

**IN THE  
COURT OF SPECIAL APPEALS OF MARYLAND**

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**SEPTEMBER TERM, 2005**

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**NO. 1657**

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**IN RE: ADOPTION/GUARDIANSHIP OF GERALD M.**

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**APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE CITY  
(THE HONORABLE MARTIN P. WELCH)**

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**BRIEF OF *AMICI CURIAE* ALTERNATIVE DIRECTIONS, INC.;  
CENTER FOR CHILDREN OF INCARCERATED PARENTS;  
CENTER FOR FATHERS, FAMILIES, AND WORKFORCE DEVELOPMENT;  
CHILDREN HAVING INCARCERATED PARENTS, INC.;  
FAMILY AND CORRECTIONS NETWORK; JUSTICE MARYLAND;  
LEGAL SERVICES FOR PRISONERS WITH CHILDREN;  
NATIONAL COALITION FOR CHILD PROTECTION REFORM;  
POWER INSIDE; PUBLIC JUSTICE CENTER;  
AND WOMEN'S PRISON ASSOCIATION  
IN SUPPORT OF APPELLANT**

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## INTRODUCTION

*Amici curiae* submit this brief in support of appellant father in his appeal from the termination of his fundamental right to parent his son, Gerald M. *Amici curiae* argue that termination of parental rights was unwarranted in this case because the child placement agency failed to provide timely, appropriate services during appellant father's incarceration, as Maryland law requires, to facilitate reunification of parent and child upon the father's release and full rehabilitation. *Amici curiae* seek to inform the Court of the devastating effects of termination of parental rights on children whose parents have been involuntarily removed from their daily lives through incarceration. While parental incarceration poses significant obstacles to the preservation of a parent-child relationship, permanent dissolution of the relationship is not in a child's best interest where those barriers can be successfully surmounted through reunification services provided by the child placement agency. To terminate parental rights in such cases -- as in the instant case -- would unjustifiably permit a *parent's* sentence of imprisonment to result in a *child's* lifelong deprivation of his parent's love, care, and guidance.

## STATEMENTS OF INTEREST OF *AMICI CURIAE*

**Alternative Directions, Inc.** (ADI) is a Maryland non-profit organization that promotes the reunification of families of incarcerated people by helping formerly incarcerated men and women successfully reintegrate into their communities as productive citizens. ADI accomplishes its goals by providing a combination of civil legal assistance, advocacy, and comprehensive transitional services to formerly incarcerated people. ADI has an interest in this litigation because it recognizes that children of incarcerated parents face significant obstacles in maintaining emotional relationships with their parents during the physical separation of incarceration.

The **Center for Children of Incarcerated Parents (CCIP)**, based in California, is a leading national authority on children of criminal offenders and their families. A child development organization, CCIP is nationally recognized for empirical research on and the design of model services for children of prisoners. With the mission of preventing intergenerational crime and incarceration, the Center has unparalleled experience with families of incarcerated parents, having provided more than 20,000 clients with educational, therapeutic and family reunification services since 1989. Through the Child Custody Advocacy Services Project, CCIP has worked with over 3100 families to ensure that prisoners and their children retain or regain the opportunity for development of healthy and enduring parent-child attachments. CCIP has an interest in this case because of its work in support of children of incarcerated parents.

Based in Baltimore, Maryland, the **Center for Fathers, Families, and Workforce Development (CFWD)** is committed to serving Baltimore's low-income families through



its workforce development, responsible fatherhood and family strengthening initiatives. A large part of CFWD's efforts are focused on helping Maryland's ex-offenders re-enter society and become positive contributors to their families and communities. CFWD's support services include individualized assistance to clients with the goal of removing barriers to re-entry through job training and placement, interpersonal and life skills coaching, and providing referrals for housing, transportation, and health and mental health services. In addition, CFWD's Men's Services Responsible Fatherhood Program and domestic violence prevention initiatives seek to strengthen fathers' ties to their families and to give men a safe place to talk about issues of violence in their homes and communities. CFWD has an interest in this litigation because it recognizes the critical importance of family reunification to successful reintegration of formerly incarcerated parents into the community.

**Children Having Incarcerated Parents, Inc. (CHIPS)**, based in Baltimore, believes that children of parents who are incarcerated should not have to bear the punishment for their parents' criminal behavior through dissolution of their families. Rather, CHIPS believes that children who have bonds with an incarcerated parent should be allowed to maintain -- and strengthen -- that relationship. Accordingly, CHIPS seeks to remove barriers to parent-child reunification, to educate professionals and caregivers about ways to minimize the negative consequences of parental incarceration on children, and to prevent children's involvement with the criminal justice system by promoting positive youth development skills.

Founded in 1983, **Family and Corrections Network** (FCN) was the first national organization in the United States focused on families of prisoners. With a membership of individuals and organizations, FCN seeks to inform, support and empower families of prisoners and their supporters. To this end, FCN facilitates the sharing of information and experiences among those concerned with families of prisoners, for example, through publishing, sponsoring conferences, and offering training and technical assistance to service providers and advocates. FCN joins as *amicus curiae* in this case because it recognizes the vital role that child placement agencies play in facilitating family reunification by assisting incarcerated parents and their children to overcome prison barriers to parenting.

**Justice Maryland** is an alliance of advocates, service providers, and community-based organizations who seek a fair criminal justice system in the state of Maryland. Justice Maryland works to eliminate injustice and promote systemic change in all areas affected by the criminal justice system. In order to further this mission, Justice Maryland advocates for the preservation and reunification of families that include incarcerated and formerly incarcerated parents.

