

Chapter 8 – Incarcerated Parents

“Incarcerated parents have the same rights as parents who are not incarcerated, to fully participate in the court process, to fully participate in case planning, to require the agency to make reasonable efforts towards reunification, and to have visitation and contact with their children.”

Pennsylvania State Roundtable Dependent Children of Incarcerated Parents 2013 Workgroup Report

8.1 Overview

The engagement and inclusion of incarcerated parents in the dependency system can be challenging, but not impossible. The major difference between an incarcerated parent and one who is not incarcerated is their current residence—jail vs. the community.

In general, incarcerated parents have the same rights as any other parent in dependency proceedings with regard to involvement in case planning, visitation with their children, and participation in hearings. In regard to case planning, the children welfare agency is required to provide parents with “the opportunity to participate in the development and amendment of the service plan.” 55 Pa. Code § 3130(d). No exception is made for incarcerated parents.

In cases where reunification is the goal, absent a contrary court order or refusal in writing by the parent(s), the agency must provide the “opportunity for visits between the child and parents as frequently as possible but no less frequently than once every 2 weeks at a time and place convenient to the parties and in a location that will permit natural interaction” 55 Pa. Code § 3130.68(a). Again, there is no exception for incarcerated parents. The Superior Court has held that, with regard to visitation between children and incarcerated parents, visitation should not be denied or reduced unless it poses a grave threat to the child. (In re: C.J., 729 A.2d 89, 95 (Pa. Super. 1999))

Inclusion of incarcerated parents in the case planning process and delivery of services is critical. Inclusion must occur at the onset of the case, or at least when it is discovered that a parent is incarcerated. Many parents who are incarcerated are serving minimal sentences in county jails, or are incarcerated pretrial and will be released while the permanency goal is reunification with a parent.

If incarcerated parents were engaged in case planning and working on family services plan goals while incarcerated, it is possible that reunification could occur shortly after release from incarceration. *Remember, incarceration does not relieve the agency of making reasonable efforts or offering reasonable services to assist the incarcerated parent with meeting their family service plan goals. The agency must offer needed services to the incarcerated parent, if possible.* The court should inquire as to the efforts being made by the agency to provide needed services to parents while incarcerated.

8.2 Engagement of Incarcerated Parents in Case Planning and Delivery of Services

Incarcerated parents and their children have the right to maintain a relationship; this includes the right to contact and/or visitation and to actively participate in family service planning. Reunification of a child and parent is the preferred permanency choice under AFSA and the Juvenile Act (42 Pa.C.S. § 6031(b) and 42 Pa.C.S. § 6351(f.1)(1)).

Best Practice – Inclusion of Incarcerated Parent

Because the decisions made during a dependency court proceeding are likely to have dramatic impact on the parent/child relationship, judges and hearing masters are encouraged to ensure the participation of incarcerated parents.

This inclusion should extend beyond the actual court proceeding to any meeting wherein decisions are being made about the care of the children. In particular, incarcerated parents need to be included in service planning meetings. Incarcerated parents should have input in the placement of their children.

Many of the past challenges to this inclusion have been minimized by advances in technology. While in-person inclusion is preferred, when this is not possible, judges and hearing masters are encouraged to expect that incarcerated parents be included via telephone or video conferencing.

Incarcerated parents should participate in all case planning meetings, conferences, educational meetings, etc.

8.3 Engagement and Participation of Incarcerated Parents in the Court Process

Participation in court hearings is critical for an incarcerated parent. It should be “the rule, rather than the exception” for incarcerated parents to attend court hearings. Appearances at court hearings provide an opportunity for the court to observe the interaction between parent and child. In cases where it is difficult for a child to visit an incarcerated parent, appearances at court hearings provide an opportunity for the parent and child to have contact. Appearances at court hearings also enable the court to engage the parent and to encourage the incarcerated parent to participate in the case planning. To this end, the following practices and protocols can ensure the incarcerated parents participate in the court process.

- The Judge or Hearing Master should **automatically appoint counsel** to represent a parent who is incarcerated.
- The Judge or Hearing Master should **order the incarcerated parent to appear at every hearing**. The court can order the parent to be transported to the hearing or can order appearance by videoconference or teleconference.
- The Judge or Hearing Master should **set forth, on the record, the expectations for the incarcerated parent**. It is important that the Judge or Hearing Master speak on the record, as the incarcerated parent may not receive or read the court order. The Judge or Hearing Master should address the issue of visitation and contact with the child in the order of court.
- At the conclusion of the hearing, **issue the transportation order for the next hearing**.

8.4 Visitation and Contact for Dependent Children of Incarcerated Parents

Some people feel that children should not visit parents in a jail or prison. However, the truth is that, in most cases, children benefit from visitation and contact with a parent who is incarcerated. Children feel enormous grief and loss when they are unable to maintain contact with a parent. It is almost the same as when a parent has died. Children also worry about a parent that they cannot see or talk to on a regular basis. They wonder whether their mommy is happy or whether daddy is safe. Visitation and contact can reduce some of their worries and sad feelings.

Children have a right to visit with their incarcerated parent, children want to maintain the bond during their parent’s incarceration, and in most cases child well-being

is enhanced by frequent visitation. Common barriers to engagement, hearing participation, and visitation include distance to the institution, transportation, inadequate, “non-child-friendly” spaces in the correctional facilities, concerns of emotional impact of visits on the child, an absence of a written county protocol for working with incarcerated parents with dependent children, and a lack of collaboration among stakeholders.

