

Incarcerated Mothers: Mental Health, Child Welfare Policy, and the Special Concerns of Undocumented Mothers

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Abstract

This study presents a single case that illustrates the special concerns of incarcerated mothers with undocumented immigrant status. Current immigration, criminal justice, and child welfare policies, lack of agency coordination, staffing difficulties, and limited resources can create challenges for any incarcerated parent attempting to maintain custody of minor children. For a parent without legal immigration status, the likelihood of reunification with children is nearly impossible. This paper examines current policies impacting incarcerated mothers, the special needs of families involved in justice systems, and recommendations for more humane practice, education, and public policies.

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“Trying to get my kids out of foster care is like being in a mud-hole over my neck and having all these people telling me I need to wipe my feet.”
(Anonymous incarcerated mother)

The memory of her face still haunts me. I first met Marina when I was working as a mental health clinician in a county jail. Marina was not her real name, of course, and the details of this case have been changed to protect client confidentiality. To the best of my knowledge, the content of this case is accurate. This case is important as it illustrates the intersection of punitive criminal justice policies, current immigration law, and the types of correctional health services (or lack of services) that are available for persons who are incarcerated.

My job as part of the medical staff in the jail was to assess inmates for suicide risk, recommend referral for psychotropic medications, and to provide supportive counseling. Marina was brought to my attention by a kindly correctional officer who happened to have been the child of Mexican farm workers. The officer expressed concern that Marina seemed to have lost a great deal of weight, spent most of her time crying in her cell, and appeared to be extremely

depressed. Marina had been arrested along with her husband Luis, and many other residents of the migrant camp where they had been living. Narcotics officers located a methamphetamine lab within several yards of the small trailer where Marina and Luis resided with their two small children. They had been charged with manufacturing methamphetamine and child endangerment. Their two children, aged 18 and 38 months had been taken into protective custody and placed in foster care.

As a veteran of more than two decades of social work practice with community and institutional corrections, I have learned to approach clients expecting to hear sad stories of victimization that often lack any admission of self-responsibility. I was somewhat surprised to have a first impression of Marina as a very sad, extremely thin, sincere young woman. Marina lacked the hardened, physically worn-out appearance characteristic of many substance users. She sat on the floor of her cell, clutching a huge packet of court reports and a service plan from Child Protective Services. Through an interpreter, she explained that she had been living in California following “the crops” for more than seven years. She had come from

Mexico with less than a fifth grade education. Marina was an undocumented immigrant. Other inmates more familiar with child welfare policies had warned her that the papers meant she would need to follow the orders of the juvenile court or it was likely her parental rights would be terminated, allowing her children to be placed for adoption.

Marina cried throughout the first interview, stating she would do anything to make sure her children were safe and that if she was unable to regain custody she wanted them placed with relatives. Marina denied use of any substances or knowledge of the methamphetamine lab. She verbalized willingness to comply with the juvenile court expectations that she attend parenting classes and substance abuse treatment. Unfortunately, the limited services available in the county jail were not offered in Spanish. In lieu of other services, the county case worker had provided some parenting and substance abuse brochures. Apparently, Marina did not tell the worker that she could not read or write in English or Spanish.

Marina's husband Luis had two previous convictions including spousal abuse and driving under the influence. Given his criminal history, Luis expected to be sentenced to prison and deported upon his release, despite the fact that he had legal immigrant status at the time of his most recent arrest. Luis expressed concern for his wife and children, insisting Marina should not be charged with any crime as she had no awareness of the lab, despite the close proximity to their trailer.

