



**CALIFORNIA'S MOTHER-INFANT
PRISON PROGRAMS:
*An Investigation***

November 2010

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Legal Services for Prisoners with Children (LSPC) is a California legal services support organization. Started in 1978, LSPC advocates for the human rights and empowerment of incarcerated parents, children, family members and people at risk for incarceration. We respond to requests for information, trainings, technical assistance, litigation, community activism and the development of more advocates. Our focus is on women prisoners and their families, and we emphasize that issues of race are central to any discussion of incarceration.

This report comes out of the work of LSPC's Family Unity Project and reflects our desire to find true alternatives to incarceration for all incarcerated parents and their families.

* * *

We want to thank all of the women incarcerated at these facilities who took the time to answer all of our questions thoroughly and patiently. Family members contacted us with their concerns. In addition, there were many staff members who met with us to answer our questions and show us around the facilities. This report could not have been done without all of you.

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EXECUTIVE SUMMARY

California has six small mother-infant prison facilities, all run by outside contractors with an on-site representative of the California Department of Corrections and Rehabilitation (CDCR). They house only 1% of the 10,000 women in state prison facilities.¹

The three **Family Foundations** facilities are located in Fresno (contracted by WestCare), Santa Fe Springs (Los Angeles Centers for Alcohol and Drug Abuse—LACADA) and San Diego (WestCare). Women are sent to the Family Foundations Program by their sentencing judge.

The **Community Prisoner Mother Program** (CPMP) currently consists of three facilities located in Oakland (Project Pride), Pomona (Prototypes) and Bakersfield (Turning Point). Women are transferred to these programs after entering state prison and applying to CDCR for admission.

In 2009, two of us visited all six of these facilities, usually receiving a tour and always speaking with staff and mothers. We have also received communications from relatives of these mothers, read CDCR materials and researched the relevant statutes. We have written this report to record what we learned and to make recommendations. It represents a “snapshot in time” – what we observed and were told in 2009. Things may be better or worse now.

This report looks at a number of program features, such as childcare/childrearing issues, food, medical care, relationship to the outside world and re-entry. All of the mothers in these programs are grateful to be in them and helped us to identify their many positive qualities.

However, the mothers, and we, found many areas which could be improved. For example, there are often delays in getting into the CPMPs and CDCR’s requirement of “dental eligibility” results in unnecessary tooth extractions. The programs are not sufficiently “child-friendly”, with the children’s needs often not met. Access to medical care can be problematic, and mothers are sometimes afraid to seek medical care for their children or themselves. Inadequate attention is paid to helping these mothers successfully reenter the free world.

At a time when the three major women’s prisons are overcrowded, these programs are under-enrolled. And there is a disturbing racial inequality in that the better-funded FFPs are serving primarily white families while the less-well funded CPMPs serve primarily families of color.

¹ The vast majority are housed in three large women’s prisons: Central California Women’s Facility (CCWF) and Valley State Prison for Women (VSPW) in Chowchilla, and California Institution for Women (CIW) in Corona. See CDCR website for weekly and monthly population reports at http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Population_Reports.html

Despite these problems, we do not advocate shutting down these programs; we would prefer to see them improved. However, in the final analysis, we believe strongly that primary caregivers of children should not be sent to prison in most cases. This principle is now the law in South Africa and is based on the concept that the incarceration of a child's parent/caregiver is an infringement on the human rights of the child. We call for community-based alternatives to these mini-prisons, not under the control of CDCR, as the best way to serve the needs of these mothers and their young children.

INTRODUCTION

Esperanza's story

Denisha Lawson gave birth to her daughter Esperanza in 2007. Esperanza was premature, spent a few weeks in the hospital and then came home with her mom. When she developed a cold that seemed to be getting worse, Denisha decided she should take her daughter to the doctor to have her checked out.

This is a common scenario—babies get born, they get sick and they go to the doctor. The difference in this case is that Denisha was a prisoner incarcerated in the San Diego Family Foundations Program. Esperanza, while not officially a prisoner, was also being held at this facility. Prison and program officials refused to allow Denisha to take her daughter to the doctor. Denisha kept insisting that Esperanza was ill. This impasse continued for two weeks until a visiting nurse listened to Denisha and rushed Esperanza to the hospital in near-cardiac arrest. If Denisha had complied with prison orders and not demanded that her daughter be seen by a physician, Esperanza would be dead today.²

In a second incident at the same facility during the same time period, a 5 year old child, who had complained of serious headaches and nausea, was forced to wait over six weeks before being allowed to see a doctor. It was then discovered that the child had a malignant brain tumor.

These incidents were the genesis for this report.

Why this report

For over 30 years, Legal Services for Prisoners with Children (LSPC) has fought for the rights of incarcerated mothers and their children to maintain their family bond. We believe strongly that a mother is not automatically a bad parent simply because she is in prison or has a drug problem. Like Denisha, most incarcerated mothers love their children and would do anything to protect them.

We have historically supported the concept of mother-infant prison programs as a needed alternative to the separation of mothers and children upon the mother's incarceration. However, because of these experiences in San Diego (then contracted to CenterPoint), we decided that we could not continue to support these programs without seeing for ourselves how the mothers and women were treated.

A brief history of California's mother-infant programs

Pursuant to legislation enacted in 1978³, the California Prisoner-Mother Program (CPMP) opened its doors in 1980. Generally, eligible women must have shorter, less

² See Moore, Solomon, "California Investigates a Mother and Child Prison Center," New York Times, July 6, 2007, page A9.