It is important for the Judge or Hearing Master to take an active role in ensuring that, when appropriate, a child maintains contact with an incarcerated parent. Many institutions will not permit contact visits if they are not court ordered. In deciding whether to order visitation, including contact visitation, the Judge or Hearing Master should consider the following:

- The safety of the child based on clear and convincing evidence of “grave threat of harm,”
- The type of contact the child had with the parent prior to the incarceration and adjudication of dependency,
- The child’s needs and wishes,
- The age and special needs of the child,
- The distance the child will have to travel to attend the visit,
- The visitation schedule in the facility, and
- The wishes of the incarcerated parent

The court order should set forth in clear and concise language, whether contact visits should take place, and whether the visits need supervision other than the security in the institution. If the court requires some other type of supervision, observation, or coaching, then the order should reflect this and who will be responsible for the supervision. Remember, the job of the correction officer is to keep the institution secure and not to supervise a court-ordered visit.

- The Judge or Hearing Master should **order the same person to transport the child to and from the visitation** (if possible). This will enable observations and consistent assessments to be made of the child’s mood and behaviors. This will also allow for debriefing by a person with whom the child is familiar.
- The Judge or Hearing Master should **order additional visitation by videoconference** (if available) and the Judge or Hearing Master should **order an incarcerated parent to also maintain contact with the child through letter, cards, telephone calls, etc.**
- Sometimes, it is not in the best interest to have siblings visit together in a jail or prison. Accordingly, **when appropriate, the court should order separate visitation for siblings.**

- The Judge or Hearing Master should **order that the visitation occur outside of the institution**, if a parent is permitted to leave the jail or prison on work release.

Best Practice – Visits in Local Jails and Prisons

In many counties, judges are inviting wardens to become members of the Local Children’s Roundtable (LCR). Including wardens in LCR discussions can foster better understanding of the safety needs inherent in correctional facilities and the well-being needs of children. This informed discussion can produce jail visitation policies and practices that reduce trauma to children and enhance the parent/child bond without jeopardizing safety.

Indeed, many counties have worked with their local jails and created innovative practices, including child-friendly visitation space, that support meaningful parent/child visitation. Some examples include Adams, Allegheny, Blair, Crawford and Westmoreland counties.

When developing local policies and practices, courts are encouraged to focus on the needs of children rather than using visitation as a “reward system” for the incarcerated parent.

While in most cases visitation with an incarcerated parent is important to the well-being of the child, there are circumstances when visitation with an incarcerated parent may not promote the well-being of the child. Visitation with an incarcerated parent should **NOT** occur when:

1. The child is the victim of the crime for which the parent is incarcerated AND there is a grave threat of harm to the child,
2. The child is scheduled to testify as a witness at trial against the incarcerated parent,
3. A qualified mental health professional trained in grief and loss has stated that it would be emotionally harmful for the child to visit with the incarcerated parent and the Judge or Hearing Master feels this is an appropriate recommendation,
4. The child does not wish to visit with the incarcerated parent and the Judge or Hearing Master feels it is an appropriate request,
5. The child is medically fragile and a qualified physician indicates visits in a prison should not occur due to the child's health condition.

Note: These are the same factors that a Judge or Hearing Master should consider in ANY case regarding whether or not visitation is appropriate between a child and a parent.

Any of these factors may be temporary in nature so the judge or hearing master should consider whether additional services and support would eliminate the factors. At every review hearing, the Judge or Hearing Master should review and reconsider the issue of visitation and inquire as to whether the issues have resolved or whether the factors have changed.

CHECKLIST OF SUGGESTED QUESTIONS FOR HEARINGS INVOLVING AN INCARCERATED PARENT

NOTE: This list is not exhaustive. It is important to adapt the questions to the specific case and, within a case, to tailor the questions for each participant.

To the Agency:

- When was your last communication with the incarcerated parent?
- When is the last time you met, in-person, with the incarcerated parent?
- Describe how the incarcerated parent was included in the development of the Family Service Plan/Child Permanency Plan.
- Was a Family Group Decision Making conference offered and/or used? If so, how was the incarcerated parent included?
- Describe the visitation plan for the child and incarcerated parent.
- Describe the services available to the incarcerated parent at the current facility. Is the incarcerated parent utilizing these services?
- In anticipation of the incarcerated parent's release, what additional services might be needed?

To the Incarcerated Parent:

- When did you last speak with your caseworker and/or your attorney?
- How were you involved in creating your Family Service Plan/Child Permanency Plan?
- Was a Family Group Decision Making conference used and if so, how did you participate?
- In what services are you currently participating? Describe your participation.
- What additional services might you need, upon release, to successfully parent your child?
- When did you last have contact with your child? Describe that contact.
- When did you last visit with your child? Describe your visit.
- Is there any reason why the court shouldn't order you to attend the next hearing?

CHECKLIST FOR HEARINGS INVOLVING AN INCARCERATED PARENT

- “Set the tone”
 - Automatically appoint counsel.
 - Make it clear that it is expected that the caseworker meets with the incarcerated parent(s) and includes them in development and ongoing monitoring of the case plan.
 - Make it clear that it is expected that the attorney communicates with their client, in-person and via phone, letters or other means.
 - Make it clear that the caseworker and the attorney should know what services are available to the parent within the facility.
 - Make it clear that the parent is expected to utilize available services while in the facility.

- Order the incarcerated parent(s) to appear at every hearing, unless excused by the court.

- Issue transportation orders for the next hearing at the conclusion of a hearing.

- Carefully consider the issue of visitation for every incarcerated parent and every child, basing such on the specific needs of the child.

- Use clear, concise language in court orders about the type and frequency of child/incarcerated parent visitation.

- Order the incarcerated parent to contact the caseworker within 72 hours of discharge.