Marina appeared to have done an exceptional job parenting her two children, in spite of her long work hours in the fields and lack of resources. According to their caseworker the children were well nourished and "developmentally advanced" although clearly confused and upset about separation from their parents. Correctional officers voiced frustration and anger that visiting day was traumatic for staff and other inmates, as the hysterical screams of Marina's children could be heard throughout the visiting area when the foster mother dragged them away from their mother; "How can this

happen in a civilized country?" asked, one sympathetic officer. The children's young age and lack of behavioral/developmental difficulties made them very "adoptable." Attempts to find a suitable relative caregiver had been unsuccessful, as no one met the requirement of having adequate housing or willingness to work with the child welfare workers. When I spoke with the caseworker about Marina's desire to have the children placed with relatives, she commented, "Something is wrong with this family. They seem very suspicious and most of the relatives do not have phones or permanent addresses." The caseworker was a young, white middle-class woman new to her position.

I worked with Marina for the next several months providing supportive counseling, (using a translator), and attempting to provide information and referrals. In my role as jail clinician all I was supposed to provide was "crisis intervention" and a referral to the psychiatrist who prescribed antidepressant medication and ordered nutritional supplements for her 15 pound weight loss. I attempted to gather information from the various systems involved in Marina's life, including the criminal justice, child welfare, and public health agencies. In a desperate effort to find help for Marina, I located an immigrant advocacy agency located more than 100 miles away. A Latina advocate explained they might petition for Marina's legal status, given documentation of domestic violence. Unfortunately, Marina would be low on their priority list given the fact that she did not reside in their service area.

Marina's sad face would brighten each time she saw me. I think she believed I represented some hope that she would not lose her children forever. My clearly biased perception is that I failed her miserably.

Incarcerated Mothers

The United States currently incarcerates a higher proportion of its residents than any other nation (Walmsley, 2003). Over the past two decades the population of female inmates has increased dramatically and is expected to continue to increase (Beckerman, 1998; Gentry, 1998;

Halperin & Harris, 2004; Johnson & Waldfogel, 2002; Kauffman, 2001; Luke, 2002; Myers, Smarsh, Amlund-Hagan, & Kennon, 1999; Singer, Bussy, Song, & Lunghofer, 1995). According to the U.S. Department of Justice, the number of female inmates in American correctional facilities has increased over 400 percent in the past 15 years (Mumola, 2000). There were approximately 183,000 women in U.S. correctional facilities as of mid-year 2004 (Harrison & Beck, 2005).

A number of reasons have contributed to the increase in incarcerated persons, including mandatory minimum sentencing requirements, truth-in-sentencing legislation, and “three-strikes” sentencing (Gentry, 1998; Luke, 2002). The estimated annual cost to incarcerate one person in a state prison, not including court, police, probation, or parole costs was \$22,650 in 2001, or some 38 billion dollars in (Stephan, 2004). These costs underscore the fact that corrections is a large enterprise, and some scholars have commented the dollars invested in punishing people might be better spent on interventions that would actually reduce problems such as addictions, mental health, or long-term poverty that seem to be the source of most problems of jail or prison inmates (Hagan & Dinovitzer, 1999).

Numbers of children impacted by parental incarceration are unclear, as neither child welfare nor correctional systems collect information about the children of inmates (Luke, 2002; Myers et al., 1999; Rodetti, 2005). It estimated that almost 1.5 million children, or 2.1 percent of all U.S. children had a parent in prison in 1999 (Mumola, 2000) - and this total would be greater if jail populations were included. A large number of these youngsters are placed in foster care systems (Beckerman, 1998; Halperin & Harris, 2004; Johnson & Waldfogel, 2002; Kauffman, 2001; Seymour, 1998).

Mothers who are incarcerated are likely to be vulnerable and disadvantaged prior to their legal troubles. A majority of female inmates suffer from intergenerational poverty and family dysfunction (Halperin & Harris, 2004;

Kauffman, 2001; Luke, 2001; Seymour, 1998). Large proportions of female inmates report histories of physical abuse, including child maltreatment and domestic violence (Johnson & Waldfogel, 2002; Myers et al., 1999; Seymour, 1998). Approximately 23 percent of all female inmates report histories of treatment for mental illness prior to incarceration (Mumola, 2001, p. 2). Approximately 57 percent of all U.S. incarcerated women are persons of color, with African-American and Hispanic women especially overrepresented (Harrison & Beck, 2005; Mumola, 2000; Myers et al., 1999; Seymour, 1998; Singer et al., 1998). The vast majority of women are incarcerated for non-violent, economic-related crimes including fraud, theft, prostitution, and drug sales (Halperin & Harris, 2004).