³ California Penal Code §§3412-3424.

serious prison sentences and be pregnant or have a child or children under age 6. From the beginning, there were serious problems with access to the program. Originally, it was very difficult for any incarcerated woman to get into CPMP. Five years after the program started, fewer than 15 women were participating. Many women only heard about the program through other prisoners. Some women had to wait over two years after submitting their applications before they were notified of their application status. Delays were often the result of applications being lost or incorrectly processed.

Finally, In 1985, LSPC's clients sued the California Department of Corrections (CDC, now CDCR) to reform and expand this program. The case, *Rios v. Rowland*, was settled in 1990, and required the prisons to inform women about the program within one week of their entry into prison, to provide meaningful assistance to women in applying to the program, and in appealing denials, to revamp the appeals process, to accept applications from pregnant women before delivery, and to train staff in correct procedures for placement.

In order to further address the serious problem that pregnant women were not being allowed to apply for the program until after their babies were born, LSPC staff worked to change this policy in the legislature as well as the courts. In 1988, additional regulations were passed and CDC rules were implemented establishing that (1) pregnant women could be placed directly into the program before delivery, (2) women convicted of manslaughter may be considered if they committed the crime in response to a physically abusive male partner, and (3) the CDC may consider mitigating circumstances to approve an otherwise ineligible applicant.

The Family Foundations Program (FFP) opened in 1999 pursuant to 1994 legislation.⁴ This program differs from the CPMP in several significant ways. The most important is that the judge, with input from CDCR, sentences the woman to FFP, and she is transported there directly from county jail, rather than being sent to a state prison first. Second, FFP is specifically a drug treatment program—in order to be sentenced there, women are supposed to have a drug abuse problem. Third, unlike the CPMP, the mother does not serve her full sentence in the program. Rather, she serves one year at the program and then is paroled to one year of “aftercare.” In this program, she could serve more, or less, than her original sentence.⁵

⁴ California Penal Code §1174.

⁵ If she has any disciplinary problems or violates her parole, she will be sent to state prison to finish her term there.

LSPC'S INVESTIGATION

GETTING IN—ELIGIBILITY REQUIREMENTS AND PROCEDURES

Since the procedures for getting into these programs depend on whether it is a Family Foundations Program or a CPMP, each will be discussed separately.

Family Foundations:

Procedure: Admission to the Family Foundations Program requires a direct referral from the sentencing judge. CDCR advises the defense attorney or the court to contact its Women and Children's Services Unit (WCSU) (916-327-7944) before sentencing so that the WCSU Correctional Counselor can prescreen the woman for eligibility and place her on a waiting list. If the court sentences her to state prison and recommends placement into the program, the WCSU will arrange for the county sheriff to transport her to the facility. Once the mother arrives at the facility, her child must be brought there by the family or current caregiver. If the child is not brought there, program staff may get involved in facilitating this delivery. If the child does not arrive within about a month, the woman will be transported to state prison to serve her time there.

Eligibility⁶: The woman must be pregnant or have one or more children under age six at the time of entry, be sentenced to 36 months state prison or less, and have an established history of substance abuse. However, there are many disqualifiers. By statute, she cannot have a prior prison term for, or a current conviction of, any of the so-called "serious" offenses listed in Penal Code section 1174.4(a)(2), which include various drug offenses. If her child is under the jurisdiction of the juvenile dependency court, CDCR will not accept a mother into the program if CPS objects.⁷ CDCR literature states that the mother must not have an immigration or "potential or active Felony hold", "must have primary custody of her child or children," and sets a two-child limit.⁸

Under-enrollment, funding and racial disparity: We were informed, and CDCR literature states, that each facility can accommodate a maximum of 35 women, for a total maximum enrollment of 105.⁹ There were 70 women total at these facilities on our visits in 2009. As of June 30, 2010, there were 66 women in these three facilities—63% capacity.¹⁰ As of September 29, 2010, there were 51 women there—less than 50%

⁶ Statutory eligibility requirements for the Family Foundations Program are found in California Penal Code section 1174.4 .

⁷ California Penal Code section 1174.4(b)(4).

⁸ Undated information sheet entitled "The Family Foundations Program, California Department of Corrections and Rehabilitation, A New Chance for Inmate Mothers".

⁹ Undated information sheet entitled "California Department of Corrections & Rehabilitation, Female Offender Programs and Services, Women and Children's Services Unit, Family Foundations Program—FFP", distributed in 2010.

¹⁰ See http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOPIA/TPOPIAd100630.pdf

capacity.¹¹ These programs are significantly under-enrolled at a time when the three women's prisons average 200% capacity. When we asked, we were told that these programs rely on court referrals and many courts are unaware of this program. At least one Family Foundations program told us they were conducting outreach to the courts. In the meantime, the programs continue to be under-enrolled.

Most gravely, we observed that the ethnic background of the participants in the FF programs was predominantly white. This was different from CPMP participants, who are primarily women of color. We asked why this racial disparity exists and were told that the courts send women to Family Foundations. This racial disparity is of particular concern considering that the Family Foundations program is apparently better funded than the CPMP program.

CPMP

Procedure: Admission to the CPMP occurs after a woman arrives at state prison. Women are informed about the program in reception (and by statute are supposed to be informed by the probation department). A woman fills out an application form and CDCR determines eligibility. Once accepted, CDCR transports her to the facility. The procedure is facilitated by a CPMP Coordinator at each women's prison. This process takes anywhere from a few months at best to over a year. We have received many reports of delays in processing these applications. One mother's process was delayed because of delays in providing medical/dental services in prison, paperwork delays, and transportation mix-ups. Other reasons for delays include classification delays, vacation schedules, and staffing shortages.

