



Training Key® #691

Safeguarding Children of Arrested Parents: An Overview

Part I of this two-part *Training Key*® on children of arrested parents focuses on providing an overview of the topic, defining key terms used in the discussion, and outlining the legal obligations that govern the actions of officers when confronted with these situations.

The arrest of a parent can have a significant impact on a child whether or not the child is present at the time of the arrest.¹ Depending on age and quality of the relationship with the parent, children may feel shock, immense fear, anxiety, or anger towards the arresting officers or law enforcement in general. Over the past two decades, increasing emphasis has been placed on examination of the effects of these events on children of various ages and the ways in which law enforcement can make sure that an involved child doesn't "fall through the cracks."² Research clearly indicates that such events can and often do have a negative impact on a child's immediate and long-term emotional, mental, social, and physical health.³ Symptoms such as sleep disruptions, separation anxiety, irritability, and even more serious disorders or post-traumatic reactions have been documented.⁴ In addition, later problems with authority figures in general and law enforcement in particular can arise if officers or other service providers do not take the time to address the needs of the child. Time taken with a child under these trauma producing circumstances is time well spent. The kindness and assistance of an officer with a child creates lasting impressions even among very young children. Treating a child with compassion and thoughtfulness is not only the proper thing to do, it is also a hallmark of good policing that can have long-term positive benefits for the child and the community.

Unfortunately, many, if not most, law enforcement agencies do not have policy, procedures, or training that specifically address actions that should be taken to reduce and prevent trauma associated with the arrest of a parent. For example, a seven-year study of all local

California law enforcement agencies found that two-thirds of responding agencies did not have written policies outlining officer responsibilities for a child at the time of a parent's arrest. Additionally, about half of responding child welfare agencies had no written protocols describing how to minimize trauma that may be experienced by a child of an arrestee.⁵ These findings may not reflect the situation in many jurisdictions around the country, but they do strongly suggest that both law enforcement and community partner organizations who share responsibility for child welfare in arrest situations may lack the training or preparation necessary to respond appropriately.

When children are involved during the arrest of a parent, police officers are often confronted with many overlapping challenges and responsibilities. They must perform their duties in sometimes difficult or even chaotic situations, while also fulfilling their legal responsibility to protect the interests of an innocent child at the scene. Readily available alternatives, such as placing a child with a neighbor, relative, or family friend, often must be made with some urgency, but with minimal information on the capacity or suitability of those persons to provide adequate and safe care. Efforts to reduce the trauma on children created by the arrest cannot always be addressed in a coordinated or timely manner given exigencies associated with some arrests, particularly those involving greater risks to officers. For example, officers may unexpectedly encounter armed or violent suspects who must first be subdued before any additional action can be taken.

Similarly, child welfare services (CWS) often has limited resources to respond to these situations in a

timely manner and all too often, their services may not be established with a complete understanding of law enforcement requirements, policies, and practices during arrest situations. In addition, involving CWS may not be necessary in all arrest situations or appropriate as defined by state law or agency policy. The same can be said of a lack of law enforcement understanding of CWS policies, procedures and responsibilities. Without cross-training and a procedure for the coordination of services between law enforcement and CWS, as well as other partner organizations, the needs of the child may be inadequately or only sporadically met.

Fortunately, law enforcement is developing a greater understanding of the overall impact of violence and parental incarceration on children. Efforts to keep families connected, even if a parent is incarcerated, are part of the overall movement championed by many correctional systems. Among law enforcement agencies, the philosophy of early intervention in the life of a child to support positive development is being recognized as part of the overall strategy to prevent crime and violence. Showing kindness and concern to a child whenever possible, but especially during a difficult time, will help influence his or her opinions towards law enforcement then and later in life. Helping to prevent or minimize a child's exposure to potentially traumatic events is an operationally sound law enforcement strategy to promote public safety and reduce the likelihood of future misconduct, criminal behavior, and victimization. It is also consistent with law enforcement's community service and assistance function and is a direct component of principles of community policing, problem solving, and conflict resolution.

Law enforcement officers and their agencies have long been attuned to the dangers of civil liability for failure to train. In the present context, failure to train officers to take reasonable measures to safeguard children at the time of their parent's arrest and to ensure that appropriate actions are taken before, during and after the arrest, can have legal implications for officers and their employing jurisdictions. In addition to the legal consequences, protection of a child in these and related situations should also be viewed as an ethical, moral, and pragmatic responsibility that serves the short-term and long-term interests of both law enforcement, its justice partners and the communities they serve.