Child Welfare Policies and Practices

When a child enters the public child welfare system, legal and philosophical policies have an impact on outcomes. Decisions for placement or reunification take place in juvenile court proceedings, which are subject to both current laws and the discretion of caseworkers, and juvenile court judges. In the event the court determines a need for out-of-home placement, a caseworker is required to provide the parent with a service plan outlining expectations that must be met (Reed & Karpilow, 2002). Typically, these case plans include parenting classes, substance abuse treatment, and the establishment of safe living arrangements. Child welfare policies require that “reasonable effort” be made to reunite children with biological parents and that services are provided to help parents meet the requirements of the service plan. Permanency plans are expected to be made according to “best interest of the child.” The terms “reasonable effort” and “best interest of the child” are ill-defined and subject to the interpretation of individual workers and counties. In California, each of the 58 counties has its own child welfare system and interpretation of the federal policies (Reed & Karpilow, 2002).

In 1997, the Adoptions and Safe Family Act (ASFA) was implemented as a means to provide youngsters, especially very young children, with

permanent living arrangements (Beckerman, 1998; Gentry, 1998; Johnson & Waldfogel, 2002; Seymour, 1998). Under ASFA policies and practices were less directed at maintaining biological families than providing “permanency” for children in out-of-home care. Federally mandated time limits for completion of service plans became much more restrictive, requiring that any child living in out-of-home placement for 15 of 22 months have a “permanency plan.” For parents unable to complete service plans within the time limits there is a high risk that parental rights can be terminated, legally freeing the child(ren) for adoption.

Parents can prevent permanent termination of custody by having the child placed with a relative who can provide care. Child welfare policies require that relative care providers are given priority in placement decisions (Gentry, 1998; Reed & Karpilow, 2002). Relative caregivers requesting to take custody of a child who has been made a dependent of the juvenile court are required to meet the same standards as non-relative foster care givers, and are often provided with limited or no financial and supportive benefits (Beckerman, 1998). Parents from backgrounds of poverty and disadvantaged ethnic groups are likely to have more difficulty finding a relative who meets the legal and housing standards, as financial ability to take in another family member. Certification for placement requires legal background checks of every adult in a potential placement household and careful evaluation of living conditions. There are numerous practical and cultural reasons, however, why undocumented immigrant relatives might avoid contact with the child welfare system.

For parents with complex needs that may include financial and educational disadvantage, domestic violence, substance abuse, cultural and language differences from the dominant culture, substandard housing, and lack of trust in the “system” - the ability to comply with a service plan is very challenging. For incarcerated mothers without a relative able to provide an appropriate placement, avoiding having their parental rights permanently terminated is nearly impossible. Child welfare polices, including the

time limits of ASFA, do not require special consideration in the event of parental incarceration (Beckerman, 1998; Gentry, 1998; Johnson & Waldfogel, 2002; Seymour, 1998). More than 90 percent of women, for instance, are sentenced to more than 15 months (Gentry, 1998).

Service plans and ongoing case management is the responsibility of individual caseworkers. The juvenile dependency court relies almost exclusively on caseworkers to make assessments and to provide ongoing case management for families. Caseworkers are likely to lack specialized training, experience high turnover rates, and carry large caseloads (Reed & Karpilow, 2002). In California, caseloads in public child welfare are twice the recommended level in many areas (California Department of Social Services, 2000). For an incarcerated mother, the caseworker is her sole source of contact with the child welfare system and her child in out-of-home care. Untrained workers may be unfamiliar with laws and policies impacting incarcerated mothers and lack understanding of cultural factors that may contribute to the perceptions of child maltreatment (Halperin & Harris, 2004). An individual caseworker has considerable discretion in determining what services demonstrate “reasonable effort” and what plan is “in the best interest of the child.” Caseworkers may share the public stigma that incarceration is indicative of lack of fitness as a parent (Kauffman, 2001).