As with Family Foundations, once the mother is transported to the facility, the child must be delivered to that facility within a few weeks. If the child is not brought there, the woman is returned to state prison. At one facility, a woman was warned that she would be "rolled up" and go back to prison if her child did not get to the program within 7 days, causing her untold anxiety. The practice seems to allow a month.

Eligibility¹²: The woman must have one or more children under age six when received by or committed to state prison, have been the primary caretaker before incarceration, and not have been found to be an unfit parent. Or she can be pregnant or have given birth while under CDCR jurisdiction. She must be sentenced to a maximum of six years (after deduction of goodtime credit). Exclusions include having certain sex or drug offense convictions (unless there are mitigating circumstances), posing a "probability of absconding", "engaging in other conduct adverse to herself or to other participants", or

¹¹ http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOPIA/TPOP1Ad100929.pdf CDCR's website incorrectly states that the design capacity for all three Family Foundations programs is a total of 70 women.

¹² Statutory eligibility requirements for the CPMP program are found in California Penal Code section 3417.

“posing an unreasonable risk to the public.” A mother can be excluded because she has an older child (close to age 6).¹³

CDCR imposes other requirements, such as being “mentally, medically and dentally eligible.” The medical, dental and mental eligibility requirements appear overly harsh. We learned of a woman who had been taking anti-seizure medication her entire life. In order to be eligible, she had to be medicine-free for a year, so she stopped taking her medication. Others have many teeth pulled unnecessarily, since that is the only way to become dentally cleared in a system where it can take years to receive dental care other than extractions. A few years ago, our office proposed that this practice be stopped and were told that at least the dental clearance would cease. Apparently, it has not. We met women at all three CPMPs who had teeth pulled in order to be eligible – one woman had nine teeth removed, three at a time.

In addition, CDCR requires that a woman have at least six months left on her sentence upon her arrival to a CPMP facility.

Under-enrollment, funding and racial disparity: The CPMPs also appear to be under-enrolled. There were 22 women at the Bakersfield CPMP when we visited; it can house 27 women. The CDCR website states that the design capacity for all three CPMPs is 70 women¹⁴; as of June 30, 2010, there were 44 women in these facilities total, which is 63% capacity.¹⁵ As of September 29, 2010, there were 50 women in these facilities.¹⁶ LSPC fought to the point of litigation to open up the CPMP program to more participants; it is dismaying to see its underuse today.

As noted above, these facilities seemed to be serving primarily women of color; we were informed by a CDCR staff member that the contract amounts for the CPMP programs are less than that for the Family Foundations Program. This racial disparity in funding concerns us greatly.

Recommendations:

- Make statutory changes to expand eligibility to include women with drug convictions and other listed offenses at the discretion of the court (for FFP) and CDCR (for CPMP)
- Adopt administrative or legislative changes to make the mental, medical and dental eligibility requirements less restrictive
- Abolish unnecessary teeth-pulling as a prerequisite for eligibility
- Refer apparent racial disparity in Family Foundation referrals from the courts to the Judicial Council for investigation into its causes and possible remedies

¹³ We have not seen written documentation about this last requirement, but have been informed of it anecdotally by prisoners and staff.

¹⁴ We question the accuracy of that design capacity number.

¹⁵ See footnote 4.

¹⁶ See footnote 5.

- Publicize Family Foundations to public defenders, private attorneys, probation departments and the courts to increase access for women of color and increase total enrollment
- Increase funding of CPMPs to be comparable to Family Foundations Programs
- Expedite the processing of CPMP applications

PHYSICAL PLANT

Family Foundations buildings are newer than CPMP buildings. San Diego and Santa Fe Springs were new construction and look very much alike. They are in urban areas with few or no homes nearby. San Diego is near a large complex for children who apparently are in group foster care settings, across the street from a park and close to a community college campus. Fresno is a refurbished church on the outskirts of town.

All three CPMPs are older and in various states of disrepair. Pomona is a refurbished church school in a complex with other facilities run by the same provider (Prototypes), including a residential drug treatment program for adults, day treatment programs and an after-prison program for women and their children. It has a swimming pool (which appears to be rarely used) and a large, well-equipped playground. We heard complaints of dangerous conditions in the living quarters and buildings: very hot water pipe running next to a bed (this was eventually covered), unstable shower disability seat, slippery bathroom floors, hanging television cords, among other things. One mother told us that it was an extremely stressful environment, both physically and mentally, and that the children feel the stress that the mothers feel.

Oakland is in an urban setting, near downtown Oakland, down the street from several treatment programs. The building is old, apparently refurbished single-room occupancy units, and in great disrepair. The building is shared with another drug treatment residential program. We were refused a tour, so we have no idea what the actual living facilities or outside play area for the residents are like.

Arguably, the most dramatic location is the Bakersfield CPMP. Located at least 10 miles from town, it is literally in the middle of nowhere. In one direction is a massive corporate organic farm, in the other is a crossroads between two county roads with nothing but fields in all directions. This creates a major problem for the residents because they must have transportation to go anywhere: to a doctor, to an outside counseling program, to a store, or anywhere else they may want or need to go to.

