

Does My Daddy Love Me?
Issues faced by the Incarcerated Father.
by Mirado Crow

As a father, we are already looked upon as the wallet and sole support system by most people; and worse, the Courts. Most states have expanded the rights of unmarried fathers, but such expansion has been of little to no help in the long run. What's sad, is the fact that the Court's don't even take into consideration what truly is in the Best Interest of the Child; so the children, our children, suffer in the end.

As a father myself, I have personally experienced the dramatic setbacks of being an unmarried parent. Even after I had married my former wife, I was still looked upon as what some might call a "sperm donor"; with no *real* rights to my children despite how hard I work to be part of their life.

The law provides no real safeguards to this issue when a father is incarcerated; despite the court's apparent prudence. The disparity faced by fathers in the family setting is tipped more away from assuring isonomy. Black letter law has been watered down by countless case law to even be effective anymore.

Most fathers who work very hard; who provide for their families, are still not granted the equality afforded to mothers in the United States. Mothers are granted a wide range of freedoms and other liberties that in some ways, adversely affects those of the father. But why? Aren't all members of the familial household of equal value? In today's world, the courts [and even State Administration] don't seem to think so. Gender disparities of all kinds run unchecked by officials, and create many injustices whether you are male or female.

Many higher courts in the United States have reversed a lower court's *sua sponte* denial of an incarcerated father's motion for visitation with his minor children. The custodial parents of

children to incarcerated fathers have almost always used his incarceration status as a means of restricting his access to his children. There are those custodians who don't use this obvious condition, but that's very rare.

Many courts have ruled that a father's incarceration alone does not justify denial of visitation with his minor children. *See, Lonobile v. Betkowski*, 261 A.D.2d 829, 829, 689 N.Y.S.2d 790, 790 (4th Dep't 1999) (finding that a parent's incarceration will not, by itself, render visitation inappropriate); *Rhynes v. Rhynes*, 242 A.D.2d 943, 943, 662 N.Y.S.2d 667, 667 (4th Dep't 1997) (finding that a parent's incarceration, standing alone, does not render visitation inappropriate); *Simpson v. Finnigan*, 202 A.D.2d 592, 592, 609 N.Y.S.2d 265, 266 (2nd Dep't 1994) (explaining that a parent's incarceration alone does not make visitation with that parent's child inappropriate); *Vann v. Vann*, 187 A.D.2d 821, 821, 589 N.Y.S.2d 715, 716 (3rd Dep't 1992) (stating that the father's incarceration alone does not mean that his right to visitation should automatically be forfeited); *Wise v. Del Toro*, 122 A.D.2d 714, 714, 715, 505 N.Y.S.2d 880, 881 (1st Dep't 1986) (holding that a parent's incarceration alone does not make visitation with that parent's child inappropriate); *Harris v. Burns*, 904 P.2d 648, 650 (Or. Ct. App. 1995) (finding that a parent's incarceration does not invariably require that visitation be denied).

Likewise, the courts have also stated that, in order to determine what's in the best interest of the child, an incarcerated father is entitled to a hearing. In *Alexander v. Alexander*, 900 S.W.2d 615, 616 (Ky. Ct. App. 1995) the Kentucky Court of Appeals had reversed a trial court's order denying incarcerated father visitation with his child because "a parent's incarceration does not suspend, nor deprive him of, his right to a hearing before he is denied visitation with his child". Additionally, in *Smith v. Smith*, 869 S.W.2d 55, 56 (Ky. Ct. App. 1994) it was held that a trial court's order denying an incarcerated father visitation with his child because there had never

