

A Law's Fallout: Women in Prison Fight for Custody

It Encourages Adoption Of Many Foster Kids; Mothers Lose Contact

Judge: 'Too Much History'

Article

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(See *Corrections & Amplifications* item [below](#).)

CHEEKTOWAGA, N.Y. -- In January 2004, Tamika Davis was leaving a department store in a mall with her son, when security officers nabbed her for stealing men's jeans and shirts.

Her children, an 11-year-old boy and a 7-year-old girl, were eventually sent to foster care. Last summer, while Ms. Davis was completing her jail term, child-welfare authorities moved to end her parental rights, so the children could be available for adoption.



Tamika Davis

Now free, Ms. Davis, 29, is fighting the move. In November, she admitted to a Buffalo family court judge that she neglected her children. Still, she wants to retain custody of them. "I'm numb," she says. "I fear I'll never see my kids again."

Under a 1997 federal law, states must move to end the rights of parents whose children have been in foster care for 15 of the past 22 months. The law, known as the Adoption and Safe Families Act, was intended to keep abused or neglected children from languishing in foster care while their biological parents, often drug-addicted, tried to kick their

habits.

Since then, the population of women in prison has exploded -- to more than 104,800 from 79,624 -- and now the law is raising difficult questions about what is best for children whose parents are incarcerated. Some say children need to stay connected to their parents during that traumatic time. Others contend the women have demonstrated that they are negligent and unfit and it is better if the state can find the children a permanent new home. Once their rights are terminated, the law forbids

parents to see their children, or even know where they are.

Prison sentences for many women are longer than the 15-month period the law dictates, meaning they automatically risk losing their children. Inmates often can't attend hearings on whether their parental rights should be terminated. In some cases they aren't even informed about those hearings, which may be held hundreds or thousands of miles away.

Related Article

U.S. Custody Law Is the Exception

The U.S. is the only nation that routinely moves to terminate the parental rights of incarcerated parents whose children are in foster care, according to international family-law specialists.

The Act also created a financial incentive to encourage adoption. States receive an "adoption bonus" of \$4,000 to \$8,000 in federal money for every foster-care adoption above the previous year. More than \$192 million in adoption incentives

have been awarded to states since fiscal 1998, when the first bonuses were issued.

The rate of incarceration of women has increased faster than that of men in recent years. The increase has been fueled by state laws mandating minimum drug sentences and on the federal side by restrictions on granting leniency to single mothers.

The 15-month time frame for terminating parental rights is too stringent, some say, imposing a standard that is impossible for many women in prison to meet. Even after women are released from prison, most can't immediately set up a home stable enough for children.

The Act creates a situation that is "a violation of the fundamental rights of parents and children to have relationships with one another," says Tamar Kraft-Stolar, director of the Correctional Association of New York's Women in Prison Project. The nonprofit group will release a report soon calling for changes in a New York law with requirements similar to the federal act. The report argues that the government should make exceptions to the 15-month rule for inmates with children in foster care. It recommends that child-welfare agencies help maintain relationships between children and their incarcerated parents.



Tamika Davis may lose her children, Ramon and Destiny.

About three-fourths of the women in state and federal prison today have children under 18. There are nearly 30,000 children in foster care because their parents are in jail or prison. Cases involving parental-rights termination of incarcerated parents more than doubled from 1997 to 2002, according to a study of 2,500 cases by Philip Genty, a Columbia University School of Law professor, conducted for a report by the Child Welfare League of America.

Authors of the law say it is intended to work in the best interest of children, not their parents.

Cassie Bevan, a senior policy adviser to the

House majority leader and an architect of the Adoption and Safe Families Act, says, "We looked at prison sentences, but we weren't that sympathetic." Richard Gelles, another ASFA architect and dean of University of Pennsylvania's School of Social Policy & Practice, says, "the fact that the criminal justice system locks women up for too long can't be a reason why children's development is held hostage."

The Law's Intent

The intent of the law is to sever parental rights so that children can be placed in stable, adoptive homes. But for some children, especially older ones or those with special needs, that may never happen. In those cases, the children remain in foster care, but have no contact or information about their parents.

Some European countries allow incarcerated women to keep their children with them, says Eurochips, a Paris group working on behalf of children with imprisoned parents. In Spain, Portugal, Ireland and Italy, children can stay with parents in prison until the age of 3. In Germany, children may stay until they are 6. Termination of parental rights is rare in most of these countries.