Living quarters also varied widely. The rooms we saw at Bakersfield (CPMP) were singles, where a mom would sleep with her child or children. There were photos and drawings on the walls and lots of toys. The children took us on this tour and were very proud of their rooms. On the other side of the spectrum was Pomona (also CPMP), where classrooms had been converted into small dormitories where 4-5 women slept with all of their children. We were curious about how so many people could live in one room; most women said it was difficult but they tried to resolve differences in personalities and child rearing styles so that there would be as little tension in the rooms as possible. The

Family Foundations living quarters were set up as small “pods” with four bedrooms that were attached to a larger living area. The living area was extremely barren, with no toys or decorations. Each bedroom had a small bulletin board that could have children’s drawings and photos on it; other than that, decorating of the rooms was not allowed. We were not allowed to view the living area in Oakland.

Recommendations:

- Upgrade the physical building of the Oakland facility or move it elsewhere¹⁷
- Repair dangerous conditions
- Allow the mothers and children to live in child-friendly quarters, by allowing wall decorations, toys, children’s furniture, etc.
- Base any new programs in urban areas to allow access to services

PROGRAMMING

When women are sentenced to FFPs or sent to CPMPs, they are told they will receive programming to help them learn to parent, get drug treatment, balance a checkbook, receive education or vocational training, get a good job and reenter the community. Second only to being able to serve their sentence with their children, this is the reason women told us they wanted to come to a mother-infant program—for the programming. Women living in an FFP seem to be programming most of the time. CPMP programming does not seem to be as intensive. While people in CPMP are not required to have a drug problem, most of the therapeutic programming in both programs seems to be centered around drug treatment, using an abstinence model. There are some good points to the programs, and many areas for improvement.

What works: Good programming depends on the individuals doing the actual training. Some are better than others. In areas where there is the possibility of getting outside volunteers (Oakland, San Diego, Fresno, Pomona), some of those volunteers are excellent. Because so much of it is volunteer based, good programming often happens in the evening when the volunteers have time and when many women are exhausted and want to spend time with their children. There were specific programs that were especially popular: yoga, 12-step, relapse prevention, anger management.

What could be improved:

Many women felt that they and their children were being over-programmed, and that they did not have enough time to spend with their children. They believe that their children need to have unstructured time with the mothers so they can talk, play games and bond with each other. There are also issues regarding what the children are doing while women are doing their chores (chores are considered part of programming). One example: a mother was expected to keep her child in a high chair for several hours while the mom was cleaning the kitchen. She could not take the child out of the chair because there were a lot of toxic chemicals being used in the cleaning process.

¹⁷ This may be irrelevant as we understand the contract has not been renewed.

Turning Point in Bakersfield has specific issues related to its location. Because it is out in the country, it is very difficult to get volunteers to come to the facility and even more difficult for the women to participate in outside activities. For example, there is free domestic violence counseling in Bakersfield through the Family Alliance Against Domestic Violence, but the women can't participate because there is no way to get from the CPMP into downtown Bakersfield.

Some women in the San Diego FFP would like to take classes at the community college right down the street.

The mothers have no access to the Internet, which means that training is limited, as is the ability to look for job opportunities and apply for jobs. In some facilities, even the staff does not have Internet access, making this process even more difficult.

Finally, there seems to be some confusion about aftercare for women who are in Family Foundations. The statute requires that there be one-year parole/treatment period following confinement in Family Foundations. Many women have thought this would include housing and other treatment options. In fact, it appears that the only follow-up is FOTEP¹⁸, which appears to be voluntary. So, we are not clear about the implementation of this part of the statute.

Recommendations:

- Provide access to community college classes if available
- Bakersfield—provide decent transportation to the city for prisoners so they can attend programs during the week and for visitors on the weekend
- Allow Internet usage so that job skills training and job opportunities are available
- Allow more downtime so that mothers and children are able to relax and enjoy each other every day
- Initiate aftercare programming (housing, job training, drug treatment, education) for those who request it
- Clarify what the one-year parole/treatment is for those leaving FFP

CHILDCARE/CHILDREARING

The first thing that virtually everyone told us was that they were thankful to be with their children. Even those who had serious complaints and felt that the program might be dangerous for their children felt that their children were better off in the program than away from their mothers.

That being said, there were some issues. When walking into any of these programs (with the exception of Bakersfield where a children's playground is seen from the road), there is NO indication that children live in these facilities. While they are in many different

¹⁸ FOTEP is the Female Offender Treatment and Education Program, which provides housing for women and their children as well as job training. There are several FOTEPs around the state; a woman does not have to go through the CPMP or FFP to go into a FOTEP facility.

locations, the common feeling is that you are entering a clinic or some sort of treatment facility for adults, not for children. Small changes could affect the feel of each of these programs for little or no money, especially in the public reception areas—drawings by children, child friendly furniture, possibly photos of the children living there would tell everyone that children live here and are welcome.

Perhaps the clearest indication of the lack of consciousness about children appeared whenever we asked how many children were living in a facility. With the exception of one secretary, no one was able to answer us! The general impression is that the children are not at the center of these programs, but rather on the periphery.

What works: Everyone told us that Head Start programs were really helpful to them and good for their children. Many facilities had a Head Start program on-site; others were off-site. Whatever the location, the unanimous agreement by the women about the high quality of the program speaks volumes.

In general, childcare got high marks as well. Many of the childcare staff members genuinely care for the children; some are former residents of the programs. Project Pride has a close relationship with Children's Hospital and Research Center Oakland; residents love that program and felt supported as parents by Children's Hospital staff. Mothers learned about child development and felt that Children's Hospital staff was not there to judge or to punish them.

What could use improvement: Oftentimes, people are assigned to work in childcare who really don't want to be there. In some places, newest residents are assigned to childcare with little or no training. While many women liked the childcare, others thought it would be better if staff were more proactive in teaching residents good childcare strategies.

