

**COLLATERAL CASUALTIES:  
Children of Incarcerated Drug Offenders in New York**

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## I. INTRODUCTION

For over a quarter of a century, New York's drug laws have mandated severe prison sentences for drug offenses and have filled the state's prisons with low-level offenders, most either black or Hispanic. Many of the 150,000 prison sentences handed down to drug offenders have been so disproportionate to the crime—mostly retail street sales and other minor drug offenses—that they violate basic principles of justice and internationally recognized human rights, as detailed in an earlier report.<sup>1</sup> Excessively long sentences can constitute cruel and counterproductive punishment for those who are incarcerated. Such sentences also needlessly harm the children left behind.

Children of incarcerated drug offenders are one of the collateral casualties of the state's war on drugs. Many advocates for drug law reform have cited the experience of children who have lost their mothers or fathers to prison on drug charges. While anecdotal evidence abounds, to date there have been no statistical studies to help assess the magnitude of the problem. In this report, Human Rights Watch presents the first such statistics about New York's children of incarcerated drug offenders.<sup>2</sup>

Among our findings:

- An estimated 23,537 children currently have parents in prison convicted of drug charges.
- An estimated 11,113 currently incarcerated drug offenders are parents of children.
- Since 1980, an estimated 124,496 children have had at least one parent imprisoned on drug charges.
- Some 50 percent of mothers and fathers in prison for drug convictions do not receive visits from their children.

Safeguarding communities and protecting families from drug trafficking and drug abuse are important public interests. But the means chosen to combat drugs should neither violate fundamental human rights nor inflict unnecessary collateral harm. As New York debates reform of its drug laws, it needs to consider steps to restore proportionality, fairness, and common sense to drug sentences. New York also needs to attend to the emotional, developmental, and economic consequences of parental imprisonment on children.

Children of convicted drug offenders typically grow up in families and communities struggling to cope with poverty, inadequate work and educational opportunities, discrimination, crime, and substance abuse. The loss of a parent to prison can be yet another terrible burden for these children, one that experts agree can have a significant adverse impact on their emotional and social development.<sup>3</sup> While some drug offending parents abuse or seriously neglect their children, many others do not. Contrary to prevalent stereotypes, even if a parent is addicted, he or she may nonetheless be a source of love, care, and stability. In many cases, community-based substance treatment would address the addicted parent's needs and the public interest, as well as benefit the children far more than incarceration.

Some offenders' crimes are so serious that imprisonment is warranted regardless of the implications for their families. But for many low-level nonviolent drug offenses, alternatives to incarceration—including community-based sanctions and drug treatment programs—are a more proportionate sanction and one that would be less costly for their families. Human Rights Watch has consistently urged the State of New York to eliminate harsh mandatory minimum sentences for drug offenders and to authorize judges to tailor criminal sanctions that reflect the individual offender's conduct and other relevant factors. Restoring fairness and proportionality to New

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<sup>1</sup> For a detailed human rights analysis of New York's drug laws, see Human Rights Watch, "Cruel and Usual: Disproportionate Sentences for New York Drug Offenders," *A Human Rights Watch Report*, vol. 9, no. 2, March 1997.

<sup>2</sup> The Department of Justice has published statistics on incarcerated offenders and their children nationwide, but does not provide a breakdown of information for drug offenders in particular or on offenders by state. See Bureau of Justice Statistics, "Incarcerated Parents and Their Children," (U.S. Department of Justice, 2000).

<sup>3</sup> We have attached, as Appendix 2, a short bibliography of documents on the impact of parental incarceration on children.

York's drug laws would reduce the number of drug offenders needlessly sent to prison. By reducing their numbers, the state would also reduce the number of children who must suffer from losing a parent to prison.

## II. NEW YORK DRUG LAWS: WHO GOES TO PRISON

As of January 1, 2002, there were 19,164 drug offenders in New York prisons—17,741 men and 1,423 women. Drug offenders constituted 40 percent of prison admissions in 2001, and represented about one-third of the total state prison population.<sup>4</sup> New York sends people to prison on drug charges at a far higher rate, relative to population, than it does violent offenders.<sup>5</sup> Since 1980, there have been 150,085 drug offender admissions to state prison.<sup>6</sup>

Few of the drug offenders sent to prison are major traffickers or violent, dangerous individuals for whom serious prison sentences are justified. Whether first time or repeat offenders, most of them were convicted of participating in voluntary, nonviolent, retail-level transactions between adults to obtain or sell drugs, or of functioning in other low-level roles in the drug trade:

- 60 percent of the incarcerated drug offenders were convicted of offenses in the three lowest classes of drug felonies—Class C, D, and E—which involve only minute drug amounts.<sup>7</sup>
- Among drug offenders sent to prison, almost one in three (30.7 percent) had no prior felony convictions for any crime.
- 46.1 percent had prior convictions limited to nonviolent felonies.
- Less than one in four (23.2 percent) had any prior violent felony convictions.<sup>8</sup>

