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ISSUE PRESENTED FOR REVIEW

This case asks the Court to decide whether, because a mother spent two years in prison for a non-violent crime she committed while addicted to drugs, the State may permanently take her child away. Sober, employed, and eager to parent her child, Detra W. was found by the Appellate Court to be fit under all relevant provisions of the Adoption Act, except the provision permitting a finding of unfitness based on “repeated incarceration.” 750 ILCS 50/1(D)(s)(West 1998). *Amici curiae*, Chicago Legal Advocacy for Incarcerated Mothers, the Legal Assistance Foundation of Metropolitan Chicago, Loyola University Chicago School of Law ChildLaw Center, and Companions Journeying Together, Inc., submit this brief in support of Detra W.’s right to remain a parent.

STATEMENT OF INTEREST OF AMICI CURIAE

A. Chicago Legal Advocacy for Incarcerated Mothers

Established in 1985, Chicago Legal Advocacy for Incarcerated Mothers (“CLAIM”) provides legal advice and representation that helps mothers take proactive steps to prevent their incarceration from causing the permanent destruction of their families. CLAIM also helps formerly incarcerated mothers to re-enter society as responsible parents. The organization helps women and their children’s caregivers enforce legal rights, such as mother-child visits, placement and guardianship options for children, and public benefits for children while their mothers are incarcerated. Through intensive legal counseling, CLAIM assists incarcerated mothers to make sound, realistic decisions about their children’s placement and their families’ future. CLAIM staff members make referrals to services inside correctional centers and in the community, including substance abuse treatment, domestic violence programs, family

counseling, job training, GED and other education programs. CLAIM's website is: <http://www.c-l-a-i-m.org/>.

Since CLAIM began operating, the number of women in the criminal justice system has steadily grown, with African-American women bearing the brunt of the increase. As of June 30, 2004, Illinois imprisoned 2,806 women — an increase of almost 50% since 1993 — and 67% of those women were African American. According to the Office of Planning and Research of the Illinois Department of Corrections (“IDOC”), the annual rate of incarceration of women in the past decade has accelerated at approximately twice the rate of men, increasing nearly fivefold in 20 years. Issues of parental rights are critical to this population: More than 80 percent of women in Illinois prisons have at least one child. (George & LaLonde at 10¹). As of 2002, approximately 35,000 children in Illinois had a mother who had spent time in state prison. A projected 60,000 children are likely to have a mother in Illinois prisons in the next generation. Id. at 16. Last year alone, CLAIM served 2,078 women, girls and families in their direct service and advocacy programs. Of the 689 mothers CLAIM has served in its direct legal services last year, 249 of them face the threat of losing their children under the Adoption Act's parental termination provisions. CLAIM, which has worked with thousands of incarcerated mothers in its 19-year history, can bring its expertise and experience in this area to bear on the resolution of the centrally important issue raised in this case.

¹ See http://harrisschool.uchicago.edu/chppp/pdfs/lalonde_incarceratedmothers.pdf

B. Legal Assistance Foundation of Metropolitan Chicago

The Legal Assistance Foundation of Metropolitan Chicago (“LAF”) is the principal provider of free legal services to low-income individuals in civil matters in Chicago and suburban Cook County. Through its six neighborhood offices and numerous special projects, it provides advocacy on a wide range of civil matters related to the poor, including family, housing, employment, and public-benefits-related matters. For over 30 years, LAF has provided – and continues to provide – advocacy on issues related to the Department of Children and Family Services on behalf of parents, relatives, and children in cases involving abuse, neglect and dependency the Illinois Juvenile Court Act and Adoption Act. LAF has also represented foster parents, biological parents and relatives at the appellate level. Finally, through its city-wide network of neighborhood offices, LAF interviews and counsels hundreds of applicants for legal assistance and provides referrals to these citizens for legal and social services from other providers. The priorities of LAF, stated on its web homepage at <http://www.lafchicago.org>, include supporting families and preserving the home. Though LAF does not represent incarcerated persons, it is the pursuit of these priorities that makes the pending decision of this court, a significant concern for LAF and the populations it serves.