The children, although not officially incarcerated, are required to follow the same rules as their mothers. Their movements within the facilities as well as their access to the outside world are extremely restricted. In some facilities there is no indoor space for children to run around and make noise.

In Fresno, the outdoor play area has some kind of pollutant problem so the children are not able to utilize it.

There is too much programming, both for the children and for the mothers. At one FFP (San Diego), everyone wakes up at 6 a.m., gets dressed and eats breakfast in order to start programming at 8 a.m. Lunch time is extremely rushed (1/2 hour), programming for the women ends at 8 p.m. and the children have to be in bed by 9 p.m. This is very exhausting and does not allow enough time for the mothers and children to have real quality time with each other.

There is a generalized fear that the older children will become institutionalized (this was true in both types of facilities)—many children make up games about their mothers being

counted, and children are very aware that their mothers are being punished. In at least one facility, if a mother gets a write-up, she is not allowed to take her child on field trips. This punishes both mother and child and is not fair to the children. Many children spend months in the facilities without being able to go anywhere. Some mothers suggested that extra duty or some other punishment would be better than hurting the children and interfering with the mother-child relationship.

Women were concerned about their other children who are left at home and are only able to visit on weekends. Visiting is often not conducive to a good relationship—in one place, they sit at tables in the dining room where there is little to do. One mother suggested that older children be allowed to stay overnight on a regular basis.

The FFPs have a general rule that children can only have five toys at a time. (This does not seem to include stuffed animals or books.) The stated reason is that there is not enough room, yet these facilities have a large living room area for every four to six bedrooms. The living rooms were very starkly furnished with no children's items in evidence.

The oldest children go to public kindergarten. There seems to be inconsistency about whether or not the mothers are able to take their children to school, visit the school or participate in back-to-school night or other parent-child activities at school.

Recommendations:

- Create a child-friendly environment/atmosphere in the public areas
- Develop child centered training for the childcare workers
- Remediate the Fresno play area so children can go outside
- Create a child friendly environment for children who come to visit their mothers on the weekends; allow older children to participate in overnights with their moms
- Remove the five-toy limit so that children are able to have lots of toys to play with
- Allow mothers to walk their children to kindergarten and to attend parent-teacher events and meetings at their children's schools

FOOD

We heard many complaints about the food at these programs. There were some reports of food shortages, particularly at Project Pride in Oakland, and of isolated shortages, such as at a particular meal, or for babies, or for a pregnancy diet. There were complaints about lack of access to food when the cafeteria is closed, although women had access to a refrigerator at one program. There are only two meals provided on Sundays in at least one facility—this is extremely difficult for everyone, particularly the children.

There is a controversy between the mothers and staff about “child-friendly” food or lack thereof at more than one program. It seems the children get the same basic food as the

mothers, though it may be modified somewhat (less spicy). The staff informed us that the “child-friendly” food the mothers want is non-nutritious (such as chicken nuggets). This is an area where outside nutritional experts could perhaps facilitate improvements. We also heard complaints that “everything is frozen” and eggs are reconstituted at one facility; food is “mediocre,” at a second and there are “not enough vegetarian options” at a third. The food at one facility was described as tasting good. We observed one posted menu for the week, and it was heavy on meat and “traditional” American fare. At another facility, we heard there were “too many vegetables” while there were shortages in other areas, and that children were losing weight.

There appear to be administrative problems in accessing federally-funded WIC (Women, Infants and Children) nutritional program benefits for the women and children at some of these facilities, but not others. Fresno, San Diego and Bakersfield had WIC; Santa Fe Springs lost its WIC eligibility. We do not know about Oakland or Pomona.

Recommendations:

- Eliminate food shortages
- Improve food options, particularly for children
- Involve nutritionists to educate and mediate on food issues
- Ensure every facility has access to WIC foods

MEDICAL CARE

The medical care at California’s prisons has been found to be so bad that it amounts to cruel and unusual punishment and is, therefore, unconstitutional. Despite being under court order to remedy this situation for many years, CDCR has been either unwilling or unable to do so. As a result, the provision of medical care has been placed under a federal receivership.¹⁹ Medical care for all state prisoners is under the direction of the federal Receiver. The mothers at the six mother-infant facilities, as state prisoners, receive their medical care under the direction of the Receiver. Because the children are not prisoners, the Receiver does not have control over their medical care. (As a practical matter, with over 165,000 prisoners in California’s state prisons, the attention of the Receiver has been on the large state prisons.)

The three Family Foundations have similar arrangements for the provision of medical care for the children, with a full-time nurse on the premises, pediatricians on call and a local hospital identified for necessary emergency room or hospitalizations.²⁰ The mothers’ access to care is more limited. They get transported back to the nearest

¹⁹ *Plata v. Schwarzenegger*, US District Court (Northern California) NoCal-1351TEH.

²⁰ Even though the FFPs provide medical care for the children, the non-profit and the state took the legal position in Esperanza’s lawsuit that they had no legal duty to provide them with such care. In January 2010, a Court of Appeal issued its decision in Esperanza’s case, clarifying that the non-profits that run Family Foundations do owe a duty to provide medical care to the infants and children in their care and that CDCR and its on-site staff may be found liable for negligence in failing to provide such care. It is distressing that CDCR and the non-profit argued otherwise.

women's prison for their non-urgent medical care. The role of the on-site nurse is critical. This is a gatekeeper role, and is handled differently at each institution. We heard complaints of lack of competence, lack of confidentiality and over-medication at one facility, while the quality of the pediatrician at another facility was questioned, giving rise to desire for a second opinion. There is a persistent mold issue at one facility and we heard that there were many cases of RSV (Respiratory Syncytial Virus) and measles at another facility.

