Children of Incarcerated Caregivers

FEDERAL SENTENCING TOOLKIT



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Who We Are

Children of Incarcerated Caregivers (CIC) advocates for laws, policies, and programs that support the best interests of minor children with parents involved in the criminal legal system. This summary demonstrates how courts can and should consider the impact on a defendant's children when the parent is facing incarceration. CIC recognizes that not every parent will be eligible for a community-based sentence and that it won't always be in a child's best interest to have their parent in the community. However, in cases where imposing a community-based alternative to incarceration is within a judge's discretion and serves the best interests of the defendant's child/children, the information below provides a legal framework and social rationale for those decisions. CIC believes and research shows that community-based alternatives to incarceration can support the needs of children while also benefiting society as a whole.

Introduction

This resource provides an overview of the law governing sentencing in the federal criminal legal system and the relevance of family ties to sentencing decisions.

Family circumstances are important considerations during sentencing for multiple reasons. First, the harmful effects of incarceration on a defendant's family, and particularly on his or her children, are relevant to ensuring that the defendant's sentence is not greater than necessary and that the sentence serves the statutory purposes of sentencing. Second, actual and potential family ties serve as a protective factor by reducing the likelihood of recidivism. Third, 18 U.S.C. § 3553(a) requires the consideration of family circumstances as part of the defendant's history and characteristics, as well as relevant to serving the purposes of sentencing and determining the kind of sentence to impose. Finally, the national and global movements toward recognizing family circumstances at sentencing shows that the failure to consider family circumstances would result in unwarranted sentence disparities among similarly situated defendants. For these reasons, family circumstances should be considered at sentencing and should inform decisions to vary or depart from the guidelines when necessary to impose a sentence that is not greater than necessary to serve the goals of sentencing.

This primer will (1) provide information regarding parental incarceration and family circumstances, including statistics on parental incarceration in the United States and research regarding the harms of parental incarceration and how familial ties are relevant to rehabilitation

and success post-conviction; (2) summarize federal sentencing law; (3) detail how family circumstances are relevant to consider at sentencing pursuant to federal sentencing law and the U.S. Sentencing Guidelines; (4) provide supporting legal and policy justifications for considering family circumstances at sentencing; and (5) overview the global trend towards recognizing the effects of parental incarceration when making decisions in criminal proceedings that will impact children.

Parental Incarceration and Family Circumstances

The consequences of contact with the criminal legal system extend far beyond those who experience it firsthand. Incarceration produces traumatic ripple effects for the children and family members of incarcerated individuals, and these impacts may reverberate across generations.[1] Children of incarcerated parents are "hidden victims" of the criminal legal system and "collateral consequences" of criminal convictions.[2]

Specifically, the impacts of parental incarceration are significant, in part, because they are widespread and result in significant harm to criminal defendants' children and family members. Parental incarceration is increasingly prevalent in the United States. Furthermore, parental incarceration adversely affects children and is associated with negative mental health experiences; behavioral issues, delinquency, and criminal conduct; substance abuse and other high-risk behaviors; negative physical health outcomes and limited healthcare access; inhibited educational readiness and attainment; social disadvantages and economic harms; displacement, homelife disruption, and impacts on relationships with peers and community engagement; and child parentification.

Moreover, family circumstances are relevant to a criminal defendant's recidivism risk and likelihood of rehabilitation and success in the community. Family circumstances protect criminal defendants against reoffending and provide a basis for motivation to change. Both

[1] Abigail J. Anderson, Christopher C. Henrich & Sylvie Mrug, *Paternal Incarceration and Adolescent Delinquency: Role of Father Engagement and Early Child Behavior Problems*, 25 OFF. J. SOC'Y FOR PREVENTION RSCH. 1228, 1229 (2024), https://doi.org/10.1007/s11121-024-01734-2; Turney, *Stress Proliferation Across Generations? Examining the Relationship Between Parental Incarceration and Childhood Health*, 55 J. HEALTH & SOC. BEHAV. 302, 312–16 (2014), https://doi.org/10.1177/0022146514544173.

[2] PARTNERS FOR JUST., GENERATIONAL HARM: INCARCERATION'S IMPACT ON CHILDREN AND FAMILIES 1 (Mar. 2023), https://www.partnersforjustice.org/evidence/generational-harm (noting how children represent the legal system's "hidden victims"); Isabel Coronado, *We Are Not Collateral Consequences: Children of Incarcerated Parents*, NEXT100: CRIM. JUST. (Feb. 10, 2020), https://thenext100.org/we-are-not-collateral-consequences-children-of-incarcerated-parents/ ("Children are often thought of as collateral consequences to our parents' incarceration.").

actual and potential familial ties can support criminal defendants' success following their convictions.

Apart from superficial references to the unfortunate impact of incarceration on families and communities, the details of these effects are not often known, appreciated, or considered by courts when making sentencing decisions.

Parental Incarceration in the United States

Parental incarceration is no longer uncommon in the United States.[3] Over five million children in the United States have experienced the detention or incarceration of a parent at some point during their childhood.[4] By high school, one in seven students has experienced the detention or incarceration of a parent or guardian.[5] More than 220 thousand minor children have a parent in federal prison.[6] More than half of incarcerated individuals in federal prisons are parents to at least one minor child.[7] Approximately 13 percent of minor children with a parent in federal prison are under four years old, and around 20 percent are between 15 and 17 years old.[8] The average age of minor children with a parent in federal prison is 10 years old.[9] Considering how parental incarceration is highly prevalent in the United States, understanding the effects of the criminal legal system on criminal defendants' family members and specifically, their children, is paramount.

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[3] Julie Poehlmann-Tynan & Kristin Turney, *A Developmental Perspective on Children With Incarcerated Parents*, 15 CHILD DEVELOPMENT PERSPECTIVES 3, 3 (2021), https://doi.org/10.1111/cdep.12392.
[4] THE ANNIE E. CASEY FOUND., A SHARED SENTENCE 2 (2016), https://assets.aecf.org/m/resourcedoc/aecf-asharedsentence-2016.pdf (estimating 5.1 million children); NAZGOL GHANDNOOSH, EMMA STAMMEN & KEVIN MUHITCH, THE SENT'G PROJECT, PARENTS IN PRISON 1 (2021), https://www.sentencingproject.org/app/uploads/2022/09/Parents-in-Prison.pdf (estimating 5.2 million children).
[5] Elizabeth A. Swedo et al., *Adverse Childhood Experiences and Health Conditions and Risk Behaviors Among High School Students—Youth Risk Behavior Survey, United States, 2023*, 73 MORB. & MORTAL. WKLY. REP. 39, 46 (2024), http://dx.doi.org/10.15585/mmwr.su7304a5.
[6] LAURA M. MARUSCHAK, JENNIFER BRONSON & MARIEL ALPER, U.S. DEP'T OF JUST., BUREAU OF JUSTICE STATISTICS, SURVEY OF PRISON INMATES, 2016: PARENTS IN PRISON AND THEIR MINOR CHILDREN 2 (2021), https://bjs.ojp.gov/content/pub/pdf/pptmcspi16st.pdf.
[7] *Id.* at 1.
[8] *Id.* at 2.
[9] *Id.*

Harms of Parental Incarceration

Parental incarceration is considered an adverse childhood experience (ACE).[10] ACEs are potential traumatic events that occur in childhood and are known to affect well-being into adulthood.[11] Even if the incarceration occurs prior to early childhood, parental incarceration can have long-term adverse impacts on children.[12] Additionally, because women generally fulfill the role of primary caregiver, maternal incarceration can be especially harmful.[13] The extent of the harm caused by parental incarceration significantly depends on the children's current caregiver maintaining a relationship with the incarcerated parent.[14] When the relationship between the caregiver and the incarcerated parent is incongruous, children have an increased risk of aggression, anxiety, withdrawal, and poor social competence.[15] Moreover, these long-lasting impacts are not remedied by subsequent reunification.[16]

Parental incarceration can have negative impacts in the following areas:

- **Mental Health:**
    - Parental incarceration increases a child's risk of depression, post-traumatic stress disorder, anxiety,[17] internalizing symptoms, self-injury, suicidal ideation, suicide attempts,[18] and antisocial problems.[19] Maternal incarceration, specifically, is also

[10] Centers for Disease Control and Prevention, *Preventing Adverse Childhood Experiences (ACEs): Leveraging the Best Available Evidence* 7, National Center for Injury Prevention and Control (2019), https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf.
[11] *Id.*
[12] Anderson, Henrich & Mrug, *supra* note 1, at 1229.
[13] Joyce A. Arditti, *Family Process Perspective on the Heterogeneous Effects of Maternal Incarceration on Child Wellbeing: The Trouble with Differences*, 14 CRIMINOLOGY & PUB. POL'Y 169, 170 (2015), https://doi.org/10.1111/1745-9133.12117.
[14] *Cf.* Joyce A. Arditti et al., *Maternal Mediation in the Context of Fathers' Incarceration and Reentry*, 70 FAM. RELS.: INTERDISC. J. APPLIED FAM. SCI.146, 146–48, 157 (2021), https://doi.org/10.1111/fare.12526.
[15] Ann Booker Loper & Caitlin Novero Clarke, *Attachment Representations of Imprisoned Mothers as Related to Child Contact and the Caregiving Alliance: The Moderating Effect of Children's Placement with Maternal Grandmothers*, 78 MONOGRAPHS SOC'Y RSCH. CHILD DEV. 41, 55 (2013), https://doi.org/10.1111/mono.12020.
[16] JOHAYRA BOUZA ET AL., SOC'Y FOR RSCH. IN CHILD DEV., THE SCIENCE IS CLEAR: SEPARATING FAMILIES HAS LONG-TERM DAMAGING PSYCHOLOGICAL AND HEALTH CONSEQUENCES FOR CHILDREN, FAMILIES, AND COMMUNITIES 1–2 (June 20, 2018), https://www.srcd.org/briefs-fact-sheets/the-science-is-clear.
[17] Rosalyn D. Lee, Xiangming Fang & Feijun Luo, *The Impact of Parental Incarceration on the Physical and Mental Health of Young Adults*, 131 PEDIATRICS 1188, 1191 (2013).
[18] Laurel Davis & Rebecca J. Shlafer, *Mental Health of Adolescents with Currently and Formerly Incarcerated Parents*, 54 J. OF ADOLESCENCE 120, 120–34 (2017).
[19] Joseph Murray & David P. Farrington, *Parental Imprisonment: Effects on Boys' Antisocial Behaviour and Delinquency Through the Life-Course*, 46 J. CHILD PSYCH. & PSYCHIATRY 1269, 1269–78 (2005).

associated with high-risk behaviors including having sex for money[20] and self-harm.[21] One study found that the incarceration of a household member in childhood increased the likelihood of that child's later suicide attempt by 50 percent.[22] Another study concluded that experiencing familial incarceration during childhood increased the odds of experiencing poor mental health outcomes as an adult by 123 percent.[23]

- Parental incarceration is associated with the child having learning disabilities, ADD/ADHD, developmental delays, and speech or language problems, which are conditions some researchers believe are related to stress.[24]

- Children who live with a parent or caregiver who is subsequently incarcerated are especially vulnerable to experiencing "traumatic separation," which refers to the intense psychological distress a child undergoes specifically within the context of incarceration and is unique compared to other child trauma experiences characterized by ambiguity, uncertainty, and loss of a parent.[25] Even the incarceration of a nonresident parent may cause the child to experience traumatic separation.[26]