C. The Loyola ChildLaw Center

A program of the Loyola University Chicago School of Law, the Loyola ChildLaw² Center’s (“the ChildLaw Center”) mission is to prepare law students and lawyers to be ethical and effective advocates for children and to promote justice for children through interdisciplinary teaching, scholarship, and service. Through its ChildLaw Clinic, the ChildLaw Center also routinely provides representation to child clients in child protection, domestic relations, and other types of cases involving children. The ChildLaw Center maintains a particular interest in matters

² “ChildLaw” is a term created by Loyola to capture the nature of the work the center accomplishes.

affecting the regulation of relationships between children and their parents. The ChildLaw Center's website is: http://www.luc.edu/law/academics/special/center/child_family.html.

D. Companions Journeying Together

Companions Journeying Together, Inc. ("Companions") is a not-for-profit organization established in 1986 to serve incarcerated mothers and their children through programs designed to build healthy relationships and foster positive communication. In 2003, Companions served 492 incarcerated mothers and their 1,130 children. Aunt Mary's Storybook Project provides an audio tape so that mothers can read a children's book, and their children receive the book and the tape of their mother's voice. "Motherlove" parenting classes teach child development and parenting skills to incarcerated mothers. The PACT (Parents and Children Together) video visitation program for mothers at Decatur Correctional Center provides video visits with children in Chicago, to supplement visits for children whose caregivers cannot make the long trip downstate. Companions offers Bible study and a number of special holiday projects. Its website is: <http://www.cjtinc.org/Mission/Mission.html>.

STATEMENT OF FACTS

Detra W. was once addicted to drugs. T1-2 195, T1-2 168-169. Like many people blinded by substance abuse, she engaged in petty criminal conduct to support her habit. In the throes of her addiction, Detra W. once even escaped from corrections custody. R3-4 C692, T1-2 027. Her last arrest was on June 15, 1999. R2-4 C479, C467, C478, C458; T1-2 021-023. Since June 18, 1999, the day Detra W.'s daughter, Gwynne P., was born, she has not been arrested or charged with any criminal conduct. Shortly after her daughter's birth, Detra sought a range of services that, unfortunately, were not readily available to her in prison – parenting classes, substance abuse assessment and treatment, psychological evaluation, and counseling. T1-2 192, 34-35, 61; T 2-2 358; R3-4 C553, C593, C689, C691. As soon as she was permitted access, Detra W. completed a series of parenting classes in September 2000. T1-2 92; R3-4 C663. In March 2001, she began substance abuse classes, which she completed in September of that year. T1-2 138, 89. Detra has been free of drugs since June 1999. T1-2 179.

In addition to promptly seeking services to improve herself, Detra W., immediately upon Gwynne P.'s birth, sought to spend as much time as possible with her baby. She continually sent Gwynne cards and gifts expressing her love and support. R3-4 C664-677; T1-2 186-192. She wrote at least seven letters to child welfare workers and had her attorney write three more, requesting visits with Gwynne P. that often were not honored by child welfare officials. T1-2 171-176; R3-4 C679-688; T1-2 145. She also attempted to telephone the child welfare office, T1-2 169; R4-3 685, and she requested visits through her prison counselor. T1-2 68-69, 169; R3-4 C593. Despite the State's obligation to facilitate 11 visits between Detra W. and her daughter, only five occurred. Detra W. made 13 requests using all means of communication available to her. In re Gwynne P., 346 Ill. App. 3d 584, 592 (1st Dist. 2004). When she was able

to secure visits with her daughter, the social worker found that Detra W. “acted appropriately with Gwynne P. . . . tried to engage her, and acted affectionately.” Id.

