



PARENTAL RIGHTS

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Hidden or “collateral consequences” are additional penalties that may result from criminal convictions. They have a direct impact on critical areas of life such as: employment, housing, education, public benefits, parental rights, and voting, and can hinder an individuals’ ability to successfully reintegrate. Understanding the relevant legal and regulatory framework that creates these sanctions can be helpful to criminal defense attorneys, other advocates, and all residents of New Jersey affected by incarceration. Please note that these laws can and do change, and you should inquire about updates before relying on this information. [June 2006]

SUMMARY: According to a report by the Bureau of Justice Statistics, 55% of state and 63% of federal prisoners reported having a child under the age of 18.¹ Almost half of these parents reported living with their children prior to the admission to prison.

While New Jersey does not regularly collect comparable data on its prison and jail population, this pattern of parental incarceration exists in the state as well, and issues of family preservation and reunification will play a role in the reentry process. Women prisoners are even more likely to be living with their children, and thus the growing incarceration rates of women prisoners will have an even more onerous impact.

In 1997, Congress passed the Adoption and Safety Families Act (ASFA), which shifted the emphasis of federal policy away from family preservation, towards safety and permanency, pushing states to move much more rapidly to terminate parental rights. Federal funding to

states for foster care and adoption assistance and child protective services was made contingent on state adoption or implementing legislation, and New Jersey has done so.

Under the ASFA amendments, the Division of Youth and Family Services (DYFS) must make “reasonable” efforts – no longer “diligent” efforts – to prevent placement or reunify families prior to petitioning to terminate parental rights. DYFS will not be required to make reasonable efforts under certain circumstances, and incarceration puts parents at greater risk of termination. New Jersey law now requires DYFS to seek termination as soon as any of the grounds for termination are established but no later than when a child has been in placement for 15 out of the most recent 22 months.

This fact sheet lists provisions for terminating parental rights, particularly as they impact incarcerated parents. You will find the enabling statute, identify triggering convictions or conditions and their consequences, and remedies where they exist.

Provisions for Termination of Parental Rights

STATUTE OR REGULATION	CONVICTION OR OFFENSE	CONSEQUENCES	REMEDIES
N.J.S.A. §30:4C-15(a)	A conviction for abuse, abandonment, neglect of or cruelty to the child	Division of Youth and Family Services (DYFS) is obligated to initiate proceedings to terminate parental rights	Before a trial court may terminate parental rights, the facts must be established by “clear and convincing evidence”
N.J.S.A. §30:4C-15(c)	A court finding that termination of parental rights is in the “best interest of the child”	Division of Youth and Family Services (DYFS) is obligated to initiate proceedings to terminate parental rights	A trial court must find that: (1) the child's health and development has been or will be seriously impaired by the parenting relationship;

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			(2) the parents are unable or unwilling to eliminate the harm and delay in permanent placement will add to the harm; (3) alternatives to terminating parental rights have been thoroughly explored and exhausted, including efforts to help the parents cure the problems that led to the placement; and (4) termination of parental rights will not do more harm than good
N.J.S.A. §30:4C-15(d)	When a child is in foster care for more than a year and the parent(s) fail to fix the problems that led to the removal, although physically and financially able to do so and despite the agency's reasonable efforts to assist	Division of Youth and Family Services (DYFS) is obligated to initiate proceedings to terminate parental rights	The agency's "reasonable efforts" mean attempts by the agency to assist the parent in remedying the circumstances and conditions that led to the placement of the child, including, but not limited to: 1) consultation and cooperation with the parent in developing a plan for appropriate services; 2) providing agreed upon services to further the goal of family reunification; 3) informing the parent at appropriate intervals of child's development, progress and health; and 4) facilitating appropriate visitation. ²
N.J.S.A. §30:4C-15(e) <i>Matter of the Adoption of Children by L.A.S.</i> 134 N.J. 127 (1993)	When the parent has abandoned the child ³	Division of Youth and Family Services (DYFS) is obligated to initiate proceedings to terminate parental rights	A trial court must find that for a period of six or more months: 1) (a) the parent, though able, has had no contact with the child, the child's resource family parent or the division; and (b) the parents whereabouts are unknown or 2) the

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			identities of the parents are unknown or 3) the parent voluntarily left, or caused another to leave, the child with the state without expressing an intent to return.
N.J.S.A. §30:4C-15(f)	The parent has been convicted of serious crimes against the child or another child of the parent	Division of Youth and Family Services (DYFS) is obligated to initiate proceedings to terminate parental rights	A trial court may terminate parental rights if the facts are established by “clear and convincing evidence”
Adoption and Safe Families Act (ASFA) P.L. 105-89, 111 Stat. 2115 (1997) and N.J.S.A. §30:4C-15(f)	Triggered when any of the grounds for termination (above) are established	Division of Youth and Family Services (DYFS) is obligated to initiate proceedings to terminate parental rights, but <u>no later</u> than when a child has been in placement for 15 out of the most recent 22 months	Exceptions: (a) The child is being cared for by a relative and a permanent plan can be achieved without TPR; ⁴ (b)The division has documented in the case plan a “ <i>compelling reason</i> ” for determining that filing the petition would not be in the best interests of the child; (c) the agency has not provided reasonable efforts to reunify consistent with the time period in the case plan

¹ Mumola, Christopher J., US Department of Justice Bureau of Justice Statistics, *Incarcerated Parents and Their Children* (Washington, DC: US Department of Justice, August 2000), p. 1.

² At present, there is no requirement that DYFS assist parents and children to maintain a bond during incarceration.

³ The Supreme Court of New Jersey held in *Matter of the Adoption of Children by L.A.S.*, 134 N.J. 127 (1993) that the incarceration of a parent is a relevant factor in determining whether the parent-child relationship should be terminated on the basis of either abandonment or unfitness.

⁴ New Jersey law requires mandatory criminal background checks for prospective foster and adoptive parents, and individuals will be permanently disqualified from being either if they or anyone in their household has been convicted of a range of violent crimes. Prospective candidates will also be disqualified for five years (from conviction or last date of incarceration, probation or parole, whichever is later) if they or any household member was convicted of certain lesser felonies and any violation of the Comprehensive Drug Reform Act.