- **Behavioral Issues and Contact with Criminal Legal System:**

  - Parental incarceration is correlated with an increased risk of physical aggression, attention problems, behavioral problems and school punishments, rule-breaking,

[20] Nia Heard-Garris et al., *Health Care Use and Health Behaviors Among Young Adults With History of Parental Incarceration*, 142 PEDIATRICS e20174314 (2018), https://publications.aap.org/pediatrics/article/142/3/e20174314/38619/Health-Care-Use-and-HealthBehaviors-Among-Young.
[21] Craig Cumming et al., *Maternal Incarceration Increases the Risk of Self-Harm but not Suicide: A Matched Cohort Study*, 32 EPIDEMIOLOGY & PSYCH. SCI. e33 (2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10227533/.
[22] Melissa T. Merrick et al., *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, 69 CHILD ABUSE & NEGLECT 10, 10–19 (2017).
[23] Ashley Provencher & James Conway, *Incarcerations' Costs for Families* (Oct. 2, 2019), https://publichealthpost.org/health-equity/incarcerations-costs-for-families/.
[24] Turney, *supra* note 1, at 311, 313–14.
[25] Joyce A. Arditti, *Child Trauma Within the Context of Parental Incarceration: A Family Process Perspective*, 4 J. FAM. THEORY & REV. 181, 195 (2012), https://doi.org/10.1111/j.1756-2589.2012.00128.x.
[26] *Id.*

all of which can come with an increased risk of arrest for children with an incarcerated parent.[27]

- Parental incarceration can also increase a child's risk of contact with the criminal legal system into adulthood[28] and is a risk factor for teen delinquency.[29]

  - Specifically, paternal incarceration increased the risk of delinquency related to "violent, destructive, or aggressive behavior" more than "offending that has the potential to result in monetary gain."[30] In other words, having an incarcerated father was not found to have increased the risk of children committing delinquent acts such as robberies or thefts, but was found to increase the risk of children committing delinquent acts such as property destruction and violence.

  - Children impacted by paternal incarceration, specifically, are more likely to have early behavior problems, which subsequently poses a greater risk for teen delinquency.[31] At least one study, however, has found that children of incarcerated mothers are more likely to be incarcerated as adults than children of incarcerated fathers.[32]

    - Children impacted by paternal incarceration are at an increased risk of arrest by age 25 and an increased risk of delinquent

[27] *See* Amanda Geller et al., *Beyond Absenteeism: Father Incarceration and Child Development*, 49 DEMOGRAPHY 49, 65–66 (2012); Wade C. Jacobsen, *The Intergenerational Stability of Punishment: Paternal Incarceration and Suspension or Expulsion in Elementary School*, J. RES. CRIME & DELINQ. (2019); SARA WAKEFIELD & CHRISTOPHER WILDEMAN, CHILDREN OF THE PRISON BOOM: MASS INCARCERATION AND THE FUTURE OF AMERICAN INEQUALITY (2014); Christopher Wildeman, *Paternal Incarceration and Children's Physically Aggressive Behaviors: Evidence from the Fragile Families and Child Wellbeing Study*, 89 SOC. FORCES 285, 285–309 (2010).
[28] Beth M. Huebner & Regan Gustafson, *The Effect of Maternal Incarceration on Adult Offspring Involvement in the Criminal Justice System*, 35 J. CRIM. JUST. 283, 283–96 (2007); Michael Roettger et al., *Paternal Incarceration and Trajectories of Marijuana and Other Illegal Drug Use From Adolescence Into Young Adulthood: Evidence From Longitudinal Panels of Males and Females in the United States*, 106 ADDICTION 121, 121–32 (2011).
[29] Lauren C. Porter & Ryan D. King, *Absent Fathers or Absent Variables? A New Look at Paternal Incarceration and Delinquency*, 52 J. RSCH. CRIME & DELINQ. 414, 433 (2015), https://doi.org/10.1177/0022427814552080.
[30] *Id.*
[31] Children whose fathers were incarcerated prior to their first year of life had increased behavior problems by age 5. Anderson, Henrich & Mrug, *supra* note 1, at 1234.
[32] Danielle H. Dallaire*, Incarcerated Mothers and Fathers: A Comparison of Risks for Children and Families*, 56 FAM. RELS.: INTERDISC. J. APPLIED FAM. SCI. 440, 448 (2007), https://doi.org/10.1111/j.1741-3729.2007.00472.x.

behavior in adolescence and young adulthood.[33] In contrast, the experience of maternal incarceration during childhood increased the odds of adult probation placement by 400 percent and the odds of having a criminal conviction by nearly 300 percent.[34]

- Parental incarceration causes emotional stress, acting out in response to other adverse experiences, and weakened parental attachment, all of which only further increase risk of teen delinquency.[35]

- Children impacted by parental incarceration are at a greater risk of offending, particularly when their incarcerated parent has a significant criminal history and his or her criminal history includes serious offenses.[36]

- Children impacted by parental incarceration who have low emotional independence are particularly more likely to engage in criminal activity as young adults.[37]

- Parental incarceration is associated with child internalization of negative labels, such as being a troublemaker/partier. Children impacted by parental incarceration are more likely to experience this labelling, as well as more likely to perceive others as labelling them. Internalization of negative labels is associated with young adults' offending.[38]

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[33] Michael E Roettger & Raymond R. Swisher, *Associations of Fathers' History of Incarceration with Sons' Delinquency and Arrest Among Black, White, and Hispanic Males in the United States*, 49 CRIMINOLOGY 1109, 1110 (2011), https://doi.org/10.1111/j.1745-9125.2011.00253.x.
[34] Huebner & Gustafson, *supra* note 28, at 283–96.
[35] Porter & King, *supra* note 29.
[36] VANESSA GOODWIN & BRENT DAVIS, AUSTRALIAN INST. CRIMINOLOGY, CRIME FAMILIES: GENDER AND THE INTERGENERATIONAL TRANSFER OF CRIMINAL TENDENCIES 5 (2011), https://www.aic.gov.au/sites/default/files/2020-05/tandi414.pdf.
[37] Jessica G. Finkeldey et al., *An Exploratory Investigation of Parental Incarceration, Emotional Independence, and Adult Children's Criminal Activity*, 7 J. DEVELOPMENTAL & LIFE-COURSE CRIMINOLOGY 151, 167 (2021), https://doi.org/10.1007/s40865-021-00164-w [hereinafter "Finkeldey et al. (2021)"]; *see also* Jessica G. Finkeldey et al., *Identifying as a Troublemaker/Partier: The Influence of Parental Incarceration and Emotional Independence*, 29 J. CHILD & FAM. STUD. 802, 813 (2020), https://doi.org/10.1007/s10826-019-01561-y [hereinafter "Finkeldey et al. (2020)].
[38] Finkeldey et al. (2021), *supra* note 37, at 169.

- Parental incarceration is also linked to more reported violence, anger, and rule violations than other incarcerated individuals.[39]

    - For children who experience parental incarceration and are subsequently incarcerated, their adjustment to incarceration is worse than other incarcerated individuals, as they reportedly experience more prison violence, anger, and rule violations.[40]

- **Substance-Abuse and High-Risk Behaviors:**

    - Young adults who have experienced parental incarceration can have an increased risk of substance-abuse issues, including cigarette smoking, alcohol abuse, and prescription drug abuse.[41]

    - Children who experience paternal incarceration are more likely to report using illegal drugs during their transition from adolescence to adulthood.[42]

    - Maternal incarceration is associated with high-risk behaviors including having sex in exchange for money.[43]

    - One study determined that experiencing familial incarceration during childhood increased the odds of engaging in risky health behaviors by nearly 200 percent.[44]

- **Physical Health and Healthcare Access:**

    - Recent parental incarceration is associated with a nearly 50% increase in early infant mortality.[45]

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[39] Caitlin M. Novero, Ann Booker Loper & Janet I. Warren, *Second-Generation Prisoners: Adjustment Patterns for Inmates with a History of Parental Incarceration*, 38 CRIM. JUST. & BEHAV. 761, 761–78 (2011).
[40] *Id.*
[41] *Id.*
[42] Roettger et al., *supra* note 28, at 121–32.
[43] Heard-Garris et al., *supra* note 20.
[44] Provencher & Conway, *supra* note 23.
[45] WAKEFIELD & WILDEMAN, *supra* note 27.

- Research shows that "mass incarceration has almost certainly exacerbated disparities in child health" in the United States.[46]

- Parental incarceration is associated with a multitude of health issues, such as a higher risk of poor health-related quality of life in adulthood,[47] and limited access to healthcare.[48]

- Parental incarceration is associated with increased risk of high cholesterol, asthma, migraines, HIV/AIDS, poor health,[49] obesogenic behaviors, drinking sugary drinks, smoking cigarettes,[50] poor oral health,[51] and a greater risk of developing adult-onset hypertension and other coronary disease biomarkers.[52]

- Women who experienced parental incarceration have higher Body Mass Indexes than women who did not.[53]

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[46] Christopher Wildeman, Alyssa W. Goldman & Kristin Turney, *Parental Incarceration and Child Health in the United States*, 40 EPIDEMIOL. REVS. 146, 153 (2018), https://doi.org/10.1093/epirev/mxx013.
[47] Annie Gjelsvik et al., *Adverse Childhood Events: Incarceration of Household Members and Health-Related Quality of Life in Adulthood*, 25 J. HEALTH CARE FOR POOR & UNDERSERVED 1169, 1169–82 (2014), https://doi.org/10.1353/hpu.2014.0112.
[48] Rohan Khazanchi, Nia J. Heard-Garris & Tyler N.A. Winkelman, *Health Care Access and Use Among Children & Adolescents Exposed to Parental Incarceration—United States, 2019*, 23 ACAD. PEDIATRICS 464, 466–71 (2022).
[49] Lee, Fang, & Luo, *supra* note 17, at 1191; Holly Ventura Miller & J.C. Barnes, *The Association Between Parental Incarceration and Health, Education, and Economic Outcomes in Young Adulthood*, 40 AM. J. CRIM. JUST. 765, 765–84 (2015).
[50] Heard-Garris et al., *supra* note 20.
[51] Alexander Testa & Dylan B. Jackson, *Parental Incarceration and Children's Oral Health in the United States: Findings from the 2016-2018 National Survey of Children's Health*, 49 CMTY. DENT. & ORAL EPIDEMIOL. 166, 173 (2020), https://doi.org/10.1111/cdoe.12588 (finding that children impacted by parental incarceration were more likely to have poor or fair teeth conditions, toothaches, gum bleeding, and cavities/tooth decay).
[52] Elizabeth L. Tung et al., *Childhood Parental Incarceration and Adult-Onset Hypertension and Cardiovascular Risk*, 8 JAMA CARDIOLOGY 927, 928 (2023), https://doi.org/10.1001/jamacardio.2023.2672 (finding that childhood parental incarceration was associated with 33% and 60% higher adjusted odds of developing adult-onset hypertension and elevated high-sensitivity C-reactive protein, a marker of inflammation used to estimate risk of future coronary events ("hsCRP"), respectively).
[53] Michael E. Roettger & Jason D. Boardman, *Parental Incarceration and Gender-Based Risks for Increased Body Mass Index: Evidence from the National Longitudinal Study of Adolescent Health in the United States*, 175 J. EPIDEMIOLOGY 636, 636–44 (2012); *see also* Hedwig Lee et al., *A Heavy Burden: The Cardiovascular Health Consequences of Having a Family Member Incarcerated*, 104 AM. J. PUB. HEALTH 421, 421–27 (2014) (finding that the experience of family incarceration increases the likelihood of female obesity by 44 percent; increases the odds of women reporting poor or fair health by 200 percent; and the chances of heart attack or stroke for women with currently incarcerated family members is two-and-a-half times greater than women without currently incarcerated family members).