Detra Welch outside her Chicago home. Her parental rights were terminated and her daughter was adopted.

On the eve of her daughter's June 1999 birth, Detra Welch was indicted in an Illinois state court in Chicago for possessing crack with intent to sell. Ms. Welch was a long-time abuser, she says, and her baby, Gwynne, was born addicted, according to court filings. Ms. Welch spent just two days with the child in the hospital before returning to prison. It was her third prison term in seven years.

Gwynne was placed with a foster family trained to deal with problems she might face, according to court records. Her foster mother has a master's degree in early-childhood education. The family wanted to adopt Gwynne. Ms. Welch, a high-school drop-out at the time of her release, wanted to keep the child.

The baby made Ms. Welch view prison differently this time, she says. She attended a drug-rehabilitation program in prison. "I really wanted my baby, and I wasted so much time in my life," says the 37-year-old Ms. Welch, who says she began using crack at 16.

Her late father was an alcoholic, she says, and three of her sisters are drug addicts. Ms. Welch says she sees her 20-year-old son, who was raised by his grandmother, infrequently. He was recently released from prison, after serving time for possession of crack cocaine. "He'll listen to me eventually," she says.

When she was released from prison in 2002, Ms. Welch signed up for an outpatient substance-abuse program at Chicago's Haymarket Center, a nonprofit facility. After completing the program, Haymarket hired her full-time to work with addicted mothers, a job she holds today. "Detra is one of the best employees I've ever had," says Mary Jane Miller, clinical director of women's services at Haymarket. "She's dependable, loyal and an incredible communicator."

In 2002, Ms. Welch had several visits with Gwynne, supervised by county social workers. She says the child bonded with her, often crawling into her lap and stroking her face.

The last visit was in December 2002. Five months later, her parental rights were terminated by a judge who ruled that her repeated incarcerations made her unfit to parent Gwynne.

Appealing the Ruling

Ms. Welch appealed the ruling, arguing she now was in a position to give her daughter the life that she herself never had. While noting Ms. Welch had made "substantial progress toward correcting her life as she sought to regain custody of her child," an appellate court panel ruled in 2004 that her prison terms "prevented her from discharging her parental responsibilities." The judges said, "Sometimes there is just too much history."

In May 2005, Illinois's highest court upheld the termination. "Were it not for the fact that a halfway house put her on its payroll as a detox specialist, it is difficult to see how she could even support herself financially," the court said.

"I was shocked," says Ms. Welch, who calls the resolution "double jeopardy" because she was punished twice. The courts "went on my past -- but that's my past." Ms.

Welch completed a high-school equivalency degree in 2004 and now is studying for a college degree.

Today, she doesn't know where her daughter is, or the names of her adoptive parents. Many family-court records relating to minors aren't public.

"I'm all right and I have to accept it," Ms. Welch says. "God got me here for a reason."

Incarcerated mothers often aren't even informed of efforts to terminate their rights to their children, according to a soon-to-be-released report by the Correctional Association of New York, an independent group that monitors women's prisons. The report says correctional facilities frequently fail to follow "basic steps" to bring inmates to termination hearings.



Tracey Smith (left) now lives with her mother Jacqueline in Brooklyn.

Jacqueline Smith spent more than nine years in a federal prison in Connecticut for possessing crack cocaine with intent to sell. She says the first time she learned she might lose her parental rights was when her daughter, Tracey, then 9, confided to her during a visit that she was going to be adopted. "Adoption?' Where'd you get that from? Nobody said nothing to me about this," Ms. Smith recalls telling her.

When she asked to attend hearings where the termination of her parental rights would be discussed, Ms. Smith says prison authorities turned her down.

Federal prisons aren't required to transport inmates to state court proceedings.

Rachel Chapa, a spokeswoman for the women's federal prison at Danbury, Conn., where Ms. Smith did her time, says the Bureau of Prisons' practice is to allow inmates to participate in civil family court matters by telephone, or even video phone. These types of calls aren't monitored, she adds, as other calls are.

Ms. Smith had a court-appointed lawyer whom she says she spoke with by phone a few times. "My lawyer told me to give it up," Ms. Smith says. She refused, writing letters to the judge and corresponding with the daughter she rarely saw.