been an evidentiary hearing, much less a finding, that [the child] would be endangered in any manner by visiting her father in prison was improper, and was thus reversed and remanded; *Sullivan v. Shaw*, 650 A.2d 882, 885 (Pa. Super. Ct. 1994) (reversing and remanding the lower court's denial of visitation and holding that "as long as prisoners seeking visitation have the opportunity to tell the court how they would marshal their resources to enable visitation, then they have a meaningful opportunity to be heard"); *Wolfe v. Wolfe*, 899 P.2d 46, 48 (Wyo. 1995) (holding that denial of visitation to an inmate must be based upon evidence conspicuous in the record); *Folsom v. Folsom*, 262 A.D.2d 875, 692 N.Y.S.2d 529, 530 (3rd Dep't 1999); *see also*, *Lonobile v. Betkowski*, 261 A.D.2d 829, 829, 689 N.Y.S.2d 790, 790 (4th Dep't 1999) (reversing the denial of visitation and remitting for a new hearing at which the court shall consider the full range of factors pertinent to that determination. The court, however, did not delineate the factors to be examined); *Wise v. Del Toro*, 122 A.D.2d 714, 714, 505 N.Y.S.2d 880, 881 (1st Dep't 1986) (noting that no Law Guardian was appointed to represent the child while reversing the lower court's denial of visitation and holding that there should be a full inquiry before visitation is denied to a parent); *Shipp v. Gaglia*, 97 A.D.2d 945, 945, 468 N.Y.S.2d 743, 743 (4th Dep't 1983) (reversing lower court's denial of visitation because the record did not include any expert testimony as to the effect visitation would have on the child, any psychological examination of the father, any Law Guardian appointed to represent the child, or any in camera interview of the child).

It would appear that there are many cases that protect the incarcerated father from arbitrary abrogation of his parental rights. However, let us take a closer look at the issue. While case law is set in place to "protect" the fundamental interests of the family unit, courts are bound

by the best interest doctrine. This states that the rights of the child are to surpass or even trump those of the parent.

On more than one occasion, the father is faced with the arbitrary termination of his parental rights. Thankfully, the United States Supreme Court had put a basic stop on this when it stated that in order to terminate a prisoner's parental rights, the state must show that they are an unfit parent by "clear and convincing evidence." *Santosky v. Kramer*, 455 U.S. 745 (1982). However, what it means to be an unfit parent varies from state to state. Many states have held that being a prisoner does not necessarily make a person an unfit parent. *In re B.W.*, 498 So.2d 946 (Fla. 1986); *In re Staat*, 178 N.W.2d 709 (Minn. 1970); *In re J.D.*, 512 So.2d 684 (Miss. 1987); *In re Sego*, 513 P.2d 831 (Wash. 1973); *In re Adoption of McCray*, 331 A.2d 652, 655 (Pa. 1975).

A good way that fathers, and even incarcerated mothers can avoid losing their parental rights, and/or being seen as an unfit parent, is by contacting their child at least once every week. During my incarceration, I contacted my children at least once per week; and have attempted many times to gain the ability from the court to write my oldest son. This will show the Family Court Judge that you *are* interested in being a substantial part of your child's life. It will not be easy though. Being an incarcerated parent has its major obstacles.

Another great way an incarcerated father can avoid losing their parental rights, is by petitioning the courts for visitation rights. Be reasonable though, if an incarcerated parent is housed in a facility across the state from where their child lives, then contact visitation is unfeasible. The court will not allow such a burden on the child, nor their custodian. Instead of contact visits, an incarcerated father should request for other types of visits such as: phone, video, mail...etc. Phone and Video visits will have to be paid by the parent wanting visitation.

The incarcerated father should always keep a written log of all visits, mail, and phone calls between them and their child[ren]. This log should be notarized, and verified under penalty of perjury. This will give the parent at least some credibility with the court of their efforts to gain access to their child.

The prison system doesn't necessarily cater to families. They do however, offer minimal parental rehabilitation; such as Moral Recognition Therapy: Parenting, Inside Out Dad (which is part of the National Fatherhood Initiative) ...etc. This can be a major challenge to incarcerated fathers, but it doesn't make caring for their children impossible. I have found that by writing articles for publishing companies, I can send my children at least "some" money to spend from dad. It may not be much, but it's at least something. The publishers have been very generous enough to send me receipts of the money sent, and where it has been sent to. This type of work might not be what everyone can do, but it's an example of how an incarcerated father can financially contribute to their child's wellbeing while incarcerated. Some prison systems will allow incarcerated fathers to send out money. To those fathers, I highly recommend getting a prison job, and sending out your state pay.