The Pomona CPMP is the only CPMP that has medical staff on site to provide both mothers and children with rudimentary medical care. In addition, women at that program can get day passes to go out for medical care for themselves and/or their children. We did hear about mold problems, a rash of pneumonia, and a delay in treatment of a baby who developed pneumonia at Pomona. In Oakland's Project Pride, mothers and their children get passes to go to Children's Hospital, Highland Hospital, and the Claremont Clinic (affiliated with Children's Hospital). The very rural Bakersfield CPMP has neither medical staff on site nor easy access to outside care. We understand that, like the mothers in the FF Program, the CPMP mothers are also transported to the nearest women's prison for non-urgent medical needs.

Many women told us that they do not seek medical care for themselves, or sometimes for their children, for fear of being "rolled up" (returned to prison) or disciplined. We also heard about problems relating to Medi-Cal coverage. Some women arrived at the facility with Medi-Cal coverage for their child but no card and were told their child could not access medical care until the card arrived. The mothers questioned why they had to wait to get the card to have their child seen, since the system is computerized.

Several mothers told us that non-medical personnel (e.g., program administrative staff or childcare workers) often make medical decisions regarding their children. A child may be quarantined when they do not have a contagious condition, for example.

Recommendations:

- Improve access to medical care, especially for children, at these facilities
- Allow mothers to decide if and when a child must see an outside medical practitioner
- Do not discourage mothers from or punish them for seeking medical care for their children and themselves
- Do not allow non-medical personnel to make medical decisions for the children or their mothers
- Ensure there is a functioning procedure to deal with medical emergencies when on-site medical staff are not on duty: nights and weekends
- Ensure that all eligible children can access Medi-Cal coverage

RELATIONSHIP TO OUTSIDE WORLD

Many of the mothers we met have older children who are not eligible to live in the program. All of the mothers have family members whom they would like to see on a regular basis. Communication with these family members as well as to friends, other relatives and social services agencies through visits, phone calls and mail is extremely problematic.

What works: San Diego has a walk every day where women and children walk around the neighborhood. Most of the women we spoke with enjoyed this, and the women in San Diego had regular contact with the world outside of the FFP because of these walks. The staff at FFP Fresno is committed to working with the women around their family law needs—they will take women to court if they have a date that will impact their parental rights; they will help them find an attorney to advise them. The CDCR correctional counselor at FFP Fresno has called on LSPC to advise women by phone. Both Oakland and Pomona allow greater access to the outside world by letting women take their children to kindergarten (Pomona) or to the doctor (Oakland).

What could be improved: Phone calls are prohibitively expensive. Mothers can only make collect calls, which have an enormous surcharge attached to them. We were told that a 15-minute local phone call can cost \$33. Phone calls are the easiest way to keep in touch, but most women cannot afford to do this.

There have been problems getting mail out. Because everything has to be read by a staff member and many staff don't work every day, mail gets extremely delayed. Some family members report never receiving letters that women have sent. One husband told us of receiving nine pieces of mail in one day from his wife *after* an attorney began to look into his complaint about mail interference.

Visiting with older children can also be problematic. At Fresno, visiting happens in the dining room where there is nothing to do. The older children see the playground and know there are childcare facilities, but they can't access them. At Pomona, they can go to the playground, but there are few places to sit.

It has become more difficult for children living in the mother-infant facilities to get passes to go home to their outside families over the weekends. They used to be able to go for periods of 48 hours once a month and 24 hours on other weekends—now it appears this rarely happens.

Minor medical conditions can prevent children from getting out of the facility to spend time with outside family. In one facility, we were told that if a child is getting any kind of medication, they cannot leave for the weekend. For example, a child who had an ear infection and was receiving antibiotics could not go see their father until they were off of the medication for at least two weeks.

There are also problems with going on outings and going shopping, which are a highlight of people's time in these programs. Transportation problems at Bakersfield mean that women and children rarely leave. Many women were told they would be able to access education or training facilities, but there is no transport. Several women expressed a desire to attend a support group for victims of domestic violence available to residents of Bakersfield, but there is no way for them to get there. In addition, family members who are coming to visit have no way of accessing public transportation. This leaves women and family members at a distinct disadvantage, both in terms of programming and reunification.

The only exception is Oakland. Women there report that there are lots of outings, including to Lake Merritt, Defemery Park, the circus, the zoo, Disney on Ice, picnics, parks, pizza parlors, etc.

We have heard reports that women are sometimes punished for minor infractions by being denied permission to go on outings. When this happens, their children are also not allowed to leave the facility. The women we talked to were not opposed to being punished but feel that their children should not be punished along with them.

Finally, staff at both Pomona and Oakland were uncooperative when we tried to interview women and tour the facilities. When we initially met with women at both of these programs, staff insisted on sitting in and participating in these discussions, creating an atmosphere that was not conducive to an honest exchange. One Correctional Counselor discouraged women from speaking with us by reportedly telling the mothers, "Don't say anything that will get us shut down," and "it is your own choice if you go and see the attorneys." We were able to return to both facilities for confidential legal visits with individuals but were not able to have a good discussion with the full group. Many of the women who had previously told us they wanted us to visit then failed to meet with us.