- Children of incarcerated parents are more likely to experience fair or poor overall health and a range of physical health conditions.[54]

- One study determined that experiencing familial incarceration during childhood increased the odds of poor physical health by 47 percent. [55]

- Limits to healthcare access begin for children impacted by parental incarceration during childhood itself.[56]

- Specifically, children impacted by parental incarceration struggle to access preventative, mental health, and primary care.[57]

- Parental incarceration is associated with poor access to a usual source of care,[58] unmet dental care needs,[59] and unmet mental health care needs.[60]

- One study estimated that over 100 thousand children exposed to parental incarceration have no usual source of care and have forgone dental care needs.[61] That same study further estimated that more than 75 thousand children exposed to parental incarceration have delayed mental health care needs and over 53 thousand have forgone mental health care needs.[62]

[54] Turney, *supra* note 1, at 314–15.
[55] Provencher & Conway, *supra* note 23; *see also* Turney, *supra* note 1, at 311, 314–15 (finding that children of incarcerated parents are more likely to experience fair or poor overall health and a range of physical health conditions).
[56] Khazanchi, Heard-Garris, & Winkelman, *supra* note 48, at 466.
[57] *Id.* at 470.
[58] *See* Heard-Garris et al., *supra* note 20; Khazanchi, Heard-Garris, & Winkelman, *supra* note 48, at 470.
[59] *See* Testa & Jackson, *supra* note 51, at 173.
[60] Heard-Garris et al., *supra* note 20; *see also* Kristin Turney, *Unmet Health Care Needs Among Children Exposed to Parental Incarceration*, 21 MATERNAL & CHILD HEALTH J. 1194, 1198 (2017), https://doi.org/10.1007/s10995-016-2219-2 (finding that children exposed to parental incarceration are 60 percent more likely than their counterparts to have unmet mental health care needs).
[61] Khazanchi, Heard-Garris, & Winkelman, *supra* note 48, at 470 (estimating that parental incarceration was associated with an additional 123,703 children with no usual source of care and 114,795 with forgone dental care needs).
[62] *Id.* (estimating that parental incarceration was associated with an additional 75,434 children with delayed mental health care needs and 53,678 with forgone mental health care needs).

- Research further suggests that insurance status alone does not cause children impacted by parental incarceration to experience limited healthcare access.[63]

- Parental incarceration is associated with a doubled likelihood of children utilizing emergency room services rather than primary care and an increased risk of foregoing healthcare overall.[64]

- **Education:**

  - Parental incarceration can negatively impact educational readiness and attainment. One in three adults in the United States with less than a high school degree has experienced parental incarceration.[65] Parental incarceration is also associated with decreased education attainment in emergent adulthood, as well as significantly lower GPAs, lower levels of education achieved, lower levels of college completion,[66] more grade retention and high school dropout,[67] and greater unhappiness in school than peers.[68]

  - Paternal incarceration, in particular, is associated with decreased likelihood of college graduation and lower personal satisfaction with academic achievement, as children who have experienced paternal incarceration have a reduced likelihood of graduating from college as a young adult by 46 percent and decreased self-reported satisfaction with personal educational attainment.[69]

[63] *Id.* (finding that public insurance status did not ameliorate access to a usual source of care, dental care, and mental health care).
[64] Heard-Garris et al., *supra* note 46.
[65] Peter K. Enns et al., *What Percentage of Americans Have Ever Had a Family Member Incarcerated?: Evidence from the Family History of Incarceration Survey (FamHIS)*, 5 SOCIUS: SOC. RES. DYNAMIC WORLD 1-45 (2019).
[66] Holly Foster & John Hagan, *The Mass Incarceration of Parents in America: Issues of Race/Ethnicity, Collateral Damage to Children, and Prisoner Reentry*, 623 ANNALS AM. ACAD. POL. & SOC. SCIENCE 179, 179–94 (2009); John Hagan & Holly Foster, *Intergenerational Educational Effects of Mass Imprisonment in America*, 85 SOC. EDUC. 259, 259–86 (2012).
[67] Christian Brown, *Maternal Incarceration and Children's Education and Labor Market Outcomes*, 31 LABOUR 43 (2017).
[68] Marcus Shaw, *The Reproduction of Social Disadvantage Through Educational Demobilization: A Critical Analysis of Parental Incarceration*, 27 CRITICAL CRIMINOLOGY 275-90 (2019).
[69] Miller & Barnes, *supra* note 49.

- Parental incarceration is a significant predictor of teacher-reported internalizing and externalizing problems.[70]

- Experiencing maternal incarceration is associated with increased inattention, assertion problems, oppositional problems, and cooperation problems, as reported by teachers.[71]

- For boys who experience paternal incarceration by age five, there is an increased likelihood of placement in special education classes by age nine due to lower non-cognitive skills, including the ability to concentrate and emotionally self-regulate when entering school.[72]

- Although school connectedness may function as a protective factor for children exposed to parental incarceration,[73] youth who experienced school connectedness that had incarcerated parents were still at greater risk for worse school-based outcomes.[74]

- Moreover, because children impacted by parental incarceration are more likely to exhibit negative behaviors at school,[75] they are less likely to receive adequate

[70] Erin C. Casey, Rebecca J. Shlafer & Ann S. Masten, *Parental Incarceration as a Risk Factor for Children in Homeless Families*, 64 FAM. RELS.: INTERDISC. J. APPLIED FAM. SCI. 490, 498 (2015), https://doi.org/10.1111/fare.12155.
[71] Christopher Wildeman & Kristin Turney, *Positive*, *Negative, or Null? The Effects of Maternal Incarceration on Children's Behavioral Problems*, 51 DEMOGRAPHY 1041, 1041–68 (2014).
[72] Anna R. Haskins, *Unintended Consequences? Effects of Paternal Incarceration on Child School Readiness and Later Special Education Placement*, 1 SOC. SCI. 141 (2014).
[73] Niamh Taggart & John McAloon, *The Association Between Parental Incarceration and Children's Educational Outcomes: A Systematic Review*, PSYCHIATRY, PSYCH. & L., 2025, at 1, 2–3, https://doi.org/10.1080/13218719.2025.2578536.
[74] Elizabeth L. Shaver et al., *School Connectedness as a Protective Factor for School-Based Outcomes of Youth with a History of Parental Incarceration*, 55 SCH. PSYCH. REV. 133, 139 (2026), https://doi.org/10.1080/2372966X.2024.2424743.
[75] *See, e.g.*, Novero, Loper, & Warren, *supra* note 39, at 761–78 (association between parental incarceration and high-risk behaviors); Wildeman, *supra* note 27, at 285–309; (association between parental incarceration and physical aggressive behaviors); Murray & Farrington, *supra* note 19, at 1269–78 (association between parental incarceration and antisocial behavior).

teacher support,[76] effectively rendering children in the greatest need of intervention without teacher support.[77]

- **Social and Economic Harms:**

    - Parental incarceration exacerbates social inequality and childhood disadvantage.[78]

    - Parents who were incarcerated during their children's youth have less education, fewer work hours, lower incomes, lower socioeconomic status, and receive more government assistance, leading their children to have less family social advantages than their peers.[79]

    - Children experiencing parental incarceration are also more likely to be rated as aggressive by their peers.[80]

    - Reduced economic contribution and other family strains,[81] as well as lower instrumental support,[82] exacerbate the economic and material[83] hardship experienced by children who are impacted by parental incarceration.

    - Children impacted by parental incarceration are more likely to experience food insecurity overall, and particularly in instances when a residential parent is

[76] Kristin P. Kremer et al., *Risk and Resilience among Children with Incarcerated Parents: Examining Heterogeneity in Delinquency and School Outcomes*, 29 J. CHILD & FAM. STUD. 3239, 3245 (2020), https://doi.org/10.1007/s10826-020-01822-1.
[77] Taggart & McAloon, *supra* note 73, at 1, 2; *see also* Casey, Shlafer, & Masten, *supra* note 70, at 498 (finding that parental incarceration is a significant predictor of teacher-reported internalizing and externalizing problems in children).
[78] Christopher Wildeman, *Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage*, 46 DEMOGRAPHY 265, 276–77 (2009), https://doi.org/10.1353/dem.0.0052.
[79] Jean M. Kjellstrand & J. Mark Eddy, *Parental Incarceration During Childhood, Family Context, and Youth Problem Behavior Across Adolescence*, 50 J. OFFENDER REHAB. 18, 18–36 (2011).
[80] Danielle H. Dallaire & Janice L. Zeman, *Empathy as a Protective Factor for Children with Incarcerated Parents*, 78 MONOGRAPHS SOC'Y RSCH. CHILD DEV. 7, 22 (2013), https://doi.org/10.1111/mono.12018.
[81] Offira Schwartz-Soicher, Amanda Geller & Irwin Garfinkel, *The Effect of Paternal Incarceration on Material Hardship*, 85 SOC. SERV. REV. 447, 447–78 (2011).
[82] Kristin Turney, Jason Schnittker & Christopher Wildeman, *Those They Leave Behind: Paternal Incarceration and Maternal Instrumental Support*, 74 J. MARRIAGE & FAMILY 1149, 1149–65 (2012).
[83] Kristin Turney, *The Consequences of Paternal Incarceration for Maternal Neglect and Harsh Parenting*, 92 SOC. FORCES 1607, 1607–36 (2014).

incarcerated.[84] The impact of food insecurity may further be exacerbated by an inability to access government assistance programs with stricter eligibility criteria, multiple application hurdles, and requirements for enrollment that are difficult for the child or children's family to satisfy.[85]

- Additionally, formerly incarcerated parents may struggle to find stable employment due to a lack of skills or the stigma associated with incarceration,[86] which may prevent the family from experiencing economic security and stability long after a parent's sentence of incarceration ends.

- Children impacted by parental incarceration exhibit decreased political participation and more distrust in the government as a result of the long-lasting consequences of parental incarceration.[87]

- **Housing and Family Disruption:**

  - Parental incarceration is associated with an increased risk of experiencing homelessness in childhood and adulthood,[88] and an increased risk of foster-care placement.[89]

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[84] Luke Muentner, C. Blair Burnette & Rebecca Shlafer, *Parental Incarceration and Adolescent Food Insecurity*, 42 FAMS., SYS., & HEALTH 386, 398–91 (2024), https://psycnet.apa.org/doi/10.1037/fsh0000909; s*ee also* Karen M. Davison et al., *Food Security in the Context of Paternal Incarceration: Family Impact Perspectives*, 16 INT'L J. ENV'T RSCH. & PUB. HEALTH 776 (2019), https://doi.org/10.3390/ijerph16050776 (finding that food insecurity and paternal incarceration mutually reinforce one another); Robynn Cox & Sally Wallace, *Identifying the Link Between Food Security and Incarceration*, 82 S. ECON. J. 1062, 1074 (2016), https://doi.org/10.1002/soej.12080 (suggesting that parental incarceration increases the likelihood of food insecurity to 12.5 percent); Jude Al Abosy, Anna Grossman & Kimberly R. Dong, *Determinants and Consequences of Food and Nutrition Insecurity in Justice-Impacted Populations*, 11 CURRENT NUTRITION REPS. 407, 407–15 (2022), https://doi.org/10.1007/s13668-022-00421-4 (discussing how criminal justice contact exacerbates food insecurity by creating additional barriers to healthcare coverage through public insurance and welfare benefits).