Either way, the Courts look very much into how much an incarcerated father attempts to be in their child's life. It has been proven that if an incarcerated father does not maintain contact with his children, he is more at risk of losing his rights. *See Philip M. Genty, Procedural Due Process Rights of Incarcerated Parents in Termination of Parental Rights Proceedings: A Fifty State Analysis*, 30 J. FAM. L. 757, 761 (1992) (noting that approximately twenty five states have termination of parental rights statutes that specifically pertain to incarcerated parents); *see also Copeland v. Copeland*, No. E1999-01514-COA-R3-CV, 2000 WL 336665 (Tenn. Ct. App. 2000) (terminating a father's rights under T.C.A. § 36-1-113(g)(6) where a "parent has been confined

in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten or more years and the child is under eight years of age at the time the sentence is entered by the court”) (citations omitted). This can work wonders for those who truly love their children, the courts will see through the smoke and mirrors of those who only use their children as a tool for sympathy; so don’t even dare go there.

Children of incarcerated fathers are particularly at risk of criminal behavior when unable to reasonably see their dad. It has been shown in many studies that the absence of the father can result in social and cognitive delays in their children. Many of whom, grow up to become criminals themselves. BONNIE E. CARLSON & NEIL CERVERA, *INMATES AND THEIR WIVES: INCARCERATION AND FAMILY LIFE* 31 (1992); *see also*, Vice President Al Gore, Address at the Second National Summit on Fatherhood in Washington, D.C. (June 15, 1998), available at <http://www.geocities.com/nafcj/GoreFRmole.htm> (stating that the Report of the Federal Interagency Forum for Child and Family Statistics “confirms earlier findings that children growing up without a father are more likely to do poorly in school, get pregnant, do drugs and have a hard time finding and keeping a job”). Who are we to blame for this? Are we to blame the mothers for keeping our children away from us during our incarceration? Do we place the blame in society due to its sinister portrayals of prisoners? Or do we blame the Prison Profiteers for making the prison industry a revolving door? The answers to these questions can never be answered honestly and without acrimonious prejudice.

By keeping a child away from their incarcerated father, the absence begins to make the child believe that their father does not love them; that they are away because of something “they” did, instead of what the father did to become incarcerated. *See, e.g.*, Denise Johnston, *Parent Child Visitation in the Jail or Prison*, in *CHILDREN OF INCARCERATED PARENTS* 136,

137 (Katherine Gabel & Denise Johnston eds., 1995); Garry L. Landreth & Alan F. Lobaugh, *Filial Therapy with Incarcerated Fathers: Effects on Parental Acceptance of Child, Parental Stress, and Child Adjustment*, 76(2) J. COUNSELING & DEVELOPMENT 157, 157 (1998) (citation omitted); Cynthia Seymour, *Children With Parents in Prison: Child Welfare Policy, Program and Practice Issues*, 77(5) CHILD WELFARE 469, 472 (1998) (citation omitted); Peter A. Breen, *Families in Peril: Bridging the Barriers*, CORRECTIONS TODAY, Dec. 1995, at 99 (stating that children of incarcerated parents “are at great risk in all areas of their lives, from basic health needs to completion of their education”); Daphne Muse, *Parenting From Prison*, MOTHERING, Sept. 22, 1994, at 13 (stating that ten year old Johnette sometimes feels scared that her father is in prison: “Sometimes I feel ashamed and I also wonder what he doesn’t tell me about being in prison”). These are concerns that the courts need to look at when deciding custody and visitation matters for the incarcerated father. Fathers, who are not incarcerated for a crime involving abuse or death in any way towards a child or a member of their family, should not be denied visitation with their child; regardless of the reason for incarceration. It has been proven, time and again, that visitation, and nurturing provided by both its parents, are in the Child’s Best Interests.

As an incarcerated father, we must not forget that our first and foremost responsibilities are to our children. By fulfilling our duty as a father while incarcerated, by improving the men we can be for not only ourselves, but to our children, can we truly show them that yes, daddy does love them.