

IN-PRISON DAY CARE: A CORRECTIONAL ALTERNATIVE FOR WOMEN OFFENDERS

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INTRODUCTION

For the hand that rocks the cradle
is the hand that rules the world.¹

What is a society to do when the hand that is supposed to rock the cradle is instead handcuffed? Should we, as a society, pretend as if there is no cradle to rock, and lock her up as we would any other criminal? Surely, we cannot turn away from her criminal activities just because she has a child to care for, lest the foundations of our society quiver at the thought of letting a criminal go free. This Note explores the option of allowing mother-offenders to care for their children, albeit with cuffed hands.

Women with children hold a unique place within society. Traditionally, women have been, and continue to be, the prime caretakers for their children. The incarceration of mothers, therefore, raises many critical legal and social issues for the women themselves, their children, and for the rest of the society. In Part I, I describe and analyze the current demographics of incarcerated women, and the rippling effect that results from incarcerating women who have been prime caretakers of their children. I then explore whether the traditional mode of incarceration accomplishes its goals with respect to women prisoners.

Part II addresses the costs and benefits of reuniting women prisoners with their children as a part of an alternative correctional method. More specifically, this Note focuses on two distinct types of alternative correctional methods: (1) in-prison nursery programs; and (2) community based correctional facilities.

Finally, in Part III, I suggest a hybrid of the prison nursery and the community based correctional facility – in effect, a “reversed day care program” – as a form of an alternative correctional

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¹ William Stewart Ross, *The Hand that Rocks the Cradle*, in *THE OXFORD BOOK OF ENGLISH VERSE* 105 (Christopher B. Ricks ed. 1999).

method. This Note concludes that, while it may be difficult to amass the necessary political support for "reversed day care" for women offenders, it may be the most progressive and cost effective alternative correctional method for women prisoners.

PART I. WOMEN IN PRISON

A. *Demographics of Incarcerated Women*

Historically, women have comprised the minority of both state and federal prison populations. Traditionally, most crimes, especially violent crimes, were committed by men rather than women. In the past, most women took on domestic caretaker roles, and as such, much of their social interactions were limited to matters concerning or revolving around their family. Consequently, women interacted with fewer people and less frequently than men, which contributed to their relative criminal dormancy.

Until recently, women dominated only a few crimes, such as prostitution, abortion (when illegal), and infanticide.² As a consequence, the number of women in prison was substantially lower than that of men. Contemporary years have witnessed, however, a sharp increase in the number of incarcerated women offenders in prisons. Between 1980 and 1995, the number of incarcerated women increased by 185%.³ "The past decade has witnessed a vast increase in the number of women under correctional supervision, from 405,500 in 1985 to 828,000 in 1995.⁴ This increase of 104% far outpaced the corresponding increase of 74%"⁵ in the number of men under correctional supervision. Currently, women represent 5.8% of the total state and federal prison population, 7.9% of all federal prison inmates, 5.6% of state prison inmates, and 11% of jail inmates.⁶

Changes in the patterns of women's criminality and the increase in the number of incarcerated women can be explained by the change in gender roles and modern day feminism. Although a comparatively larger segment of women still take on the domestic

² LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 223, 229 (1993).

³ *Alternative Sanctions for Female Offenders*, 111 HARV. L. REV. 1921, 1927 (1998) (citing BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS* 502, tbl. 6.2 (1996)). Hereinafter "BJS." An "incarcerated population" refers to persons jailed or imprisoned in federal or state prisons. Incarcerated persons, therefore, does not include former prisoners on parole or probation. Persons on probation or parole and current inmates in jails and prisons are collectively referred to as being under correctional supervision.

⁴ *Id.* at 1927.

⁵ *Id.* at 1925.

⁶ *Id.*

caretaker roles than men do, modern day feminism has drastically transformed the social, gender, and power structure. Women's roles have diversified, and while women still remain the default caretakers of family units, they are no longer socially restricted as they were in the past. Women have become socially, politically, and economically active members in society. These expanded social interactions have led to more frequent conflicts and crimes.⁷ As a result, modern day women commit more serious crimes more often than in the past.⁸

In addition to the change in gender roles, the rise in women's incarceration rates can be explained by the changes in criminal justice policy. It is suggested that the surge in the female incarceration rate is a result of mandatory sentencing for crimes involving drugs and stricter federal sentencing guidelines.⁹ "Determinative sentencing under the U.S. Sentencing Guidelines was supposed to eliminate disparate treatment of offenders. The guidelines mandate neutrality with respect to sex and discourage consideration of family ties and responsibilities."¹⁰ These two elements limit the sentencing discretion of judges, and as a result women are being incarcerated now where other forms of non-incarcerative methods were previously implemented.¹¹ In particular, mandatory imprisonment of nonviolent/drug offenders constitute much of the explosion in women's incarceration rates. "In 1986, one in eight women in [state] prison was serving a sentence primarily for a drug offense; five years later, the ratio had grown to nearly one in three. Over five times as many women were incarcerated for drug offenses in 1991 as in 1986."¹² In federal prisons, approximately 64% of the women were serving sentences for drug offenses.¹³

The overall surge in the number of incarcerated women and the relatively shorter incarceration term¹⁴ means that greater number of female prisoners will reintegrate into society and into their families in a much shorter time than their male counterparts.

⁷ FRED A ADLER, *SISTERS IN CRIME* 13-17 (1975).

⁸ *Id.*

⁹ MEDA CHESNEY-LIND & JOYCELYN M. POLLOCK, *Women's Prisons: Equality with a Vengeance*, in *WOMEN, LAW, AND SOCIAL CONTROL* 160 (Alida V. Merlo & Joycelyn M. Pollock Eds. 1995). Clarice Feinman attributes the surge in women incarceration rates to the mandatory sentencing for second felony conviction, and to the strong stance on crimes involving drugs. See CLARICE FEINMAN, *WOMEN IN THE CRIMINAL JUSTICE SYSTEM* 23 (1994).

¹⁰ John C. Coughenour, 8 *FED. SENTENCING R.* 142.

¹¹ See *Alternative Sanctions for Female Offenders*, *supra* note 3, at 1928. See also CHESNEY-LIND & POLLOCK, *supra* note 9, at 160.

¹² *Alternative Sanctions for Female Offenders*, *supra* note 3, at 1928.

¹³ Coughenour, *supra* note 10.