Even when caseworkers are supportive of an incarcerated mother’s attempts to work towards reunification, there are many obstacles. Mothers are usually placed in prisons far from their counties of origin as most states only have one prison for women. Geographic distances can become a serious barrier to communication and reunification service plans. Because many inmates have inconsistent access to long-distance phone calls, contact between incarcerated mothers, caseworkers, and children is often in written form (Luke, 2002). High illiteracy rates, however, make written communication ineffective for many incarcerated mothers. The difficulties of

communication with caseworkers -- especially if there are language barriers -- leave many inmates with a lack of understanding of their rights and responsibilities. Beckerman (1998) reported that incarcerated mothers often rely on other inmates or correctional staff as their primary source of information about child welfare policies and expectations.

Most service plans require ongoing contact with children as a condition of reunification. For incarcerated mothers, contact with children is often beyond their control (Halperin & Harris, 2004). Long distances, visiting policies within correctional facilities, inadequate visiting arrangements within a jail or prison, and concern about exposing children to a correctional environment may cause caseworkers, caregivers, and incarcerated mothers themselves to discourage children from visiting (Dressel, Porterfield, & Barnhill, 1998; Halperin & Harris, 2004; Myers et al., 1999; Morton & Williams, 1998). To compensate for some of these problems some jurisdictions are experimenting with televised visiting programs to maintain family contact (Rogers, 2004).

Lack of coordination or cooperation between child welfare agencies and correctional organizations can make compliance with services plans difficult. Child welfare agencies and correctional facilities are likely to have conflicting roles and responsibilities. Both systems lack resources and staffing (Seymour, 1998). Even when correctional facilities provide parenting classes and substance abuse treatment, the programs are rarely specific to the special needs of incarcerated mothers (Dressel et al., 1998).

Maternal Incarceration and Impact on Children

There is considerable evidence that children with incarcerated parents may be at higher risk of educational, emotional, and legal problems than average children (Dressel et al., 1998; Myers et al., 1999; Morton & Williams, 1998; Rodetti, 2005). Children of incarcerated mothers are at high risk of experiencing multiple out-of-home placements, school failure, mental health

problems, and being incarcerated in juvenile or adult facilities (Luke, 2002; Myers, et al., 1999).

The negative impact of maternal deprivation is well-documented in research. Children of incarcerated mothers are likely to experience trauma, loss, and potential problems with bonding and attachment (Dressel et al., 1998; Myers et al., 1999; Morton & Williams, 1998; Rodetti, 2005). The developmental stage of the impacted child may be a factor in adjustment, with some researchers believing children between the ages of two and six years-old may be at greatest risk (Johnston, as cited in Myers et al., 1999).

Many children experience "enduring trauma" beginning with the experience of seeing their mother's arrest and removal. Children of incarcerated parents may grow up with the shame and stigma of having an incarcerated mother. It is not known how much of the difficulties displayed by these children were caused by living conditions prior to parental incarceration, living arrangements after removal, and/or the experience of knowing a parent is in prison (Myers et al., 1999). There is a need for research on long-term outcomes for children who are adopted after parental incarceration.

Special Challenges for Undocumented Mothers

An incarcerated mother with undocumented immigration status has almost no chance of avoiding termination of parental rights if sentenced to a lengthy prison term. The conspicuous lack of research and publications relating to incarcerated mothers with undocumented legal status -and the lack of literature about undocumented persons in general- is indicative of the lack attention on this vulnerable population. Little is published at all about undocumented immigrants with the exception of conservative rhetoric about the economic costs of "illegal aliens." Undocumented immigrants are portrayed as criminals, depriving legal citizens of jobs and a burden on health, education, and welfare systems. In contrast, the media rarely provides images of undocumented immigrants as marginalized persons in need of protection

(Bertman, 2003; Dwyer, 2004; McDonald, 1997).

