

Connecticut Explores a Parental Incarceration Exception to the Termination of Parental Rights under the Federal Adoption and Safe Families Act of 1997 (ASFA)

Submitted by the Institute for Municipal & Regional Policy's Children with Incarcerated Parents Initiative to the Connecticut Sentencing Commission's Advisory Committee of Collateral Consequences of Criminal Conviction.

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Background / Landscape

Congress passed ASFA in part to promote the safety, permanency, and well-being of children in foster care. One mandate of Section 103 of that law is that states must file a petition to terminate parental rights (TPR) on behalf of a child who has been in foster care for 15 consecutive months, or 15 of the most recent 22 months.¹ Exceptions exist where: 1) at the option of the state, the child is being cared for by a relative, 2) the state finds that termination of parental rights would not be in the best interests of the child, or 3) the state has not provided appropriate services for the safe return of the child to his or her home. The provision can be triggered by parental incarceration, even when the parent attempts to remain engaged in services designed to support reunification. Thus, despite the stated intent, the law may lead to the severance of family ties against the best interests of the child.² Figure 1 (below) notes specific steps states have taken to prevent this unintended consequence.

Figure 1: Illustrative state provisions to prevent or postpone triggering the TPR filing requirement.

State	Provision
Arkansas	Reasonable efforts to place a child for adoption or with a legal guardian or permanent custodian may be made concurrently with reasonable efforts to reunite a child with his or her family. ³
California	With exceptions, requires child welfare services, which may include reunification services. ⁴
Colorado	An exception to the TPR filing requirement exists when "The child has been in foster care under the responsibility of the county department for such period of time due to circumstances beyond the control of the parent such as incarceration of the parent for a reasonable period of time, court delays or continuances that are not attributable to the parent, or such other reasonable circumstances that the court finds are beyond the control of the parent." ⁵

¹ ASFA specifies how the count must be conducted based on milestone dates.

² The Brennan Center for Justice summarized the issue in a 2006 press release available at <https://www.brennancenter.org/press-release/national-study-faults-federal-adoption-safe-families-act-consigning-children-permanent>; also see full *Rebuilding Families, Reclaiming Lives* report at <https://www.brennancenter.org/publication/rebuilding-families-reclaiming-lives>.

³ Adoption and Safe Families Act of 1999 (Led to development of: ACA § 9-27-302 / 303 / 325 / 327 / 328 / 329 and ACA § 9-27-332 / 334 / 335 / 337 / 338 / 341/ 343 / 402.), Ann. Code § 9-27-303(48)(D), <http://law.justia.com/codes/arkansas/2016/title-9/subtitle-3/chapter-27/subchapter-3/section-9-27-303/>.

⁴ See, "Reunification Services" dropdown, <http://www.courts.ca.gov/1205.htm>. See specific reunification services at § 361.5(a)(1), https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=361.5.&lawCode=WIC.

⁵ C.R.S. 19-3-604 Termination of the Parent-Child Legal Relationship, http://web.lexisnexis.com/research/retrieve?_m=45bb9d4c597e35bd2dd9c18717fbcf24&csvc=toc2doc&cform=sear

Massachusetts	<i>(PENDING)</i> : Community-based sentencing alternatives for primary caretakers of dependent children who have been convicted of non-violent crimes. ⁶
Nebraska	The state shall not petition for TPR if parental incarceration is the sole factual basis. ⁷
New Mexico	The state shall not petition for TPR if parental incarceration is the sole factual basis. ⁸
New York	The state shall not petition for TPR if the sole basis would be that “the parent or parents are incarcerated, or participating in a residential substance abuse treatment program, or the prior incarceration or participation of a parent or parents in a residential substance abuse treatment program is a significant factor in why the child has been in foster care for fifteen of the last twenty-two months.” ⁹
Oregon	Family Sentencing Alternative: Divert certain parents of minor children to a sentence under community supervision. ¹⁰ Note: An advocate’s article notes that “physical custody of the child at the time of the offense,” as used in Oregon and Washington, is “an outdated way of determining whether the individual before the court is a ‘primary caregiver,’ which is also a misleading way of determining the significance of the parent’s role in the child’s life.” ¹¹ Divert women convicted of certain property crimes to supervision programs and addiction and mental health treatment. ¹²
Tennessee	<i>(PENDING 2018 ACTION)</i> Require “court to sentence a person who was convicted of a nonviolent offense and is the primary caretaker of a dependent child to an individually assessed sentence based on community rehabilitation with a focus on parent-child unity and support.” ¹³
Washington	The Children of Incarcerated Parents Bill of 2013 ¹⁴ gives incarcerated parents the right: <ul style="list-style-type: none"> • “During dependency proceedings to have their service plans reflect the services available at the institution they are confined at, the right to participate in case conference meetings, the right to visitation unless it is not in the best interest of the child. • “To delay the filing of a termination by asking the court to make a “good cause exception” when the parent is maintaining a meaningful role in their child’s life--via phone calls, letters, attempts to get DSHS to support the parent, and showing barriers they may have received when trying to maintain a meaningful role (e.g. DSHS didn’t respond to letters or provide visitation).”¹⁵

[chForm& fmtstr=FULL&docnum=1& startdoc=1&wchp=dGLzVzB-zSkAz& md5=b87c49bed8968beb4b4ae3fe8b7f8fac.](http://malegislature.gov/Bills/190/S770)

⁶ 2017 Primary Caretakers bill, Bill S.770, An Act providing community-based sentencing alternatives for primary caretakers of dependent children who have been convicted of non-violent crimes, <https://malegislature.gov/Bills/190/S770>.