The thousands of low-level drug offenders in New York prisons are the result of mandatory minimum sentencing drug laws that are among the most punitive in the United States (U.S.). Put in place over a quarter century ago, the so-called Rockefeller drug laws prevent judges from tailoring sentences that are proportionate to the crime. Harsh prison sentences are required for even minor offenses; judges lack the authority to impose alternatives to incarceration such as community-based sanctions or substance abuse treatment.<sup>9</sup>

Drug sentences in New York are keyed to two factors: the weight of the drug involved and whether the offender has a prior conviction. In most cases, drug felons receive an indeterminate term that includes a minimum and maximum period of imprisonment. A judge cannot impose a minimum sentence lower than that specified by statute, regardless of the nature of the offender's role in the offense or the threat he or she poses to society. For example, for a single \$10 sale of cocaine, the lowest sentence a court can impose is a term of one to three years. If the offender has a prior conviction—as many drug offenders do—the lowest sentence is a term of four-and-one-

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<sup>4</sup> Data from the New York State Department of Correctional Services (hereinafter the Department of Correctional Services), on file at Human Rights Watch. In 1996, drug offenders constituted 31 percent of new prison admissions (excluding returned parole violators). See Human Rights Watch, "Punishment and Prejudice: Racial Disparities in the War on Drugs," *A Human Rights Watch Report*, vol. 12, no. 2, May 2000. Figure 6.

<sup>5</sup> *Ibid.* The rate of admission of convicted drug offenders was fifty-five per 100,000 adult residents, compared to thirty-five per 100,000 adult residents for convicted violent offenders.

<sup>6</sup> The Correctional Association of New York, "Basic Prison and Jail Fact Sheet," [http://www.corrassoc.org/visiting\\_fact.html](http://www.corrassoc.org/visiting_fact.html) (accessed May 17, 2002).

<sup>7</sup> Human Rights Watch, "Who Goes to Prison for Drug Offenses?" *A Human Rights Watch Update*, March 18, 1999.

<sup>8</sup> Data for 2000 new court commitments provided by the New York State Division of Criminal Justice Services, on file at Human Rights Watch. Similar criminal history profiles were evident in prior years as well. See Human Rights Watch, "Who Goes to Prison for Drug Offenses?" New York does not differ from other states in this regard: nationwide, three quarters of drug offenders in state prisons in 1997 had no prior convictions for violent crimes; one-third had prior sentences limited to drug offenses. See Bureau of Justice Statistics, "Substance Abuse and Treatment, State and Federal Prisoners," (U.S. Department of Justice, 1997), p.2.

<sup>9</sup> Although there are prosecutor-sponsored diversion programs in some parts of the state, they require prosecutorial consent, and they exclude many drug offenders from eligibility. Human Rights Watch, "Cruel and Usual."

half to nine years in prison. The sentences can be far worse: a first-offender convicted of involvement in the sale of two ounces of cocaine faces a mandatory minimum sentence of fifteen years, with a life-term maximum.

The unfairness of many drug sentences is compounded by their discriminatory impact. Prison sentences for drug offenses have been imposed disproportionately on members of racial and ethnic minorities—blacks and Hispanics constitute 94 percent of the drug felons sent to prison but only 31 percent of the state’s population. Black men in New York are sent to prison on drug charges at eleven times the rate of white men.<sup>10</sup> The racial disparity in incarceration for drug offenses bears little relation to racial differences in drug offending. Available evidence indicates that whites—who constitute 62 percent of New York residents—use, buy, and sell drugs in proportions that differ little from blacks. In absolute numbers, the total of whites who commit drug offenses exceeds the number of blacks. Yet blacks are more likely than whites to be arrested, convicted, and incarcerated on drug charges, because drug law enforcement efforts target participants in street-level, retail drug transactions in poor—primarily minority—urban neighborhoods.<sup>11</sup> Incarceration for drug offenses has led to disproportionately high rates of incarceration of minorities and significant racial disparities in the state’s incarcerated population (including persons in jail as well as prison):

- 6.4 percent of all of New York’s black men and 3.0 percent of all Hispanic men aged eighteen to sixty-four are behind bars, compared to 0.5 percent of all white men.<sup>12</sup>
- Blacks account for 15.9 percent of the state’s population but represent 54.3 percent of the state’s total incarcerated population; Hispanics represent 15.1 percent of the state’s population but 26.7 percent of the total incarcerated population.<sup>13</sup>

### III. INCARCERATED PARENTS AND CHILDREN: NEW STATISTICS

While it is widely recognized that New York’s drug laws have had a significant impact on families, no state-based statistics have been published that help measure the nature and extent of that impact. For example, neither the New York State Department of Correctional Services (hereinafter the Department of Correctional Services) nor any other state agency tracks the number of children who have parents in prison, much less the number of children who have parents in prison serving sentences for drug offenses. The need for such data has added importance in light of the ongoing public debate over the costs and benefits of the state’s drug laws and the need for reform.