Recommendations

- Establish an affordable phone system
- Create a good visiting environment for older children, including having them stay overnight on a regular basis
- Institute a comprehensible pass policy so that children can visit their outside families regularly and prisoners can go home more and more frequently as their time to leave the facility draws near
- Allow mail to be sent out daily
- Stop punishing women by disallowing outings; this impacts children at least as much as their mothers
- Allow children who have medication to take it out with them so they can visit other family members who are not in the facility
- Allow outside contact with legal organizations and other social services agencies without harassment

RETALIATION

We received reports of management’s use of threats and retaliation from mothers at all three CPMPs, and also at the Family Foundations program in San Diego. We heard of efforts to return one woman to prison who had never been written up for anything. A visitor reported being threatened with loss of visiting rights if he and the mother pursued certain complaints.

At one CPMP, the women were very afraid to file a 602 grievance form because they felt that their children would be made to suffer. We were told that “staff likes to retaliate” and that “filing a 602 gets you nowhere.” The women stated, “You have to put up with what staff does to you.” The women are also afraid of getting write-ups because they would not be able to go on field trips with their children. At another CPMP, the women stated that staff often issue threats to “add on a day” to their sentence. We heard a complaint that one woman was written up for “staff splitting” (getting assistance from an available staff person when her assigned counselor was unavailable) while simultaneously being written up for risking her child’s health by *not* “staff splitting”—all in an effort to get her child necessary medical attention. At the third CPMP, we heard about inconsistent disciplinary consequences for using a cell phone, ranging from return to prison and 30 days additional time, 30 days additional time but no return to prison, to no additional time at all.

As described in the medical section above, many women are afraid to seek medical care for themselves or their children, for fear of being “rolled up.” One woman was disciplined for seeking simple medical information for herself from her child’s pediatrician during her child’s appointment .

Recommendations:

- Refrain from retaliation for filing 602’s, seeking medical care, or advocating for one’s child
- Refrain from penalties that punish the child
- Employ clear, consistent and reasonable rules

RE-ENTRY

By statute, the Family Foundations Programs are required to provide a 12-month outpatient transitional services program. We have little information about the extent to which this program is being offered, or what it entails. Some participants may be transferring to a FOTEP (Female Offender Treatment and Employment Program). The Fresno program attempts to find appropriate housing for women upon reentry. We have no information on the other two Family Foundations programs.

Many women wanted more help with aftercare planning—such as help with housing. Because many women have drug offenses, they are not eligible for public housing and have a hard time getting Section 8 (government housing assistance). They then are in the

Catch-22 situation of having completed all their parenting programming but being in danger of losing their children upon release because they don't have housing.

The Pomona CPMP is one program of a multi-service organization (Prototypes) that has a low income housing component. Graduates of that CPMP may be able to obtain housing through this program. However, one woman at Pomona reported that some women there do not know where they will go upon release, and she wished that HUD or section 8 housing were available. Parole planning assistance at Bakersfield is limited, reportedly due to lack of Internet access for most counselors.

Generally, all of these women will be placed on parole.²¹ Unfortunately, their parole conditions may undercut the value of the CDCR program they have just completed. We are aware of paroled mothers being forbidden from being in contact with the very child they were just housed with, creating the absurd situation of being imprisoned with their child but being separated from their child upon gaining freedom. Restrictive conditions, such as not being allowed in the presence of the child without being supervised unless the parole officer has granted explicit permission, are likewise extraordinarily heavy-handed. One woman was forbidden from moving back into her home with her husband and other children, and forbidden from having contact with the child she had just been incarcerated with, by restrictive parole conditions. Our client Denisha Lawson was returned to prison when she was seen eating an ice cream cone with her daughter without permission.

The women who participate in these programs are highly motivated to retain custody of their children and have lived in close proximity of these children successfully for months if not years. Parole conditions that undermine this strong maternal bond do not benefit the child, the mother, or the public.

A 2008 CDCR report shows a “relatively low” return-to-prison rate for women in both of these programs who were released between 2003 and 2007 over a one or two year period.²²

Recommendations:

- Abolish restrictive parole conditions limiting contact between these mothers and the children they have just been incarcerated with, or any of their other children in the same household
- Provide housing and other assistance to these mothers and their children
- Provide programming that prepares these mothers for reentry

²¹ Perhaps under the new non-revocable parole scheme, many or all of these women will not be placed on formal parole with specified conditions.

²² “Female Offenders Programs: Community Prisoner Mother Program and Family Foundations Program,” Office of Research, Adult Research Branch, State of California, Department of Corrections and Rehabilitation, Revised December 2008.

CONCLUSION

In our work, we are in regular contact with good mothers who have permanently lost custody of their children due to their incarceration. Whether due to CPS and the dependency courts, probate court guardianships or other court orders, many women leave prison unable to reunite with their children. It is therefore not surprising that every mother living in the programs described by this report was grateful to be there. As noted above, even those who had *serious complaints* and felt that the program might be *dangerous* for their children felt that their children were better off in the program than away from their mothers. A recent study by CDCR suggests that the recidivism rates of these mothers are lower than for other women not in these programs.²³

Nevertheless, it is difficult for us to wholeheartedly support these programs as they exist today, given the problems we have discovered. Instead, we believe strongly that various changes and improvements must be adopted to improve the lives of the children and their mothers. Our recommendations are scattered through this report and appear together following this conclusion.

We believe strongly that primary caregivers of children should not be sent to prison in most cases. This principle is now the law in South Africa and is based on the concept that the incarceration of a child's parent/caregiver is an infringement on the human rights of the child.²⁴ Instead, we call for a revamping of our criminal justice and prison system to emphasize community-based rehabilitation programs that will allow families to remain together in facilities that are not under the direct supervision of CDCR. California's continual prison building has got to stop. When the CPMP legislation was passed in 1978, the Department of Corrections had fewer than 30,000 prisoners; today, the number is around 165,000.