Definitions

Child: Any unemancipated person under the age of 18, or as otherwise defined by state law, whether or not he or she is present at the arrest. (As used herein, "child" refers to both an individual child or multiple children.)

Parent: Any adult who is legally responsible for the well-being, supervision, and care of a child. In most cases, this individual is a biological or adoptive parent, or guardian.

Caregiver: A responsible adult selected to temporarily care for the child in situations where another individual with legal custody of the child is unavailable. In

some cases, responsibility for the temporary care and supervision of a child may be delegated to a relative, neighbor, friend, or another adult, as they are willing and able.

Child Welfare Services (CWS): A public service agency, or its contractee, that has authority to assume responsibility for the care, welfare, and temporary supervision of a child pursuant to law.

Partner Organization: A group or agency with interests aligned with this department with regards to safeguarding a child from trauma when his or her parent is arrested. This may include, but is not necessarily limited to, CWS, probation/pretrial entities, victim advocates, corrections, medical/mental health services, schools, youth-serving organizations and faith-based programs.

Trauma: Individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and that has lasting adverse effects on the individual's functioning and physical, mental, social, emotional, or spiritual well-being.⁶

Responsible Adult: An individual over 18 years of age who can pass a preliminary NCIC check and clear a child protection registry background check to ensure that he/she does not have any arrests for founded cases of child abuse, sexual crimes, domestic violence, recent arrests for drug use or possession, or other violent felony violations.

Scope of the Problem: How Many Children Are Affected?

There are no accurate statistics on the number of children who are present when their parent is arrested since these numbers are not routinely captured in arrest reports or collected by any central authority. However, statistics on incarcerated parents collected by the U.S. Department of Justice, Bureau of Justice Statistics (BJS) cast some light on the issue, even though it is recognized that far more arrests are made than are represented by the data on incarcerated persons in state and federal prisons.

According to the most recent data originally published in 2008 by BJS, and updated in 2010, among federal and state prisoners:

- An estimated 809,800 prisoners of the 1,518,535 held in the nation's prisons at mid-year were parents of minor children—52 percent of state inmates and 63 percent of federal inmates.
- An estimated 1,706,600 children have a parent in prison (i.e., 2.3 percent of the U.S. population under 18 years of age). Note that this does not include children who have parents in jail.
- Incarceration of mothers increased 122 percent and the incarceration of fathers rose 76 percent between 1991 and 2007.
- More than half of mothers held in state prison reported living with at least one of their children in the month before arrest, compared to 36 percent of fathers.

- Among federal inmates, mothers were two-and-one-half times more likely than fathers to report living in a single-parent household.
- Among parents living with their minor children prior to incarceration, more than three-quarters of mothers, compared to just over a quarter of fathers reported providing most of the daily care of their children.⁷

The increase in parental incarceration between the years 1991 and 2007 is of particular note within the present discussion. The arrest of any parent presents the clear possibility that a child may experience immediate trauma or have traumatic reactions at a later time. Possibly the most vulnerable among those cited above is the child of an incarcerated mother. Incarceration of a mother can have the most severe and long-lasting consequences for her child, as she is most often the primary, if not the only, caregiver. Separation from a primary caregiver represents a crisis for children and should be given special consideration.⁸

Recognition that the child of an incarcerated mother may be the most deeply affected by this separation is not to suggest that the arrest of a father or male guardian may not have the same impact or that officers should hesitate to make arrests of mothers when required. It is mentioned here to highlight the need to pay particular attention to arrests involving primary caregivers (arrested women or others who identify as primary caregivers) through coordination with partner organizations. Through this combined effort, all reasonable steps should be taken to minimize the child's exposure to the arrest, to allow the arrestee to reassure the child and stay with the child until the caregiver is present, to ensure placement with a responsible adult, and to guarantee that follow-up with the child is performed where necessary by the law enforcement agency, partner organizations, or both.

In spite of the need for law enforcement to closely monitor the arrest of primary caregivers, in most cases, mothers, the survey of California's law enforcement agencies cited previously does not suggest any particular emphasis by agencies on the needs of the child of an arrested mother. This is in spite of the fact that these agencies reported that the arrested sole caretaker of a child is a woman in over 80 percent of the cases. Additionally, almost half of all law enforcement agencies (42 percent) did not know the number of mothers with minor children arrested in their jurisdictions.⁹ This latter fact underscores the failure of many law enforcement agencies to fully document when arrested parents are responsible for children and the importance of doing so routinely in arrest reports.