In this report, Human Rights Watch presents the first statistics on the state’s incarcerated drug offender parents and their children. Our figures were derived from Department of Correctional Services data on drug offenders and from a 1997 survey of a representative sample of New York prison inmates conducted for the Bureau of Justice Statistics (BJS) of the U.S. Department of Justice (the 1997 survey).<sup>14</sup> As explained in more detail in Appendix 1, while the statistics presented in this report are illuminating, they are best understood as estimates because of the limitations in the data with which we were working. While we are reasonably confident of the reliability of most of the statistics presented here, the numbers for female prisoners should be approached with caution because of the small size of the female subsample on which they were based.

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<sup>10</sup> Human Rights Watch, “Punishment and Prejudice.”

<sup>11</sup> *Ibid.*

<sup>12</sup> The figures reflect incarceration in jails, prisons, and other adult confinement facilities. Human Rights Watch, “Race and Incarceration in the United States,” *A Human Rights Watch Backgrounder*, February 2002. Table 2A, 4, and 5.

<sup>13</sup> *Ibid.* Tables 4 and 5.

<sup>14</sup> The 1997 survey consisted of personal interviews of a nationally representative sample of state and federal prison inmates as well as a statistically representative sample of state inmates in three states—California, New York, and Texas. The survey obtained a wide range of information, including data on current offense, sentence, criminal history, family background, and personal characteristics. The statistics in this briefing were derived from an analysis of the New York sample. Inter-university Consortium for Political and Social Research (ICPSR), “The Survey of Inmates in State and Federal Correctional Facilities, 1997,” <http://www.icpsr.umich.edu/cgi/archive2.prl?num=2598&path=ICPSR> (accessed May 17, 2002).

### Number of Drug Offender Parents and Children

We estimate there are 11,113 drug offenders currently confined in New York prisons who are parents of children. They have an estimated total of 23,537 minor children. Our estimates were calculated as follows.

As shown in Table 1, a total of 57.9 percent of prisoners reported in the 1997 survey that they were parents of children under the age of 18, with a higher number of women (64.1 percent) reporting children than men (57.5 percent).

**Table 1: Percentage of Inmates who are Parents of Children**

Male	Female	Total
57.5%	64.1%	57.9%

Applying these percentages to the 17,741 men and 1,423 women incarcerated at the end of 2001 on drug charges, we calculate there are an estimated 11,113 drug offenders in New York prisons who are parents of children.<sup>15</sup>

Table 2 shows the family size reported by New York inmates in the 1997 survey.

**Table 2: Size of Families Reported by Prisoners**

Number of children (under 18)	Male	Female	Total
No children	41.8%	35.3%	41.4%
One child	26.2%	21.0%	25.9%
Two children	16.4%	20.8%	16.6%
Three children	8.8%	11.6%	8.9%
Four children	3.9%	5.4%	3.9%
Five children	2.0%	5.4%	2.1%
Six children	1.1%	0.7%	1.0%

Using the reported family size and applying it to currently incarcerated drug offenders, we calculate there are 23,537 children who have parents serving time in prison because of drug convictions, as shown in Table 3.

**Table 3: Estimated Number of Children with Incarcerated Drug Offender Parents**

	Men	Women	Total
Number of children	20,862	2,675	23,537

We estimate also that there were 124,496 children who had a parent in New York prisons between 1980 and 2001 for drug offenses. During this period, there were 150,085 drug offender admissions to prison.<sup>16</sup> Data on the number who were recidivists is not available. To minimize double counting individuals who were sent to prison more than once, we have reduced the total number of drug admissions during the twenty-one year period by 30 percent, leaving an estimated total of 105,059 individuals who were sent to prison during that period because of drug convictions.<sup>17</sup> Assuming their average family size was the same as that reported by inmates in 1997 (Table 2), we estimate they had a total of 124,496 children (Table 4).

<sup>15</sup> Figures as of January 31, 2001 from the Department of Correctional Services, on file at Human Rights Watch.

<sup>16</sup> The Correctional Association of New York, "Basic Prison and Jail Fact Sheet."

<sup>17</sup> Data on the percentage of recidivists among drug offenders sent to prison each year since 1980 is not available. The Department of Correctional Services told Human Rights Watch that in recent years as many as 40 percent of drug offenders are repeat offenders, but that in previous years the figure was much lower. A breakdown of prison admissions between 1980 and 2001 by gender is not available.

**Table 4: Estimated Number of Children with Parents Incarcerated on Drug Charges, 1980-2001**

Number of children in family	Percentage of prisoners with children	Total number of children
One child	25.9%	27,211
Two children	16.6%	34,880
Three children	8.9%	28,051
Four children	3.9%	16,389
Five children	2.1%	11,031
Six children	1.1%	6,934
Total		124,496

**Caregivers of Children**

As shown in Table 5, almost half of incarcerated parents reported in 1997 that they lived with one or more of their children prior to incarceration. More mothers (54 percent) lived with their children than fathers (46 percent).<sup>18</sup>

**Table 5: Percent of Prisoners Who Lived with Children Prior to Incarceration**

Male	Female	Total
45.8%	53.6%	46.3%

When a parent is incarcerated, children may face dramatically changed family conditions, particularly if the incarcerated parent was the sole or primary caregiver. Table 6 identifies the current caregivers of children of incarcerated parents as reported by parent inmates in the 1997 survey. The survey data does not, however, indicated the extent to which their children's living arrangements differ from those prior to parental incarceration. A number of the mothers Human Rights Watch interviewed who had been incarcerated on drug charges told us that even before they were sent to prison, one or more of their children had been living with grandparents or other caregivers.