Little more than 1% of California's 10,000 women prisoners are in the CPMP or FF programs. We believe that many more of the women incarcerated in state prison would benefit from community-based treatment programs, at a cost of less than what it costs to house them in a massive prison setting. We urge policy-makers at all levels to turn away from reliance on traditional prisons in favor of local programs where mothers can continue to live with their children and receive the education, treatment and support that they need to successfully manage their lives.

At the end of the 2010 legislative session, Governor Arnold Schwarzenegger signed SB 1266 (Liu), a bill that provides for alternative sentencing for many parents who are primary caregivers of their children at the time of sentencing. It is unclear at this time how this bill will be implemented. But some lessons that we have learned in studying CDCR's mother-infant programs are quite timely. While there are many successful aspects of these programs, we have serious questions about the ability of CDCR to implement effective, child-centered programming for parents and their children. We believe that real alternative sentencing that includes parents and their children should not

²³ See footnote 22

²⁴ <http://www.saflii.org/za/cases/ZACC/2007/18.pdf>

be under the jurisdiction of the state's largest punishment provider. Instead, we call for programs that are implemented by organizations that are experienced in providing services to children and their parents outside of the world of punishment.

In 2000, California's voters approved Proposition 36 that provides for a real alternative to incarceration for people convicted of certain drug crimes. We believe that such an alternative for primary caregivers of children, outside of the CDCR's jurisdiction, is the best way to reduce our prisoner population while providing real services to these families.

RECOMMENDATIONS

Getting in

- Make statutory changes to expand eligibility to include women with drug convictions and other listed offenses at the discretion of the court (for FFP) and CDCR (for CPMP)
- Adopt administrative or legislative changes to make the mental, medical and dental eligibility requirements less restrictive
- Abolish unnecessary teeth-pulling as a prerequisite for eligibility
- Refer apparent racial disparity in Family Foundation referrals from the courts to the Judicial Council for investigation into its causes and possible remedies
- Publicize Family Foundations to public defenders, private attorneys, probation departments and the courts to increase access for women of color and increase total enrollment
- Increase funding of CPMPs to be comparable to Family Foundations Programs
- Expedite the processing of CPMP applications

Physical plant

- Upgrade the physical building of the Oakland facility or move it elsewhere
- Repair any dangerous conditions
- Allow the mothers and children to live in child-friendly quarters, by allowing wall decorations, toys, children's furniture, etc.
- Any new programs should be based in urban areas to allow access to services

Programming

- Provide access to community college classes if available
- Bakersfield—provide decent transportation to the city for prisoners so they can attend programs during the week and for visitors on the weekend
- Allow Internet usage so that job skills training and job opportunities are available
- Allow more downtime so that mothers and children are able to relax and enjoy each other every day
- Initiate aftercare programming (housing, job training, drug treatment, education) for those who request it
- Clarify what the one-year parole/treatment is for those leaving FFP

Childcare/childrearing

- Create a child-friendly environment/atmosphere in the public areas
- Develop child centered training for the childcare workers
- Remediate the Fresno play area so children can go outside
- Create a child friendly environment for children who come to visit their mothers on the weekends; allow older children to participate in overnights with their moms

- Remove the five-toy limit so that children are able to have lots of toys to play with
- Allow mothers to walk their children to kindergarten and to attend parent-teacher events and meetings at their children's schools

Food

- Eliminate food shortages
- Improve food options, particularly for children
- Involve nutritionists to educate and mediate on food issues
- Ensure every facility has access to WIC foods

Medical care

- Improve access to medical care, especially for children, at these facilities
- Allow mothers to decide if and when a child must see an outside medical practitioner
- Do not discourage mothers from or punish them for seeking medical care for their children and themselves
- Do not allow non-medical personnel to make medical decisions for the children or their mothers
- Ensure there is a functioning procedure to deal with medical emergencies when on-site medical staff are not on duty: nights and weekends
- Ensure that all eligible children can access Medi-Cal coverage

Relationship to outside world

- Establish an affordable phone system
- Create a good visiting environment for older children, including having them stay overnight on a regular basis
- Institute a comprehensible pass policy so that children can visit their outside families regularly and prisoners can go home more and more frequently as their time to leave the facility draws near
- Allow mail to be sent out daily
- Stop punishing women by disallowing outings; this impacts children at least as much as their mothers
- Allow children who have medication to take it out with them so they can visit other family members who are not in the facility
- Allow outside contact with legal organizations and other social services agencies without harassment

Retaliation

- Refrain from retaliation for filing 602's, seeking medical care, or advocating for one's child
- Refrain from penalties that punish the child

- Employ clear, consistent and reasonable rules

Re-entry

- Abolish restrictive parole conditions limiting contact between these mothers and the children they have just been incarcerated with, or any of their other children in the same household
- Provide housing and other assistance to these mothers and their children
- Provide programming that prepares these mothers for reentry

Over-riding recommendation

- **Create a real alternative to incarceration for primary caregivers of children that provides services to these families outside of the jurisdiction of CDCR**

OUR MISSION

The mission of Legal Services for Prisoners with Children is to advocate for the civil rights and empowerment of incarcerated parents, children, family members and people at risk for incarceration through responding to requests for information, trainings, technical assistance, litigation, community activism and the development of more advocates. Our focus is on women prisoners and their families, and we emphasize that issues of race are central to any discussion of incarceration.

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