¹⁴ The average incarceration term for women is thirty-nine months. See Claudia Glenn Dowling, *Women and Children Behind Bars*, *LIFE MAG.*, Oct. 1997, at 76, 84.

Also, considering their roles as primary caretakers, the incarceration and reintegration of female prisoners have great side effects on both family and the children. It is, therefore, critical for women prisoners to have a successful reintegration system; this necessarily means that the familial issues concerning women prisoners must be appropriately considered.

B. *Profile of an Average Incarcerated Woman*

Approximately 50% of women incarcerated in state prisons are between the age of twenty-five and thirty-four.¹⁵ The average incarcerated woman in state prison is thirty-one years old.¹⁶ She is incarcerated primarily due to property and drug-related crimes,¹⁷ and she is either a racial or an ethnic minority who comes from an urban background.¹⁸ Like most other women in state prisons, she is a mother.¹⁹

Women in state and federal prisons are mothers to more than 167,000 children.²⁰ In state prisons alone, an estimated 25,700 women have more than 56,000 minor children.²¹ Two-thirds of female prisoners in state prisons have at least one child younger than the age of eighteen.²² An efficient and progressive prison system is important for women prisoners, their children, and society in general. The effect of imprisonment on women is deep and far-reaching. Most incarcerated women are mothers. It is accepted that a staggering 81% of more than 830,000 women incarcerated in state and federal prisons are mothers.²³ Incarcerating women has a heavy impact on their families, especially on their children, for whom these women have been the prime, if not the sole, caretakers. Thus, when most mothers are incarcerated, their families and children are subject to considerable social and economic upheaval.

Admittedly, economic and social hardships are not unique to the families of incarcerated mothers. Obviously, incarcerating fa-

¹⁵ TRACY L. SNELL, U.S. DEP'T OF JUSTICE, WOMEN IN PRISON: SURVEY OF STATE PRISON INMATES 2, tbl. 1 (1994).

¹⁶ *Id.*

¹⁷ FEINMAN, *supra* note 9, at 45-46. See also SNELL, *supra* note 15, at 1. As of 1991, one out of three women inmates in state prisons were serving sentences for drug offenses. Approximately three out of ten women were incarcerated for violent offenses. Of those women incarcerated for violent crimes, 31.9% of the women were serving sentences for killing their intimate partners. *Id.* at 3.

¹⁸ SNELL, *supra* note 15, at 2 tbl. 1.

¹⁹ Donna K. Metzler, *Neglected by the System: Children of Incarcerated Mothers*, 82 ILL. B.J. 428, 429 (1994).

²⁰ *Id.*

²¹ SNELL, *supra* note 15, at 2, tbl. 1.

²² *Id.*

²³ Metzler, *supra* note 19, at 429.

thers also inflicts economical and emotional hardships on family members.²⁴ Fathers' incarceration can lead to the disintegration of their families due to separation from their partner and estrangement from children.²⁵ Aside from the emotional hardships their children must inevitably experience, the incarceration of fathers has a significant impact on the economic status of the family unit.²⁶ In most cases, men draw a greater portion of the family income.²⁷ Therefore, when fathers are incarcerated, the families must make do with substantially less income.

Supposedly, families suffer a greater economic hardship when fathers are incarcerated rather than mothers since the incarceration of fathers leaves behind a greater income deficit than the incarceration of mothers. Arguably, when mothers are incarcerated, families at least continue to have the substantial economic support of the fathers. When fathers are incarcerated, their families must experience a substantial shift in their economic status due to the sudden cessation of a majority of the family income.

However, when fathers are incarcerated, the children still have another parent to take care of them, namely their mother.²⁸ "[M]ost children continue to live with their mothers during the period of [the father's] incarceration."²⁹ In other words, notwithstanding the change in economic status, the children are left with a parent who has been their primary caretaker. Thus, while the incarceration of fathers may have a considerable financial impact on the children, the children's well-being may still be guarded or cushioned against the impact by the mothers who stay behind with the children.

Unfortunately, the reverse is not true when mothers are incarcerated. Statistics show that an overwhelming 70% of female prisoners in state and federal prisons are single parents³⁰ compared to 18% of their male counterparts. And over 75% of women inmates in state prisons are either unmarried, divorced or separated.³¹

²⁴ Elise Zealand, *Protecting the Ties that Bind from Behind Bars: A Call for Equal Opportunities for Incarcerated Fathers and Their Children to Maintain the Parent-Child Relationship*, 31 COLUM. J.L. & SOC. PROBS. 247, 247-249 (1998).

²⁵ *Id.* at 260.

²⁶ Sixty-eight and half percent of male inmates in state prisons stated that they were employed before incarceration, compared to the 46.7% of the female inmates. Of the 68.5%, 56.5% of the men were working full time, compared to 35.7 % of their female counter parts. Clearly, more men than women worked, and even when both worked, men drew greater income due to greater employment hours. SNELL, *supra* note 15, at 2, tbl. 1.

²⁷ *Id.*

²⁸ Zealand, *supra* note 24, at 261.

²⁹ *Id.* See also SNELL, *supra* note 15, at 6, tbl. 9.

³⁰ Metzler, *supra* note 19, at 429.

³¹ SNELL, *supra* note 15, at 2, tbl. 1.

Most of these women lived with their children prior to incarceration.³² This means that while most fathers in prison raised their children with the children's mothers prior to incarceration, most mothers in prison raised their children alone. Therefore, when mothers are incarcerated, most of their children are left without parental guardianship.³³

Foremost, because most incarcerated women are single parents, the incarceration of mothers usually destroys what remains of the nuclear family unit. Statistics show that only 25% of women reported that their children were living with their fathers.³⁴ While 25% of the women prisoners reported that their children were living with the other parent, i.e. the children's fathers, nearly 90% of the men said that their children were living with the other parent, i.e. the children's mothers.³⁵ The statistics also show that without another parent, families lose the only source of income that has been maintaining the family, and the children must often be left to the care of extended family members or to the state.³⁶

From incarcerated mothers' perspective, the hand of justice not only isolates them from society, but it effectively destroys their family unit and takes away their right to motherhood. While all incarcerated inmates may have visitors, women inmates face a unique problem that prevents them from maintaining active contact with their children. The single most important factor contributing to the hardship for women inmates is the great distance placed between inmates and their children. Statistics show that more than two thirds of women in federal prisons are placed over 500 miles from their home.³⁷ Although most of the women in state prisons are from urban areas, most state prisons are located in rural parts of the state. Such great distance makes it difficult for family, especially children, to visit. The distance between prisons and the families severely disrupts incarcerated women's ability to maintain their status as primary caretakers for their children or to resume such responsibilities upon release.