**Legal Services for Prisoners with Children** (LSPC) is a leader in the field of advocacy for incarcerated parents and their children. Based in California, LSPC is internationally recognized as a model for legal and policy advocacy on behalf of incarcerated people and their families. LSPC provides information and technical assistance to community organizations, government agencies, and service providers nationwide on the consequences of incarceration on families. Throughout its work,

LSPC emphasizes that issues of race are central to any discussion of incarceration and its effects. LSPC joins as *amicus curiae* in furtherance of its mission of strengthening and empowering the families of incarcerated people through support of family reunification.

**Power Inside**, a program of Fusion Partnerships, Inc., is a Baltimore-based grassroots program for women impacted by incarceration, street life and abuse. Power Inside works with 300 women and their families per year, offering groups inside prison and jail, reentry and case management services in the community, GED preparatory classes, HIV testing, and street outreach. Power Inside joins as *amicus curiae* as part of this work in support of incarcerated and formerly incarcerated parents and their families.

The **National Coalition for Child Protection Reform** (NCCPR) is an organization of professionals from the fields of law, psychology and journalism who are dedicated to improving child welfare systems through public education and advocacy. Throughout its work, NCCPR supports family preservation and family reunification as a way of promoting children's safe, healthy development. NCCPR joins as *amicus curiae* in this case order to emphasize the benefits of appropriate family reunification services for children of incarcerated parents.

The **Public Justice Center** (PJC) is a non-profit civil rights and anti-poverty legal services organization, headquartered in Baltimore, Maryland, dedicated to advocating nationally and in Maryland to protect the rights of the underrepresented. Since its inception in 1985, PJC has used impact litigation, public education, and legislative advocacy to accomplish law reform for its clients in numerous areas of civil rights and anti-poverty law. PJC has established an Appellate Advocacy Project, seeking to expand

and improve the representation of indigent and disadvantaged persons before various state and federal appellate courts. PJC has appeared before this Court in numerous cases involving the right to family autonomy, both as direct counsel or as *amicus curiae*. This case raises those issues again. Its proper resolution is therefore a matter of direct concern to PJC and its clients.

The **Women's Prison Association** (WPA), based in New York, is the nation's oldest service and advocacy organization committed to helping women with criminal justice histories rebuild their lives and families, and participate fully in civil life. WPA offers an integrated continuum of services to criminal justice-involved women in response to five key areas of need: livelihood, housing, family, health and well-being, and criminal justice compliance. Through its Institute on Women and Criminal Justice, WPA also pursues a rigorous policy, advocacy, and research agenda to bring new perspectives to national public debates on gender and criminal justice. WPA joins as *amicus curiae* in this case because it understands the barriers that mothers and fathers face in reuniting with their children after incarceration, and believes that children of formerly incarcerated persons should not be punished for their parents' contact with the criminal justice system.

## STATEMENT OF FACTS

*Amici curiae* adopt appellant father's statement of facts and legal arguments, and restate only those facts relevant to the arguments made in this brief. Gerald M. was born on May 11, 1997, and lived with both of his birth parents for two years until appellant father was incarcerated in May 1999 for a non-violent drug offense. (T7.3 (Vol. II); T11.58-59, T8.52).<sup>1</sup> Gerald M. remained in the care and custody of his birth mother until Fall 1999, when he was placed in state care. (T7.52 (Vol. II); T11.71).<sup>2</sup> On November 12, 1999, appellant father traveled from prison to attend a hearing to adjudicate his son's alleged status as a child in need of assistance. (T11.80). Unrepresented by counsel, appellant father stipulated that his son was a child in need of assistance, and that he would be placed in the physical custody of his paternal aunt (appellant father's sister). (App. 30-32). Appellant father was incarcerated in a facility in Hagerstown, more than 75 miles from Baltimore City, for some portion of his sentence. (T11.59); Maryland Dept. of Public Safety & Correctional Services, Correctional Facility Locator, <http://www.dpccs.state.md.us/locations/prisons.shtml> (last visited January 25, 2006).

While in prison, appellant father maintained daily telephone contact with his sister and received information from her about his son's progress, including photographs taken at family gatherings. (T11.72). He also participated in the Angel Tree program, through

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<sup>1</sup> *Amici curiae* adopt appellant father's practice of referring to the transcripts of the 2005 hearings as follows: T1 -- May 4; T2 -- May 23; T3 -- May 24; T4 -- May 26; T5 -- May 31; T6 -- June 30; T7 -- July 6 (Volumes I and II); T8 -- August 2; T9 -- August 8; T10 -- August 9; T11 -- August 31; and T12 -- September 1.

<sup>2</sup> The record shows no indication that the birth mother continued to be involved in Gerald M.'s life after his removal from her care. The mother defaulted after being served with notice of the petition to terminate parental rights by publication. (App. 14.)

which he was able to send his son a gift and card for Christmas each year. (T11.81). Appellant received no reports about his son's progress from the child placement agency. (T11.83).

Appellant father successfully completed numerous prison-administered rehabilitation programs during his incarceration, including drug treatment (T11.59), job training (T11.64-67), and life skills education (T11.62-63). Appellant father also obtained his high school diploma. (T11.70).

When Gerald M.'s paternal aunt became unable to care for him, the child was placed with his godmother, upon appellant father's recommendation. (T5.19-21).