**Table 6: Caregiver of Children of Incarcerated Parent\***

Child's current caregiver	Father incarcerated	Mother incarcerated	Total
Other parent or stepparent	88.8%	20.4%	84.8%
Grandparent	14.0%	51.2%	16.2%
Other relatives	6.1%	23.1%	7.1%
Foster home/Agency	0.7%	18.1%	2.1%
Friends/Others	0.5%	1.9%	0.6%

\*Detail may exceed 100% because some prisoners had multiple children living with multiple caregivers.

As shown in Table 6, most children of incarcerated fathers live with their mothers. While the incarceration of fathers may be less likely to precipitate new household arrangements—both because only half of the fathers lived with their children prior to incarceration and because the children of incarcerated fathers tend to remain with their mothers—their incarceration can nonetheless instigate a dramatic shift in family circumstances. The impact of a father's incarceration on his children's emotional or financial well-being can be particularly significant if he had played an active role in the family's life prior to his incarceration.

<sup>18</sup> The 1997 survey does not provide information on whether parents lived with all or only some of their children prior to incarceration.

The sundering of families is particularly notable when a mother is incarcerated. Mothers in prison reported that relatively few of their children lived with their father. Half of the incarcerated mothers reported that their children were being cared for by grandparents. Almost one in five mothers reported that their children were in a foster home or under control of a child services agency.<sup>19</sup> A small number of mothers who give birth while incarcerated are able to keep their children up to the age of eighteen months in one of New York's two prison nurseries (at Taconic and Bedford Hills).<sup>20</sup>

An unknown number of the children of incarcerated parents experience one or more changes in their caregiver during parental incarceration. For example, one mother serving time for selling cocaine told Human Rights Watch that her two oldest daughters were placed with four different foster families during the several years she was in prison.<sup>21</sup>

Where there are multiple children, parental incarceration often leads to the separation of the siblings, imposing additional emotional burdens on them. For example, one mother of three children was sent to prison for eleven and one half years for selling drugs, her two sons went to live with her sister, and her daughter went to her boyfriend's mother's house. The two sons were later taken from the sister and placed with separate foster-care parents.<sup>22</sup>

Some parents lose parental rights to their children while they are incarcerated, either voluntarily or involuntarily. We were unable to locate any New York statistics on the adoption of children with an incarcerated parent.

Most families of incarcerated drug offenders are relatively poor even prior to a parent's incarceration. The incarceration of a parent can mean the elimination of part of the household income, and can place the remaining caregiver and family in seriously strained circumstances. Substitute caregivers are also likely to have extremely limited financial resources, which are further taxed by new childcare expenses.<sup>23</sup> Even apart from the financial implications, the lives of grandparents or other adults who find themselves responsible for caring for someone else's children are significantly affected by their new responsibilities. One grandmother taking care of the young son of an incarcerated drug offender told Human Rights Watch that she had just retired from the postal service and had planned to travel and enjoy the respite from work. Now she is "raising kids again and can't get away." A woman in her sixties, she takes the child to football games, school outings, and church, and "tries to keep him busy and off the streets." Describing her new life as a parent, she concluded, "I just do the best I can."<sup>24</sup>

### **Maintaining Family Connection**

Maintaining strong, continuing contact with their parents can help children survive the emotional and developmental hazards of parental absence because of incarceration.<sup>25</sup> Family connection also heightens the likelihood that inmates will make a successful transition to the post-prison world. While visits, telephone contact, and mail offer the potential for maintaining communication with parents, in practice these options are limited.

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<sup>19</sup> When a single parent with custody of a child is incarcerated, the children may come under the jurisdiction of the Child Welfare Agency. The parent can either sign a voluntary consent to foster care placement, or the agency can make a finding of parental neglect or abandonment and secure placement. In either case, the foster care placement is court-approved, and the court will impose conditions for the parent to be able to regain custody of the child.

<sup>20</sup> Mothers are allowed to keep infants at Bedford Hills or Taconic until the child is twelve months old, unless the mother is likely to be released before the child is eighteen months old. The two facilities have a total capacity of fifty-six infants.

<sup>21</sup> Human Rights Watch interview with C.J., New York City, March 8, 2001. To protect the privacy of interviewees, we have not provided their names.

<sup>22</sup> Human Rights Watch interview with C.S., New York City, June 14, 2001.

<sup>23</sup> See, e.g., Susan Phillips and Barbara Bloom, "In Whose Best Interest? The Impact of Changing Public Policy on Relatives Caring for Children with Incarcerated Parents," *Child Welfare Journal Special Issue: Children with Parents in Prison*, vol. 127, no.5 (1998).

<sup>24</sup> Human Rights Watch interview with B.R. by telephone, February 9, 2001.

<sup>25</sup> See resources listed in Appendix 2.

Families already experiencing serious financial difficulties as a result of the incarceration of a parent can find the costs of frequent visiting and telephone calls insurmountable.