After her release in March 2002, Detra visited Gwynne regularly. T1-2 147. She also voluntarily attended, and graduated from, a drug treatment program. T1-2 178; T1-2 178, 200; SR C30 reverse. That program, Haymarket, then hired a drug-free Detra W. as a “detox specialist.” T1-2 210; T2-2 355. Nonetheless, a year after her release, following an inspiring transformation, a trial court judge ruled Detra W. not fit on five statutory grounds: failure to maintain a reasonable degree of interest, failure to make reasonable efforts or reasonable progress, repeated incarceration, and depravity. See 750 ILCS 50/1 (D) (b), (m), (s), (i). In re Gwynne P., 346 Ill. App. 3d at 590. The Appellate Court reversed the trial court, finding Detra W. fit under all grounds except under the “repeated incarceration” provision.

ARGUMENT

I. IN AUTHORIZING THE DRASTIC STEP OF TAKING A CHILD AWAY FROM HER MOTHER, THE LEGISLATURE REQUIRES INDIVIDUALIZED FINDINGS AND DETERMINATIONS BASED ON EACH PERSON'S UNIQUE CIRCUMSTANCES.

The Adoption Act describes the dramatic impact of an order terminating parental rights:

Effect of order terminating parental rights or Judgment of Adoption. After either the entry of an order terminating parental rights or the entry of a judgment of adoption, the natural parents of a child sought to be adopted shall be relieved of all parental responsibility for such child and shall be deprived of all legal rights as respects the child, and the child shall be free from all obligations of maintenance and obedience as respects such natural parents.

750 ILCS 50/1 (West 1998). An order terminating parental rights completely severs the connection between a parent and her child, changing the lives of both forever. By taking this step, the State deprives a parent of rights "as ancient as mankind," In Re F.S., 322 Ill. App. 3d 486, 489 (1st Dist. 2001), among the "oldest of the fundamental liberty interests," Troxel v. Granville, 530 U.S. 57, 65, 120 S.Ct. 2054, 2060 (2000), and even enshrined in human rights instruments acknowledged by this Court, Illinois v. Caballero, 206 Ill. 2d 65, 102 (2002) (discussing the International Covenant on Civil and Political Rights).³

The Appellate Court's interpretation of Section (D)(s) of the Adoption Act, 750 ILCS 50/1(D)(s)(West 1998), is inconsistent with these principles and with the intent of the Legislature in cases -- such as this one-- where a parent is able to care for the child. Given the rising number of mothers in prison for minor, nonviolent offenses, this reading of the provision also places a large number of children at risk of permanently losing their parent and can be reasonably

³ The International Covenant of Civil and Political Rights, ratified by the United States on June 8, 1992, states that: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200A (XXI) U.N. GAOR 21st Sess., Supp. No. 16, art. 23(1), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

expected to create a generation of legal orphans. The children the State cuts off from their parents will find themselves in the care of an overburdened child welfare system incapable of placing all of them in safe, permanent homes.

If this mother — who has bonded with her child, recovered from drug addiction, and rehabilitated herself following a stint of petty crimes — is unfit, then the vast majority of formerly incarcerated mothers will likely be found unfit. This cannot be the Legislature’s intent. If it had such a drastic goal in mind, the Legislature surely would have said so explicitly. Rather than adopt this reading of the statute, this Court should construe (D)(s) in a manner consistent with the intent and language of other provisions of the Adoption Act, and its own decision in In re D.D., 196 Ill. 2d 405, 422 (2001), and in keeping with the fundamental constitutional protections of family integrity cited above. Based on over half a decade of working with thousands of incarcerated mothers, *amici curiae* urge the Court not to read this statute in a way that focuses virtually exclusively on the historical fact of incarceration and ignores the individual parent’s overall abilities, conduct, and rehabilitation at the time of the hearing.

A. The Crux Of The Parental Fitness Determination Must Be An Individual’s Ability To Parent.

Termination of parental rights is a last resort under the Juvenile Courts Act and the Adoption Act. The Juvenile Court Act, 705 ILCS 405 (West 1998), makes clear that maintaining intact families is a central purpose, stating the importance of preserving family ties at the beginning of its “Policy and Purpose” provision:

The purpose of this Act is to secure for each minor subject hereto such care and guidance, preferably in his or her own home... *to preserve and strengthen the minor's family ties whenever possible*, removing him or her from the custody of his or her parents only when his or her safety or welfare or the protection of the public cannot be adequately safeguarded without removal.