In July 2002, appellant father was released on parole after serving three years in prison. (T8.24; T11.83). Appellant father then began visiting his son at the godmother's home, without the agency's involvement. (T11.86-87). He also continued his rehabilitation by successfully completing a substance abuse treatment program that included counseling and regular urine testing (T8.35-37), and by obtaining employment (T8.40; T11.86), housing (T8.42-43; T11.11), and, eventually, a life companion, whom he married in November 2002 (T11.86). After his release, appellant father received no offers of assistance, including housing referrals, or reports of his son's progress from the child placement agency. (T7.77-79 (Vol. II); T11.87-89).

In February 2003, Gerald M. was removed from his godmother's home. (T7.65-66 (Vol. II)). Instead of considering the return of custody of the child to his birth father, the child placement agency moved Gerald M. into the care of a non-relative foster parent. (T7.65-66 (Vol. II)). Upon his removal into non-kinship foster care, the child expressed

his wish to maintain contact with his father and his godmother. (T10.4). In April 2003, the agency notified appellant father that it planned to move to terminate his parental rights due to his alleged non-compliance with the agency's permanency plan for Gerald M. (T8.60).

On May 1, 2003, appellant father requested that the agency return custody of Gerald M. to him and that he be granted visitation in the meantime. (T7.72 (Vol. II)). The agency did not arrange visitation until ordered to do so by the court. (T7.80-81, 88 (Vol. II); T8.62-64, 70). The agency sought to terminate parental rights by filing a Petition for Guardianship With the Right to Consent to Adoption or Long-Term Care Short of Adoption on May 29, 2003. (App. 17). While the trial on the agency's petition was pending, appellant father visited his son, including during unsupervised weekend visits. (T9.27; T9.55; T11.98- 101, 143). In stipulations of facts, the parties agreed on June 18, 2003, and May 13, 2004, that Gerald M. wished to maintain contact with his father. (T7.66- 67 (Vol. II); T9.21-24).

During the trial, appellant father testified that his son calls him "Daddy." (T11.117). He stated, "Now that I'm clean [of drugs], I can be that father that I'm supposed to be to my son . . . . I thank God that I can sit here and say, I can do for that boy. . . . I'm not the same person that went to jail six years ago. . . . And I just want the opportunity to show that I'm worthy of my son's love. I want the opportunity to show that I can be that father to him. . . . That's all." (T11.118-19).

On September 1, 2005, the Circuit Court granted the agency's petition to terminate appellant father's parental rights, based on its findings that Gerald M. had been

previously adjudicated a child in need of assistance in 1999, and that termination of parental rights was in Gerald M.’s best interest. (T12.32, 40).<sup>3</sup>

## ARGUMENT

### **I. Termination of Parental Rights Is Not in a Child’s Best Interest Where the Child Placement Agency Failed to Address the Unique Circumstances of Parental Incarceration**

#### **A. Federal and State Law Required the Child Placement Agency to Provide Services During Appellant Father’s Incarceration to Facilitate Reunification with His Child**

“Prior to a termination of parental rights, the parent and perhaps the child have fundamental federal and state constitutional rights to the maintenance of the parent/child relationship.” *In re Adoption/Guardianship Nos. J9610436 and J9711031*, 368 Md. 666, 669, 796 A.2d 778, 780 (2002). *See Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (recognizing the fundamental interest of a birth parent in “the companionship, care, custody, and management of his or her children”). The Maryland courts have long recognized that termination of parental rights results in the “drastic and permanent severing of the strongest and basic natural ties and relationships.” *Walker v. Gardner*, 221 Md. 280, 284, 157 A.2d 273, 275-76 (1960).

Indeed, the United States Supreme Court has suggested that termination of parental rights may in some respects be even more devastating than incarceration: “Few consequences of judicial action are so grave as the severance of natural family ties. Even

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<sup>3</sup>Despite appellant father’s November 12, 1999, stipulation that Gerald M. was a child in need of assistance after his mother abandoned him while his father was incarcerated, the record contains no allegations or evidence that appellant father was unfit to parent Gerald M. at the time his parental rights were terminated in 2005, three years after his release from prison.



the convict committed to prison and thereby deprived of his physical liberty often retains the love and support of family members.” *Santosky v. Kramer*, 455 U.S. 745, 787 (1982). The children of parents who are committed to prison face enormous obstacles in giving and receiving expressions of love and support over prison walls, as discussed in detail in Part I.C of this brief. Ironically, it is these children who are most at risk -- through no fault of their own -- of suffering the severe penalty of permanent, legal dissolution of their relationship with a loved one.

In Maryland, the “paramount consideration” in determining whether to terminate parental rights is whether severance of the parent-child relationship is in the child’s best interests. *In re Adoption/Guardianship No. A91-71A*, 334 Md. 538, 561, 640 A.2d 1085, 1096 (1994). Yet the best interests of a child are presumed, in the first instance, to require reunification with the child’s birth parents. *In re Adoption/Guardianship of Victor A.*, 386 Md. 288, 300, 872 A.2d 662, 669 (2005). “The best interests of the child standard embraces a strong presumption that the child’s best interests are served by maintaining parental rights. If it were otherwise, the most disadvantaged of our adult citizens always would be at greater risk of losing custody of their children than those more fortunate.” *In re Yve S.*, 373 Md. 551, 571, 819 A.2d 1030, 1042 (2003) (internal citations omitted).