### Visits

According to Denise Johnston, a national authority on the developmental and mental health implications of parental incarceration, parent-child visits help the children’s emotional well-being and may prevent or mitigate negative behavior.<sup>26</sup> The visits:

- Allow parents and children to maintain their existing relationship, which may also help the family to reunite upon the parents’ release.
- Allow children to express their emotional reactions to the separation, which they may not feel able to do elsewhere.
- Allow parents to work out their feelings about separation and loss, and thereby help them become better able to help their children with the same issues.
- Allay some of the more extreme fears that children may hold about prison conditions, as well as dispel fantasies that they may develop about their parents in their prolonged absence.
- Reduce feelings of abandonment among children, as well as the anger and guilt that tend to accompany such feelings.
- Counteract, by seeing other children and families at prison visiting centers in similar circumstances, some of the alienation that children experience.
- Quell the separation anxiety to which children of incarcerated parents are particularly prone.

Despite the importance of visitation, children of parents incarcerated in New York do not visit their parents frequently. One-half of incarcerated parents reported that they are never visited.

**Table 7: Frequency of Visits**

	Men	Women	Total
Daily or almost daily	1.4%	1.0%	1.4%
At least once a week	5.5%	7.2%	5.6%
At least once a month	14.8%	13.4%	14.8%
Less than once a month	19.2%	20.4%	19.2%
Never	49.5%	52.5%	49.7%
Other/Do not know	9.1%	5.5%	8.9%

Our research suggests that in some cases, children do not want to visit their parents. They are angry and turn their backs on them, or had little contact with them even before they were incarcerated. In other cases, incarcerated parents do not want their children to see them in a prison. But perhaps the single greatest impediment to visits is the distance of prisons from the children.

Most of New York’s drug offenders come from the New York City area, and most of New York’s prisons are located upstate, hundreds of miles away.<sup>27</sup> More than half of incarcerated parents reported in 1997 that their prison was between 100 and 500 miles from their previous residence; almost one-in-five were more than 500 miles away. These distances pose significant travel costs in time and financial resources. Every Friday night, about 800 people, primarily women and children, board chartered buses and vans in New York City heading for

<sup>26</sup> Denise Johnston, “Parent-Child Visitation in the Jail or Prison,” in Katherine Gabel and Denise Johnston, Eds. *Children of Incarcerated Parents* (New York: Lexington Books, 1995); and Human Rights Watch interview with Denise Johnston, Pasadena, California, January 31, 2000.

<sup>27</sup> According to the Department of Correctional Services, three-quarters of male and female prison inmates were convicted in New York City. Data on file at Human Rights Watch.



upstate prisons.<sup>28</sup> They face a long overnight journey, short visits with loved ones, and then the long return home. The Department of Correctional Service provides free buses, but there is such high demand that families can only get tickets every two or three months. The alternative is private vans, which cost about \$50 round trip for an adult and \$25 for a child.<sup>29</sup>

**Table 8: Distance of Prison from Previous Residence**

Distance in Miles	Men	Women	Total*
No response/Do not know	3.4%	3.5%	3.4%
Less than 50	5.0%	27.6%	6.3%
50-100	16.2%	20.0%	16.4%
101-500	58.1%	28.9%	56.4%
More than 500	17.3%	20.1%	17.5%

For children placed with foster parents, the frequency of visits is a key factor in determining whether the family will be reunited once the parent is released. Yet these children face additional obstacles to visits. Foster parents may lack the emotional commitment to undertake the time and expense of taking the children to visit their incarcerated parents themselves. Although child welfare workers are legally mandated to facilitate parent-child visits when such visits are not detrimental to the child, many feel that accompanying children to visit parents in prison is disproportionately time-consuming and hard to reconcile with other demands of their caseload. As a national study of the children of incarcerated offenders concluded:

From the child welfare worker’s perspective, reunification services are notoriously difficult to provide in situations where the children are in foster care and the mother is in prison at some distance from her children. Social workers in these situations may find it difficult to facilitate visits to the correctional facility. . . Sometimes, the social worker may carry a bias or negative stereotype, blaming the “convict mother” for problems encountered by her children.<sup>30</sup>

Even when visits occur, they are not an unalloyed pleasure for the children. As one mother pointed out, young children cannot understand why they cannot stay with their mother—visits are like “giving a toddler a lollipop and then snatching it away.”<sup>31</sup> Another mother described the sadness in her children’s faces when they leave the visiting room; each visit means another separation.

### **Telephone**

Telephone communication is perhaps the primary means by which inmates and their families maintain contact during incarceration. But as Table 10 reveals, only half of mothers and one-fourth of fathers report being in telephone contact with their children once a week or more. A substantial number of parents never talk on the telephone with their children.

**Table 10: Frequency of Telephone Contact**

	Father	Mother	Total
No response/Other	5.5%	1.0%	5.3%
Daily or almost daily	4.2%	12.5%	4.7%
At least once a week	19.3%	26.6%	19.8%
At least once a month	19.3%	17.2%	19.2%
Less than once a month	13.9%	5.9%	13.4%
Never	37.7%	36.7%	37.7%

<sup>28</sup> Operation Prison Gap was founded in 1973 by an ex-convict named Ray Simmons, with a single van. The operation today includes some thirty-five buses and vans.