[85] *See* Naomi F. Sugie, *Punishment and Welfare: Paternal Incarceration and Families' Receipt of Public Assistance*, 90 SOC. FORCES 1403, 1420–21 (2012), https://doi.org/10.1093/sf/sos055 (discussing differential program participation of families impacted by paternal incarceration and potential justifications for differential results across government assistance programs like TANF, food stamps, and Medicaid/SCHIP).

[86] Amanda Geller et al., *Parental Incarceration and Child Well-Being: Implications for Urban Families*, 90 SOC. SCI. Q. 1186, 1196 (2009), https://doi.org/10.1111/j.1540-6237.2009.00653.x.

[87] Hedwig Lee, Lauren C. Porter & Megan Comfort, *Consequences of Family Member Incarceration: Impacts on Civic Participation and Perceptions of the Legitimacy and Fairness of Government*, 651 ANN. AM. ACAD. POL. SOC. SCI. 44, 44–73 (2014).

[88] WAKEFIELD & WILDEMAN, *supra* note 27.

[89] LAUREN E. GLAZE & LAURA M. MARUSCHAK, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PARENTS IN PRISON AND THEIR MINOR CHILDREN 5 (2008).

- Children impacted by maternal incarceration, in particular, are at a greater risk of being placed in foster care, orphanages, or other nonfamilial care situations.[90]

- Children of incarcerated parents are also less likely to live in a two-parent home and less likely to have stable housing, which further disadvantages their support systems at home.[91]

- Children impacted by parental incarceration are less likely to demonstrate empathetic behaviors at home.[92]

- Because the restructuring of children's homelife may result in a breakdown of the family unit and a depletion of emotional resources in the home, children impacted by parental incarceration are likely to have less motivation and skills to reach out to others in prosocial, empathetic ways.[93]

- Maternal incarceration is associated with increases in rule-breaking behavioral problems at home, based on caregiver reports.[94]

- **Child Parentification:**

    - Parental incarceration may also lead to parentification of children. "Parentification" refers to when children assume developmentally inappropriate parent- or adult-like roles and responsibilities,[95] resulting in a sort of reversal of roles between parent and child.[96] ACEs, such as parental incarceration, prompt

[90] Dallaire*, supra* note 32, at 448–49; *see also* Christopher A. Swann & Michell Sheran Sylvester, *The Foster Care Crisis: What Caused Caseloads to Grow*, 43 DEMOGRAPHY 309, 309–35 (2006) (finding the growth of female incarceration accounted for 31.1 percent of the growth in foster-care caseloads between 1985 to 2000 in the United States).
[91] Geller et al., *supra* note 86.
[92] Dallaire & Zeman, *supra* note 80, at 22.
[93] *Id.*
[94] Wildeman & Turney, *supra* note 71.
[95] Jacinda K. Dariotis et al., *Parentification Vulnerability, Reactivity, Resilience, and Thriving: A Mixed Methods Systematic Literature Review*, 20 INT'L J. ENVTL. RSCH. & PUB. HEALTH 6197 (2023), https://doi.org/10.3390/ijerph20136197; *see also* Ruziana Masiran et al., *The Positive and Negative Aspects of Parentification: An Integrated Review*, 144 CHILD. & YOUTH SERVS. REV. 106709 (2023), ("Parentification occurs when children are assigned excessive instrumental or emotional caregiving roles.").
[96] Mary West, *What to Know About Parentification*, MEDICAL NEWS TODAY (Apr. 29, 2022), https://www.medicalnewstoday.com/articles/parentification.

parentification.[97] Parentification often occurs when a parent is unable to fulfill his or her role as a caregiver, forcing a child to step in and take care of younger siblings and other domestic labor; thus, the absence of a parent as a result of his or her incarceration may result in a child taking on more responsibility and lead to parentification.[98] Moreover, because parentification also can occur when a parent relies on his or her child for comfort and reassurance during a difficult time, parental incarceration may lead to parentification when incarcerated parents rely on their children for emotional support.[99]

- Parentification is associated with numerous adverse consequences that may extend well into adulthood. Parentification can lead to negative mental health outcomes, including feelings of anxiety, depression, low self-esteem, and psychological stress, as well as chronic stress and anxiety in adulthood.[100] These mental health experiences, in turn, can increase the risk of developing physical health problems, such as heart disease and autoimmune disorders.[101] Imposter syndrome, which occurs when a person doubts their skills, knowledge, or talents, is a significant long-term effect of childhood parentification in adulthood.[102] Parentification also is associated with difficulty with boundary-setting and strong people-pleasing tendencies, which may lead to difficulty forming healthy relationships in adulthood.[103] Additionally, parentification is associated with being overly responsible and feeling guilty when failing to meet others' expectations.[104] Moreover, in households with multiple children, siblings of a parentified child may foster feelings of resentment towards their parentified sibling, leading to feelings of isolation and being without support.[105] Parentification also can significantly strain family dynamics.[106] Adults who were

[97] Ray M. Merrill, *Adverse Childhood Experiences Promote Increased and Selective Caregiving in Adulthood*, 23 INT'L J. ENVTL. RSCH. & PUB. HEALTH 213 (2026), https://doi.org/10.3390/ijerph23020213.
[98] *Parentification Trauma: What it is and How to Heal*, CHARLIE HEALTH (Apr. 23, 2023), https://www.charliehealth.com/post/parentification-trauma-what-it-is-and-how-to-heal.
[99] *Id.*
[100] *Id.*; Masiran et al., *supra* note 95.
[101] *Parentification Trauma*, CHARLIE HEALTH, *supra* note 98.
[102] Masiran et al., *supra* note 95.
[103] *Parentification Trauma*, CHARLIE HEALTH, *supra* note 98; *see also* Masiran et al., *supra* note 95 (finding parentification to be associated with difficulty in future interpersonal relationships).
[104] *Parentification Trauma*, CHARLIE HEALTH, *supra* note 98.
[105] *Id.*
[106] *Id.*

parentified during childhood or adolescence may experience issues with substance use, one or more eating disorders, symptoms of dissociation (such as losing track of time and forgetfulness), and symptoms of personality disorders, such as difficulty managing emotions or challenges relating to self-image.[107] Research suggests that parentification may affect academic achievement[108] and that parentified children and teenagers have tendencies toward alcohol use disorder and perfectionism.[109] Importantly, parentification can significantly and negatively impact a parentified child's caregiving ability as an adult.[110]

[107] West, *supra* note 96.
[108] Judyta Borchet et al., *The Relations Among Types of Parentification, School Achievement, and Quality of Life in Early Adolescence: An Exploratory Study*, FRONTIERS PSYCH., (Mar. 2021), https://doi.org/10.3389/fpsyg.2021.635171.
[109] Piotr Połomski et al., *Exploring Resiliency and Parentification in Polish Adolescents*, 18 INT'L J. ENVTL. RSCH. & PUB. HEALTH 11454 (2021), https://doi.org/10.3390/ijerph182111454.
[110] Masiran et al., *supra* note 95.

Family Circumstances as a Protective Factor

Family circumstances may be evidence of actual or potential protective factors against recidivism. The term "protective factor" is "an umbrella term that can encompass social, environmental, or psychological features that help to lower the risk of reoffending."[111] Research consistently shows that "family support is a powerful and substantively meaningful protective factor against recidivism."[112] Further, potential familial ties can also provide a social context that supports the transformation of identity and accordingly protects against recidivism.[113] Thus, actual and potential family circumstances are associated with a decreased likelihood of reoffending and increased odds of specific deterrence.

Family Circumstances as an Actual Protective Factor

Family circumstances function as a protective factor for defendants. Family ties and support are significant contributors to a defendant's likelihood of successful rehabilitation.[114] Research suggests that family ties and responsibilities, and parenting responsibilities in particular, reduce an individual's risk of recidivism by increasing motivation for success. For parents who are placed on probation rather than sent to prison, parenting is a salient part of their lives[115] and an especially powerful motivator to be successful on probation.[116] In one study, parents on probation put significant effort into being there for their children and overcame multiple challenges to be physically, emotionally, and financially invested in their children's lives.[117] Even in moments where trying to balance parenthood and probation caused significant stress, supervised parents maintained the perspective that parenthood and their children were positive influences and protective factors for "surviving" probation and desisting from substance abuse.[118] Another study found that more routine parenting activities were associated with fewer probation and parole violations in the 18 months after starting supervision.[119] Research indicates that parenting responsibilities may function as a protective factor in preventing reoffending, particularly for women.[120] Moreover, the salient role of family does not diminish when individuals receive other forms of social support.[121]

Research on the role of family ties and responsibilities during reentry also suggests that parenting responsibilities and parent-child relationships lower the risk of recidivism. Parents

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[111] ROSIE KITSON BOYCE & ALICE BETTERIDGE, DESISTANCE FROM CRIME: WORKING WITH PROTECTIVE FACTORS 2 (Aug. 2022), https://irep.ntu.ac.uk/id/eprint/48302/1/1728228_Kitson-Boyce.pdf; *see also* Stephane M. Shepherd, Stefan Luebbers & James R. O. Ogloff, *The Role of Protective Factors and the Relationship with Recidivism for High-Risk Young People in Detention*, 43 CRIM. JUST. & BEHAV. 863, 863 (2016),

who maintain relationships with their children during their incarceration have lower recidivism rates upon release.[122] Familial support is associated with job attainment, better health outcomes, and stronger emotional support during reentry.[123] Family relationships, and parent-child relationships in particular, are powerful motivators for successful rehabilitation,[124] providing a construct that discourages recidivism.[125] Family ties also deter reoffending by offering an additional level of supervision and accountability.[126] Familial and community support are

