



Lindsey Linder, Senior Policy Attorney
Work: (512) 441-8123, ext. 110
LLinder@TexasCJC.org
www.TexasCJC.org

2019 FACT SHEET
HB 1389

Consider Minor Children When Sentencing a Person Who is Their Primary Caretaker *HB 1389 will require courts to consider a person's status as the primary caretaker of a minor child or minor children at sentencing*

The number of women in Texas prisons has grown by nearly 1,000 percent since 1980 (more than twice the rate of men).¹ Texas now **incarcerates more women by sheer number than any other state** in the nation.² A staggering 81 percent of women in Texas prisons are mothers, while nearly 200 women gave birth in the Texas Department of Criminal Justice (TDCJ) in FY 2016. When a child loses a parent to incarceration, it can result in serious mental, physical, and emotional health issues.³

Furthermore, incarcerated parents can permanently lose custody of their children, sending them into the foster care system or into other vulnerable situations. Primary caretakers are an especially distinct group that deserves attention, given that many of the challenges they face – particularly financially – are intensified upon reentry when a criminal record can impact employment and housing.⁴

Family-based treatment alternatives to incarceration are a more effective approach than incarceration, consistently resulting in lower recidivism⁵ and leading to **improved children's health, family stability, sustained parental sobriety, increased family reunification, and significantly better outcomes for children than foster care placement**.⁶ Texas should provide more opportunities like these for parents to address the root causes of their behavior outside the justice system, allowing them to put their past behind them and successfully support their families.

KEY FINDINGS

- The majority of incarcerated women in Texas prisons have less extensive criminal histories than incarcerated men, and the majority (64 percent) of women are **incarcerated for nonviolent offenses**.⁷
- While 81 percent of women in Texas prisons are mothers, 68 percent of men are fathers. Collectively, almost 103,000 people in Texas' state corrections system in FY 2016 had children,⁸ at tremendous cost to families and communities.
- Children who have one or both parents incarcerated are also **more likely to be placed in foster care or experience homelessness**.⁹
- Half the children of incarcerated mothers will never be able to visit them during the period of incarceration.¹⁰ This intensive separation risks the significant benefits derived from the development of a mother-child relationship: **reduced recidivism among women, increased economic stability among women following reentry, and increased interest among women in undertaking rehabilitative efforts**.¹¹
- **Parental incarceration is formally recognized as an adverse childhood experience (ACE)**.¹² ACE's are tied to depression, chronic diseases, certain cancers, and an array of other mental health disorders.¹³ The outcomes that are significantly increased for the children of incarcerated individuals include **attachment disorders, substance use disorders, and severe lags in academic performance**.¹⁴

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COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 1389 BY REPRESENTATIVES THOMPSON AND WHITE

HB 1389 requires courts to consider a person’s status as the primary caretaker of a minor child or minor children at sentencing. Incarcerating individuals compounds the employment, financial, and housing strains that those with criminal records already face. This practice is especially harmful for primary caregivers, as it limits their ability to effectively provide for their families – risking children’s foster care involvement or homelessness – while isolating parents from their support networks and adding additional stress. Judges should take primary caretaker status into consideration before sentencing a person to incarceration, especially for nonviolent offenses.

The specific consideration of primary caregiver status can prevent unnecessary incarceration, reduce the stress it would place on children and families, and save on costly incarceration.

Citations

¹ Texas Department of Criminal Justice (TDCJ) data request, 2017.

² Aleks Kajstura, Prison Policy Initiative, in a call with TCJC Policy Attorney Lindsey Linder on September 5, 2017. This refers to all incarcerated women, including immigrant detainees, and is based on 2010 U.S. Census Bureau data.

³ Lindsey Linder, *An Unsupported Population: The Treatment of Women in Texas’ Criminal Justice System*, April 2018, <https://www.texascjc.org/womens-justice>.

⁴ A. Kajstura, “Women’s Incarceration: The Whole Pie 2017,” *Prison Policy Initiative*, 2018, <https://www.prisonpolicy.org/reports/pie2017women.html>.

⁵ A. Thompson, “Releasing Prisoners, Redeeming Communities Reentry, Race, and Politics” *NYU Press*, 2008, 64-65.

See also: Women’s Prison Association, *Mothers, Infants and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives*, 2009, https://www.prisonlegalnews.org/media/publications/womens_prison_assoc_report_on_prison_nurseries_and_community_alternatives_2009.pdf

⁶ National Women’s Law Center, *Mothers Behind Bars*, 2010, <https://www.nwlc.org/sites/default/files/pdfs/mothersbehindbars2010.pdf>

⁷ E. Swavola, K. Riley, R. Subramanian, “Overlooked: Women and Jails in an Era of Reform,” *Vera Institute*, August 2016, <https://www.vera.org/publications/overlooked-women-and-jails-report>.

⁸ TDCJ, data request, September 2017.

⁹ R. Anspach, “What It’s Like to Grow Up With a Parent Behind Bars,” *Teen Vogue*, October 13, 2017, <https://www.teenvogue.com/story/what-its-like-to-have-an-incarcerated-parent>.

¹⁰ S. Phillips, “Mother-Child Programs: Connecting Child Welfare and Corrections Agencies, in *Women and Girls in the Criminal Justice System: Policy Issues and Practice Strategies*,” *Civic Research Institute*, 2006.

¹¹ B. Bloom, B. Owen, & S. Covington, “Gender Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders,” *National Institute of Corrections*, 2003, <https://s3.amazonaws.com/static.nicic.gov/Library/018017.pdf>.

¹² T. Krupat, E. Gaynes, Y. Lincroft, “A Call to Action: Safeguarding New York’s Children of Incarcerated Parents,” *Osborne Association*, 2011, <http://www.osborneny.org/programs-down/strengthening-communities/new-york-initiative-for-children-of-incarcerated-parents/a-call-to-action/>.

¹³ Center for Health Care Strategies, *Fact Sheet: Understanding the Effects of Trauma on Health*, June 2017, <https://www.chcs.org/resource/understanding-effects-trauma-health/>.

¹⁴ R. Anspach, *What It’s Like to Grow Up*.