<sup>29</sup> Human Rights Watch interview with P.B., New York City, February 12, 2001.

<sup>30</sup> Barbara Bloom and David Steinhart, *Why Punish the Children?* (Oakland: National Council on Crime and Delinquency, 1993), p. 43.

Telephone communication in some cases is limited because either the child or the parent does not want to talk to the other. As one mother told Human Rights Watch, her young children were so angry at her for leaving them that they refused to speak to her when she called.<sup>32</sup> But the key reason calls are relatively infrequent may be their exorbitant cost.

Prison rules preclude inmates from receiving calls; they can only make them, and then only by calling collect using MCI WorldCom, the service provider with whom New York has an exclusive system-wide contract for inmate telephone services. The operator assisted station-to-station collect calls inmates must make are the most expensive type of telephone communication. In addition to high prices per minute of conversation, the mostly low-income families who want to communicate with inmates must also pay MCI a \$3.00 surcharge for each call from an inmate, an amount far higher than other collect call connection fees.<sup>33</sup> Prisoners are allowed a thirty-minute maximum per phone call; if they want to continue talking they must redial—and incur another surcharge. Inmates' families are not allowed to use other telephone service providers, nor are inmates permitted to use less expensive alternative telephone services, such as an inmate debit account system, telephone cards or a "1-800" system, even though those alternative systems would meet prison security concerns (e.g., preventing calls to unauthorized numbers).<sup>34</sup> The high rates plus the surcharges render telephones prohibitively expensive as a way of maintaining close family contact. Family members describe telephone bills that can reach into hundreds of dollars, ultimately prompting the reluctant decision to cut back on calls that are an emotional mainstay for them as well as the inmates.

The surcharge for each call from an inmate is not related to the costs either MCI or the Department of Correctional Services incurs in operating the inmate phone system. Rather it functions as a revenue generator. Sixty percent of the funds go back to the Department of Correctional Services as a commission under the terms of the contract with MCI, and those funds are allocated to the department's so-called Family Benefit Fund. For fiscal year 2002-2003, \$24 million is budgeted under that fund.<sup>35</sup> About \$350,000 is budgeted for the maintenance of phone lines and equipment. Three quarters of the fund—\$18 million—is budgeted for inmate medical services, including \$13 million for AIDS pharmaceuticals. Another \$800,000 is budgeted for clothing for released inmates, and more than \$400,000 for inmate television and movies. Five million dollar of the total \$24 million is designated for programs that benefit inmate families—e.g., to underwrite buses coming to upstate prisons, nursery and pediatric staff, visitor centers, and inmate postage.

In essence, the state is using the prison telephone system to generate revenue that subsidizes selected expenses of the Department of Correctional Services. The state has argued that the correctional services department "may appropriately raise revenues" by imposing a "surcharge" on inmate telephone calls because the revenues are earmarked "for a legitimate penalogical objective."<sup>36</sup> But there is no "penalogical" justification for raising revenue through onerous phone charges levied uniquely on family members and others who wish to talk with inmates. The state is responsible for holding prisoners in humane conditions, for providing for medical care, and for promoting their rehabilitation. While the telephone commission funds are put to good use, e.g., providing AIDS drugs, they are being used for activities that are that state's responsibility—and which should be funded by the public at large.

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<sup>31</sup> Human Rights Watch interview with C.J., New York City, March 8, 2001.

<sup>32</sup> Human Rights Watch interview with M.R., New York City, April 9, 2001.

<sup>33</sup> For example, the typical station-to-station connection toll for a collect call from Ulster County to New York City is \$1.80. Yet MCI charges a \$3.00 toll for station-to-station collect calls by inmates at the Eastern Correctional Facility in Ulster County to New York City.

<sup>34</sup> Use of debit or 1-800 calling should not pose additional security risks. Like collect calls, they can be monitored, limited in time, and restricted to prevent third-party calls. See [www.curenational.org/etc](http://www.curenational.org/etc) (accessed May 17, 2002) for information on the National Campaign to Promote Equitable Telephone Charges. The Federal Bureau of Prisons, for example, permits inmates to use a debit card system.

<sup>35</sup> Budget on file at Human Rights Watch.

<sup>36</sup> Quoted in plaintiff's Opposition to Motion to Dismiss in *Byrd v. Goord*, 00 Civ. 2135 (S.D.N.Y.); the plaintiff's complaint was filed March 21, 2000.

Family members and others receiving inmate telephone calls have filed state and federal lawsuits challenging the single provider/collect-call only telephone system dictated by the Department of Correctional Services and the exorbitant rates they are charged. One of their claims is that families who accept inmate calls are paying a double taxation for corrections: a “tax” through the phone service as well as the state taxes they already pay that are apportioned through the budgetary process to the Department of Correctional Services. The lawsuits are pending. Meanwhile, the high telephone costs created by the Department of Correctional Services/MCI revenue generating arrangement continue to limit the ability of inmates to maintain contact with their children.