Clearly, a progressive prison system for women is important because they have held the unique social position as primary care-

³² *Id.* at 6, tbl. 9.

³³ *Id.* at 2, tbl. 1.

³⁴ *Id.* at 6, tbl. 9.

³⁵ *Id.*

³⁶ *Id.* Fifty percent of the women reported that their children were living with grandparents, 20% reported that the children were living with other relatives, and nearly 10% of the women reported that their children were in foster homes, agencies, or other institutions.

³⁷ Coughenour, *supra* note 10, at 142.

takers, and in recent history as single parents. Incarcerating women with children, therefore, presents many difficult and complex questions not necessarily faced when incarcerating men. Currently, these difficult questions are all but ignored, and thus women prisoners are paying greater prices for their crime than their male counterparts.

C. *When "Prime Caretakers" are Sentenced to Prison*

Women are often the primary caretakers of their children.³⁸ The average incarcerated woman has a child or children for whom she was primary caretaker before she was incarcerated.³⁹ Most children lived with their mothers prior to the mother's imprisonment.⁴⁰ Thus, while the incarceration of fathers leaves children in the care of their mothers, incarceration of mothers often results in the children being placed in the care of relatives or the state foster care system.⁴¹ The incarceration of mothers, therefore, presents unique and harsh effects on women as mothers, on their children, and on the family unit as a whole.

The foremost detrimental effect of incarceration is that it effectively severs familial ties between mothers and their children. Incarceration physically separates mothers from their children by eliminating the mothers' presence from their respective homes. Indeed, the same is true when fathers are incarcerated; fathers are also detached from their children and their homes as a consequence of incarceration. However, for women inmates with children, the distant location of prisons adds to the effective severance of familial ties.

While most women in prison are from urban surroundings, women's prisons are most often located in rural areas.⁴² For example, there are only thirteen federal women institutions in the United States, and they are spread across the country.⁴³ There are three facilities in California, two each in Arizona and Florida, and

³⁸ See SNELL, *supra* note 15, at 6, tbl. 9.

³⁹ LAWRENCE A. GREENFELD & STEPHANIE MINOR-HARPER, U.S. DEP'T OF JUSTICE, WOMEN IN PRISON 6 (1991).

⁴⁰ SNELL, *supra* note 15.

⁴¹ *Id.*

⁴² Correctional facilities for women were originally built in rural areas because women reformers believed that women criminals could be saved if they were removed from the corrupting influences of inner cities and men. Prisons were, therefore, built in rural areas where the prison regimen was designed to instill a sense of decency and home life. Women's prisons were usually small, with an average of approximately 250 inmates. The prison structure consisted of small cottages within walking distance of the dining room and other common facilities. The inmates often had their own rooms, not cells, and many of them were accompanied by their children. See FEINMAN, *supra* note 9, at 54-55.

⁴³ *Id.* at 56.

one each in Connecticut, New York City, Chicago, Kentucky, Texas, and West Virginia.⁴⁴ One of the most common problems deriving from the sparse number of women's institutions is that incarcerated women do not receive any regular visitors.⁴⁵ The distance, the lack of adequate public transportation, and the considerable cost of travel presents significant barriers for visitors, and thus women often do not receive any regular visits from their children and other members of their family or friends.⁴⁶ "Even phone calls are very expensive. As a result, it is difficult for the women inmates to keep close ties with her children and family, her friends, and even her lawyer."⁴⁷

The physical effects of separation caused by incarceration are severe for mothers, as well as for their children. Mothers commonly suffer from separation anxiety and concern for their children.⁴⁸ In a society where the primary caregiver is the mother, her absence is a severe blow to the children's development.⁴⁹ "Where there are changes of parent figure or other hurtful interruptions, the child's vulnerability and the fragility of the relationship becomes evident. The child regresses along the whole line of his affections, skills, achievements, and social adaptation."⁵⁰ Continuity of relationships, especially the mother-child relationship, are essential for a child's normal development during different life stages.⁵¹

Change of the care-taking person for infants and toddlers further affects the course of their emotional development. Their attachments, at these ages, are as thoroughly upset by separations as they are effectively promoted by the constant, uninterrupted presence and attention of a familiar adult. When infants and young children find themselves abandoned by the parent, they not only suffer separation distress and anxiety but also set-

⁴⁴ *Id.*

⁴⁵ *Id.* See also SNELL, *supra* note 15, at 7, tbl. 10.

⁴⁶ FEINMAN, *supra* note 9, at 56. See also FEINMAN, *supra* note 9, at 57 (citing Phyllis Jo Baunach, *Mothering from Behind Prison Walls*, a paper presented at the 1979 annual meeting of the American Society of Criminology, stating that because of the distance and often a lack of transportation between the institution and the family home, visits were infrequent, with 55.2% of the women receiving only one visit a month or none at all).

⁴⁷ *Id.* at 56.

⁴⁸ JOSEPH GOLDSTEIN ET AL., *BEYOND THE BEST INTERESTS OF THE CHILD* 57 (1973).

⁴⁹ While incarceration of any one of the parents is traumatic for the child, incarceration of a father creates a lesser upheaval in the child's life. If a father is incarcerated, it is likely that the mother will remain the child's primary caregiver. Consequently, the child will experience less upheaval in his continued relationship with his/her primary caregiver. Economically, however, the loss of a father's income may heavily impact the family's living standards. Justin Brooks & Kimberly Bahna, *It's a Family Affair - The Incarceration of the American Family: Confronting Legal and Social Issues*, 28 U.S.F. L. REV. 271, 279 (Winter 1994).

⁵⁰ GOLDSTEIN ET AL., *supra* note 48, at 18.