750 ILCS 405/1-2(1) (emphasis added). The Juvenile Court Act must be construed “to carry out the foregoing purpose.” See 750 ILCS 405/1-2(4). Since the Adoption Act must be “construed in concert with the Juvenile Court Act,” 750 ILCS 50/2.1, the general purpose of the Juvenile Court Act to promote family integrity guides the interpretation of (D)(s). Because termination is a last resort, (D)(s) must be carefully interpreted to ensure that parental rights are not hastily terminated without attention to the individual abilities of each incarcerated or formerly incarcerated parent.

The next step in interpreting (D)(s) is to address language of (D)(s) itself. The provision allows a finding of unfitness where:

The child is in the temporary custody or guardianship of the Department of Children and Family Services, the parent is incarcerated at the time the petition or motion for termination of parental rights is filed, the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent’s repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child.

750 ILCS 50/1 (D)(s).

On its face, (D)(s) requires more than mere incarceration to justify removing a child from her or his parent. It correctly demands evidence that incarceration “has prevented the parent from discharging his or her parental responsibilities for the child.” If repeated incarceration alone were enough, this language is superfluous. See People v. Ellis, 199 Ill. 2d 28, 765 N.E.2d 991 (2002) (“If possible, when construing a statute the court must give effect to every word, clause, and sentence; it must not read a statute so as to render any part inoperative, superfluous, or insignificant.”) This Court should precisely define exactly what a failure to “discharge[e]...parental responsibilities” means under the statute, to keep (D)(s) from devolving into a per se rule where any repeated incarceration would result in a finding of unfitness.

Indeed, even the Appellate Court majority looked beyond the mere fact of incarceration in analyzing Detra W.’s fitness under the other statutory grounds, devoting much of its opinion to discussing the many ways in which Detra W. overcame the significant odds against her — including drug addiction and unhelpful child welfare workers — to improve herself and establish a relationship with her daughter. See, e.g., Gwynne P. at 588 (“Detra W. made substantial progress toward correcting her life as she sought to regain custody of her child”). But while the Appellate Court majority paid close attention to Detra W.’s individual conduct and progress in its analysis of the other unfitness grounds, it used only terse generalizations in applying (D)(s)⁴: after restating the incontrovertible fact that that Detra W. and Edward, Gwynne P.’s father, had been incarcerated while Gwynne P. was in DCFS care, the Appellate Court directly proceeded to conclude, without reference to any of the facts addressing Detra W.’s rehabilitation, that Detra W. and Edward were “unable to provide a stable home, financial or emotional support” for their child. Id. at 598. The Appellate Court majority fell so short of performing the required individualized determination of parental abilities that it did not even conduct a separate analysis for each parent as it had done with respect to the other unfitness factors analyzed. Instead of carefully considering Detra W.’s individual conduct and abilities, the Appellate Court majority virtually created a per se rule that repeated incarceration equals unfitness. The Appellate Court majority’s analysis disregarded for Detra W.’s individual circumstances, and is therefore legally erroneous.

⁴ It should also be noted that the Appellate Court begins its (D)(s) analysis with a substantial misstatement of the law, stating that “[o]nly one incarceration will support a finding of unfitness.” Gwynne P. at 597 (citing In re E.C. and D.C., 337 Ill. App. 3d 391, 399 (2003) and D.D. at 420-22). However, although D.D. countenances findings of unfitness based on one incarceration *during the child’s lifetime*, the parent must have been incarcerated more than once over her own lifetime, otherwise the Legislature’s specification of “repeated incarceration” would have no meaning.