Throughout time and in most places, immigrants have been blamed for social problems during times of economic and social instability (Dreaming, 2005; Dwyer, 2004). In recent years, public hostility towards undocumented immigrants is reflected in public policies. In 1996, the Illegal Immigrant Reform and Responsibility Act made undocumented immigrants ineligible for public benefits including Medicaid (Dwyer, 2004; Espenshade, Baraka, & Huber, 1997; McDonald, 1997). This policy was an attempt to discourage illegal immigrants from entering the U.S. and was intended to save money. The unintended outcome, however, was that illegal immigration has not decreased. Moreover, the economic cost to deter and punish “offenders” has proven more costly than the actual cost of public benefits for these immigrants (Espenshade, Baraka, & Huber, 1997; McDonald, 1997).

Although actual numbers are difficult to establish, it is estimated that approximately five million undocumented immigrants reside in the U.S., the vast majority from Mexico, and living in California (U.S. Immigration and Naturalization Service [INS], 1997). At midyear 2004, there were 91,789 non-citizens incarcerated in state or federal prisons, and this total has increased almost 20 percent since 1997 (Harrison & Beck, 2005). Jail populations in some states, such as California, also have high rates of non-citizens who are held. In the fourth quarter of 2004, approximately 10.5 percent of all jail inmates were non-citizens (California Board of Corrections, 2005). Illegal immigrants are more likely to be detained in jail and required to post higher bail than their counterparts who are citizens due to concerns that they may fail to appear at court hearings. The INS (1997) ‘estimated daily cost’ is \$60 per day to incarcerate undocumented immigrants. In 1996, the federal government provided \$495 million dollars to reimburse states for the costs of incarcerating undocumented immigrants, half of which went to California (INS, 1997).

Most undocumented workers enter the U.S. in

hopes of better jobs and living conditions for their families (Marcelli, 2005). Undocumented workers are likely to work in dangerous, undesirable jobs for low wages and “nearly slavery conditions” (Dreams, 2005, p. 18). Many American industries rely on undocumented workers as a cheap source of labor. The high risk work and living conditions experienced by many undocumented immigrants are unreported, as undocumented immigrants have limited recourse without fear of deportation (McDonald, 1997)

Children of undocumented immigrants may suffer the most as a result of punitive criminal justice and child welfare policies and practices (Dressel et al., 1998). Many children of undocumented immigrants are U.S. citizens and are entitled to services and protection (Leaman, 1994). Unfortunately, protection may not include a right to remain with one’s own family or members of their cultural background.

Undocumented women are at a higher risk of domestic violence, likely to have limited knowledge of the laws, communication barriers, realistic fears of deportation, and loss of child custody (Gross, 2001; U.S. Department of Justice, 2000). The 1994 Violence Against Women Act entitled undocumented women “of good moral character” abused by someone with legal status to self-petition for visas (Mumola, 2001). Unfortunately, this policy does little to help incarcerated women maintain legal custody of her children. Aside from consideration of “good moral character,” other public policies put any victim of domestic violence at risk of loss of child custody. Many states, including California, have implemented “failure to protect” laws (Magen, 1999). Concerned about the impact of children’s exposure to domestic violence, these policies allow courts to charge battered women with “failure to protect” if she does not remove herself and her children from an abusive relationship. An unintended consequence is that the “victim blaming” nature of these policies may make women -- especially undocumented women -- less likely to seek assistance from the criminal justice or public welfare systems. Similarly, there is some evidence that arrested persons of some ethnic groups may be more

likely to plead guilty, having experienced discrimination and lacking trust in the “fairness” of criminal justice systems (Tonry, 1997).

