

# Improving Legal Representation of Parents in Family Court

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Recommendations of the Women's Advocacy Project, 2004

## Who We Are

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The Women's Advocacy Project (WAP) began in 2003 with the goal of developing a group of leaders equipped to craft solutions to the problems facing incarcerated and formerly incarcerated women. WAP is comprised of a diverse group of women who are working in the community, formally incarcerated, and/or current or former participants in treatment and alternative to incarceration (ATI) programs. In a climate where our perspectives are sorely lacking, WAP teaches women to draw from experiences with the criminal justice system to create and carry out strategies for change.

## Our Process

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From October 2003 – June 2004, participants in the Women's Advocacy Project met to discuss the problems facing women who encounter the family court and criminal court systems. All of us have some form of direct experience with these systems, either through our own lives, the lives of community members, or the work that we do. The aim of the recommendations below is to increase the odds of family success through improving the way that parents are represented in family court. We envision a system where mothers involved in the criminal justice system – and all parents – can receive the tools and information they need to keep their families together.

## The Problem of Inadequate Representation for Parents in Family Court

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**Many problems that parents face in the family court system trace back to a lack of consistent legal representation:**

- Under the current system, a parent may be assigned a different lawyer for each court appearance, with no legal representation or source of advice in between.
- A parent's family court attorney is often inaccessible to the parent. As a result, the parent is unable to get information about her case and make informed decisions regarding her children.
- Parents are not connected to the services they need to stabilize their lives and make positive choices for themselves and their families.
- Parents do not understand, or are not informed of changes in law and policy that affect their family court case.
- Parties in a family court case – parents, foster care parents, foster care agencies – are not engaged in productive communication.

**For parents in the criminal justice system, the problems above are compounded by additional concerns:**

- There is no coordination between a parent's criminal court case and her family needs.
- Parents do not have enough information about how their family court case will be affected by their criminal court case.
- Though they are especially vulnerable to having their parental rights terminated, incarcerated parents often know very little about how to prevent this proceeding.
- Because of restrictions imposed by the correctional facilities or residential programs where they are housed, parents are not allowed to make phone calls, visits, or meetings that are vital to the outcome of their family court case.

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## Recommendations: Creating a System of Legal Representation That Works for Parents and Families

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### **Ensure adequate representation for parents in family court:**

- A parent should have consistent legal representation from the beginning of her family court case through to its completion. There should be one lawyer dedicated to a parent's case from beginning to end, who can work with her in between court dates, facilitate communication between parties, and keep her informed of her rights and responsibilities as the case progresses, whether or not she is incarcerated.
- A parent's attorney in family court should have access to social workers who can provide the entire family with appropriate and meaningful referrals.
- The Office of Court Administration should appoint a specific individual to field parent complaints related to adequate representation in family court.

### **Enhance coordination between the criminal and family court systems:**

- Create a position for a resident family law expert in criminal court.
- A parent's lawyer in family court should be appointed at the time of arraignment, if a parent does not already have one.
- The parent's lawyer in family court should be immediately notified of the parent's arrest if a parent has such an attorney prior to arrest.
- A parent should have time to speak with her family court attorney before decisions are made in her criminal case and as the case progresses.
- Appoint a task force with officials from both the family court and criminal court to implement these recommendations.

### **Improve communication between all parties to a family court case:**

- A parent's attorney in family court should be in regular communication with her client through meetings, phone calls, emails and letters and be available to attend critical meetings outside of family court.
- Non-English speaking parents should have interpreters who are able to help them communicate about and understand all aspects of their cases, not just in court.
- A parent's attorney in family court should facilitate communication between the parties to the case according to the needs of the parent.
- Family law attorneys should be aware of changes in the law and policy and should provide a parent with complete information about her case and about the laws that affect her case.

### **Address the special needs of parents who are incarcerated, in alternative to incarceration programs (ATIs) or in treatment programs:**

- Family law attorneys should have good working knowledge of the criminal justice system so that he or she can help clients involved in both systems make informed decisions about their case.
- A parent's attorney in family court should be familiar with the rules and regulations of the parent's correctional facility, ATI, or treatment program that might affect the parent's ability to be involved in her case.
- Correctional facilities and residential programs should place no restrictions on parents communicating with any parties related to their family court case.
- Correctional facilities and residential programs should appoint liaisons who can help parents and their attorneys address needs related to family, visitation, etc. If a parent is transferred to another facility or program, that liaison should continue to work with the parent until the transfer is complete.
- Family court attorneys should have specific knowledge about the time limits imposed by the Adoption and Safe Families Act (ASFA), and how incarcerated parents are especially vulnerable to these time limits.
- Family law attorneys should be mandated to attend Continuing Legal Education courses that specifically address the issues affecting incarcerated parents and parents in residential programs.

*WAP is a project of the Institute on Women & Criminal Justice at the Women's Prison Association.  
For more information, contact Sarah From at 212-674-1163, ext. 15, or [sfrom@wpaonline.org](mailto:sfrom@wpaonline.org).*