https://doi.org/10.1177/0093854815626489 (defining "protective factors" as "[i]tems that reduce the risk of offending" that also "largely entail the positive attributes and strengths of an individual").
[112] John H. Boman, IV & Thomas J. Mowen, *Building the Ties that Bind, Breaking the Ties that Don't*, 16 CRIMINOLOGY & PUB. POL'Y 753, 767 (2017), https://doi.org/10.1111/1745-9133.12307 (citing Carol Shapiro & Meryl Schwartz, *Coming Home: Building on Family Connections*, 5 CORR. MGMT. Q. 52, 52–61 (2001)).
[113] *Id.*
[114] *See* Rebecca L. Naser & Christy A. Visher, *Family Members' Experiences with Incarceration and Reentry*, 7 W. CRIMINOLOGY REV. 20, 21 (2006) (noting the significant role of strong family relationships for ensuring successful reintegration after incarceration); Luke Muentner et al., *Understanding the Needs and Programmatic Interests of Incarcerated Parents: Findings from a Prison Needs Assessment*, 9 CORR. 348, 350 (2024), https://doi.org/10.1080/23774657.2022.2136115 (identifying family factors as "promising" for reducing recidivism and parental involvement as a strength when evaluating risk of reoffending).
[115] Rebecca J. Shlafer et al., *Parents on Probation: Custody, Co-residence, and Care of Minor Children During Community Supervision*, 62 J. OFFENDER REHAB. 391, 394 (2023), https://doi.org/10.1080/10509674.2023.2246455.
[116] *Id.*
[117] *Id.* at 406.
[118] *Id.*
[119] Elizabeth A. Adams et al., *Women's Experience of Motherhood, Violations of Supervision Requirements and Arrests*, 57 BRIT. J. CRIMINOLOGY 1420, 1437 (2017), https://doi.org/10.1093/bjc/azw092.
[120] Elanie Rodermond et al., *Female Desistance: A Review of the Literature*, 13 EUR. J. CRIMINOLOGY 3, 15–16 (2016), https://doi.org/10.1177/1477370815597251 (literature review on the association between crime desistance and parenthood).
[121] Lin Liu, Patricia Becker & Thomas J. Mowen, *Social Support During Reentry: Family, Mentor, Religious, Parole Officer, and Social Service Roles*, 50 CRIM. JUST. & BEHAV. 1053, 1064 (2023), https://doi.org/10.1177/00938548231166154.
[122] LINDSEY CRAMER ET AL., URB. INST., PARENT-CHILD VISITING PRACTICES IN PRISONS AND JAILS: A SYNTHESIS OF RESEARCH AND PRACTICE 8 (2017), https://www.urban.org/sites/default/files/publication/89601/parent-child_visiting_practices_in_prisons_and_jails_0.pdf (noting how visits are important motivators for improving parent outcomes and how visits can motivate parents to comply with facility rules, leading to fewer disciplinary reports, and participate in correctional programming).
[123] *See* Thomas J. Mowen, Richard Stansfield & John H. Boman, IV, *Family Matters: Moving Beyond "If" Family Support Matters to "Why" Family Support Matters during Reentry from Prison*, 56 J. RSCH. CRIME & DELINQ. 483, 485 (2019), https://doi.org/10.1177/0022427818820902 (concluding that family support is associated with decreased recidivism, an increased likelihood of employment, and better health outcomes during the reentry process); DAVID B. MUHLHAUSEN, NAT'L INST. OF JUST., AN OVERVIEW OF OFFENDER RE-ENTRY 3 (2016), https://nij.ojp.gov/library/publications/overview-offender-reentry (finding that familial ties offer "the greatest tangible and emotional support" to individuals reentering the community following their incarceration).
[124] NEAL HAZEL ET AL., BEYOND YOUTH CUSTODY, THE ROLE OF FAMILY SUPPORT IN RESETTLEMENT: A PRACTITIONER'S GUIDE 2–4 (2016), https://www.beyondyouthcustody.net/wp-content/uploads/The-role-of-family-support-in-resettlement-a-practitioners-guide.pdf.
[125] *Id.* at 3.
[126] Boman & Mowen, *supra* note 112, at 755 (citing Bruce Western et al., *Stress and Hardship after Prison*, 120 AM. J. SOCIO. 1512, 1512–1547 (2015)).

critical for successful reentry,[127] but parenthood in particular offers a unique opportunity for responsibility, rehabilitation, and social support during reentry. For this reason, "fostering strong parent-child bonds should be a priority."[128]

Family Circumstances as a Potential Protective Factor

Close familial relationships are not necessary for family circumstances to function as a protective factor. Rather, even in the absence of close familial ties, family circumstances can influence recidivism rates as a potential protective factor. Family, and specifically children, are extremely strong motivators for change.[129] Parenthood is "a major turning point upon which people embark on a trajectory of crime desistance."[130] Parenthood is a strong motivating factor of desistance, and if individuals act on their desire to desist, their risk of recidivism will decrease.[131] Becoming a parent is a "key transition event" that may function as an "important catalyst" for making significant life changes,[132] but incorporating a parental role into routine offers an ongoing opportunity for a rehabilitative transformation. The decision to be a "good" parent necessitates the perception that offending and deviant behaviors are incompatible with the prosocial parental identity.[133] Thus, mere adoption of a parental identity is significant for desistance.[134] To embody a "good" parent, individuals are motivated to veer away from deviant

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[127] Simon D. Venema et al., *Fatherhood and Reoffending after Release from Prison: The Importance of Co-Residing with a Partner and Children*, 71 CRIME & DELINQ. 1462, 1481–82 (2025), https://doi.org/10.1177/00111287231193991 (finding that fathers who resided with a partner and children six months after release were significantly less likely to be reconvicted 18 months after release than nonfathers and fathers who did not reside with a partner and children); Liu, Becker & Mowen, *supra* note 121, at 1064 (finding that support from family members, parole officers, and social service agencies functioned as protective factors for reentry); Lin Liu & Christy A. Visher, *Decomposition of the Role of Family in Reentry: Family Support, Tension, Gender, and Reentry Outcomes*, 67 CRIME & DELINQ. 970, 984 (2021), https://doi.org/10.1177/0011128720987195 (describing family as "a social institution that keeps people from drifting—engaging in unruled and deviant behaviors").

[128] HAZEL ET AL., *supra* note 124, at 4.

[129] Tammy Rinehart Kochel & Edmund F. McGarrell, *Voices from Inside Focused Deterrence: Implications for Implementation*, 100 J. CRIM. JUST. 1, 7 (2025), https://doi.org/10.1016/j.jcrimjus.2025.102483 (finding that the top motivation for change was family (72 percent), and most notably offenders' children (44 percent)).

[130] Lin Liu & Susan L. Miller, *Reclaiming Parenthood After Incarceration: The Nexus of Determination to Desist, Fulfillment of Parental Responsibilities, and Recidivism*, 50 CRIM. JUST. & BEHAV. 870, 871 (2023), https://doi.org/10.1177/00938548231164965.

[131] *Id.*

[132] Peggy C. Giordano et al., *Parenthood and Crime: The Role of Wantedness, Relationships with Partners, and Ses*, 39 J. CRIM. JUST. 405, 405 (2011), https://doi.org/10.1016/j.jcrimjus.2011.05.006.

[133] *See* Ray Paternoster & Shawn Bushway, *Desistance and the Feared Self: Toward an Identity Theory of Criminal Desistance*, 99 J. CRIM. L. & CRIMINOLOGY 1103, 1120–21 (2009), https://www.jstor.org/stable/20685067.

[134] Liu & Miller, *supra* note 120, at 872.

lifestyles and themes of quick and easy money and the party life.[135] Instead, parenthood motivates individuals to find employment or other legal means of financial support and to stay away from drugs and alcohol.[136] Importantly, being a parent may be an important motivator to individuals with children of all ages, including adult children.[137]

Moreover, individuals adopt role expectations for parents, recognizing the need to be role models, providers, caregivers, and protectors of their children.[138] Parenthood requires nurturing children, financially providing for them, and being emotionally invested and involved in their lives.[139] The role expectations for parenthood may drive individuals to reshape their networks to include more family and to secure stable and legitimate work to financially support their children.[140] By making these changes in routines, individuals will have fewer opportunities to associate with criminal peers and engage in offending.[141] Some researchers have described this desire to desist associated with parenthood as opening a door to cognitive transformation.[142] Thus, probation officers and correctional staff can use a defendant's desire to take on a prosocial parental role as a "hook for change."[143]

Importantly, even emotionally strained family relationships may promote desistance through instrumental family support.[144] Thus, defendants' familial relationships characterized by stress

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[135] Ronet Bachman et al., *Desistance for a Long-Term Drug-Involved Sample of Adult Offenders: The Importance of Identity Transformation*, 43 CRIM. JUST. & BEHAV. 164, 167–68 (2016), https://doi.org/10.1177/0093854815604012.
[136] David J. Harding et al., *Making Ends Meet After Prison*, 33 J. POL'Y ANALYSIS & MGMT. 440, 462 (2014), https://doi.org/10.1002/pam.21741.
[137] *Id.*
[138] Liu & Miller, *supra* note 130, at 872.
[139] *See* William J. Doherty, Edward F. Kouneski & Martha F. Erickson, *Responsible Fathering: An Overview and Conceptual Framework*, 60 J. MARRIAGE & FAM. 277 (1998), https://doi.org/10.2307/353848; Chris Knoester & David J. Eggebeen, *The Effects of the Transition to Parenthood and Subsequent Children on Men's Well-Being and Social Participation*, 27 J. FAM. ISSUES 1532 (2006), https://doi.org/10.1177/0192513X06290802.
[140] Paternoster & Bushway, *supra* note 133.
[141] Derek A. Kreager, Ross L. Matsueda & Elena A. Erosheva, *Motherhood and Criminal Desistance in Disadvantaged Neighborhoods*, 48 CRIMINOLOGY 221, 224–25 (2010), https://doi.org/10.1111%2Fj.1745-9125.2010.00184.x.
[142] Peggy C. Giordano, Stephen A. Cernkovich & Jennifer L. Rudolph, *Gender, Crime, and Desistance: Toward a Theory of Cognitive Transformation*, 107 AM. J. SOCIO. 990 (2002), https://doi.org/10.1086/343191.
[143] *Id.* at 1000; *see also* Eric J. Wodahl, Thomas J. Mowen & Brett E. Garland, *The Effect of Individual Characteristics and Supervision Experiences on the Perceived Quality of the Supervision Relationship*, 32 CRIM. JUST. POL'Y REV. 523, 537–41 (2020), https://doi.org/10.1177/0887403420967070 (finding that family support effects the supervision relationship, and high-quality relationship between individuals on probation/parole and their supervising officers, together with family support, can reduce recidivism and increase compliance).
[144] Mowen, Stansfield & Boman, IV, *supra* note 123.

and emotional turmoil may still protect against future criminality and promote successful rehabilitation.[145]

Overview of Federal Sentencing Law

The fundamental limitation on federal criminal sentences is that they be "sufficient, but not greater than necessary," to comply with the purposes of sentencing.[146] To determine the appropriate sentence, judges must consider both the Sentencing Guidelines and the purposes and factors set forth in the Sentencing Reform Act, codified at 18 U.S.C. § 3553(a).[147]

In 2005, the Supreme Court made the Sentencing Guidelines advisory, reducing their impact on federal sentences to a suggestion—one that judges are required to consider but were under no obligation to follow.[148] Sentences are reviewed on appeal for reasonableness.[149] Following a November 2025 amendment to the Sentencing Guidelines, the sentencing assessment is a two-part process.[150] First, judges calculate the applicable range using the Sentencing Guidelines.[151] Although judges are not restricted to information that would be admissible at trial to calculate the Guidelines range,[152] relevant facts that are contested must be established by a preponderance of the evidence.[153] While judges must calculate the proper Guidelines range at sentencing, they may not presume that a sentence within that Guidelines range is reasonable or appropriate.[154] Rather, the calculated Guidelines range is "the starting point and the initial benchmark."[155] When determining the appropriate sentence under law, the sentencing guidelines function merely as the first step of the analysis.[156]

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[145] *Id.*
[146] 18 U.S.C. § 3553(a).
[147] Nelson v. United States, 555 U.S. 350, 351 (2009).
[148] United States v. Booker, 543 U.S. 220, 245 (2005).
[149] Kimbrough v. United States, 552 U.S. 85, 111 (2007).
[150] U.S. SENT'G GUIDELINES MANUAL § 1B1.1 (U.S. SENT'G COMM'N 2025).
[151] *Id.* § 1B1.1(a).
[152] *See* 18 U.S.C. § 3661; Witte v. United States, 515 U.S. 389, 397–401 (1995) (noting that sentencing courts have traditionally considered a wide range of information without the procedural protections of a trial in sentencing a defendant within the range authorized by statute).
[153] U.S. SENT'G GUIDELINES MANUAL § 6A1.3 cmt. (U.S. SENT'G COMM'N 2025).
[154] *Nelson*, 555 U.S. at 352; *see also* Gall v. United States, 552 U.S. 38, 50 (2007) (stating that district court judges "may not presume that the Guidelines range is reasonable"); Rita v. United States, 551 U.S. 338, 351 (2007) ("[T]he sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply.").
[155] *Gall*, 552 U.S. at 49–50.
[156] For more information about the federal sentencing guidelines and how to calculate the guidelines range, *see also* Charles Doyle, CONG. RSCH. SERV., R41696, *How the Federal Sentencing Guidelines Work: An Overview* (July 2, 2015), https://www.congress.gov/crs-product/R41696; *see also* U.S. SENT'G GUIDELINES MANUAL ch. 1, pt. B (U.S. SENT'G COMM'N 2025) (outlining general application principles).