### *Mail*

There are fewer obstacles to communicating by mail, as reflected by the frequency of reported contact by mail (Table 11). Mothers communicate much more regularly with their children than fathers, with 32.2 percent sending or receiving mail at least once a week or more frequently.

**Table 11: Frequency of Mail Contact [Mail sent to or received by child(ren)]**

	Men	Women	Total
No response/Other	4.6%	20.9%	4.0%
Daily or almost daily	4.2%	10.5%	4.5%
At least once a week	21.6%	32.2%	22.2%
At least once a month	21.8%	20.5%	21.7%
Less than once a month	20.7%	8.4%	20.0%
Never	26.6%	28.4%	26.7%

## **IV. THE EMOTIONAL IMPACT OF INCARCERATION ON CHILDREN**

Parent-child separation in almost any circumstance is difficult for children. Losing a parent to prison, however, can be especially traumatic.<sup>37</sup> As a mother who had been sent to prison for drug offenses told Human Rights Watch, she believed her children were punished for her crime as much as she was.<sup>38</sup> In addition to the feelings of abandonment, grief, fear, guilt, and anger that they share with children of divorced or deceased parents, children of incarcerated parents also may experience intense anxiety, shame, and unique fears about the conditions under which their parents live.

The incarceration of a parent can be especially scarring because of the shame that often surrounds it. Some children may be sensitive to the stigma of their parent’s crime and imprisonment and feel embarrassed or resentful around their peers and other adults. Their classmates may deride them, making them feel further alienated. The children’s feelings are also affected by those of their substitute caregivers. Some caregivers experience shame and uncertainty about how to deal with parental incarceration, leading them to maintain a “forced silence” and denying the children a critical outlet in which to express their grief and anger. The sudden absence of a parent, moreover, may make children wary of trusting or depending on the remaining or new caregiver. They may feel that at any moment other adults in their lives could also disappear.

Child experts agree that loss of parents to prison can be a continuing emotional trauma for children. It can have a significant impact on the children’s development, manifested in some cases by learning difficulties at school, aggressive behavior, and involvement in crime. Children of incarcerated parents can have trouble concentrating and struggle academically to keep up with their peers. They are susceptible to behavioral problems in and outside of school. Good statistics are not available, but some experts believe that the children of incarcerated offenders are more likely to be involved in the criminal justice system than other children their age.

<sup>37</sup> See Appendix 2 for materials on the impact of parental incarceration on children.

<sup>38</sup> Human Rights Watch interview with M.S., New York City, April 9, 2001.

Coping with the difficulties of separation may be particularly difficult for children whose parents are incarcerated for drug offenses because they typically live in circumstances that are already stressful, if not traumatic. These children typically live in predominantly minority urban neighborhoods struggling to cope with poverty, inadequate public services, discrimination, limited educational and work opportunities, tenuous community support systems, crime, and substance abuse. The loss of a parent to prison can compound the risks the children already confront, by depriving them of a critical source of care, stability, and love.

Not all drug offender families are torn apart by the incarceration of a parent. In many cases, families were in disarray prior to parental incarceration and some if not all of a parent's children were already living apart from a parent before he or she was sent to prison. The impact of parental incarceration is greatest when the parent had been actively present in the children's life and is then removed.<sup>39</sup>

Most inmates convicted on drug charges will leave prison and return to their communities following incarceration. Parents will return to children who have grown up in their absence, who have developed unique emotional needs, who have formed relationships with other caregivers, and/or who have conflicting emotions about the parent who "left them" for prison. Some of those children carry emotional injuries that will be a long time in healing. Repairing frayed family ties is a challenge—one that sometimes proves insurmountable.

## V. CONCLUSION

Unnecessarily harsh prison sentences for drug offenders needlessly inflict pain and hardship on their children. There are community-based sanctions that respond to drug offenses without sending parents hundreds of miles away from their children and locking them behind bars. When drug offender parents are addicted, there are community treatment programs that would keep the parents close to their children. If New York legislators restored to judges the discretion to tailor sanctions appropriate to the seriousness of the drug offense and the culpability of the individual offender, fewer people would be sent to prison, and fewer children would be among the collateral casualties of the war on drugs.

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<sup>39</sup> Human Rights Watch interview with Denise Johnston, Pasadena, California, January 31, 2000.

## APPENDIX 1: METHODOLOGY

Except as otherwise noted, the statistics presented in this report were developed from data obtained from, “The Survey of Inmates in State and Federal Correctional Facilities, 1997,” conducted by the U.S. Census Bureau for the Bureau of Justice Statistics (BJS) of the U.S. Department of Justice. The survey consisted of personal interviews of a nationally representative sample of state and federal prison inmates, as well as a statistically representative sample of state prisoners in California, New York, and Texas. The BJS used the 1997 survey as the basis for its report, “Incarcerated Parents and Their Children,” published in August 2000. Working with the data obtained from New York prisoners in the 1997 survey, we weighted each respondent by the respondent’s probability of being selected for the sample. The weighting variables were included in the prisoner survey data. Our analysis also used the estimates of generalized variance parameters for male and female inmates provided in the documentation accompanying the 1997 survey.