Meanwhile, her daughter was shuttled around, living in eight different foster homes in seven years. Except for her final placement, which lasted two years, "everyone else was in it for the money," says Tracey, now 17.

Both mother and daughter protested the idea of Tracey being adopted. Tracey says she made her feelings clear to social workers, who take youngsters' views into consideration, especially those over 12 years old. The goal for Tracey was eventually changed to reunification with her mother, who got out of prison in 2004. The two now live in an apartment in Brooklyn. Ms. Smith works as a manager at an Applebee's restaurant and Tracey is in high school.

"She made mistakes in her life," Tracey says of her mother. "But I still knew I wanted her to be my mom and that I didn't want to be adopted."

To keep their children out of foster care, incarcerated women often try to place them with family or friends, but that doesn't always work out. After her arrest in Minnesota in 2003 for possessing and intending to sell methamphetamines, Katrina Thielen Schultz lost custody of Mercedes Entemann, now 7, and Chance, 4. Mrs. Schultz's sister agreed to take the children, but was disqualified by child-welfare authorities because of a driving-while-intoxicated offense committed by her husband in 1999. A felony conviction often disqualifies an adult caring for an inmate's child.

Instead, Mercedes and Chance were turned over to a foster family. Parental-rights termination proceedings began in 2004. Incarcerated in a federal prison in



Mercedes Entemann at her new home in Gloucester, Va.

Alderson, W.Va., Mrs. Schultz was unable to attend the termination hearings, which were in Minnesota. Many women believe they could do a better job defending themselves than the court-appointed lawyers they rarely meet.

Mrs. Schultz's efforts to keep the children turned in her favor, but because of a fluke: last year, a court heard evidence that her daughter was mistreated in foster care, according to her and her lawyer. The records in that case are sealed. Mrs. Schultz's mother-in-law, who isn't the biological grandmother of the children and didn't know them well, agreed to take them in. Last August, Mrs.

Schultz saw Mercedes and Chance, who had just come out of foster care, for the first time in more than two years. "I will never take my children for granted again," she says.

The children were relieved, but confused. "Thank you, God, for the house we live in and the food we eat -- and that we have our family back," Mercedes prayed at lunch one day, a week after she arrived at her new home in Gloucester, Va.

'Mommy Laura, Mommy Trina'

Yet Mercedes says she won't forget her foster mother, who she calls "Mommy Laura," to distinguish her from "Mommy Trina." Though she says her foster father made her "clean toilets with a toothbrush" when he was mad, she says she still misses the family.

For some incarcerated mothers, the question they struggle with is whether they ought to have their children. Kimberly Webster says she was "the lousiest mom" and worries about how good a parent she will be if she can regain custody of her son, Anthony, 8.

There were days, she says, when she was so high on drugs that she didn't bother to change her baby's diaper. Ms. Webster, 29, lost custody of her son in May 2003. He went to foster care, but in 2004, went to live with her ailing mother.

She finished a jail sentence in the "Women in Transition" facility, a prerelease program for substance abusers in Salisbury, Mass., this month.

"I don't know what to expect when I leave here," says Ms. Webster, who hopes to be reunited with her son. She knows the risks of falling back into substance abuse, for she once was off drugs for four years and then relapsed, she says. "I don't want to fail him again."

Lawyers who assist women in their uphill battles worry, too. Mary Beth Feindt helped her client, Latasha Brown, win parole and more time to fight termination proceedings. Ms. Brown, 27, pleaded guilty to second-degree manslaughter after killing her partner with a kitchen knife. In prison for 23 months, she rarely saw her two children, now 7 and 3, who are in foster care. She learned to read and write so she could write to them. Proud of her newly acquired literacy, she says she plans to "take my children to the library and read to them."

Ms. Feindt, her attorney, says she hopes Ms. Brown will get the long-term therapy, parenting assistance and other services she will need. "I do wonder how I would live with myself if I get the kids back and something goes wrong," Ms. Feindt says.

After being released from prison, many women go back to the same communities, without a job or a place to live. "It is unreasonable to expect these women to resume parenting and make good choices," says Marilyn Montenegro, a Los Angeles social worker who counsels women in prison and believes they should be given more time to put their lives back together after getting out. The "rigid timelines" set for moving to cut off parental rights after children are in foster care for 15 months "aren't realistic,"

she says.