In light of the importance of a parent’s fundamental interest in raising his own child and the corresponding presumption that it is in a child’s best interest to remain in the custody of his birth parents, the Maryland legislature explicitly promotes family reunification in child removal cases by requiring reasonable efforts on the part of child

placement agencies to “provide child welfare services to a child and the child’s parent or guardian . . . to reunite the child with the child’s parent or guardian after the child has been placed in foster care.” Md. Code Ann. Fam. L. Art. (hereinafter “F.L.”) § 5-524.<sup>4</sup> *See also* Md. Code Ann. Cts. & Jud. Proc. Art. §3-802(a)(5) (among the purposes of statute governing “children in need of assistance” are “to conserve and strengthen the child’s family ties and to separate a child from his parents only when necessary for his welfare”). This mandate reflects federal legislative choices that encourage state agencies to pursue family reunification. *See* 42 U.S.C. § 671(a)(15)(B)(ii) (requiring states to create child welfare plans that include reasonable efforts “to make it possible for a child to safely return to the child’s home” in order to receive federal child welfare funds for foster care and adoption assistance).

Accordingly, the child placement agency in this case was statutorily required to provide services designed to facilitate appellant father’s eventual reunification with his son after the agency placed the child in substitute care with his parental aunt, regardless of appellant father’s incarceration. F.L. § 5-524; *see In re Adoption/Guardianship Nos. CAA 92-10852, 92-10853*, 103 Md. App. 1, 9-10, 651 A.2d 891, 895-96 (1994) (child placement agency obligated to provide reunification services to incarcerated father “prior to taking the extreme measure of terminating his parental rights”).<sup>5</sup>

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<sup>4</sup> All citations to the Maryland Code refer to the version in effect at the time of the trial in 2005.

<sup>5</sup> The Circuit Court made no finding of “continuing or serious conditions or acts” by appellant father that would waive the child placement agency’s reunification obligations under § 5-524(2)(d). F.L. § 5-313(d)(3). Nor was any argument raised that the agency was relieved of its reunification obligations during appellant father’s incarceration on the

Maryland’s regulatory code gives meaningful content to the child placement agency’s statutory obligation to facilitate reunification between parent and child. Such services include those designed to facilitate regular physical contact or communication between parent and child in order to encourage development of strong, healthy emotional attachments. *See e.g.*, COMAR 07.02.11.14.A (describing range of reunification services to include, where possible, “[t]ransportation costs for family visits” and “family counseling”). Just as important, such services include facilitation of the parent’s active involvement in decisionmaking regarding his child’s future, and otherwise developing responsible parenting skills. *See, e.g., id.* (reunification services include “parenting classes”); *id.* 07.02.11.07.D (requiring local department to encourage parent to “[p]articipate with the local department in preparing the child’s permanency plan,” “[p]articipate in the development of a service agreement,” “[m]eet regularly” with the department representative “to discuss progress toward achievement of the permanency goal,” “[v]isit or contact the child regularly as planned with the local department or as ordered by a court, unless the contact has been determined by a court to be contrary to the best interest of the child,” and “[a]ttend all court, administrative, and citizen review hearings regarding the child”). This comprehensive legislative and regulatory scheme

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ground that such efforts would have been futile. *Cf. In re Adoption/Guardianship No. 10941*, 335 Md. 99, 117, 642 A.2d 201, 210 (1994) (failure of agency to provide reunification services does not preclude termination of parental rights where attempts at reunification would have been futile); *In Re Adoption/Guardianship No. J970013*, 128 Md. App. 242, 254, 737 A.2d 604, 611 (1999) (trial court did not err in finding agency relieved of obligation to provide reunification services to incarcerated father serving lengthy sentence of 20 years to life, where “there is a possibility that the appellant will remain incarcerated for the rest of his life”).

recognizes the importance of both regular contact between parent and child and the development of parental responsibility as crucial elements of successful family reunification.

**B. Agency Provision of Reunification Services During Parental Incarceration Has Unique Benefits for Children**

Reunification efforts by the child placement agency are particularly crucial for a child's emotional well-being where he is separated from a custodial parent through parental incarceration. The preservation of emotional bonds between child and incarcerated parent -- for example, through prison visits or communication by phone, video or audiotape, or mail -- may ease the trauma of the parent's sudden, involuntary absence, and help to demonstrate the parent's love, care, and concern for the child despite the physical separation. In addition, agency efforts to actively involve incarcerated parents in planning for their children's futures, including their educational, health, and emotional needs, preserves the parent's role as a steadfast source of love, care, and concern for the child despite incarceration.

Corrections agencies have long recognized that providing assistance with the preservation of parent-child relationships during parental incarceration serves substantial penological purposes by facilitating the parent's rehabilitation and by promoting "inmate morale, better staff-inmate interactions, and more connection to the community, which in turn has made [inmates] less likely to return to prison" upon release. U.S. Department of Justice, Office of the Inspector General, *Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges*, Ch. II, n.6 (Aug. 1999), available

at <http://www.usdoj.gov/oig/special/9908/callsp2.htm#Background> (last visited January 25, 2006) (quoting Bureau of Prisons report). See also Louisiana Department of Public Safety and Corrections, *Time in Prison: The Adult Institutions*, 5 (2004), available at <http://www.corrections.state.la.us/Whats%20New/PDFs/TimeInPrison.pdf> (last visited January 25, 2006) (“Maintaining family contacts is important to an inmate’s ability to adjust in prison and to his/her future potential to return successfully to a community.”); N.E. Schafer, *Exploring The Link Between Visits and Parole Success: A Survey of Prison Visitors*, 38 Int’l J. of Offender Therapy & Comparative Criminology 17, 17 (1994) (summarizing empirical studies that reveal significant correlation between family contact and successful completion of parole and noting “growing perception among prison officials that family visits are an essential component of the rehabilitative process”); Christy A. Visher & Jeremy Travis, *Transitions From Prison to Community: Understanding Individual Pathways*, 29 Annual Review of Sociology 89, 100 (2003) (reporting “lower recidivism rates and greater post release success” associated with greater family contact).