Implications for Intervention

Until there are significant changes in public policies and societal values that value the contribution of undocumented immigrants, this population will be at greater risk. These large scale changes are unlikely to occur in the near future. In the meantime, the policies and practices of criminal justice and social service agencies might allow for more humane and cost effective interventions for undocumented mothers and their children. Interventions for incarcerated women are not likely to be effective if they do not take into account the complex social, environmental, and political challenges experienced by this vulnerable and marginalized population. Moreover, therapists, community health workers, and community organizations should advocate on behalf of this high-risk population.

Although there are no programs specific to undocumented incarcerated parents, interventions might be more effective if delivered by correctional health care providers who coordinate services with public child welfare caseworkers. There is a need for cultural competency, better awareness of laws, and the knowledge about the special needs of incarcerated mothers and their families. Correctional health care workers with specialized training might create more opportunities for communication, cooperation with correctional organizations, and advocacy (Beckerman, 1998; Kauffman, 2001).

Several states have introduced correctional facilities that allow children to remain with their mothers or community based programs that allow for more cost effective rehabilitation (Dressel, et al., 1998; Fearn & Parker, 2004; Morton & Williams, 1998). Many researchers and practitioners see incarceration of parents as an opportunity for intense problem-solving and interventions -if adequate resources and staffing can be provided (Beckerman, 1998; Kauffman, 2001; Luke, 2002; Myers et al., 1999; Pomeroy, 1998; Singer, et al., 1995). Incarceration can

serve as an opportunity for development of parenting skills, substance abuse education, and supportive therapy for inmates with histories of family violence.

Perhaps more helpful and cost-effective would be preventive measures to help keep undocumented mothers out of the criminal justice system. Undocumented mothers often come in contact with health care providers for emergency medical care and childbirth (Prentice, Pebley, & Sastry, 2005; Trossman, 2004). Culturally sensitive health care workers may have opportunities to develop trust and to link vulnerable undocumented mothers to community resources including; domestic violence programs, substance abuse information, legal advocacy services, housing, and educational services. Provision of these services might be considered not only altruistic and compassionate, but cost-effective and in the best interests of community public health (Jaklevic, 2001; Kullgren, 2003).

There is a need for greater public and professional awareness of the complex issues encountered by undocumented immigrant mothers. The lack of knowledge about the real economic and social costs and benefits of immigration contributes to misconceptions and apathy. Social justice for vulnerable groups is not likely as long as these populations remain invisible.

Final Remarks

I came to work on a Monday morning and requested to see Marina. I had not been able to meet with her for several weeks due to a shortage of correctional staff. County jail policies required that all interviews be supervised by an officer -and mental health services were considered a low priority. I was told that Marina had been transferred to a state prison facility after taking a plea bargain in hopes of beating the permanency time guidelines. Her former caseworker explained it was likely that the children would be adopted, given that it was doubtful that Marina would complete her service plan within the time requirements. Marina would probably be turned over to Immigration and Naturalization Services

upon completion of her prison sentence, and returned to Mexico. This individual case raises a number of important questions about the way our society perceives immigrants, the role of women, and whether our ways of punishing people are worse than the actual crime.

Who was Marina? Was she a victim of her husband's abuse, exploitive employers, and an ineffective system that failed to advocate for her? Was she simply a cunning criminal who got what she deserved and whose children's needs would be better met living with an adoptive family?

Who were Marina's children? Were they children rescued from inadequate, criminal parents, or traumatized by a system intended to protect them? Will they grow up to be productive members of society or at greater risk of costly services and dependency in the future?

There are many unanswered questions in this single case, as well as the larger concerns of children of undocumented immigrants who become incarcerated. Before there can be real solutions to these problems, there is a need for professionals and public to consider the human and social costs of the invisible suffering of undocumented immigrants.

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