Second, the judge considers the factors set forth in the 18 U.S.C. § 3553(a),[157] including "the history and characteristics of the defendant" at sentencing.[158] "No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."[159] Sentencing judges are not precluded from considering family circumstances; indeed, family ties and circumstances fit squarely within the required consideration of the defendant's personal history and characteristics.[160] Accordingly, their consideration can and should include family circumstances, including parental and caregiving ties and responsibilities.[161]

Additionally, the judge should consider the purposes of sentencing to determine whether a particular sentence is "sufficient, but not greater than necessary."[162] This includes, *inter alia*:

> the need for the sentence imposed--
>
> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

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[157] U.S. SENT'G GUIDELINES MANUAL § 1B1.1(b) (U.S. SENT'G COMM'N 2025).
[158] 18 U.S.C. § 3553(a)(1).
[159] 18 U.S.C. § 3661.
[160] 18 U.S.C. § 3553(a). Importantly, while the Commission is directed to assure that the guidelines, "in recommending a term of imprisonment or length of a term of imprisonment, reflect the general inappropriateness of considering the education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant," 28 U.S.C. § 994(e), this statutory provision does not limit judicial discretion in determining the appropriate sentence under § 3553(a). *See* 18 U.S.C. § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense [sentencing] which a court . . . may receive and consider for the purpose of imposing an appropriate sentence."); Pepper v. United States, 562 U.S. 476, 480 (2011) (construing § 3661 and § 3553(a) together); *see also* U.S. SENT'G COMM'N, AMENDMENTS TO THE SENTENCING GUIDELINES 80 (Apr. 30, 2025) (explaining the distinction between statutory limitations on the Commission's authority in promulgating the Guidelines and the requirement that courts consider a broad range of individual and offense characteristics).
[161] *See, e.g.*, Rita v. United States, 551 U.S. 338, 364 (2007) (Stevens, J., concurring) (describing § 3553(a) as authorizing sentencing judges to consider "[m]atters such as age, education, mental or emotional condition, medical condition (including drug or alcohol addiction), employment history, lack of guidance as a youth, family ties, or military, civic, charitable or public services"); United States v. Menyweather, 447 F.3d 625, 634 (9th Cir. 2006) (recognizing how *Booker* allowed courts to consider family responsibilities within a defendant's characteristics), *overruled on other grounds by* Kimbrough v. United States, 552 U.S. 85 (2007); U.S. SENT'G COMM'N, PRIMER: DEPARTURES AND VARIANCES 36–37 (2025) (including family circumstances in list of factors considered within a defendant's history and characteristics pursuant to § 3553(a)(1)); U.S. SENT'G GUIDELINES MANUAL ch.5, pt. H, introductory cmt. (U.S. SENT'G COMM'N 2024) (recognizing family ties and responsibilities, among other factors, as "specific offender characteristics" that fall within "the history and characteristics of the defendant" in 18 U.S.C. § 3553(a)).
[162] 18 U.S.C. § 3553(a).

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.[163]

Judges must further consider the "kinds of sentences available."[164]

After calculating the guidelines range and considering the factors in § 3553(a), judges may impose a sentence outside the advisory guidelines range.[165] Judges have discretion to impose sentences that vary dispositionally, such as a probationary sentence instead of imprisonment, and durationally, such as a sentence that is shorter in length than the low number in the applicable guidelines range.[166] However, judges must explain the deviation from the sentencing guidelines in reference to the statutory sentencing factors in § 3553(a).[167]

Before 2025, the Guidelines offered two avenues for deviation from the Guidelines range: (1) departures and (2) variances.[168] The 2025 Guidelines, however, deleted most provisions governing departures.[169] This amendment removed a provision stating that "family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted," and a smaller collection of offenses, mostly sex offenses, for which the Sentencing Commission's opinion was that they are not relevant.[170]

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[163] *Id.* § 3553(a)(2).
[164] *Id.* § 3553(a)(3).
[165] *Id.* § 3553(b)(1).
[166] *See, e.g.*, Gall v. United States, 552 U.S. 38, 59–60 (2007) (upholding variance where judge imposed non-incarceration sentence as variance from the guidelines); *Kimbrough*, 552 U.S. at 111–12 (approving of imposed sentence being below the guidelines range duration).
[167] 18 U.S.C. § 3553(c); *see also* Chavez-Meza v. United States, 585 U.S. 109, 119–20 (2018) (stating that a sentencing judge's explanation for a sentence does not need to be lengthy or detailed).
[168] *Chavez-Meza*, 585 U.S. at 112 (citation omitted).
[169] *See* U.S. SENT'G GUIDELINES MANUAL § 5H (U.S. SENT'G COMM'N 2025) (deleted section on departures); *see also* U.S. SENT'G GUIDELINES MANUAL app. B (U.S. SENT'G COMM'N 2025) (compiling deleted departure provisions as last provided in the 2024 edition of the guidelines).
[170] *See* U.S. SENT'G GUIDELINES MANUAL § 5H1.6 (U.S. SENT'G COMM'N 2025).

The Sentencing Commission emphasized that the removal of departures from the Guidelines "does not limit the information courts may consider," and that "facts previously identified as a basis for a departure" would still justify a sentence outside the Guidelines range as a variance.[171] Beyond this, the Commission's enabling legislation, 28 U.S.C. § 994, limits the Commission, not sentencing courts.[172] Section 994(e) directs the Commission to ensure that the guidelines reflect the "general inappropriateness" of considering family ties and responsibilities, among other characteristics, in recommending a term of imprisonment or the length of a term of imprisonment.[173] Because the provision dictating family circumstances as "not ordinarily relevant" to departure considerations[174] was based on § 994(e),[175] which restricts the Commission but not the courts, sentencing courts remain free to consider family circumstances in determining the sentence, whether within or outside the range suggested by the Guidelines.[176]

[171] U.S. SENT'G GUIDELINES MANUAL ch.1, pt. A, introductory cmt. (U.S. SENT'G COMM'N 2025).
[172] *See* U.S. SENT'G COMM'N, AMENDMENTS TO THE SENTENCING GUIDELINES 80 (Apr. 30, 2025).
[173] 28 U.S.C. § 994(e).
[174] *See* U.S. SENT'G GUIDELINES MANUAL § 5K2.0(a)(4) (U.S. SENT'G COMM'N 2024).
[175] *See* U.S. SENT'G GUIDELINES MANUAL ch. 5, pt. H, introductory cmt. (U.S. SENT'G COMM'N 2024); *see also* U.S. SENT'G GUIDELINES MANUAL § 5K2.0 cmt. n.3(C) (U.S. SENT'G COMM'N 2024) (explaining that departures based on circumstances identified as "not ordinarily relevant" concern circumstances specified as not ordinarily relevant to sentencing in § 5H (Specific Offender Characteristics)).
[176] U.S. SENT'G COMM'N, AMENDMENTS TO THE SENTENCING GUIDELINES 82 (Apr. 30, 2025) (explaining that the removal of departures "does not serve as a limit to the information courts may consider in imposing a sentence" under 18 U.S.C. § 3553(a)).

Variances

The 2025 Guidelines provide for sentences outside the Guidelines range through the use of variances.[177] Variances are sentences outside the Guidelines range that courts may impose "both for reasons related to the operation of the applicable Guideline provisions and in light of individual characteristics unrelated to Guideline provisions."[178] Sentences that vary from the guidelines are based on § 3553(a) factors.[179] Because sentencing courts have "broad discretion to consider various kinds of information,"[180] the factors in § 3553(a) "permit a sentencing court to consider the 'widest possible breadth of information' about a defendant ensuring the court is in 'possession of the fullest information possible concerning the defendant's life and characteristics.'"[181]

Because family circumstances such as parental and caregiving ties and responsibilities are part of a defendant's history and characteristics, judges can and should consider family circumstances pursuant to § 3553(a) when granting a variance. Numerous courts have recognized family circumstances as a justification for sentences below the range suggested by the Guidelines.[182]

Moreover, the Sentencing Commission noted that judges should continue to consider the individual characteristics contemplated in the now-deleted departure guidelines as within the

[177] *See* U.S. SENT'G GUIDELINES MANUAL ch.1, pt. A, introductory cmt. (U.S. SENT'G COMM'N 2025).
[178] *Id.*
[179] Rita v. United States, 551 U.S. 338, 344 (2007).
[180] United States v. Watts, 519 U.S. 148, 151 (1997) (per curiam).
[181] U.S. SENT'G COMM'N, AMENDMENTS TO THE SENTENCING GUIDELINES 80 (Apr. 30, 2025) (citing Pepper v. United States, 562 U.S. 476, 488 (2011); Conception v. United States, 597 U.S. 481, 493 (2022)); *see also* Koon v. United States, 518 U.S. 81, 113 (1996) ("It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.").
[182] *See, e.g.*, United States v. Martin, 520 F.3d 87, 93 (1st Cir. 2008) (affirming downward variance based in part on "the support that the defendant stood to receive from his family[and] personal qualities indicating his potential for rehabilitation"); United States v. Muñoz-Nava, 524 F.3d 1137, 1143, 1148 (10th Cir. 2008) (record supported finding extraordinary family circumstances; defendant cared for his eight-year-old son as a single parent and had elderly parents with serious medical problems); United States v. Lehmann, 513 F.3d 805, 806, 809 (8th Cir. 2008) (per curiam) (affirming downward variance where the court found that a prison sentence would negatively affect the defendant's disabled young son). *But see* United States v. Carter, 510 F.3d 593, 602 (6th Cir. 2007) (court did not abuse its discretion by not varying based on exceptional family circumstance; court reasonably concluded that defendant's absence would be mitigated by his wife's presence at home and the family's continued receipt of substantial healthcare, housing, and sustenance benefits).

purview of § 3553(a) factors.[183] Thus, cases where courts have departed based on family circumstances remain relevant and persuasive caselaw for sentencing purposes.