⁵¹ *Id.* at 32-34.

backs in the quality of their next attachments, which will be less trustful. Where continuity of such relationships is interrupted more than once, as happens due to multiple placements in the early years, the children's emotional attachments become increasingly shallow and indiscriminate. They tend to grow up as persons who lack warmth in their contacts with fellow being.⁵²

Young children under the age of five years suffer injury to their social training: they are known to have breakdowns in toilet training and communication skills after separation from their mothers.⁵³ The effects of this discontinuity of parental relationships with children are most apparent among school age children who develop feelings of abandonment and resentment.⁵⁴ Children develop resentment toward adults who have disappointed them in the past, and so they adopt the attitude of not caring for anybody else.⁵⁵ Many school age children whose relationships with their parents have been disrupted or severed develop disruptive, delinquent, and/or social behavioral problems.⁵⁶

Notwithstanding such detrimental effects of separation, maintaining parental ties is difficult for women offenders. Because the children are often left to the care of the mother's relatives or in the state's foster care system,⁵⁷ incarcerated women are dependent on others to make familial contact possible. The lack of constant or regular visits from children can be explained by the fact that personal visits are only possible if relatives or foster parents invest considerable cost and time.⁵⁸ The problem of maintaining parental ties is further aggravated for women in federal institutions as opposed to state facilities. While there is at least one state prison facility for women in each state,⁵⁹ there are only thirteen federal women institutions in the entire United States: three in California, two in Arizona, two in Florida, and one each in Connecticut, New York, Chicago, Kentucky, Texas, and West Virginia.⁶⁰ For women inmates whose children live in different states, maintaining per-

⁵² *Id.* at 32-33.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 34.

⁵⁶ *Id.*

⁵⁷ See SNELL, *supra* note 15.

⁵⁸ The issues relating to women in prison have traditionally been left out of the lime-light, and as a result, there is considerable lack of statistical data available. While the recent studies have stated that the infrequent visits are due to the distance and the lack of transportation options available, no in depth research has been made into the issue as of date.

⁵⁹ There are 277 state prisons nationwide where women are incarcerated. See SNELL, *supra* note 15, at 2.

⁶⁰ FEINMAN, *supra* note 9, at 56.

sonal contact with their children and family is a difficult endeavor indeed.

D. *Traditional Objectives of Punishment and Incarceration*

The four major goals of the correctional system are incapacitation,⁶¹ retribution,⁶² deterrence,⁶³ and rehabilitation.⁶⁴ "Imprisonment is the primary means our society has chosen to serve these goals."⁶⁵ Since imprisonment necessarily separates inmates from their families, we must consider whether familial separation, as presently maintained, is consistent with the intended goals of incarceration. If the present state of family separation due to imprisonment is inconsistent with the intended goals of incarceration, then the legislature must admit that the present format of incarceration defeats the very purposes for which imprisonment was designed. The analysis of the relationship between familial separation and the traditional objectives of incarceration is especially important for women prisoners since incarceration presents unique problems for women inmates and their children.

1. Incapacitation

The primary goal of incapacitation is to take criminals away from the environment, i.e. general society, where they can commit further crimes. The basic goal of incapacitation, therefore, is to prevent criminals from committing further criminal acts. Indeed, an inmate may still commit crime during imprisonment, but through incarceration, the inmate is incapacitated from committing criminal acts against the general public that he or she would be able to commit otherwise. For example, while an inmate may still be able to commit murder against another inmate, ideally he or she is incapacitated from committing kidnapping or counterfeiting.

If the primary goal of incapacitation is to prevent further criminal acts, then familial separation fulfills the goal of incapacitation only when crimes have been committed against family members.⁶⁶ Therefore, in an attempt to separate criminals from non-criminals,

⁶¹ See Jacqueline Cohen, *Incapacitating Criminals: Recent Research Findings*, in BRIEF 1 (U.S. Nat'l Dep't of Justice, National Institute of Justice ed., 1984).

⁶² See generally IMMANUEL KANT, *THE PHILOSOPHY OF LAW* (W. Hastie trans., 1974).

⁶³ See JEREMY BENTHAM, *Principles of Penal Law*, in J. BENTHAM'S WORKS 396, 402 (J. Browning ed., 1843).

⁶⁴ See Robert Blecker, *Heaven or Hell? Inside Lorton Central Prison: Experiences of Punishment Justified*, 42 STAN. L. REV. 1149, 1150 (1990).

⁶⁵ Brooks & Bahna, *supra* note 49, at 273.

⁶⁶ *Id.* at 273-274.

the criminals are also removed from their families.⁶⁷ If crimes have not been committed against family members, then incapacitation is no justification for separating mothers from their children.

Arguably, incarceration is a per se reason to find a parent unfit, and thereby incarceration justifies the separation of mothers from their children.⁶⁸ From a moral standpoint, one may conclude that a parent who violates the moral fiber of the general society would be unable to impress a decent and honorable character onto their children. Also, because an incarcerated parent is unable to attend to their children's everyday needs, incarcerated parents are often considered unfit to raise their children. In some jurisdictions, a parental rights may be legally terminated if the reason for imprisonment is adultery, child abuse, or non-support.⁶⁹ "In short, imprisonment can cause a mother to be considered an unfit parent, even though her questionable behavior is in the past and is not necessarily a predictor of future behavior."⁷⁰ Correctional authorities, therefore, encourage female inmates to relinquish their rights to their children.⁷¹

However, the incarcerated parents' inability to impress upon their children a decent and honorable character, if such inability exists, is not necessarily due to their incarcerated status or a lack of certain moral compass, but probably due to their own upbringing. Often, inmates who want to be good mothers just do not know how to be so. A predominant number of incarcerated women come from abusive and/or otherwise unstable family backgrounds where they themselves were abused or neglected as children.⁷² According

⁶⁷ *Id.*

⁶⁸ Prior to the enactment of Domestic Relations Law § 111(2)(d), effective as of January 1, 1984, social services deemed incarcerated parents unable to maintain contact with their children and thus precluded termination of parental rights. See Joseph R. Carrieri, *The Rights of Incarcerated Parents*, LAW J., Jan. 12, 1990.

⁶⁹ James D. Jorgensen, A.C.S.W., et al., *Addressing the Social Needs of Families of Prisoners: A Tool of Inmate Rehabilitation*, FED. PROBATION, Dec. 1986, at 47, 50.

⁷⁰ *Id.*

⁷¹ *Id.* Prior to 1984 the consent of an incarcerated parent was unnecessary for the adoption of an infant in New York. Until 1984, Domestic Relations Law § 111(2)(d) provided that the consent of parent was unnecessary if the parent was deprived of civil rights pursuant to the Civil Rights Law. In *In re Eric J.B.*, 92 A.D. 2d 917 (N.Y.S. 1983), the court stated that, in regard to the Domestic Relations Law § 111(2)(d), nothing in the Due Process Clause prohibits the termination of parental rights when a parent is unable or unwilling to care for the child and the adoption is in the child's best interest. As of January 1, 1984, Chapter 11 of the Laws of 1983, § 384-(b) of the Social Services Law amended § 111(2)(d) and based termination of parental rights upon abandonment. Chapter 11 repealed the no fault termination by requiring that parental rights of an incarcerated parent be terminated only upon evidence that the parent had clearly neglected or abandoned the child. See Carrieri, *supra* note 68.