Ms. Davis, the woman arrested for stealing jeans and shirts at the Cheektowaga, N.Y., mall, recalls that when she was 7, her mother would steal minks as she looked on. "I was the only kid I knew who went to school wearing a mink stole," she says. While she was serving her most recent sentence, her mother, who gave birth to her at 15, was also in prison, she says.

Ms. Davis's arrest at the mall wasn't her first. An arrest in 2000 on assault charges forced her to find care for her children while she served 18 months in state prison. Leaving them with fathers wasn't an option: her son's dad was serving a 100-year prison term for murder, while her daughter's father died of gunshot wounds. Ms. Davis left her son, Ramon, and daughter, Destiny, with an aunt while she did her time.

During her most recent time in jail, her children ended up in foster care. After they had been there for more than 15 months, the state, as required, moved to terminate Ms. Davis's parental rights.

While in jail, Ms. Davis took the parenting classes required for reunification with her children. She also attended Alcoholics Anonymous and drug-rehabilitation sessions, even though she says she doesn't have an addiction problem. Every Thursday, social workers brought her children for visits.

In March, her son, then 10, wrote her a letter:

Mom

You have to get your self strate. I cannot wait until you get out of jail so we can start all over again. You will get a job and we can have a good life. You know I love you badly just try to be right in jail so you can have us back. I love you mom.

"The kids tell me they really want us to be together again," Ms. Davis said in August, days before her release from the Erie County Correctional Facility. She planned to find work and save money for an apartment and furniture. One day, she told her children, she would go to school to be a hairdresser.

It was an ambitious dream for Ms. Davis, a high-school drop-out who says she has held only one job, a stint at a supermarket before her children were born. Instead she says she made her living as her mother had: supplementing welfare benefits by being a "booster," stealing goods and selling them on the street. "I'd make \$350 to \$500 a day," she says. "It paid the bills and gave me Chanel pocketbooks."

After her release from jail in August, Ms. Davis moved in with an aunt, who asked her for money. Unable to pay, she went to stay with a cousin.

On Sept. 8, Ms. Davis had her first postincarceration hearing on ending her parental rights. When the hearing began, she wasn't there. An hour and 20 minutes after her scheduled court appearance, she walked in.

'I Don't Understand'

The lawyers and social workers had gone; the judge had moved on to other matters. "I didn't have money for the bus, and I had to walk in the rain," Ms. Davis explained, wondering why no one waited for her. "I don't understand how I got into this mess."

A week earlier, she says she sought work as a dietary aide in a nursing home. She arrived two hours late for the interview, she says, and when she tried to reschedule, she was told the job was filled.

On Sept. 26, Ms. Davis went back to the Cheektowaga Mall. This time, police say, she stole a Coach purse, a gold bracelet and earrings, shoes, a jacket, jeans and belt and child's jacket and hat. Ms. Davis agreed to enter a drug program in lieu of a jail sentence.

After Ms. Davis missed two weekly visits with her children, her son worried that his

mother "might be dead," according to a report given to Ms. Davis's lawyer in October by social workers. "These kids really care about her," says David Blackley, her lawyer.

Child-welfare workers recommended Ms. Davis agree to a conditional surrender of her parental rights. This would enable her children to be freed for adoption, but would still give her occasional visits with them. Ms. Davis rejected this because she doesn't want her children to be adopted.

Last month, she returned to court, trying to keep her children. One of the children's social workers said Ms. Davis had made a "remarkable turnaround," because she now is showing up on time for visits with her children and has found a place to live, a \$250-a-month apartment paid for directly by welfare. She remains unemployed.

Child-welfare workers said Ms. Davis's children were struggling but still attached to her. She was required to show receipts for the Christmas presents she gave them, to prove she had purchased them.

Her case will be considered again in July. By then, Ms. Davis must have a "suitable income," the judge said. "You have six months to get your act together," said Erie County Family Court Judge Patricia Maxwell. "You've got to decide whether you can be a mother."

Ms. Davis has already made that decision. She says she recently learned she is pregnant.

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Corrections & Amplifications:

The Adoption and Safe Families Act doesn't expressly prohibit contact between parents whose parental rights have been terminated and their biological children who have been adopted, although such contact rarely occurs since it must be sanctioned by the adoptive parents. This article incorrectly said the law prohibited contact.