Another group of children of arrestees who are particularly vulnerable are teenagers. In some cases this is because they are viewed as being able to manage on their own, or, in other instances because they state that they can cope on their own or with the assistance of friends or other persons. A 2006 presentation by Nell Bernstein, author of *All Alone in the World: Children of the Incarcerated*, addressed this issue through review of actual case studies.

Teenagers, [she noted] are the most vulnerable to being left alone when a parent is arrested. Among police departments that said they had a written policy outlining officers' responsibility for minor children of an arrested caretaker, only 55 percent defined "minor" as all children under 18. The rest offered definitions that ranged from 16 and under to 10 and under. In other words, children who would not be permitted to sign a lease, get a job or enroll themselves in school because of their age were, as a matter of explicit policy, deemed old enough to be left behind in empty apartments.

Terrence fell into this category. He was 15 the day police broke down his door and took away his mother; who had a problem with drugs. "Call somebody to come watch you," he remembers an officer advising him on the way out. But Terrence had no one to call. For a few weeks, he got by on what was left of the family's food stamps. When they ran out, he cracked open his piggy bank, netting 56 dollars. When that was gone, he washed cars in the neighborhood and sold newspapers door-to-door. At 15, he was old enough to be left alone, but too young to get a real job.

Terrence bought groceries with his odd job earnings, but he couldn't keep up with the bills. First the electricity got cut off, then the water and gas. Once his apartment went dark, then cold, Terrence began spending more and more time with friends from school who lived together in a foster home nearby. When he began spending the night there, the foster father took notice. Terrence explained his situation, and the man arranged for Terrence to be placed with him on an emergency basis. Five months had passed since his mother's arrest before Terrence's abandonment registered as an "emergency" with anyone.¹⁰

The foregoing is not to suggest that children in other age groups are less susceptible to trauma resulting from parental arrest. Children of all ages are vulnerable to potential trauma following the arrest of their parent and reactions vary somewhat by age.

Nell Bernstein's accounts also revealed the following common reactions:

...Some children's own experience during or after their parent's arrest may leave them feeling that they themselves have done something wrong, and are being punished—even incarcerated. One young woman described coming home from science camp one afternoon to find police in her home. One squad car had just left with her mother; now another took her to the children's shelter. She felt, she told me, "that my life was over. That I would never see my family again. I thought I had done something

wrong because I had to go away too. But my family says I didn't." This young woman was 27 years old when she told me this story—and she still didn't sound convinced.

...For many children, a parent's arrest is the moment when their invisibility is made visible; when it is made clear to them just how easily they may be overlooked within the systems and institutions that come to claim their parents. With appalling regularity, young people have described to me being left to fend for themselves in empty apartments for weeks or even months in the wake of a parent's arrest. In most cases, these children were not present when their parent was arrested; they simply came home from school to find their parent gone and were left to draw their own conclusions. But some told me of watching police handcuff and remove a parent—the only adult in the house—and simply leave them behind.

The first time I heard such a story was from a young man named Ricky. Like a third of all incarcerated mothers, Ricky's mother was living alone with her children when she was arrested. Ricky was nine years old, and his brother under a year, when the police came to his house and took away his mother.

"I guess they thought someone else was in the house," Ricky said, when I asked him how the police had come to leave him by himself. "But no one else was in the house. I was trying to ask them what happened and they wouldn't say. Everything went so fast. They just rushed in the house and got her and left."

After the police left with his mother, Ricky did what he could. He cooked for himself and his brother, and changed the baby's diapers. He burned himself trying to make toast, and got a blister on his hand, but he felt he was managing. He remembered that each day, his mother would take him and his brother out for a walk. So he kept to the family routine, pushing the baby down the sidewalk in a stroller every day for two weeks, until a neighbor took notice and called Child Protective Services.

