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# THE HIDDEN SENTENCE:

A ZINE EXPLORING THE IMPACTS OF PARENTAL INCARCERATION ON YOUTH AND POTENTIAL POLICY REFORM

ILLUSTRATED BY MOIRA (MIRI) VILLIARD~

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 Overview of the issues surrounding children of incarcerated parents in the United States
Approaches to policy alternatives that we believe have potential

### **ABOUT THIS ZINE:**

This zine was created by students at the University of Minnesota – Twin Cities in collaboration with community partners and as part of the Parental Incarceration & Children's Human Rights project. It was supported by a residency grant from the Liberal Arts Engagement Hub (in the College of Liberal Arts). *Design and illustrations were created by Moira (Miri) Villiard*.



### **RESOURCE GUIDE:**

For individuals who are caregivers or for those who are directly impacted by incarceration, we've collected a list of resources. Scan the QR code to the left to access it!



## DISCLAIMER:

The policies explored in this zine grew out of conversations between a diverse group of students and community members, many with connections or interest in the topic at hand. They reflect months of collaborative research, discussion, and imagination through seminars and workshops. The suggestions in this zine are neither final nor complete; rather, they're starting points, grounded in dialogue and shared hope for more just, family-centered alternatives.

## **INTENTIONS:**

We created this zine to shine a light on how parental incarceration impacts children in Minnesota. Rooted in the belief that children have a right to family, dignity, and voice, this zine frames incarceration as a children's human rights issue. It is meant to educate and empower, sharing not only the harsh realities but also bold, hopeful policy alternatives that center care and justice. This small offering was created to support the stories so often left out of courtrooms and policy. Whether you're a caregiver, advocate, student, or community member, we hope these pages offer tools, ideas, and resources to support a future where children's rights are not just recognized, but prioritized.

## THE ISSUE:

In the United States, the impact of incarceration goes far beyond a single cell. From first arrests and bail hearings, to release and supervision, as well as long-term prison sentences ... the impact of incarceration follows entire families.



1 out of every 6 children in Minnesota have experienced a parent's incarceration at some point in their lives; at least a third of those youth were under the age of 5 when it happened. Incarceration is a children's rights issue.

We have the opportunity to change this. Across the country, many are considering policies that protect the rights of children and think more holistically about what community safety really means.



### HIGHLIGHTED BURDENS OF CAREGIVER INCARCERATION:



#### **Children are incredibly resilient**, but data shows that parental incarceration is linked to many increased risks that follow kids throughout their lives. *The following*

are some of the potential consequences of parental

incarceration; note that this is not an exhaustive list and that each family situation is unique.

#### CHILDREN

- May experience behavior or mental health difficulties
- Disrupts child development
- Witnessing arrests or crimes can cause trauma
- Homelessness and foster care risks are particularly high after maternal incarceration
- Less likely to attend or finish college
- Increased risk of arrest, drug use, and incarceration later in life

#### SYSTEMS & COMMUNITY

- Prisons rarely track who has kids
- Visitation environments aren't suitable for kids
- Support programs are scarce or unfunded
- Sentencing ignores child impacts
- Schools often miss signs of parental incarceration
- Families face stigma
- Incarceration can repeat across generations
- Relatives may struggle to take over care
- Families lose trust in government and civic systems
- U.S. lags behind international standards on protecting children of incarcerated parents

Sources: Shlafer, R. J., Gerrity, E., Ruhland, E., & Wheeler, M. (2013). Children with incarcerated parents: Considering children's outcomes in the context of complex family experiences (Children's Mental Health eReview). University of Minnesota Extension, Children, Youth & Family Consortium. https://www.cyfc.umn.edu

Curry, C., Horowitz, V., Matonich, J., & Stock, K. (2019). Mass parental incarceration and sentencing reform in Minnesota. Mitchell Hamline Law Review, 45(4), Article 8, 1341-1371. https://open.mitchellhamline.edu/mhlr/vol45/iss4/8

### **INCONSISTENT WITH GLOBAL STANDARDS**

With the **sole exception of the United States**, every member country of the United Nations has ratified the Convention on the Rights of the Child (CRC). This piece of international human rights law highlights how children are uniquely impacted by everything from displacement to incarceration. Most importantly, it affirms that children's best interests must be considered in any and all cases that impact them.

The CRC provides a set of international human rights norms pertaining to children, and furthermore, has a lot of useful language for articulating these rights. **Some of our favorite Articles are listed on the next page and throughout this zine.** 



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- Article 9 notes that a child shall not be separated from their parents against their will, except when such separation is necessary for the best interests of the child.
- Article 12 affirms that children have the right to freely express their views in all matters affecting them, and for those views to be given due weight in accordance with their age and maturity.
- Article 20 states that a child temporarily or permanently deprived of their family environment is entitled to special protection and assistance provided by the state.