Similar benefits of reunification efforts accrue to the children of incarcerated parents. Assisting parents and children in “maintain[ing] contact during incarceration reassures children of their parents’ love . . . and increases the likelihood that families can be successfully reunited when prisoners return home.” Shay Bilchik, Executive Director of the Child Welfare League of America, Op-ed, *Children of Convicts Struggle with a Prison of Their Own*, Seattle Post-Intelligencer (May 12, 2002), at F9. Indeed, the Department of Health and Human Services Administration for Children and Families

Administration for Children and Families -- the same federal agency that administers child welfare payments to the states, *see* 42 U.S.C. §§ 670-679b -- recognizes the imperative need for communication between children and their incarcerated parents in seeking grant proposals for mentoring programs for children of incarcerated parents. “[W]here incarcerated parents [are] actively engaged in the mentoring process, through visits, phone conversations or letters, reunification is a natural process.” U.S.

Department of Health & Human Services, Administration for Children & Families, Family & Youth Services Bureau, Notice of a Funding Opportunity, *Mentoring Children of Prisoners*, 69 Fed. Reg. 8201, 8202 (Feb. 23, 2004). Maintenance of child-parent relationships during parental incarceration may also contribute to the prevention of juvenile delinquency where a child is at risk of contact with the criminal justice system. Creasie Finney Hairston, Working Paper, *Prisoners and Families: Parenting Issues During Incarceration*, 2 (Dec. 2001), available at <http://aspe.hhs.gov/hsp/prison2home02/hairston.pdf> (last visited January 25, 2006) (“The importance of family relationships and parenting practices in child development and the prevention of delinquency is a recurring finding in studies of delinquency . . .”).

**C. Without Agency Assistance, Children of Incarcerated Parents Face Substantial Obstacles to Reunification and Unnecessarily Risk Permanent Dissolution of the Child-Parent Relationship**

Despite the importance of maintaining relationships between children and their incarcerated parents, the most recent data collected by the Department of Justice Bureau of Justice Statistics indicates that the majority of mothers and fathers in state prison had never received a visit with their minor children. Christopher J. Mumola, *Incarcerated*

*Parents and Their Children*, U.S. Department of Justice, Bureau of Justice Statistics (Aug. 2000). “Imprisonment, in and of itself, presents major obstacles to the maintenance of family ties. Prisoners are not at liberty to see or talk to their children whenever they like. They cannot engage in their children’s daily care, nor can they be present to assure their children’s safety. They have no control over their own jobs or income and are not likely to have much to contribute to their families’ financial support.”

Creasie Finney Hairston, *The Forgotten Parent: Understanding the Forces that Influence Incarcerated Fathers’ Relationships with Their Children*, 77 *Child Welfare* 617, 623 (1998).

In addition to these basic obstacles to successful parenting from within prison walls, scholars have documented numerous other conditions of incarceration that exacerbate the already severe hardships of physical separation and make parent-child communication -- and particularly visitation -- unnecessarily difficult. In Maryland, a parent may be imprisoned in a facility more than 130 miles away from his child’s home and inaccessible by public transportation. See Maryland Dept. of Public Safety & Correctional Services, Correctional Facility Locator, <http://www.dpscs.state.md.us/locations/prisons.shtml> (last visited January 25, 2006); Maryland Transit Authority, <http://www.mtmaryland.com/index.cfm> (last visited January 25, 2006); Washington Metropolitan Area Transit Authority, <http://www.wmata.com/default.cfm> (last visited January 25, 2006); Greyhound Line, Inc., <http://www.greyhound.com/home.asp> (last visited January 25, 2006). Children who are old enough to communicate by telephone or letter face the high cost of collect calls from prisons and the social stigma of

corresponding with a prisoner as barriers to regular communication. *See* Jeremy Travis, *Families and Children*, 69 Federal Probation 31, 37 (2005) (documenting high cost of collect calls from prisons); Hairston, *The Forgotten Parent* at 626 (documenting “social costs” of communication by mail for families of incarcerated people).

Children are generally dependent on their substitute caregivers to help them in maintaining relationships with their incarcerated parents by bringing them to distant prison facilities or by accepting expensive collect telephone calls. Where a child’s substitute caretakers are low-income and lack transportation, visits and other communication between child and parent may be infrequent at best, and impossible at worst. Crucially, a child’s substitute caregiver -- whether kin or unrelated -- may be personally opposed to communication or visits between a child and his incarcerated parent. *See, e.g.*, Renny Golden, War on the Family, 95-97 (2005) (recounting tensions that may arise between an incarcerated birth parent and a substitute caretaker, “whether a relative or not,” that may undermine the birth parent’s relationship without “help[ing] the children”); Barbara Bloom, *Imprisoned Mothers*, in Katherine Gabel & Denise Johnston, eds., Children of Incarcerated Parents, 21-30 at 25 (1995) (noting potential conflicts between foster caregivers and incarcerated birth parents, including some caregivers’ belief “that it is unhealthy for the child to have contact” with an incarcerated parent).