This Court previously invalidated a provision of the Adoption Act that threatened to deny parents their rights based on something other than their ability to parent. In In re H.G., 197 Ill. 2d 317 (2001), this Court struck down an unfitness provision that terminated parental rights simply because the child spent 15 out of 22 months in foster care. Because time in foster care may bear no relation to parental fitness, the provision was not narrowly tailored enough to pass constitutional muster. Id. at 330-32. The H.G. decision observed that, in many cases, purely administrative or procedural factors bearing no relation to fitness may have triggered the statute. For example, a parent ordered into drug treatment may not be able to get into an under-funded and oversubscribed program in time to satisfy the 15-month deadline, through no fault of her own. Id. at 332. On the other hand, other unfitness time limits in the Adoption Act are permissible because they “measure some form of parental conduct, inaction or inability.” Id. at 333. To correctly measure Detra W.’s ability to parent, (D)(s) dictates that courts consider her individual conduct while incarcerated and her subsequent rehabilitation. The Appellate Court majority’s decision failed to consider those factors.

B. To Assess The Ability To Parent, The Court Must Consider Detra W.’s Conduct During And After Her Incarceration.

A proper reading of section (D)(s) requires courts to consider Detra W.’s conduct and parenting abilities since her release from prison, as well as during her incarceration. To keep repeated incarceration from becoming a per se ground for unfitness, a result that would not cohere with the rest of the Adoption Act or with this Court’s previous interpretation of (D)(s) in In re D.D., 196 Ill. 2d 405, 422 (2001), the evidentiary time period must be expansive enough to consider the authentic rehabilitation of parents like Detra W. The Detra W. that appeared at the fitness hearing in December 2003 was not the same Detra W. arrested over four years earlier, but the Appellate Court ignored the transformation. Her conduct *throughout* the period leading up to

the fitness hearing is critical in determining her ability to parent as both a matter of logic and as a matter of statutory construction.

1. **Precedent: In Re D.D.’s focus on the “overall impact” of incarceration means that evidence of Detra’s rehabilitation should be considered.**

The touchstone of (D)(s) is the “overall impact” of incarceration. See In re D.D., 196 Ill. 2d 405, 420-21 (2001). By interpreting (D)(s) to include incarcerations that took place before the child was born in D.D., this Court embraced a holistic evaluation of the implications of incarceration on fitness, examining the past, present, and future--rather than strictly limiting the temporal range of evidence. Likewise, the effects of Detra W.’s incarceration on her fitness should be examined over a broad time period, including evidence of her individual conduct in prison and her subsequent rehabilitation. The Appellate Court failed to properly consider the “overall impact” of incarceration when it focused only on Detra W.’s past incarceration, rather than on her present rehabilitation.

2. **Statutory Interpretation: Use of the present perfect tense indicates evidence up until the time of the fitness hearing should be considered.**

As in D.D., precise and careful attention to the Legislature’s grammatical choices is essential to understanding the Legislature’s purpose. See D.D. at 420-21 (examining connotation of plural form). In this case, the verb tense used in (D)(s) provides crucial additional guidance on whether Detra W.’s rehabilitation should be considered at the time of her fitness hearing. The statute specifies that a repeatedly incarcerated parent will be deemed unfit if her incarceration “has prevented” her from discharging her parental responsibilities. “Has prevented” is a verb in the *present perfect* tense⁵. See Miller v. Consolidated Rail Corporation, 173 Ill. 2d. 252 (1996).

⁵ A present perfect verb is formed by a present tense conjugation of the verb “to have” plus the past participle of another verb, e.g., “has cared,” “have belonged,” or “has won.” An interpretation that views “has prevented” as past tense, is incorrect. Such an interpretation would support the flawed argument that

In giving meaning to the Illinois Supreme Court Rules themselves, this Court has deemed the meaning of the present perfect term “has run” to mean something that began in the past but continues all the way into the present. *Id.* The present perfect tense has connections to both the past and the present: It can indicate an action begun in the past but continuing in the present.⁷ For example, “Your taxi has arrived” means that the cab is still waiting for you right now. “She has gone to bed” means she is still asleep now. The present perfect tense can also express an event that happened in the more recent past as compared to the past tense: “The war has caused great suffering” refers to a recent or continuing conflict; but “The war caused great suffering” refers to more distant history.