⁷² See Kim S. Hirsch, *Babies Form a Vital Bond by Joining Mothers in Prison*, CHI. TRIB., Aug. 8, 1993.

to a study by the U.S. Department of Justice, over 75% of incarcerated women reported that they were abused as children; over 53% of the women inmates reported that they were abused by their parent or guardian, and over 22% reported that they were abused by other relatives.⁷³ It is difficult to imagine that an abused child would make a "good" parent when he or she becomes an adult. According to the same study, in many cases the abuse or neglect started early and continued onto their young adult lives. About 32% of the incarcerated women said that the abuse had occurred before they were eighteen years old, and 24% said that they were abused since the age of eighteen.⁷⁴ The statistics also show that a majority of the female inmates' parents or guardian had some sort of substance abuse problems that undoubtedly created a physically and psychologically unstable family environment. A third of the female inmates had a parent or guardian who abused drugs or alcohol while the inmate was growing up.⁷⁵ Thirty-two percent of the women inmates had a parent who abused alcohol.⁷⁶

According to Jean Harris, a former inmate who taught parenting classes to women inmates at the Bedford Hills, women inmates are often eager to learn to be good parents and value the activities they can do with their children.⁷⁷ "In reality, therefore, imprisonment and unfitness to be a parent are not mutually exclusive, and the right to assume or resume parenthood on the part of the mother needs to be protected fully as much as the child's right to protection."⁷⁸

2. Retribution

The goal of retribution is to punish those who transgress society's laws by inflicting punishment.⁷⁹ It is a goal apart from controlling the criminals and crimes. Incarceration fulfills the goal of retribution by taking away the criminal's freedom. Incarceration also fulfills the goal of retribution by separating the inmates from their families. In fact, the separation element of incarceration is probably its most punitive aspect.⁸⁰

Punishment of women inmates through incarceration, however, has two derivative effects. First, the inmates' families, particu-

⁷³ SNELL, *supra* note 15, at 5, tbl. 8.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Hirsch, *supra* note 72.

⁷⁸ Jorgensen, *supra* note 69, at 65.

⁷⁹ Brooks & Bahna, *supra* note 49, at 274.

⁸⁰ *Id.*

larly the children, also experience the punitive impact of incarceration. Especially in the case of a single parent, but also in cases where the children have both parents, the reduction or total loss of contact with the parent terminates the parent's functional role and threatens parent-child attachments.⁸¹ The incarceration of a family member also means that there will ordinarily be a sharp reduction in income.⁸² Consequently, the family may experience housing problems, a change in the standard of living, and difficulties with other daily necessities. The sudden incarceration of a mother and the lack of straightforward information about the parent's whereabouts usually promotes feelings of anxiety and abandonment in the child.⁸³ Second, because women are primary care givers in this society, women inmates experience this punitive impact in an exponentially greater degree than their male counterparts.⁸⁴

3. Deterrence

The goal of deterrence involves the idea that people can be deterred from committing crimes either by experiencing punishment or witnessing punishment.⁸⁵ Called either "specific deterrence" or "general deterrence," incarceration's main goal is to specifically deter criminals from committing further crimes.⁸⁶ The reasoning behind the theory of specific deterrence is that the punitive experiences of imprisoned life will trigger the deterrent effect.⁸⁷ Separation of women inmates from their children increases the punitive and/or retributive nature of incarceration.⁸⁸ Therefore, separating women and their children arguably furthers the goals of deterrence. One may reason that former inmates with children will be more specifically deterred because they would not want to be separated from their children again. Separation of mothers from their children may also further the goals of general deterrence by increasing the potential loss. More specifically, being incarcerated would mean not only losing freedom but also losing contact with their children.

⁸¹ Metzler, *supra* note 19, at 430.

⁸² *Id.*

⁸³ GOLDSTEIN ET AL., *supra* note 48, at 31-34.

⁸⁴ In recent times, incarcerated fathers have begun to voice their right to maintain contact with their children and to demand that the state provide adequate means for them to do so during their incarceration. See Zealand, *supra* note 24.

⁸⁵ Brooks & Bahna, *supra* note 49, at 275.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

The reality is, however, that separating women from their children is likely to have an opposite effect. Research has shown that strong family ties function as a support system for former inmates.⁸⁹ Inmates who maintain family ties while in prison have a better chance of remaining out of prison after their release.⁹⁰

Drawing from a study of 412 prisoners of a minimum security facility in California, in 1972, concluded that there was a strong and consistently positive relationship between parole success and the maintenance of strong family ties during imprisonment. The study suggests that family members, as a natural support group for offenders, have a tremendous potential for assisting in the reintegration of the offender to community life.⁹¹

Considering the natural and emotional ties between mothers and children, pairing women with their children during incarceration will help mothers to reintegrate into community life. "Furthermore, a disrupted family support network is likely to cause inmates to return to their only existing support network: prison."⁹² Maintaining and strengthening parent-child ties during incarceration is likely to have an anchoring effect on parents after release; she will have an alternative support network to the one existing at prison.

4. Rehabilitation

The goal of rehabilitation is to improve inmates' attitudes toward crimes and provide skills necessary to live in society without resorting to crimes.⁹³ "In order to achieve the goal of rehabilitation, inmates must be prepared to deal with the challenges of post-prison life. The rehabilitation process should foster inmates' abilities to deal with the responsibilities, not prevent them from fulfilling these responsibilities."⁹⁴ In a society where the primary caregiver is the mother, women inmates must be prepared to assume and resume the role of a caregiver after release. "To be rehabilitated, inmates must [. . .] be transformed into individuals who have the necessary skills and emotional stability to face up to their

⁸⁹ Susan Hoffman Fishman & Albert S. Alissi, D.S.W., *Strengthening Families as Natural Support System for Offenders*, FED. PROBATION, Sept. 1979, at 16 (citing Norman Holt & Donald Miller, *Explorations in Inmates Family Relationships*, RESEARCH DIV., CA DEP'T OF CORRECTIONS REP. 46 (1972)).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Brooks & Bahna, *supra* note 49, at 273 & 275 (citing Don Adams & Joel Fischer, *Effects of Prison Residents' Community Contacts on Recidivism Rates*, 22(4) CORRECTIVE & SOC. PSYCHIATRY 21 (1976)).