As discussed above in Part I.A of this brief, child welfare agencies have a statutory obligation to facilitate reunification of children and incarcerated parents who may not be able to care for their children’s daily physical or financial needs, but who can provide love and emotional care despite incarceration. F.L. § 5-524. At a minimum, reasonable



reunification efforts include active involvement of incarcerated parents in case planning and decisionmaking, *see* COMAR 07.02.11.07.D (requiring local department to encourage parental involvement in case planning), as well as facilitation of regular parent-child contact through letter-writing, phone calls, and video or audiotaped communication, if not regular prison visits, *see, e.g.*, COMAR 07.02.11.14.A (providing for “[t]ransportation costs for family visits” where resources are available). In the absence of such efforts to facilitate regular parent-child contact and the exercise of parenting responsibility, it is difficult for incarcerated parents “to demonstrate competent parenting to prevent the termination of parental rights and to promote family reunification.” Hairston, *The Forgotten Parent* at 630.

Disruption of emotional attachments between children and their incarcerated parents increases the risk that a child may permanently, though unnecessarily, lose his parent, as in this case, through termination of parental rights even after his parent’s release and full rehabilitation. *See In re Adoption/Guardianship Nos. J9610436 and J9711031*, 368 Md. at 693 n.20, 796 A.2d at 794 n.20 (“It may be increasingly difficult to maintain bonding” where parent and child have been physically separated. “In essence, the process makes the bonding difficult, then social service agencies rely on the lack of bonding as one of the reasons for termination.”). Such a result is contrary to a child’s best interests where an emotional relationship with the parent can be preserved through basic agency reunification efforts.

## **II. Termination of Parental Rights Was Unwarranted in This Case Where the Child Placement Agency Failed to Provide Timely, Appropriate Reunification Services During Appellant Father’s Incarceration**

### **A. Placement of the Child with a Relative Did Not Fully Discharge the Agency’s Reunification Obligations**

Among the factors the Circuit Court was statutorily required to consider “[i]n determining whether it is in the best interest of a child to terminate a natural parent’s rights,” F.L. § 5-313(c), was “the timeliness, nature, and extent of the services offered by the agency” during appellant father’s incarceration “to facilitate reunion of the child with the natural parent,” F.L. § 5-313(c)(1)(i). In making that assessment in the instant case, the Circuit Court found that the child placement agency placed the child with a paternal relative, as required by statute, after the mother became unavailable to care for the child during appellant father’s incarceration. (T12.33). *See* F.L. § 5-525 (listing placement options for children adjudicated to be in need of assistance as, in descending order of priority, reunification with the child’s natural parents, placement with a relative, and adoption by a non-relative).

The Circuit Court observed that the child placement agency conducted a home study of the paternal aunt’s home, offered the aunt rent assistance, and made service referrals to the aunt. (T12.33). The Circuit Court then concluded that the agency’s efforts merely to place the child with his *aunt* after he was removed from his home amounted to “an appropriate offer of services” (T12.33), “to facilitate reunion of the child with *the natural parent*,” namely, *appellant father*, F.L. § 5-313(c)(1)(i) (emphasis added).

While placement of the child with a relative may have served to avoid the child's placement with total strangers, placement with a relative does not necessarily facilitate the eventual reunion of a child with his natural father in the absence of additional efforts to facilitate preservation of the parent-child relationship during parental incarceration. While children in kinship foster care may in some instances be more likely to maintain contact with their parents than children in non-kin foster care, kinship care may also cause rifts in the family when administered through formal state channels without adequate support for the eventual reunification of birth parent and child. *See* Dorothy Roberts, *Kinship Care and the Price of State Support for Children*, 76 Chi.-Kent L. Rev. 1619, 1634-36 (2001). The agency's placement of the child with a relative did nothing to alter its obligation to facilitate the maintenance of the child's emotional relationship to his birth father during the three-year period of appellant father's incarceration.

**B. Prison-Administered Rehabilitation Programs Were No Substitute for Family Reunification Services**

The agency sought termination of parental rights in this case in part because of appellant father's alleged failure to comply with his son's permanency plan. (T8.60-61). Yet the agency offered the father no service agreement or any other conditions with which to comply. (T11.87-89).<sup>6</sup> Despite having exacted appellant father's stipulation

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<sup>6</sup> *Amici curiae* reiterate appellant father's argument that the agency knew father was incarcerated and that he was available for reunification services. The Circuit Court's determination to the contrary, that the father was "generally unavailable" for such services during incarceration, (T12.33-34), is indeed "disturbing in that it indicates that the court considers incarceration to be a disability that excuses the [agency's] utter lack of effort to assist an incarcerated parent," Appellant's Brief at 34. *Cf. In re Adoption/Guardianship Nos. CAA 92-10852, 92-10853*, 103 Md. App. at 29-30, 651 A.2d

that his child was in need of assistance during his father's incarceration, then, the agency failed to provide the requisite assistance to reunify the family, beyond seeking a kinship caregiver for the child. The agency failed to facilitate regular contact between father and son through physical visitation or other communication, failed to determine the availability and utility of any prison parenting classes or family counseling services for incarcerated fathers and their children, and even failed, at a minimum, to actively involve appellant father in case planning or to monitor his rehabilitation progress. In short, the agency failed to treat appellant father as the parent of his own child because he was incarcerated.