⁷ Nebraska Revised Statute 43-292.02, <http://nebraskalegislature.gov/laws/statutes.php?statute=43-292.02>.

⁸ 2006 New Mexico Statutes - Section 32A-4-28 — Termination of parental rights; adoption decree.

http://law.justia.com/codes/new-mexico/2006/nmrc/jd_32a-4-28-d539.html.

⁹ New York Social Services Law § 384-b, search under “Laws” at

<http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>.

¹⁰ 2015 Family Sentencing Act, see . Summary information from

<http://www.justicestrategies.net/coip/blog/2015/09/family-sentencing-alternatives-oregons-new-pilot-program>.

¹¹ See <http://www.publicnewsservice.org/2017-07-12/social-justice/prison-sentencing-reform-among-winners-of-or-legislative-session/a58474-2>.

¹² 2017 Safety and Savings Act, see <https://olis.leg.state.or.us/liz/2017R1/Measures/Overview/HB3078>. Summary information from <http://www.publicnewsservice.org/2017-07-12/social-justice/prison-sentencing-reform-among-winners-of-or-legislative-session/a58474-2>.

¹³ Primary Caretaker Legislation (TN) HB 0825 / SB 0919, see

<http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0825>.

¹⁴ The Children of Incarcerated Parents Bill of 2013,

<http://app.leg.wa.gov/billsummary?BillNumber=1284&Year=2013>.

¹⁵ “Help Incarcerated Parents in WA Protect Child-Parent Relationships During Dependency Cases,”

<http://www.defensenet.org/ipp/incarcerated-parents-rights>.

Connecticut

In 1998, in advance of Connecticut's statutory compliance with ASFA, the Connecticut General Assembly's Office of Legislative Research (OLR) analyzed steps required for such compliance.¹⁶ As of this writing, Connecticut has not adopted specific statutory provisions aimed at preventing unintended, unnecessary application of the ASFA 15/22 mandate. In relevant part, Connecticut's current law reflects ASFA as follows.

Sec. 17a-111a. Commissioner of Children and Families to file petition to terminate parental rights, when. (a) The Commissioner of Children and Families shall file a petition to terminate parental rights pursuant to section 17a-112 if (1) the child has been in the custody of the commissioner for at least fifteen consecutive months, or at least fifteen months during the twenty-two months, immediately preceding the filing of such petition; (2) the child has been abandoned as defined in subsection (j) of section 17a-112; or (3) a court of competent jurisdiction has found that (A) the parent has killed, through deliberate, nonaccidental act, a sibling of the child or has requested, commanded, importuned, attempted, conspired or solicited to commit the killing of the child or a sibling of the child; or (B) the parent has assaulted the child or a sibling of a child, through deliberate, nonaccidental act, and such assault resulted in serious bodily injury to such child.

(b) Notwithstanding the provisions of subsection (a) of this section, the commissioner is not required to file a petition to terminate parental rights in such cases if the commissioner determines that: (1) The child has been placed under the care of a relative of such child; (2) there is a compelling reason to believe that filing such petition is not in the best interests of the child; or (3) the parent has not been offered the services contained in the permanency plan to reunify the parent with the child or such services were not available, unless a court has determined that efforts to reunify the parent with the child are not required.¹⁷

ASFA-Related Perspectives & Resources (not exhaustive; in no particular order)

- *Grounds for Involuntary Termination of Parental Rights*, Child Welfare Information Gateway, <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/groundtermin/>.
- "ASFA: An Assault on Family Preservation," an excerpt from *Shattered Bonds: The Color of Child Welfare* (2002), by Dorothy Roberts, is available at <http://www.pbs.org/wgbh/pages/frontline/shows/fostercare/inside/roberts.html>.
- "Sometimes Good Intentions Yield Bad Results: ASFA's Effect on Incarcerated Parents and Their Children," a chapter by Martha L. Raimon, Arlene F. Lee, and Philip Genty in the joint Urban Institute and Center for the Study for Social Policy report *Intentions and Results: A Look Back at the Adoption and Safe Families Act* (2009), is available at http://www.urban.org/research/publication/intentions-and-results-look-back-adoption-and-safe-families-act/view/full_report.

¹⁶ OLR analysis, <https://www.cga.ct.gov/PS98/rpt%5Colr%5Chtm/98-R-0627.htm>.

¹⁷ See, https://www.cga.ct.gov/current/pub/chap_319a.htm#sec_17a-111a.

- “ASFA: Adoption & Safe Families Act,” National Resource Center for Permanency and Family Connections (now the NCCWE; see below), Silberman School of Social Work at Hunter College, http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/asfa.html.
- National Center for Child Welfare Excellence (NCCWE) at the Silberman School of Social Work, <http://www.nccwe.org/index.html>.
- *Use Of The Adoption And Safe Families Act At 15/22 Months For Incarcerated Parents* (2008), Maryann Zavez, <http://lawreview.vermontlaw.edu/?s=zavez>
- *Child Welfare: More Information and Collaboration Could Promote Ties Between Foster Care Children and Their Incarcerated Parents* (2011), U.S. Government Accountability Office, <http://www.gao.gov/products/GAO-11-863>.