Accordingly, the best interpretation of “has prevented” in (D)(s) is as an action started in the past but continuing towards the present, with the point of reference being the unfitness hearing. (D)(s) asks whether a parent’s incarceration “has prevented” discharge of parental duties *up until* the fitness hearing – the moment the statute is applied. This would allow a wide scope of evidence about Detra W.’s ability to discharge parental duties to be considered -- including her conduct while incarcerated and her post-incarceration rehabilitation. Courts must consider evidence that a parent is no longer prevented from discharging parental duties at the time of the hearing. Certainly, if some event or development after the petition for termination was filed made a parent unfit, the court would be duty-bound to consider that evidence to make an appropriate decision. Conversely, the court must also consider positive developments showing that a parent is fit.

the focus of the statute should be exclusively on the past “void” in the child’s life created by the parent’s incarceration; any subsequent rehabilitation or predictions of future fitness would be irrelevant. By contrast, a grammatically correct reading of the statute in the present perfect tense does not allow such a drastic foreshortening of the time period to be considered.

⁷ The American Heritage Book of English Usage, Ch. 1 § 68 (1996) (available at <http://www.bartleby.com/64/C001/068.html>).

Had the Legislature wished to limit strictly the scope of the evidence, it would have clearly indicated that, either by unequivocally using the past tense (e.g., “repeated incarceration prevented discharge of parental duties” or “discharge of parental duties was prevented by repeated incarceration”), the past perfect tense (e.g., “repeated incarceration had prevented discharge of parental duties”), or by giving an explicit time frame, as it has done in other unfitness grounds. Indeed, the Legislature gave specific time periods for purposes of fitness determinations under other provisions in the Adoption Act: (D)(k) specifies that one year of addiction is grounds for unfitness; (D)(l) specifies failure to show interest within 30 days after birth; (D)(m)(ii) specifies failure to make reasonable efforts within nine months; (D)(r) specifies that the inability to discharge parental rights must be projected to continue for at least two years. Ground (D)(p) (mental illness) requires that the disability preventing discharge of parental responsibilities last for “a reasonable time period.” In contrast, (D)(s) provides no such explicit time frames.

Interpreting the statutory language in the past tense turns the statute into a tautology. "Did incarceration prevent a parent from discharging parental duties?"

The critical question is both whether it prevented the parent from discharging these duties in the past, AND whether it continues to prevent the parent from doing so. In this case there was no question that DW's prior incarceration did not prevent her, as of the time of the termination trial, from discharging her parental duties.

The overall context of (D)(s) within the Adoption Act provides further guidance on its interpretation. Logically, the most important place to begin examining (D)(s)'s context and

meaning is with its closest relative, (D)(r), unfitness based on longer-term incarceration.⁸ (D)(r) specifies that:

The child is in the temporary custody or guardianship of the Department of Children and Family Services, the parent is incarcerated as a result of criminal conviction at the time the petition or motion for termination of parental rights is filed, prior to incarceration the parent had little or no contact with the child or provided little or no support for the child, and the parent's incarceration *will prevent* the parent from discharging his or her parental responsibilities for the child *for a period in excess of 2 years after the filing of the petition or motion for termination of parental rights.* (emphasis added).

Unlike in (D)(s), the Legislature gave an explicit time period in (D)(r): the parent's incarceration must prevent her from discharging her parental duties "for a period in excess of 2 years" after the termination of parental rights filing. This strongly suggests that the Legislature did not intend to limit the time frame in (D)(s) to the very moment the State initiates proceedings to take a child away from her mother. Crucially, the parent contemplated by (D)(r) has a *more* tenuous connection to her child than many parents covered by (D)(s), because (D)(r) applies only in situations in which a parent "had little or no contact with the child or provided little or no support for the child." (D)(s) has no similar qualification on the pre-incarceration relationship. It would be unjust and illogical to interpret (D)(s) in a way that puts parents who have stayed in contact with their children in a *worse* position than those who have not.

⁸ (D)(r) applies to single long jail sentences. See In re D.D., 752, N.E.2d 1112 (2001)(Harrison, C.J., dissenting).