⁹³ *Id.* at 275.

⁹⁴ *Id.* at 276.

responsibilities as citizens, parents and spouses."⁹⁵ The rehabilitation of women with children, therefore, must incorporate providing the skills necessary to become or continue to be a good parent.⁹⁶ Such change in attitude and training is necessary to truly rehabilitate mothers.⁹⁷

The basic presumption of this argument is that women inmates with children ought to be treated differently from other kinds of inmates. This may seem like a regressive idea in the midst of a century old cry for equality between sexes, but the idea of separate treatment is inherent in our legal system.⁹⁸ We as a society do not treat inmates with mental impairments the same way as those without mental impairments.⁹⁹ Likewise, both minor and elderly inmates receive different treatments than average inmates.¹⁰⁰ When dealing with inmates with mental impairments, and minor and elderly inmates, the criminal justice system recognizes the inherently unique qualities that justify treatment different from that of average inmates.¹⁰¹

Separate prison facilities for inmates with mental impairments, for example, reflects society's recognition that inmates with mental impairments ought to be cared for differently for their own good as well as for the good of others.¹⁰² In the case of minors, society similarly recognizes their need for interaction with their peers, and social counseling. Likewise in the case of elderly inmates, easier access to medical care, for example, reflects their unique need.¹⁰³ Then, it is not so strange to espouse the idea that incarcerated women should be treated differently from their male counterparts.¹⁰⁴

⁹⁵ *Id.* at 277 (citing Martha G. Duncan, "Cradled on the Sea": Positive Images of Prison and Theories of Punishment, 76 CAL. L. REV. 1202, 1243 (1988)).

⁹⁶ Until this century, it was common for incarcerated mothers to maintain physical custody of their children because it was believed that keeping children with their mothers furthered the efforts to rehabilitate the women inmates. Terri L. Schupak, Comment, *Women and Children First: An Examination of the Unique Needs of Women in Prison*, 16 GOLDEN GATE U. L. REV. 455, 465 (1986).

⁹⁷ Whether we as a society have given up on the theory of rehabilitation as a goal of incarceration is an issue deserving of separate discussion. In *Meachum v. Fano*, 427 U.S. 215 (1976), the Supreme Court held that a prisoner has no right to be housed in a particular institution because it is more conducive to the prisoner's rehabilitation.

⁹⁸ See Susan Cranford & Rose Williams, *Critical Issues in Managing Female Offenders*, CORRECTIONS TODAY, Vol. 60, Issue 7, Dec. 1, 1998, at 130.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See *id.* But see Zealand, *supra* note 24, for the proposition that incarcerated fathers should be afforded the same opportunities as incarcerated mothers in maintaining parent-child relationships during incarceration. However, the legal and social impact of this proposition in context of nursery and halfway houses should be further analyzed.

Like minor and elderly inmates, most women inmates have a unique quality that justifies a different treatment than the average inmate.

In our society where women usually take the role as primary caregivers to children, the current prison system separates mothers from their children at the price of severe detriment to their children and counter-rehabilitative results to the women prisoners. It is questionable whether separating women inmates from their children fulfills the goals of incarceration. Arguably, the opposite would better fulfill the traditional goals of our correctional system; instead of separating them, pairing women inmates with their children may better fulfill the goals of incarceration.

PART II. ALTERNATIVE CORRECTIONAL METHODS: IN PRISON NURSERY AND COMMUNITY BASED CORRECTIONAL FACILITIES

Currently, there are two primary strategies for allowing incarcerated women to remain with their young children: in-prison nursery programs and community correctional facilities. There are three prisons in this country that allow women inmates to live with their babies during incarceration. They are located in the New York State facilities of Bedford Hill, Taconic Prison, and Riker's Island. Bedford Hill's nursery dates from the early 1900s and Taconic Prison has the largest drug rehabilitation program for women in the country.¹⁰⁵

The prime example of an in-prison nursery program is the Children's Center at the Bedford Hills program. The Bedford Hills program is the oldest in-prison nursery program. Since 1901, it has served as a model for the similar facility in Taconic Prison and in Riker's Island. The in-prison nursery program at Bedford, called the Children's Center, houses approximately 800 mothers.¹⁰⁶ Inmates who give birth while in prison may choose to keep their babies with them until the children's first birthday.¹⁰⁷ If the mother is likely to be paroled by the time the infant is eighteen months old, the infant may remain with the mother until the time of her parole.¹⁰⁸ The Children's Center program also includes a program where families in the Bedford Hills community host older children of inmates for a week at a time to allow the children to spend time with their mothers each day.¹⁰⁹ The hosting families

¹⁰⁵ Metzler, *supra* note 19, at 430.

¹⁰⁶ *Id.* at 431.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ FEINMAN, *supra* note 9, at 61.

bring the children each day to the facility's children's playroom or a parenting center to be with their mothers.¹¹⁰ At the end of the day, the mothers return to their cell and the children return to the hosting families' houses.¹¹¹ Many of the hosting families also host the children one Saturday night each month during the school year so that they may visit their mothers.¹¹²

The in-prison nursery programs allow women inmates to keep their children with them in special prison wards, but generally maintain the traditional structure of incarceration. The in-prison nursery programs, therefore, are cost effective and easy to implement because they require only small departures from the standard model of incarceration.¹¹³ However, the in-prison nursery programs only allow the baby to stay for a year to eighteen months with its mother. Thus, while a mother is able to establish a maternal bond with her newborn and care for it for eighteen months, the mother is separated from the child during its critical toddler and childhood years. As discussed in the preceding section, the disruption of parent-child ties beyond infant years can have a significant impact on the child's life. Furthermore, a year with the child may be an insufficient amount of time to develop a significant maternal bond that can serve as supportive anchor for the inmate.