I heard many more stories like these....but I heard another kind of story too, that left me more hopeful—stories where they were seen, and heard, at the time of an arrest; where someone took the time to look out for them, talk to them, perhaps find a relative to care for them. And when this is what happened, they told me, it colored all their future interactions with authority—colored them in a way that made it much more likely that they would re-

spond positively to authority, to law, in the future.¹¹

Parental arrest and incarceration are associated with a number of other negative childhood experiences including household substance abuse, parental mental illness, physical or emotional neglect, and household violence.¹² One comprehensive, longitudinal examination - The Adverse Childhood Experiences Study (ACEs) - examined a range of the health outcomes associated with traumatic events experienced early in life, and the range of behavioral, social, mental and physical effects, including physical and mental health disorders, aggressive behavior and adult victimization that can manifest throughout one's lifetime.¹³

Though witnessing a parent's arrest may appear to be a short, relatively quick life event, the trauma that it can create may be a compounding risk factor that ultimately has a detrimental impact on the child's well-being and development.

Legal Responsibilities of Law Enforcement for Children of Arrested Parents

It may seem obvious that law enforcement has an inherent responsibility to ensure that children of arrested parents are properly cared for, but the typical lack of law enforcement policy and procedures in this regard reflects lack of awareness by many departments concerning the process surrounding, and sufficiency of, the care that should be provided. Unfortunately, federal courts are also "unsettled when it comes to when and under what circumstance a law enforcement officer has the responsibility for the safety of minors at the time of a guardian's arrest."¹⁴ State statutory law addressing the legal responsibility of law enforcement officers to provide for the safety of children after a parent's arrest is generally nonexistent or lacking in specificity.

The Due Process Clause of the 14th Amendment forbids the government from depriving individuals of life, liberty, or property without "due process of law." However, in 1989, the U.S. Supreme Court found that the Due Process Clause does not provide an affirmative right to government aid.¹⁵ However, the Court has established two exceptions that may create a law enforcement officer's duty to protect and violations of which may subsequently be prosecuted under 42 U.S.C. §1983. Federal courts vary considerably in their interpretation of what constitutes either of the two exceptions, so law enforcement agencies should familiarize themselves with rulings in their federal district and circuit.

The first exception involves whether a "special relationship" exists, such as when an officer takes a suspect into custody and transports him or her to jail, thus making the officer responsible for the suspect's safety while in custody. Another example of a special relationship is when an officer makes a specific promise to protect an individual from another party.¹⁶

Possibly of more significance in context of the present discussion is the exception related to "state-created danger." Under this exception, a duty to protect

may exist if an officer or other government operative leaves a person in a more dangerous situation than the one in which he or she was found, creating a previously nonexistent danger or increasing the danger.¹⁷

Specific circuits apply different tests to determine whether a state-created danger exception exists. For example, officers were found to have created a danger for three children who they left in a vehicle by themselves on the side of a limited access highway at night when their uncle was arrested for drag racing. The children decided that the only way to get help was to leave the vehicle and walk along the highway until they found a telephone. They then called their mother, but could not identify their location. The mother was unable to pick them up due to lack of transportation. They were finally located by a neighbor several hours after leaving the car. The officers' actions constituted "gross negligence" or "reckless endangerment" according to the 7th Circuit Court, which found the officers liable for both emotional and physical injuries sustained by the children.¹⁸

In another case, two children, 11 and 13 years of age, spent the night at a friend's house, who was also a minor. That night, law enforcement raided the apartment and arrested the mother on narcotics and related charges leaving the three children in the apartment alone. In spite of their ages and potential exposure to a drug environment, and the fact that they were left without adult supervision, the court held that the officers could not foresee potential dangers as compared to the circumstances in the foregoing case. The children were inside a building with a telephone that they could use to contact another responsible adult. The court therefore found that the officers were not negligent.¹⁹

In summary, an attorney analyzing these and similar cases concluded:

The courts have not been as consistent or as prescriptive as law enforcement administrators would like with regard to guidance in this area. It seems as though the courts are sending the signal that as long as the children are not so young as to shock the conscience and no harm results, the officer can leave children in risky situations and be found to have made an unfortunate judgment call but one that does not rise to the level of deprivation of qualified immunity. But if the abandoned child is harmed in some way, the officer should have anticipated it and will be found guilty of gross negligence and reckless disregard for safety. The problem with this guidance is that it requires the officer to foresee the future.²⁰

Yet, in spite of the rulings of these and other courts, there is another principle that provides guidance to officers beside that of the fear of legal liability—the need to provide the best level of service possible to ensure the well-being of a child of an arrested parent. The recommended procedures that follow in part two of this *Training Key*® are designed to assist officers in fulfilling their responsibility to serve the best interests of the

child, rather than simply applying the bare bones compliance that may be gleaned from court rulings.