### **"BEST INTERESTS OF THE CHILD"**

Article 3 of the UN Convention on the Rights of the Child states that in all actions concerning children, the best interests of the child shall be a primary consideration.

We believe that rooting our language in "the best interests of the child" could be a starting point for counteracting the lack of children's voices in American court rooms. Policies that consider children's best interests when their caregivers are incarcerated or facing incarceration can include restorative justice and family-based reentry programs, family-focused probation in lieu of incarceration, child-friendly settings for children to visit incarcerated caregivers, and communitybased programs and support for caregivers and children. Note that considering the best interests of a child does not *automatically* equate to children staying with their parents. Instead, it allows for courts to consider the impacts of their decisions on future generations of Minnesotans. Considering the best interests of the child consistently benefits the community, the child, and the systems.



# **POSSIBLE APPROACHES:**

We encountered a wide range of policy alternatives during our research, and so on the next few pages of this zine, we'd like to share some of the ideas that most sparked our interest during community conversations. Many of the following policy strategies focus on the issue of children's voices not being involved in our current system. We believe that a first step towards better outcomes for these families is to begin providing an avenue for children's voices and experiences to be considered in the courtroom. Again, these are by no means complete ideas. Our hope is that these ideas can spark inspiration for individuals and organizations interested in addressing this issue.



#### SCAN THE QR CODE TO REVIEW REPORTS ON WHAT SOME STATES HAVE DONE TO ADDRESS THE WELLBEING OF CHILDREN WITH PARENTS IN THE CRIMINAL-LEGAL SYSTEM.

### OTHER STATES HAVE ALREADY MADE LEGISLATIVE STRIDES IN CONSIDERING THE BEST INTERESTS OF THE CHILD DURING SENTENCING.



**Washington** has implemented the Family and Offender Sentencing Alternative for parents facing incarceration and the Community Parenting Alternative for parents currently incarcerated.



**Hawaii** and several other states have passed legislation to allow parental status to be taken into consideration when determining *where* a parent is incarcerated

States with legislation allowing consideration of parental status at sentencing:









The Children's Best Interest Act in Illinois seeks to (1) prevent unnecessary harm to children caused by separation from parents during pre-trial detention or incarceration; and (2) ensure the fair and compassionate treatment of children whose parents are involved in the criminal justice system by affording certain basic considerations to these children when decisions are made that affect them.



SOME STATES OR LOCALITIES PERMIT THE USE OF FAMILY IMPACTS STATEMENTS WHEN A CAREGIVER IS SENTENCED. SCAN THE QR CODE TO LEARN MORE.

## **OPPORTUNITIES AT PRETRIAL**

Pretrial is the period after an individual (defendant) has been arrested or criminally charged with an offense, and prior to a criminal conviction. Across the globe, policies that address children's best interests during the pretrial period are lacking. Without mechanisms for considering the well-being of children when making decisions about their parent's pretrial freedom, children and the harm they experience are invisible. Further, courts and policymakers are left ill-equipped to mitigate the impacts of parental pre-trial detention on children.

#### **CONSIDER THE FOLLOWING:**

Could **pretrial evaluation forms include more information** about the support and care that defendants provide to their children and the impact that pretrial release decisions could have on the children?

Should defense lawyers use **family impact** or **family responsibility statements** to provide useful information to judges about the best interests of defendants' children when judges are making pretrial release decisions?

(REFER TO THE QR CODE ON PAGE 18 TO LEARN MORE ABOUT FAMILY IMPACT STATEMENTS.)

# **GUARDIAN AD LITEM**

Leveraging advocates to represent children's best interests when their parents are caught in the criminal legal system is another approach we looked at. A Guardian Ad Litem (GAL) division or board focused on criminal cases could be explored to ensure that the best interests of a defendant's children are represented throughout the legal process, specifically at the pre-trial to sentencing. As a pilot, this could look like focusing on youth under a certain age until more resources can be allocated to the proposal.

Trained advocates could potentially provide comprehensive insights into the effects of criminal proceedings on children, all while addressing large chasms in the current criminal legal system that leave children of incarcerated caregivers almost wholly vulnerable and invisible.



This policy is also rooted in precedent, as GALs have worked in Minnesota for over 40 years, supported by renewed legislation, funding, and the court system.

This policy also aligns with international human rights principles, particularly those outlined in the Convention on the Rights of the Child (CRC) under Articles 3 and 12, and complements family impact statements, a concept already established in sentencing practices in several states.



## **CAREGIVER COURT**

During our research, we noted that specialty courts, including veterans treatment courts, drug courts, and mental health courts, have had promising outcomes. What if there was a specialty court that focused on the roles and responsibilities of parents, providing them with resources and support to succeed as parents and community members?

### DRAW OR WRITE ABOUT YOUR VISION OF THE FUTURE WHERE CHILDREN'S BEST INTERESTS ARE NOT JUST CONSIDERED, BUT HONORED....

Consider sights, sounds, textures, feelings, and any other senses that come to mind!

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