How accurate are our estimates? The population of New York prisoners in the 1997 survey was selected to be representative of the state’s male and female inmate populations, inmates in various facility types (small vs. large), as well as other characteristics. Representative samples of inmate mothers and fathers were not purposefully selected. This introduces the possibility of serious sampling error, especially among incarcerated mothers—as only 104 out of an estimated total number of 2,369 were sampled for the 1997 survey.

From the estimated generalized variance parameters we derived margins of errors for various percentages in the report. The size of the margins of error will depend on a variety of factors including, most significantly, the estimated population size on which the sample is based. The table below indicates a few key margins of error that will provide a general gauge of the quality of the estimates. As is immediately evident from Table A, the margins of error for estimates derived solely from female samples are relatively large because of the small number of women in the survey sample

**Table A: Sample Margins of Error for Various Percentage Estimates**

Characteristic	Fathers’ estimates (Base)	Mothers’ estimates (Base)	Margin of error (Male)	Margin of error (Female)
Have minor children	57.5% (65839)	64.1% (3693)	+/- 4.32	+/- 8.94
Child living with grandparents	14.1% (37859)	51.2% (2368)	+/- 4.01	+/- 11.64
Child living other parent	88.8% (37859)	20.4% (2368)	+/- 3.64	+/- 9.38
Inmates with two children	16.4% (65015)	20.8% (3658)	+/- 3.26	+/- 7.57
Living 500 miles or more from home	17.3% (37859)	20.1% (2368)	+/- 4.36	+/- 9.33
Never visited	49.5% (37859)	52.5% (2368)	+/- 5.77	+/- 11.63

## APPENDIX 2: RESOURCES

There is an extensive literature on the incarceration of mothers and fathers, the impact of such incarceration on their children, and the steps that departments of correction and other state agencies could take to strengthen families with incarcerated parent(s). Some particularly useful sources are:

Leslie Acoca and James Austin, *The Crisis: Women in Prison* (Oakland: National Council on Crime and Delinquency, 1996). For more information, contact the National Council on Crime and Delinquency at 510-208-0500.

Nell Bernstein, *Left Behind*. MotherJones.com. [http://www.motherjones.com/prisons/left\\_behind.html](http://www.motherjones.com/prisons/left_behind.html) (accessed April 15, 2002).

Barbara Bloom and David Steinhart, *Why Punish the Children?* (Oakland: National Council on Crime and Delinquency, 1993). For more information, contact the National Council on Crime and Delinquency at 510-208-0500.

James Boudouris, *Parents in Prison: Addressing the Needs of Families* (Lanham, MD: American Correctional Association, 1996). For more information, call 1-800-ACA-JOIN.

Katherine Gabel and Denise Johnston, Eds. *Children of Incarcerated Parents* (New York: Lexington Books, 1995).

Creasia Finney Hairston, Nancy Wall and Shonda Wills, *Children, Families, and Correctional Supervision: Current Policies and New Directions* (Chicago: Jane Addams College of Social Work, University of Illinois at Chicago, 1996). For more information, call 312-413-2303.

Florida House of Representatives Justice Council, *Maintaining Family Contact When a Family Member Goes to Prison*, Florida Corrections Commission. <http://www.fcc.state.fl.us/fcc/reports/family/famcont.html> (accessed April 15, 2002)

The Legal Aid Society's Prisoners' Rights Project, *Testimony of the Legal Aid Society on the Effects of Incarceration on Families*, Legal Aid Society. [http://www.legal-aid.org/testimony5\\_30.htm](http://www.legal-aid.org/testimony5_30.htm) (accessed April 15, 2002).

Christopher Mumola, *Incarcerated Parents and Their Children*, Bureau of Justice Statistics, U.S. Department of Justice (2000).

Ellen Muston, Ed. *Family and Corrections Network* Issue 22 (1999).

Cynthia B. Seymour and Creasia Finney Hairston, Eds. *Child Welfare Journal Special Issue: Children with Parents in Prison*, vol. 127, no.5 (1998). For more information, call 202-638-2952.

Barbara E. Smith and Sharon Goretsky Elstein, *Children on Hold: Improving the Response to Children Whose Parents Are Arrested and Incarcerated* (ABA Center on Children and the Law, 1994).

Lois E. Wright and Cynthia B. Seymour, *Working with Children and Families Separated by Incarceration: A Handbook for Child Welfare Agencies* (Washington, D.C.: CWLA Press, 2000).

Various articles on the drug war and its impact on families are available on: [www.salon.com](http://www.salon.com) at [http://www.salon.com/mwt/feature/2000/10/25/drug\\_families/index.html](http://www.salon.com/mwt/feature/2000/10/25/drug_families/index.html) (accessed April 15, 2002); The Child Welfare of America website at <http://www.cwla.org/programs/incarcerated/> (accessed April 15, 2002); The Osborne Association website at <http://www.osborneny.org/publications.htm> (accessed April 15, 2002), and The

Independent Television Service website at <http://www.itvs.org/whentheboughbreaks/resources.html> (accessed April 15, 2002).

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