



Good day members of the Connecticut Sentencing Commission. My name is Aileen Keays and I am here to speak on behalf of the Connecticut Children with Incarcerated Parents Initiative in support of An Act Concerning the Adoption and Safe Families Act.

In 1997, Congress passed the Adoption and Safe Families Act (ASFA), which mandated states' child welfare agencies to begin termination of parental rights in cases of children who have been in foster care for 15 of the previous 22 months. The intent was to prevent children from being in temporary foster placements for several years and increase adoption outcomes. Exceptions to the mandate to file 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 legislation also created bonuses for states that facilitate adoptions. Since 1998, the federal government has paid more than \$639 million in these rewards"ⁱ.

Despite the stated intent, the law may actually contribute to the permanent severance of parent-child relationships against the best interests of the child.ⁱⁱ

With the average length of incarceration in a state facility being 34 months, the provision can be triggered by parental incarceration alone. Even when the parent has an active role in their child's life, incarcerated parents still find their rights being disproportionately terminated. Most shockingly, ***in an analysis of 3 million child-welfare cases from 2006-2016 to identify the ramifications of ASFA on families with an incarcerated parent, mothers and fathers who have a child placed in foster care because they are incarcerated and have not been accused of child abuse, neglect, endangerment, or even drug or alcohol use were more likely to have their rights terminated than parents who physically or sexually abused their children.*** Tens of thousands of children were placed into foster care solely because a parent was incarcerated. For about 5,000 of these children, or 1 in 8, their parent's rights were permanently terminated.

Even when the parent attempts to remain engaged in services designed to support reunification and to demonstrate an existing, active relationship, he/she may not necessarily be able to do so. One of the ways a parent can demonstrate their role in a child's life is by "spending time with their children regularly, showing up for court hearings, taking parenting classes, being employed, having stable housing, and paying child support to reimburse the government for the costs of foster care...all next to impossible from confinement." Corrections departments are not mandated by law to bring incarcerated parents to family

and court hearings. Also, families often do not have finances or transportation to visit the parent regularly or if at all.

Figure 1 (below) notes specific steps other states have taken to prevent the negative ramifications of ASFA.

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. ⁱⁱⁱ
California	With exceptions, requires child welfare services, which may include reunification services. ^{iv}
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.” ^v
Massachusetts	Community-based sentencing alternatives for primary caretakers of dependent children who have been convicted of non-violent crimes. ^{vi}
Nebraska	The state shall not petition for TPR if parental incarceration is the sole factual basis. ^{vii}
New Mexico	The state shall not petition for TPR if parental incarceration is the sole factual basis. ^{viii}
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.” ^{ix}
Oregon	Family Sentencing Alternative: Divert certain parents of minor children to a sentence under community supervision. ^x 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.” ^{xi} Divert women convicted of certain property crimes to supervision programs and addiction and mental health treatment. ^{xii}
Tennessee	(PENDING 2019 ACTION) 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.” ^{xiii}
Washington	The Children of Incarcerated Parents Bill of 2013 ^{xiv} 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). ^{xv}
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Connecticut has not adopted specific statutory provisions aimed at preventing unintended, unnecessary application of the ASFA 15/22 mandate. 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.^{xvi}

At the end of last year, the Connecticut Children with Incarcerated Parents Initiative worked with the Connecticut Sentencing Commission's Collateral Consequences Subcommittee comprised of various relative state agencies and programs, and a smaller group which included the Department of Children and Families and Office of the Chief Public Defender, to craft language that would seek to rectify the unintended negative consequences of ASFA for children whose parents are incarcerated. Through deliberation and discussion, the language included in An Act Concerning the Adoption and Safe Families Act was written. Specifically, however in summary, this Act seeks to:

- Require a parent's treatment plan include programs and treatment that are available and accessible to that parent at the correctional facility within which they are confined.
- Provide for visits with the child unless visiting is not in the best interest of the child.
- In cases where a parent has a lengthy sentence and has a meaningful relationship with their child, the court shall consider a permanency plan that does not include

Termination of Parental Rights (TPR). This may include transfer of guardianship or permanent legal guardianship.

- Provide a definition for “compelling reason” to determine that TPR is not in the best interests of the child when the parent is incarcerated. Such reasons include that the parent maintains a meaningful role in the child’s life, the parent’s incarceration is the primary reason why the child is in foster care, and there is no other ground for filing to terminate.
- Outline the factors that DCF may consider when determining whether a parent has maintained a meaningful role in the child’s life while incarcerated. These are: the parent’s expressions of concern for their child (attempting to communicate with the child); the parent’s attempts to comply with their case plan and repairing, maintaining or building the parent-child relationship; a positive response by the parent to DCF’s reasonable efforts; information provided to DCF by others regarding the parent’s attempts to maintain a meaningful role; limitations in the parent’s access to programs, treatment, communication and participating in meetings due to their incarceration; whether the continued involvement of the parent is in the best interests of the child.
- Allow a parent to participate in permanent placement plan reviews via teleconference or videoconference when they are unable to attend in person.

In short, the CT Children with Incarcerated Parents Initiative strongly supports this legislation as it seeks to protect children from permanently losing their parent when that parent’s incarceration is the primary contributing factor to termination. The legislation also protects parents from losing their children when, due to their incarceration, they are unable to participate meaningfully in the reunification plan. Parents should only be held accountable for action, and inaction, that is within their control.

ⁱ The Marshall Project, “How Incarcerated Parents are Losing their Children Forever”. December 2, 2018. Available online at <https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-children-forever>.

ⁱⁱ 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>.

ⁱⁱⁱ 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/>.

^{iv} 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.

^v C.R.S. 19-3-604 Termination of the Parent-Child Legal Relationship, http://web.lexisnexis.com/research/retrieve?_m=45bb9d4c597e35bd2dd9c18717fbcf24&csvc=toc2doc&cform=searchForm&fmtstr=FULL&docnum=1&startdoc=1&wchp=dGLzVzB-zSkAz&md5=b87c49bed8968beb4b4ae3fe8b7f8fac.

^{vi} 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>.

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

^{viii} 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.

^{ix} New York Social Services Law § 384-b, search under “Laws” at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>.

^x 2015 Family Sentencing Act, see . Summary information from <http://www.justicestrategies.net/coip/blog/2015/09/family-sentencing-alternatives-oregons-new-pilot-program>.

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

^{xii} 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>.

^{xiii} Primary Caretaker Legislation (TN) HB 0825 / SB 0919, see <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0825>.

^{xiv} The Children of Incarcerated Parents Bill of 2013, <http://app.leg.wa.gov/billsummary?BillNumber=1284&Year=2013>.

^{xv} “Help Incarcerated Parents in WA Protect Child-Parent Relationships During Dependency Cases,” <http://www.defensenet.org/ipp/incarcerated-parents-rights>.

^{xvi} See, https://www.cga.ct.gov/current/pub/chap_319a.htm#sec_17a-111a.