Even worse, the agency then sought to punish appellant father for the agency's own failures by turning appellant father's successful efforts to rehabilitate himself into a justification for agency inaction. The record is replete with examples of appellant father's substantial efforts, based on his own initiative, to rehabilitate himself in preparation for reunification with his son. (T11.59-62, 66-67, 70). As the Circuit Court recognized, even without the agency's assistance, appellant father "receive[d] and [took] advantage of" numerous prison-administered rehabilitative "services while incarcerated," and "made remarkable progress" in those programs by "completing drug treatment, obtaining a GED, a job training program, specific training in heating and air conditioning training, [and] a life style decision making program." (T12.37-38). Appellant father also attended what permanency hearings he could and maintained daily contact with his sister

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at 895-96 ("The incarceration of a parent does not *per se* constitute a 'disability' . . . and justify the termination of his or her parental rights.")

while she was caring for his son -- despite the *agency's* failure to remain in regular contact with *him* regarding his son's progress. (T11.72, 83). The court opined that the child placement agency need not have provided any family reunification services to supplement appellant father's own efforts because the prison-administered programs in which appellant father participated in order to rehabilitate himself sufficed to facilitate reunification with his son. (T12.37-38).<sup>7</sup> None of the prison-administered programs, however, assisted appellant father or his son with the tasks most central to successful reunification between a parent and child -- namely, active involvement of appellant father in his son's case and preservation of their emotional relationship.<sup>8</sup> To condone the agency's attempt to turn appellant father's remarkable rehabilitation efforts into an excuse for evading its own obligation to facilitate reunification between parent and child would be nothing short of perverse.

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<sup>7</sup> The Circuit Court discussed appellant father's successful completion of prison-administered rehabilitation programs during its analysis of "whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the natural parent within an ascertainable time, not exceeding 18 months from the time of placement" pursuant to F.L. § 5-313(c)(2)(v)(4), even as it acknowledged that the relevant 18-month period had already expired. *See In re Adoption/Guardianship No. T98314013*, 133 Md. App. 401, 425 n.10, 758 A.2d 552, 565 n.10 (2000) (§ 5-313(c)(2)(v)(4) inapplicable where "child had been in foster care for more than 18 months"). Given the importance of making progress towards reunification within an 18-month period under Maryland law, agency provision of timely services to parents who may be incarcerated for significant periods of time is essential.

<sup>8</sup> By highlighting the agency's failure to assist appellant father and his son maintain their emotional relationship during parental incarceration, *amici curiae* in no way concede that appellant father and his son lacked an emotional bond. To the contrary, the Circuit Court acknowledged that appellant father maintained contact with his son (T12.36), and *amici curiae* adopt appellant father's argument that he should have been permitted to submit a bonding study documenting the nature and extent of those attachments. *See Appellant's Brief* at 21-28.

**C. The Agency Failed to Meet the Standard for Reunification Services Established in Prior Cases Involving Incarcerated Parents**

In this case, the agency simply failed to perform its statutory duty to assist appellant father to sustain emotional attachments with his child despite the physical separation of incarceration, or to honor his role in rearing his own child. F.L. § 5-524. The agency's efforts to seek an appropriate kinship care placement for Gerald M. fell far short of the reunification efforts this Court has previously considered minimally appropriate where parents are incarcerated. In *In re Adoption/Guardianship No. 94339058/CAD*, 120 Md. App. 88, 706 A.2d 144 (1998), the child placement agency made meaningful efforts to engage an incarcerated father in case planning for his children in order to facilitate family reunification. In that case, the case worker visited the father in prison at least once and arranged prison visits between the father and his children. *Id.* at 93-94. In addition, the case worker entered into a service agreement clearly setting forth the father's obligations, upon which successful reunification was conditioned. *Id.* at 95.

In *In re Adoption/Guardianship No. 94339058/CAD*, this Court acknowledged that the agency's meager reunification efforts were "limited." *Id.* at 105. Nevertheless, the Court accepted the Circuit Court's determination that the agency's efforts were appropriate under the circumstances, in part because the father failed to comply with the terms of his service agreement requiring him to secure employment and housing after his release. *Id.* at 105-06. By contrast, in the instant case, the agency gave appellant father no opportunity to comply with any requirements in order to preserve his parental rights.

(T.7.74 (Vol. II)). Cf. COMAR 07.02.11.15 (requiring service agreement “[a]s appropriate to each case” setting forth obligations of parents and “services and supports” to be provided in exchange). Accordingly, appellant father did what he could to prepare an appropriate home for his son within months of his release from prison by seeking employment and housing *on his own initiative*, despite being under no obligation to do so under any service agreement with the child placement agency, and without the agency’s assistance. (T11.87-89).

Instead of providing appellant father with assistance in maintaining contact with his son and encouraging his active role as a parent in order to supplement his own remarkable rehabilitation efforts, the agency left him to his own devices in overcoming substantial prison barriers to parenting. See *In re Adoption/Guardianship Nos. CAA 92-10852, 92-10853*, 103 Md. App. at 7-10, 651 A.2d at 895-96 (child placement agency whose reunification efforts directed at incarcerated father “amounted to a single conversation with [him] and the mailing of several form letters to him . . . failed to provide [the father] with those services that it was statutorily obligated to provide prior to taking the extreme measure of terminating his parental rights”). Far from serving the child’s best interests, by utterly failing to provide appellant father with services to facilitate reunification with his child during incarceration -- much less “timely” and appropriate services, F.L. § 5-313(c)(1)(i)) -- the agency subjected Gerald M. to the penalty of permanent loss of his relationship to his father through the unjustified termination of parental rights.