Endnotes

¹ This *Training Key* is based on the document "Safeguarding Children of Arrested Parents," which can be accessed by visiting www.theiacp.org/childrenofarrestedparents

² See Marcus Nieto, *In Danger of Falling through the Cracks: Children of Arrested Parents* (California Research Bureau, Sacramento, California, State Library, April 2002), <https://www.library.ca.gov/crb/02/09/02-009.pdf> (accessed March 10, 2014).

³ See the *Report of the Attorney General's Task Force on Children Exposed to Violence* (December 12, 2012), 29–35, <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf> (accessed March 7, 2014).

⁴ Puddefoot, 15.

⁵ Nieto, 1.

⁶ "Trauma Definition: Part One – Defining Trauma," Substance Abuse and Mental Health Services Administration, <http://www.samhsa.gov/traumajustice/traumadefinition/definition.aspx> (accessed April 15, 2014).

⁷ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Special Report, Parents in Prison and Their Minor Children*, revised March 30, 2010, <http://www.bjs.gov/content/pub/pdf/pptmc.pdf> (accessed April 15, 2014).

⁸ American Academy of Pediatrics: Committee on Early Childhood, Adoption, and Dependent Care (2000), "Developmental Issues for Young Children in Foster Care." *Pediatrics*, 106 (5), pp. 1145-1150.

⁹ Nieto, 1.

¹⁰ Puddefoot, 10.

¹¹ *Ibid.*, 9-10.

¹² James A. Reavis, Jan Looman, and Briana Rojas, "Adverse Childhood Experiences and Adult Criminality: How Long Must We Live before We Possess Our Own Lives?" *The Permanente Journal* 17, no. 2 (Spring 2013): 44–48.

¹³ "Adverse Childhood Experiences (ACE) Study," Centers for Disease Control and Prevention, <http://www.cdc.gov/ace/findings.htm> (accessed March 7, 2014).

¹⁴ Marilyn C. Moses and Cathy Girouard, "Written Policies for Responding to Children after a Parent or Caretaker Is Arrested," *The Police Chief* 72, no. 9 (September 2005): 135–145.

¹⁵ *DeShaney v. Winnebago County Dept. of Social Services*, 109 S. Ct. 998, 1003 (1989).

¹⁶ See for example, *Pinder v. Johnson*, 54 F. 3d 1169, 1175 (4th Cir. 1995). cert denied, 116 S. Ct. 530 (1995).

¹⁷ L. Cary Unkelbach, "No Duty to Protect: Two Exceptions," Chief's Counsel, *The Police Chief* 71, no. 7 (July 2004): 12–14.

¹⁸ *White v. Rochford*, 592 F.2d 381 (7th Cir. 1979) as cited by *Moses*. For a similar case with a different outcome, see the 6th Circuit Court of Appeals case *Walton v. City of Southfield*, 995 F.2d 1331 (6th Cir. 1993) as cited by *Moses*.

¹⁹ *Valita M. v. City of Chicago*, 1986 WL 15133 (N.D. Ill. 1986) as cited by *Moses*.

²⁰ Marilyn Moses, "Written Policies for Responding to Children after a Parent or Caretaker Is Arrested."

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questions

The following questions are based on material in this *Training Key*®. Select the one best answer for each question.

1. Which of the following is a possible symptom that a child may exhibit following a traumatic event, such as the arrest of a parent?

- (a) Irritability
- (b) Separation anxiety
- (c) Sleep disruptions
- (d) All of the above

2. Which of the following statements is false?

- (a) Showing kindness and concern to a child during the arrest of a parent has no influence on his or her future opinions of law enforcement.
- (b) There are no accurate statistics on the number of children who are present when their parent is arrested.
- (c) Separation from a primary caregiver represents a crisis for children and should be given special consideration.
- (d) Parental arrest and incarceration are associated with a number of other negative childhood experiences including household substance abuse and parental mental illness.

3. The courts are in agreement that law enforcement officers have a legal responsibility for the safety of a child at the time of a parent's arrest.

- (a) True
- (b) False

answers

1. (d) Children can experience a wide array of negative symptoms following a traumatic event.

2. (a) Treating a child with kindness and respect during a parental arrest is recognized as part of the overall strategy to prevent future crime and violence and helps to foster trust in law enforcement.

3. (b) False. The courts are not consistent in their rulings on this matter. However, officers should always strive to provide the best level of service possible to ensure the well-being of a child of an arrested parent.