The community based corrections facilities, on the other hand, allow the inmates to maintain their status as primary caretakers for their children or to assist them in resuming such responsibilities upon release. For example, Pennsylvania has a statute that provides for the establishment of regional community treatment centers throughout the state for the treatment and rehabilitation of female offenders, allowing the women to have easier access to their families and children.¹¹⁴ A California statute allows qualified mothers to live with their children in minimum security community residence.¹¹⁵ Additionally, the federal Violent Crime Control and Law Enforcement Act of 1994 authorized the creation of a Family Unity Demonstration Project which allows certain eligible mothers to live in community facilities with their children under the age of seven.¹¹⁶

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Alternative Sanctions for Female Offenders*, *supra* note 3, at 1933.

¹¹⁴ PA. STAT. ANN. tit. 61, § 460.11 (Supp. 1992).

¹¹⁵ CAL. PENAL CODE §§ 3410-3424 (1982). See also Schupak, *supra* note 96, for examination of three states' responses to custody problems of incarcerated mothers.

¹¹⁶ See 42 U.S.C. §§ 13881-13882, 13891-13893, 13901-13902 (1994).

Community based facilities typically serve only a small number of women,¹¹⁷ and provide intensive supervision and a wide range of parenting classes, life skills classes, classes in children's health and child development, and educational programs to supplement the development of the parent-child relationship.¹¹⁸ Women in community based corrections facilities are usually able to maintain supervised but close day to day interactions with their children.¹¹⁹ This way, women are able to establish parental relationships with their children and to maintain day to day routines that resemble that of an average household.¹²⁰ They are able to emotionally anchor to their children and take a part in building their children's character¹²¹ which makes it easier for them to reconnect with their children after they have served their time.¹²² Within environments such as these, the goal is for women inmates to learn to be better parents than they have been.¹²³

Community corrections programs claim enormous reductions in recidivism as a result.¹²⁴ The community corrections programs at the Elizabeth Fry Center in San Francisco states that the re-conviction rate of its former women inmates is an impressive 20%¹²⁵ compared to the 39% re-conviction rate of traditionally incarcer-

¹¹⁷ See, e.g., 42 U.S.C. § 13882(C) (1994).

¹¹⁸ Brooks & Bahna, *supra* note 49, at 298-307.

¹¹⁹ *Id.*

¹²⁰ Nebraska's Mother Offspring Life Development Program allows incarcerated women to have visits from their children or grandchildren for several days each month. The women plan for the children's visit and take care of them during their entire stay. See FEINMAN, *supra* note 9, at 63 (citing BARBARA BLOOM & DAVID STEINHART, WHY PUNISH THE CHILDREN? 74 - 75 (San Francisco National Council on Crime and Delinquency 1993)).

¹²¹ See GOLDSTEIN ET AL., *supra* note 48, at 14. The parent who feeds the infant and puts him to bed thereby introduces a first compliance with a time schedule; the parents who grant but also withhold bodily and mental satisfactions help the child realize that not all wishes can be fulfilled at all times. This increases the child's capacity to tolerate postponement of gratification and inevitable frustration. The parents, by reacting to the child's behavior with appropriate praise and encouragement or criticism and discouragement, lay the first foundations for the child's own control of his drives and impulses, the lessening of his selfishness, and the beginning of consideration for others. The parents present a set of demands and prohibitions and attitudes toward work and community with which the child can identify.

¹²² See FEINMAN, *supra* note 9, at 54 (citing a 1979 study by Laura Bresler and Diane Lewis who found that black women tend to have more contact and stronger ties with their families and children during incarceration, and as a consequence were less bitter and more hopeful about reintegrating into family and society than white women).

¹²³ Brooks & Bahna, *supra* note 49, at 306-307.

¹²⁴ See Stephanie Fleischer Seldin, *A Strategy for Advocacy on Behalf of Women Offenders*, 5 COLUM. J. GENDER & L. SOC. 1, 24 (1995). See also Hirsh, *supra* note 72 (citing Senator David Durenberger who reported to the Senate Judiciary Committee that prisoners who were allowed to stay with their children in supervised group-home settings were less likely to be rearrested than jailed parents who had been separated from their children).

¹²⁵ *Alternative Sanctions for Female Offenders*, *supra* note 3, at 1934.

ated women in state prisons.¹²⁶ As of this date, there has not been parallel research on the re-conviction rate of former women inmates of in-prison nurseries. The longevity and the success of the Bedford Hill's in-prison nursery seems to indicate that in-prison nurseries may also share a comparatively low non-conviction rate.

The main drawback to the community correctional facilities is that they require a substantial departure from the traditional incarceration model, and thus require a considerable amount of financial aid to implement and to operate.¹²⁷ For example, in 1994, the Violent Crime Control and Law Enforcement Act authorized the establishment of the Family Unity Demonstration Project ("FUDP"). The FUDP allowed certain eligible parents who have committed nonviolent offenses to serve sentences of no longer than seven years in community correctional facilities with their children under the age of seven.¹²⁸ The FUDP legislation aimed to alleviate child-parent separation harm, reduce recidivism, and to explore the cost effectiveness of community correctional facilities.¹²⁹ The legislation suggested funding of \$3.6 million per year for 1996-1999, and \$5.4 million in 2000. However, Congress has yet to provide this funding.¹³⁰ Even at the originally suggested funding level, however, only a few states would have been able to implement the program.¹³¹

PART III. REVERSED DAY CARE PROGRAM

One way to reap the benefits of in-prison nursery and community corrections programs without the need for overwhelming funding may be to strike a compromise between the two programs and create a type of a reversed day care for women inmates.¹³² The in-prison day care program would be a cost-effective method of producing the benefits of low recidivism, rehabilitation of inmates, and the well beings of their children.

In an in-prison day care program, eligible women inmates would be allowed to raise their children up to the age of six or

¹²⁶ Re-conviction rate for the first three years after release. *Alternative Sanctions for Female Offenders*, *supra* note 3, at 1934 (citing ALLEN J. BECK & BERNARD E. SHIPLEY, U.S. DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASE IN 1983, at 5 (1989)).

¹²⁷ *Alternative Sanctions for Female Offenders*, *supra* note 3, at 1933.

¹²⁸ 42 U.S.C. §§ 13881-13883, 13891-13893, 13901-13902 (1994).

¹²⁹ 42 U.S.C. §§ 13881-13883, 13891-13893, 13901-13902 (1994).

¹³⁰ 42 U.S.C. § 13883(a) (1994).

¹³¹ See James L. Tyson, *When Prison Separates Parents and Children*, CHRISTIAN SCI. MONITOR, Nov. 29, 1993, at 18.