C. **Illinois's Interest In Rehabilitation Would Be Severely Undermined If Incarceration Alone Could Justify Termination Of Parental Rights.**

Belief that individuals convicted of crimes can be rehabilitated infuses Illinois's justice system. Our State's Constitution and codes repeatedly remind us that rehabilitation is possible, and that the State should take steps to encourage it. The Illinois Constitution, Article I, sec 11, requires "the objective of restoring the offender to useful citizenship" to be considered in sentencing. The Illinois Criminal Code expresses as one of its general purposes "prescrib[ing] penalties ... which permit recognition of differences in rehabilitation possibilities among individual offenders." 720 ILCS 5/1-2c. The Corrections Code includes among its general purposes "permit[ing] the recognition of differences in rehabilitation possibilities among individual offenders" and "restor[ing] offenders to useful citizenship." 730 ILCS 5/1-1-2a and c. More specifically, pre-sentencing reports must include "information about special resources within the community which might be available to assist the defendant's rehabilitation." 730 ILCS 5/5-3-2a2. The Probation and Probation Officers Act evinces regard for rehabilitation throughout by promoting programs that concern the "offender's ability to become a contributing member to his or her community," and include "[r]esidential alternative sentencing programs -- those programs which provide expanded sentencing options for less serious felony offenders and delinquent juveniles, *including mother and child unification programs.*" 730 ILCS 110/16-1a and e (emphasis added).

The Appellate Court in People v. Gibbs explained the role of rehabilitation this way:

This State's fundamental law requires that "All penalties shall be determined both according to the seriousness of the offense and *with the objective of restoring the offender to useful citizenship.*" (Emphasis added.) (Ill. Const. 1970, art. I, § 11.) . . . [In meeting this constitutional mandate,] [n]ot only must the judge consider the rehabilitative or restorative factor, he must also act on it as an objective of his sentence. Some degree of discretion is permitted

within the legislative perimeters establishing our indeterminate system of sentencing, but the judge may not resign to total retribution one who has a chance of future restoration to useful citizenship in the free society.

People v. Gibbs, 49 Ill. App. 3d 644, 648 (1st Dist., 1977). This Court affirmed the Gibbs analysis in People v. Wendt, holding that “a sentencing court must not only consider rehabilitative factors in imposing a sentence, it must also make rehabilitation an objective of the sentence.” People v. Wendt, 163 Ill. 2d 346, 352-353 (1994) (citing Gibbs among authorities). Against this legal backdrop, Detra W.’s rehabilitation and re-entry into society warrants praise. Following her incarceration, a one-time drug addict prone to petty crime became a working, responsible citizen with a bright future. She took advantage of the treatment and services offered to her, using her second chance to become the useful citizen the framers had hoped for.

The State’s belief in rehabilitation, coupled with the inspiring facts of Detra W.’s case, make the Appellate Court majority’s ruling here all the more troubling. First, Detra W. worked at drug treatment, counseling, and parenting classes, and achieved sufficient skills that she was offered and accepted a job. She did all she could to rehabilitate herself – just as the system hoped she would. Second, she actually changed her life. She achieved sobriety, secured a job, and took all necessary steps permitted to mother her child. Finally, the Appellate Court explicitly recognized Detra W.’s rehabilitation success, finding her fit in every respect except the one over which she no longer had control and could not change through hard work and determination – the fact of her past incarceration.

Section (D)(s) cannot be construed in a manner that ignores our State’s deep interest in encouraging and supporting rehabilitation. By failing to weigh or consider Detra W.’s rehabilitation, the Appellate Court majority considerably undermines that interest. The prospect of reunifying with a child is a strong motivation for transformation, for overcoming an addiction,

and for working intensively to improve employment and life skills. Jane R. Van Bremen and Ira J. Chasnoff, "Policy Issues for Integrating Parenting Interventions and Addiction Treatment for Women," *Topics in Early Childhood Education* 14 (Summer 1994); S. Fraiberg, V. Shapiro, and D. Cherniss, "Treatment Modalities" in J. Call, E. Galenson, & R. Tyson, eds., *Frontiers of Infant Psychiatry* (New York: Basic Books, 1980).

