing and employment applications.³⁵

Many states, including Montana, and Canadian provinces are slowly implementing these methods in an attempt to reduce incarceration rates. The impetus for the reduction is often based on budget issues rather than more humanitarian notions, but the effect is the same. The federal government in the United States, however, is moving in the opposite direction of late and more and more non-violent drug offenders are being sentenced to ten-year mandatory minimum sentences. Jamie and Lindsey could easily have received mandatory minimum sentences if not for a couple lucky breaks. Courts, legislators, prison officials, and voters should keep in mind children like Sophie and Robbie when deciding how best to deal with drug-addicted, non-violent offenders. While drug abuse is certainly a huge societal concern, locking away addicts for years does not appear to be solving the problem. Instead, it is costing society billions of dollars and tearing apart families in often irreparable ways. Investment of those dollars in treatment facilities and treatment courts would go a long way toward keeping families together and hopefully breaking the cycle of incarceration.

³⁵ The Sentencing Project, "Facts", *supra* note 1.