¹³² I call it a reversed day care system simply because this program would operate in reverse of the typical day care. In a reversed day care, the children would be left in the parents' care during daytime, and designated caretakers during the night.

seven.¹³³ The program would supplement the day care program with parenting programs where women may learn to develop proper parent-child relationships.¹³⁴ The facility would be within prison walls, but in separate section of the prison grounds or in a separate building. The participating inmates would be able to spend the day with their children, but at night the mother would return to her cell and the child would return either to its bed in the day care center or to a sponsoring family in the vicinity.¹³⁵ Such a program would allow women inmates and their children to establish the critical mother-child bond while minimizing the cost of implementing a similar program in a community corrections program format. Thus, an in-prison day care program has the potential to draw upon the strengths of both types of programs.

Such in-prison day care programs, however, raise as many questions as eyebrows. First, implementing such programs may give children sufficient contact with their mothers but only at the risk of effectively imprisoning the children. However, the same criticism may be made against community based correctional facilities. The women and children in community based correctional facilities are bound within the realm of the facility grounds, as they would be if the facilities were grounded within the prison. The facilities at Bedford Hill proves that a properly constructed setting within a prison may prove to be child-friendly and provide proper supervision for women inmates.¹³⁶

Another criticism may be that a prison environment is inappropriate for children. However, "in-prison nurseries in New York state include mother-baby rooms, state certified child care while mothers work or go to class, [and are] fully equipped playrooms for visiting children."¹³⁷ Likewise, in-prison day care programs may provide sufficient facilities where the parent and child may form and maintain a substantial familial bond. These "in-prison day care" programs would institute threshold eligibility qualifications,

¹³³ As discussed *infra*, most statutes that provide for community based correctional facilities - like FUDP - allow the women inmates to raise her children of up to seven years of age within the facilities.

¹³⁴ Parenting programs are a crucial component of any rehabilitation system. One of the main reasons why the in-prison nurseries and community based correctional facilities are able to maintain their recidivism rate is that they educate the women inmates to successfully reintegrate - or successfully *integrate for the first time* - into their families and into society.

¹³⁵ This aspect of the program would imitate the successful Children's Center program where children may stay with host families in order to have an extended visit with the mothers, as discussed in the text accompanying note 109-112.

¹³⁶ See texts accompanying n.105-115.

¹³⁷ FEINMAN, *supra* note 9, at 61.

limiting participating women inmates, for example, to those incarcerated for non-violent offenses similar to the current community based correctional facilities.¹³⁸ “In-prison day care” programs would identify and make eligible women similarly eligible for community based correctional facilities. Such eligible women are:

[those] who, although they have committed crimes worthy of punishment, are less dangerous to society and can likely be incapacitated and deterred without the harsh prison environment. These programs allow this group of women, for whom prison is least necessary, to remain with their children while serving their sentences, thereby avoiding the many harms caused by extended mother-child separation.¹³⁹

The greatest challenges to instituting such programs would be, first, to gain the political support and thus gain the necessary funding.¹⁴⁰ The second greatest challenge would be to replicate the existing programs’ success rates on a larger scale. For larger states, implementing such programs present considerable hurdles. We must also consider the possibility that “the community programs may well be successful specifically because of their small scale and intensive services to individual offenders.”¹⁴¹

Despite their incarcerated state, the best parent for a child is his/her parent.

We can predict that the adult most likely suited for this role [i.e. role of a psychological parent who will make a child to feel wanted] is the one, if there be one, with whom the child had already had and continues to have an affectionate bond rather than one of otherwise equal potential who is not yet in a primary relationship with the child.¹⁴²

The person who best fits this description is the child’s primary caretaker. Allowing incarcerated parents to maintain and strengthen their role as a primary caretaker for the child will serve the child, the mother and the state well. Although such “in-prison day care” programs will be open to the criticisms of coddling of-

¹³⁸ See, e.g., 42 U.S.C. § 13882(A)-(B) (1994) (under eligible offender) and § 13882(A)-(B) (under primary caretaker parent).

¹³⁹ *Alternative Sanctions for Female Offenders*, supra note 3, at 1936.

¹⁴⁰ Assessing from the lack of political support behind the community based correctional facilities, and considering the current social movement toward the fight against crime, gathering forceful political support behind the in-prison day care program may well be difficult. However, the current in-prison nursery programs and most of the community based correctional facilities also began through private communities. One may gladly imagine such humble beginning for in-prison day care programs.

¹⁴¹ *Alternative Sanctions for Female Offenders*, supra note 3, at 1937.

¹⁴² GOLDSTEIN ET AL., supra note 48, at 51.

fenders, such programs' ability to mitigate the harms of mother-child separation for a critical category of nonviolent offenders and the probable reduction in recidivism rates will make such programs viable alternatives to traditional incarceration.

CONCLUSION

Undoubtedly, some situations do require that prison inmates be separated from their children, just as some situations compel the state to separate non-incarcerated parents from their children. Most parents, incarcerated or not, however, need their children and most children need their parents, faults and all. It is the responsibility of society and its courts to consider the impact of incarcerating primary caretakers on their children and families. This Note does not advocate dismissing criminals or minimizing the consequences for their actions simply because they have children to care for. It does conclude, however, that using alternative sentencing methods for women prisoners with children will both serve the punitive goals of incarceration, and diminish the detrimental ripple effect on families and society. Surely, there is no reason to require the traditional forms of incarceration if it is more punitive than necessary to achieve its goals of retribution, rehabilitation, incapacitation, and deterrence.

Allowing parents to create and maintain a familial bond with their young children during the parents' incarceration allows female inmates to become better citizens, better parents, and better spouses. Strong familial ties and counseling allow women inmates to successfully reintegrate into society and into their family lives. Strong familial ties also allow the incarcerated inmates' children to maintain the emotional and psychological anchor between themselves and their parents. By considering the effects of incarceration on the children of the incarcerated, the state, in essence, saves children from being shuffled from home to home, feeling neglected and abandoned.

The correctional system, therefore, should provide incarcerated mothers with meaningful opportunities to interact with their family. This Note addressed three ways of providing such opportunities: in-prison nursery programs; community based correctional programs; and finally the reversed day care programs. Each program provides an effective way of accomplishing the goals of incarceration while allowing mothers to maintain the critical parental ties with their children. The potential success of such programs indicates that this kind of aid to incarcerated family members would reduce the familial and societal costs nationwide.