Just as in Detra W.'s case, the hope of reuniting their families inspires many incarcerated mothers to overcome the most difficult obstacles. The Appellate Court's ruling, if permitted to stand, will work as a further discouragement in the already difficult struggle to become a "useful citizen", since, in the end, they presumptively lose their children. If the Appellate Court majority's interpretation of this provision stands, it will be a cause for despair for the thousands of mothers who are most in need of hope as they strive to overcome the obstacles of their past incarceration, addiction and victimization by domestic violence by establishing safe and stable homes for their children. If Detra W., who turned her life around, is unfit only because of her past incarcerations, what parent with repeated incarcerations could pass this fitness test? Under this interpretation, no mothers for whom the birth of a child constitutes a wake-up call will have opportunities to overcome their past. Thousands of children will also be denied the right to be raised by a sober, employed, stable, and loving parent.

II. ANY INTERPRETATION EQUATING INCARCERATION AND PARENTAL UNFITNESS WOULD CONFLICT WITH ILLINOIS LEGISLATIVE AND ADMINISTRATIVE POLICIES PROMOTING PARENTING.

The Illinois legislature explicitly authorized the IDOC to facilitate parent-child bonds when a parent is incarcerated. In this regard, 730 ILCS 5/3-6-2 provides as follows:

(g) Any person having sole custody of a child at the time of commitment or any woman giving birth to a child after her commitment, may arrange through the Department of Children and

Family Services for suitable placement of the child outside of the Department of Corrections. The Director of the Department of Corrections may determine that there are special reasons why the child should continue in the custody of the mother until the child is 6 years old.

(h) The Department may provide Family Responsibility Services which may consist of, but not be limited to the following:

- (1) family advocacy counseling;
- (2) parent self-help group;
- (3) parenting skills training;
- (4) parent and child overnight program;
- (5) parent and child reunification counseling, either separately or together, preceding the inmate's release; and
- (6) a prerelease reunification staffing involving the family advocate, the inmate and the child's counselor, or both and the inmate.

In response to the rising number of women in prison, the IDOC created the Women and Family Services Division, which coordinates programs intended “to maintain and strengthen family ties” by finding creative responses to the burdens incarceration imposes on mother-child relationships.⁹ Women and Family Services Division programming includes videoconferencing between mothers and their children, extended family visiting hours, and day camps that allow families to interact for extended periods without being constrained by the four walls of a visiting room. IDOC’s policies confirm that incarcerated women are capable of safely parenting their children and, along with the legislative mandates to foster reunification discussed above, indicate a strong public policy to preserve the families of incarcerated mothers who can and will be able to parent their children safely.

⁹ Illinois Department of Corrections, at http://www.idoc.state.il.us/subsections/departments/women_family/default.html.

Lastly, IDOC parenting programs promote public safety. Several studies conclude that family contact is a strong predictor of female success among women who have been in the criminal justice system. (Dowden & Andrews 1999). Many of CLAIM's clients, like Detra W., are motivated to transform their lives, overcome addiction, and become productive members of society in large part because they want to become good parents and set a positive example for their children.

Construing (D)(s) to authorize ending a parent-child relationship based primarily on incarceration directly conflicts with established legislative and correctional policies and programs promoting family ties, stable healthy families, and encouraging rehabilitation. It would be counter-productive for the State to create and maintain an elaborate system for building the bond between incarcerated parents and their children only to turn around and make the fact of repeated incarceration a presumptive, or per se, ground for removing the child from those very parents.

CONCLUSION

For the foregoing reasons, *amici curiae*, Chicago Legal Advocacy for Incarcerated Mothers (CLAIM), Legal Assistance Foundation of Metropolitan Chicago (LAF), Loyola ChildLaw Center, and Companions Journeying Together, Inc., respectfully request this Court to reject any construction of 750 ILCS 50/1(D)(s) that finds unfitness based on a parent's incarceration without consideration of the parent's individual abilities and rehabilitation up

through the time of the unfitness hearing. Further, amici curiae respectfully request that this Court restore Detra W.'s parental rights with respect to Gwynne P.

Respectfully submitted,

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