### **III. Exclusion of Incarcerated Parents, Who are Likely to Be Black Males, from Reunification Services Exacerbates These Fathers' Historical Exclusion as Parenting Resources and Unnecessarily Puts Thousands of Children at Risk of Permanently Losing Their Parents**

The population of children of incarcerated parents who are potentially at risk of permanent dissolution of their relationships is staggering. The U.S. Department of Justice Bureau of Justice Statistics indicates in its most recent report on incarcerated parents and their children that approximately 1.5 million children -- 2.1 percent of the nation's child population -- had parents who were incarcerated in state or federal prison in 1999. Mumola, *Incarcerated Parents and Their Children* at 1. A majority of prisoners, including 55 percent of all state prisoners, have minor children. *Id.* Ten percent of incarcerated mothers and 2 percent of incarcerated fathers in state prison reported that their children were in foster care, *id.* at 4, and an additional 79 percent of incarcerated mothers and 18 percent of incarcerated fathers reported that their children were in the care of a relative other than the other birth parent, whether informally or through state intervention, *id.*

In Maryland, approximately 23,000 people, of whom 95 percent are male and 76 percent are black, populate the state's prisons. Maryland Dept. of Public Safety and Correctional Services, *Characteristics of Supervised Populations* (June 30, 2005), available at <http://www.dpscs.state.md.us/aboutdpscs/statistics.shtml> (last visited January 25, 2006).<sup>9</sup> A pilot study in Baltimore involving 324 people within 30 to 90 days of their

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<sup>9</sup> According to the United States Census Bureau, in 2000, only about 28 percent of Maryland's general population of 5.5 million residents were African-American. See <http://quickfacts.census.gov/qfd/states/24000.html> (last visited January 23, 2006).



release from prison revealed that 59 percent of the male respondents and 62 percent of the female respondents had children under 18 at the time of their imprisonment. Christy Visher, *et al.*, Urban Institute Justice Policy Center, *Returning Home: Understanding the Challenges of Prisoner Reentry: Maryland Pilot Study: Findings from Baltimore* 107 (Jan. 2004), available at [http://www.urban.org/UploadedPDF/410974\\_ReturningHome\\_MD.pdf](http://www.urban.org/UploadedPDF/410974_ReturningHome_MD.pdf) (last visited January 27, 2006). Forty-one percent of the men and 56 percent of the women lived with their minor children immediately prior to their imprisonment. *Id.* Fifty-four percent of the respondents reported that they lacked formal custody of at least one minor child. *Id.*

These statistics indicate that a large population of incarcerated men are African-American and/or the fathers of minor children. Yet the social science literature reveals a persistent lack of attention on the part of child placement agencies to the involvement of fathers -- particularly African-American and incarcerated fathers -- in case planning. As a result, these fathers are rarely considered to be parenting resources for the children in child removal cases. "There are no published studies of the extent of non-custodial fathers' involvement in child welfare case planning. Anecdotal evidence suggests that traditionally biological fathers have been overlooked in the case planning process." Freya Sonenstein, Karin Malm, and Amy Billing, The Urban Institute, *Literature Review: Study of Fathers' Involvement in Permanency Planning and Child Welfare Casework* (Aug. 2002), available at <http://aspe.hhs.gov/hsp/CW-dads02/> (last visited January 25, 2006). Even more disturbing, "[t]he extensive absence of and silence about [African-American] fathers in [child removal] cases," even where the child is placed in kinship

foster care, “suggest systemic deterrents to [their] paternal involvement.” John M. O’Donnell, *Involvement of African American Fathers in Kinship Foster Care Services*, 44 Soc. Work 428, 436 (1999). Because “[f]athers, in general, are not central figures in child welfare services[,] . . . imprisoned fathers are easily dismissed by child welfare services as being uninvolved, inaccessible, and unlikely role models for children.” Creasia Finney Hairston, *The Forgotten Parent* at 628. As a result, “[i]ncarcerated fathers occupy a position in child welfare that is even more marginal than other fathers.” *Id.* at 629.

Given the disproportionate numbers of African-American fathers involved in the criminal justice system, the history of persistent agency inattention to the role of African-American fathers has negative consequences for their children, who are already disproportionately at risk of permanent separation from their birth parents. See Dorothy Roberts, *Criminal Justice and Black Families: The Collateral Damage of Over-Enforcement*, 34 U.C. Davis L. Rev. 1005, 1010 (2001) (pointing out that “incarceration of parents places many children into foster care” and noting demographic overlap between “the prison system and the child welfare system,” which “are both populated almost exclusively by poor people and by a grossly disproportionate number of Blacks”).

African-American children, already overrepresented in the foster care system, need not face the added risk of permanently losing their relationships with their fathers as the result of child placement agencies’ failure to provide reunification services during parental incarceration. As in the instant case, where reasonable efforts can be made to involve incarcerated fathers in case planning and to provide appropriate services to

facilitate the preservation of emotional relationships between children and their incarcerated parents, family reunification rather than termination of parental rights best serves children's interests upon their parents' release and successful rehabilitation.

### CONCLUSION

For the foregoing reasons and those set forth in appellant father's brief, *amici curiae* request that this Court reverse the judgment of the Circuit Court.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2006, I mailed first class, postage prepaid, two copies of the foregoing Brief of *Amici Curiae* to:

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