Departures

Until 2025, the Sentencing Guidelines included departures.[184] The Sentencing Commission removed departures to reduce tension between § 3553(a) and the Guidelines and to simplify the sentencing process.[185] However, in circumstances where the sentencing judge must apply a previous version of the Guidelines, and that version contains departures, courts must consider both departures and variances to determine the appropriate sentence.[186]

Other Bases for Imposing a Sentence Outside the Range Suggested by the Guidelines

In addition to family circumstances, judges also may consider policy justifications or disagreements when deciding whether to vary or depart from the range suggested by the Guidelines.[187]

[183] U.S. SENT'G GUIDELINES MANUAL ch.1, pt. A, introductory cmt. (U.S. SENT'G COMM'N 2025); *see also* U.S. SENT'G COMM'N, AMENDMENTS TO THE SENTENCING GUIDELINES 79–82 (Apr. 30, 2025) (explaining justification for removing departures from the 2025 edition of the Guidelines).
[184] *See* U.S. SENT'G GUIDELINES MANUAL §§ 5K2.0–5K2.24 (U.S. SENT'G COMM'N 2025) (historical note discussing guidelines regarding grounds for departure, effective in 1987 and deleted in 2025).
[185] U.S. SENT'G COMM'N, AMENDMENTS TO THE SENTENCING GUIDELINES 79 (Apr. 30, 2025).
[186] *See generally* U.S. SENT'G COMM'N, CONTINUING IMPACT OF *UNITED STATES V. BOOKER* ON FEDERAL SENTENCING 28–32 (2012) (describing the three-step process for sentencing prior to the removal of the departures guidelines, requiring sentencing judges to consider both departures and § 3553(a) factors).
[187] *See* Kimbrough v. United States, 552 U.S. 85, 100–02 (2007); *see also* Spears v. United States, 555 U.S. 261, 264 (2009) (clarifying that *Kimbrough* recognized a district court's authority to vary from the Guidelines based on policy disagreements).

Historical Recognition of the Significance of Family Ties and Responsibilities

The recognition of family ties and responsibilities as significant or at least relevant to sentencing is not new and has been significant to sentencing before and since the Guidelines' inception.[188] Family ties and responsibilities were contemplated as a potential departure in the first Sentencing Guidelines Manual in 1987.[189] Specifically, § 5H1.6 acknowledged their relevance to imposition of restitution and fines, dispositions where the sentencing provided probation as an option, and where probation or supervised release was imposed, determination of the length and conditions of supervision.[190]

By the time the U.S. Supreme Court then decided *United States v. Booker*, the subsequent expansion of judicial discretion generally also expanded discretion to consider family factors at sentencing.[191] Since then, discussions of family ties and responsibilities in the Sentencing Guidelines have largely been undisturbed. In 2018, the Commission implicitly recognized the significance of considering family ties and responsibilities at sentencing with its proposed priorities for 2018–2019.[192] Judges continued to consider family ties and responsibilities when

[188] Over time, the guardrails for judicial consideration of family circumstances at sentencing changed, but discussions of family ties and responsibilities remained in the Sentencing Guidelines. In 1991, the consideration of family ties was retained in the guidelines but limited to decisions regarding restitution and fines. *See* U.S. SENT'G GUIDELINES MANUAL § 5H1.6 (U.S. SENT'G COMM'N 1991). In 2003, Congress passed the Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, § 401(b)(4), 117 Stat. 650-69 (2003), limiting the circumstances required to merit a family-based departure, which the Commission then incorporated into the sentencing guidelines in the commentary of the departure chapter. *See* U.S. SENT'G GUIDELINES MANUAL § 5H1.6 cmt. n.1(B) (U.S. SENT'G COMM'N 2003). However, the 2003 Guidelines Manual also expanded guidance regarding departures based on family circumstances and specifically in cases involving the loss of caretaking or financial support of a defendant's family. *Id.* The amendments in 1991 and 2003 demonstrate that family ties and responsibilities continued to be relevant to sentencing, even if only in limited circumstances. Importantly, the 2003 guidelines demonstrate historical recognition of the adverse impact of incarceration on a defendant's family.

[189] *See* U.S. SENT'G GUIDELINES MANUAL § 5H1.6 (U.S. SENT'G COMM'N 1987).

[190] *Id.*

[191] United States v. Booker, 543 U.S. 220, 245 (2005) (rendering the guidelines "effectively advisory"); Tali Yahalom Leinwand, *Family Matters: The Role of "Family Ties and Responsibilities" in Sentencing*, 2 STAN. J. CRIM. L. & POL'Y 63, 65 (2015) (describing *Booker* as facilitating judicial consideration of family circumstances at sentencing).

[192] *See* Proposed Priorities for Amendment Cycle, 83 Fed. Reg. 30477 (proposed June 28, 2018), https://www.ussc.gov/policymaking/federal-register-notices/federal-register-notice-proposed-2018-2019-priorities (priority number (9)(B)).

granting departures or variances until 2024,[193] when departures were removed from the 2025 Guidelines Manual.[194]

Although the extent to which the guidelines endorsed consideration of family ties and responsibilities in the Sentencing Guidelines has varied over time, some acknowledgement of their potential relevance consistently remained, and judges have continued to demonstrate that family circumstances were important to them.[195] Both the Sentencing Commission and judges have consistently expressed that the adverse effects of a defendant's incarceration on his or her family are significant to sentencing decisions.[196] Thus, family circumstances, and the impact of a

[193] *See, e.g.,* United States v. Lamoreaux, 422 F.3d 750, 756 (8th Cir. 2005) (approving of the consideration of non-Guidelines factors such as the pregnancy of the defendant's wife and the defendant's need to care for his children in fashioning an appropriate sentence, but ultimately affirming district court's sentence); United States v. Phimphangsy, 403 F. App'x 127, 130–31 (8th Cir. 2010) (affirming the district court's decision to impose a guideline sentence without departing because defendant's circumstances were not extraordinary and the guidelines adequately considered those circumstances); United States v. Herman, 848 F.3d 55, 59–60 (1st Cir. 2017) (affirming district court's refusal to grant downward departure for family responsibilities where defendant failed to demonstrate that her caretaking role was irreplaceable given that alternative care sources were available, including family living in the same state and hired visiting nurse); United States v. Prosperi, 686 F.3d 32, 48–49 (1st Cir. 2012) (affirming downward variances for a defendant who cared for wife battling terminal cancer and a defendant who provided care for daughter with disabilities); United States v. Nuñez-Polanco, 428 F. App'x 13 (1st Cir. 2011) (affirming district court's denial of a downward departure for defendant who had young son with disabilities, but the child remained in the care of his mother); United States v. Aitoro, 446 F.3d 246, 258 (1st Cir. 2006) (recognizing that discouraged factors under the Guidelines are not automatically irrelevant under the statutory factors); United States v. Leon, 341 F.3d 928, 930, 932 (9th Cir. 2003) (affirming the district court's departure based on defendant's indispensable role in caring for his wife, who recently had her kidney removed due to renal cancer and who had been diagnosed as being at risk of committing suicide if she were to lose her husband to death or incarceration); United States v. Barnes, 890 F.3d 910, 918 (10th Cir. 2018) (affirming variance based on § 3553(a) factors where defendant had three children, took custody of his four nieces and nephews after his sister's death, and the defendant provided significant social and educational support to the children); United States v. Lehmann, 513 F.3d 805, 806, 809 (8th Cir. 2008) (per curiam) (affirming downward variance where the court found that a prison sentence would negatively affect the defendant's disabled young son).

[194] *See* U.S. SENT'G GUIDELINES MANUAL § 5H (U.S. SENT'G COMM'N 2025) (deleted section on departures); *see also* U.S. SENT'G GUIDELINES MANUAL app. B (U.S. SENT'G COMM'N 2025) (compiling deleted departure provisions as last provided in the 2024 edition of the guidelines).

[195] *See* U.S. Sent'g Comm'n, *Results of Survey of United States District Judges January 2010 Through March 2010* tbl.13 (2010), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608_Judge_Survey.pdf (reporting that 62% of judges surveyed believed that "family ties and responsibilities" should be mitigating factors in sentencing); PRIMER: DEPARTURES AND VARIANCES, *supra* note 161, at 37–38 n.224 (collecting cases where family ties provided partial basis for variance).

[196] *See, e.g.,* U.S. SENT'G GUIDELINES MANUAL § 5H1.6 cmt. n.1(B) (U.S. SENT'G COMM'N 2025) (deleted section on departures); United States v. Marine, 94 F. App'x 307 (6th Cir. 2004) (upholding downward departure for defendant who was the irreplaceable caregiver of her three children); United States v. White, 301 F. Supp. 2d 289 (S.D.N.Y. 2004) (upholding downward departure for defendant who was the sole caregiver of six children, ages 5 through 14); United States v. Blackwell, 897 F. Supp. 586 (D.D.C. 1995) (considering the serious health problems of the defendant's mother's, who was caring for the defendant's children while she was in custody, in granting the defendant a downward departure); United States v. Manasrah, 347 F. Supp. 2d 634 (E.D. Wis. 2004) (upholding downward departure for defendant when defendant's children would be left in an abusive situation, removed from the country, and separated from the only caretaker they had known if defendant was incarcerated).

defendant's sentence on his or her family in particular, are appropriate and important considerations at sentencing.

Family Circumstances and 18 U.S.C. § 3553(a)

As previously mentioned, after calculating the appropriate Guidelines range, sentencing judges consider factors set forth in 18 U.S.C. § 3553(a) to determine the particular sentence to be imposed. Section 3553(a)'s factors include the history and characteristics of the defendant, the purposes of sentencing, and the kinds of sentencing available, and the statute requires the sentence imposed to be "sufficient, but not greater than necessary," to serve the purposes of sentencing. Family circumstances are relevant to the section 3553(a) factors because considering family circumstances (1) assists the sentencing judge with determining a sentence that is "sufficient, but not greater than necessary;" (2) serves the purposes of retribution, deterrence, incapacitation, and rehabilitation; (3) informs and in turn enables the sentencing judge to make the best possible decision about the kind of sentence to impose.

Family Circumstances and the Parsimony Principle in § 3553(a)

The core requirement of federal sentencing is that sentences should be "sufficient, but not greater than necessary," to comply with the purposes of sentencing.[197] This broad command is often referred to as the "parsimony principle."[198] To align with this principle, "[t]he sentencing judge [should] weigh the costs imposed by a particular sentence against the social benefit the judge expects the sentence to generate."[199] Thus, judges should consider the impacts to a defendant's children as costs of a sentence and weigh these known harms against amorphous social benefits to determine the appropriate sentence in harmony with the parsimony principle.[200] Considering family circumstances at sentencing follows this principle by providing a complete picture of what the defendant's punishment will be beyond the sentence imposed.

Family Circumstances and § 3553(a)(2)

Judges must follow the parsimony principle and impose sentences that are "sufficient, but not greater than necessary," to comply with the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2).[201] As previously mentioned, these purposes include:

> the need for the sentence imposed--
>
> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
>
> (B) to afford adequate deterrence to criminal conduct;
>
> (C) to protect the public from further crimes of the defendant; and

[197] 18 U.S.C. § 3553(a).
[198] Dean v. United States, 581 U.S. 62, 67 (2017); *see also* United States v. Dorvee, 616 F.3d 174, 182 (2d Cir. 2010) (referring to the command in 18 U.S.C. § 3553(a) as the "parsimony clause"); *but see* United States v. Irey, 612 F.3d 1160, 1196–97 (11th Cir. 2010) (en banc) (positing the terminology of "the Goldilocks principle" to describe the broad command in 18 U.S.C. § 3553(a) "because the goal is to lock in a sentence that is not too short and not too long, but just right to serve the purposes of § 3553(a).").
[199] Eleanor Bush, *Considering the Defendant's Children at Sentencing*, 2 FED. SENT'G REP. 194, 194 (Dec. 1989 – Jan. 1990), https://doi.org/10.2307/20639225.
[200] *Id.*
[201] 18 U.S.C. § 3553(a).

> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.[202]

The Supreme Court interpreted the considerations set forth in § 3553(a)(2) to reflect the purposes of retribution, deterrence, incapacitation, and rehabilitation, respectively.[203] The Court described these considerations as getting to the heart of the criminal legal system's purpose:

> They speak to the questions at the core of any system of criminal justice: What sentence does the defendant deserve? What sentence will deter criminal conduct in the future? What sentence will protect the public? And what sentence is most likely to help the defendant rehabilitate for transition back into society?[204]

Consideration of family circumstances addresses these questions and serves the purposes of sentencing.

[202] *Id.* § 3553(a)(2).
[203] Tapia v. United States, 564 U.S. 319, 325 (2011).
[204] Esteras v. United States, 606 U.S. 185, 192 (2025).

Retribution and § 3553(a)(2)(A): What sentence does the defendant deserve?

The need for the sentence imposed "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense" concerns the purpose of retribution, which asks, "What does the defendant deserve?"[205] Retribution concerns punishment for the purpose of punishment, that is, imposing a punishment for the purpose of imposing a harm on a convicted individual.[206] Retribution also implicates proportionality considerations.[207] As such, retributivist principles support sentence mitigation in circumstances that suggest limited culpability, with the "unifying theory behind those facts and circumstances [being] whether they indicate that a defendant either caused less harm than other defendants or was less culpable than other defendants."[208] The consideration of family circumstances at sentencing serves the purpose of retribution in two ways.

First, considering family circumstances informs retributive principles by providing a full picture of the harms associated with a particular sentence that a defendant will experience. Thus, considering family circumstances can prevent incarcerated parents from receiving punishment disproportionate to the severity of their crimes.[209] Incarcerated parents often experience "double punishment" due to their separations from their children.[210] Separation caused by incarceration often results in the loss of parental rights, compounding the harm defendants otherwise

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[205] *Tapia*, 564 U.S. at 325; *Esteras*, 606 U.S. at 192.
[206] *See* Michael S. Moore, *The Moral Worth of Retribution*, *in* PRINCIPLED SENTENCING: READINGS ON THEORY AND POLICY 150, 150 (Andrew von Hirsch & Andrew Ashworth eds., 2d ed. 1998) ("Retributivism is a very straightforward theory of punishment: we are justified in punishing because and only because offenders deserve it."); Michael Tonry, *Obsolescence and Immanence in Penal Theory and Policy*, 105 COLUM. L. REV. 1233, 1240(2005) ("[F]or retributivists, a just punishment is one that is morally appropriate, or proportionate, for this offender for that offense."); Albert W. Alschuler, *The Changing Purposes of Criminal Punishment: A Retrospective on the Past Century and Some Thoughts About the Next*, 70 U. CHI. L. REV. 1, 15 (2003) ("A retributivist believes that the imposition of deserved punishment is an intrinsic good."); ANDREW ASHWORTH, SENTENCING AND CRIMINAL JUSTICE 72 (3d ed. 2000) (stating that the touchstone of retributivism is proportionality concerning "the relative seriousness of offences among themselves").
[207] *See, e.g.*, Paul J. Hofer & Mark H. Allenbaugh, *The Reason Behind the Rules: Finding and Using the Philosophy of the Federal Sentencing Guidelines*, 40 AM. CRIM. L. REV. 19, 66 (2003), ("In all cases the goal [of retributivism] is to achieve proportionate punishment, where more harm means great punishment."); Ewing v. California, 538 U.S. 11, 31, 123 S. Ct. 1179, 1191, 155 L. Ed. 2d 108 (2003) (Scalia, J., concurring) (observing that proportionality "is inherently a concept tied to the penological goal of retribution").
[208] Carissa Byrne Hessick & Douglas A. Berman, *Towards a Theory of Mitigation*, 96 B.U. L. REV. 161, 182 (2016).
[209] Ilene H. Nagel & Barry L. Johnson, *The Role of Gender in a Structured Sentencing System: Equal Treatment, Policy Choices, and the Sentencing of Female Offenders Under the United States Sentencing Guidelines*, 85 J. CRIM. L. & CRIMINOLOGY 181, 204 (1994); Bush, *supra* note 199.
[210] Myrna S. Raeder, *Gender and Sentencing: Single Moms, Battered Women, and Other Sex-Based Anomalies in the Gender-Free World of the Federal Sentencing Guidelines*, 20 PEPP. L. REV. 905, 954 (1993).

experience from incarceration.[211] While the harms incarcerated parents face due to separation from their children are not viewed as criminal penalties, termination of parental rights, concern about disruption to their children's lives, and inadequate access to child visitation are all severe, painful consequences that incarcerated parents experience.[212] Where the "same" sentence has an inconsistent impact on different defendants with the same underlying convictions, the punishments are not equivalent or consistent. "Justice requires considering the consequences of a sentence for the defendant's children where they lead to such different effective quantities of punishment."[213]

Second, considering family circumstances serves retributive principles by ensuring that the culpable party is punished. "The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender."[214] "Permitting sentencing courts to consider the widest possible breadth of information about a defendant [including family circumstances] 'ensures that the punishment will suit not merely the offense but the individual defendant.'"[215] Sentencing parents can have devastating effects on children and families.[216] When the defendant's family is punished, the harmful impacts undermine the sentencing principle of avoiding harm to innocent parties, including that harm of breaking up families.[217]

Understanding a defendant's family ties and responsibilities not only ensures that his or her punishment is appropriate for the severity of the crime, but also that the punishment imposes harm on the culpable party rather than innocent third parties.

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[211] Nagel & Johnson, *The Role of Gender in a Structured Sentencing System*, *supra* note 209, at 204. Under the Adoption and Safe Families Act of 1997, proceedings to terminate parental rights begin after a child has been in foster care for a specified period unless "reasonable efforts" have been made to support reunification, or that termination is not in a child's best interest. *See* S.F. CHILD. OF INCARCERATED PARENTS P'SHIP, FROM RIGHTS TO REALITIES: AN AGENDA FOR ACTION (2005), https://affcny.org/wp-content/uploads/2008/11/billofrights.pdf; Lauren Feig, *Breaking the Cycle: A Family-Focused Approach to Criminal Sentencing in Illinois*, U. CHI., June 1, 2015, https://crownschool.uchicago.edu/student-life/advocates-forum/breaking-cycle-family-focused-approach-criminal-sentencing-illinois; 42 U.S.C. §§ 673(b), 678, 679(b).
[212] Raeder, *supra* note 210, at 962.
[213] Bush, *supra* note 199.
[214] Tison v. Arizona, 481 U.S. 137, 149 (1987); *see also* Williams v. New York, 337 U.S. 241, 247 (1949) ("[T]he punishment should fit the offender and not merely the crime."); Pennsylvania ex rel. Sullivan v. Ashe, 302 U.S. 51, 55 (1937) ("For the determination of sentences, justice generally requires consideration of more than the particular acts by which the crime was committed and that there be taken into account the circumstances of the offense together with the character and propensities of the offender.").
[215] Pepper v. United States, 562 U.S. 476, 488 (2011) (quoting Wasman v. United States, 468 U.S. 559, 564 (1984)).
[216] *See*, *supra*, Harms of Parental Incarceration, at 4-15.
[217] Bush, *supra* note 199.

Deterrence and § 3553(a)(2)(B): What sentence will deter criminal conduct in the future?

The need for the sentence imposed "to afford adequate deterrence to criminal conduct" concerns the purpose of deterrence, which asks, "What sentence will deter criminal conduct in the future?"[218] Deterrence seeks to reduce recidivism by disincentivizing reoffending and aims to prevent people from committing future crimes.[219] Deterrence includes general and specific deterrence.[220] General deterrence is the response to the *threat* of punishment, and specific deterrence is the response to the *experience* of punishment.[221] Accordingly, specific deterrence seeks to disincentivize a specific person from committing future crimes through that person's experience of punishment.[222] The consideration of family circumstances at sentencing is particularly significant to specific deterrence.

Considering family circumstances at sentencing significantly relates to specific deterrence. Family circumstances—and parenthood and a defendant's children in particular—are powerful motivators that deter defendants from committing crime. Defendants sentenced to probation are especially motivated by their families and children to remain law-abiding.[223] Parents on probation put significant effort into being part of their children's lives and work hard to overcome multiple challenges to be physically, emotionally, and financially invested in their children's well-being and success.[224] Parenting activities are also associated with fewer probation and supervised release violations.[225] Defendants' children are positive influences and protective factors for successfully completing supervision and desisting from criminal behavior, such as substance abuse.[226] Moreover, even if a defendant does not have strong familial ties at sentencing, emotionally-strained or potential family ties may also deter reoffending.[227]

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[218] Tapia v. United States, 564 U.S. 319, 325 (2011); Esteras v. United States, 606 U.S. 185, 192 (2025).
[219] Lisa Forsberg & Thomas Douglas, *What is Criminal Rehabilitation?*, 16 CRIM. L. & PHIL. 103, 110 (2022), https://doi.org/10.1007/s11572-020-09547-4.
[220] Andrew W. Grindrod, *Bottom-Up Federal Sentencing Reform*, 65 WM. & MARY L. REV. 785, 822 (2024).
[221] Daniel S. Nagin, *Deterrence: A Review of the Evidence by a Criminologist for Economists*, 5 ANN. REV. ECON. 83, 95 (2013) (emphasis added).
[222] *Id.* at 84.
[223] Shlafer et al., *supra* note 115.
[224] *See id.* at 406.
[225] *See* Elizabeth A. Adams et al., *supra* note 119 (finding association between routine parenting activities and fewer probation and parole violations by in the 18 months after a defendant started supervision).
[226] Shlafer et al., *supra* note 115; *see also* Adams et al., *supra* note 119 (finding that parenting responsibilities for female defendants are especially motivating to prevent reoffending).
[227] *See*, *supra*, Family Circumstances as a Potential Protective Factor, at 18-19.

Additionally, specific deterrence can be achieved without severe penalties or punishments. Punishment does not effectively deter criminal behavior because most people who commit crimes do not believe they will be caught.[228] Thus, they do not believe they will experience the punishment and will not be deterred by it.[229] "The *certainty* of being caught is a vastly more powerful deterrent than the punishment."[230] For example, increased police presence strengthens an defendant's perception of the certainty of being caught and has a greater deterrent effect than the possible punishment for the crime.[231] Considering family circumstances at sentencing therefore does not affect the most influential aspect of specific deterrence. Furthermore, crime prevention strategies effectively deter crime through "preemptive deterrence," which is most effective when aimed at addressing a person's specific needs (e.g. substance abuse treatment, mental health interventions, education, trauma recovery, employment assistance, etc.). [232] Consideration of family circumstances therefore can inform decisions about what preemptive deterrence strategies to employ to meet a defendant's specific needs and deter that defendant. Thus, a court can consider family circumstances at sentencing while still promoting specific deterrence.

Moreover, the consequences of a parent being charged, arrested, or convicted further promote specific deterrence by showing defendants what future punishments could look like for their children if they commit future crimes. By the time a case reaches sentencing, the defendant has already experienced the most powerful deterrent: certainty of being caught.[233] Even brief periods of separation can have devastating consequences for children.[234] Likewise, the type of

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[228] Joseph R. Dole, II, *Disinfecting the Criminal Legal System of Punitive Deterrence*, 17 DEPAUL J. FOR SOC. JUST. 1, 9 (2023).
[229] *Id.*
[230] NAT'L INST. OF JUST., U.S. DEP'T OF JUST., FIVE THINGS ABOUT DETERRENCE 1 (May 2016) (emphasis added), https://www.ojp.gov/pdffiles1/nij/247350.pdf.
[231] *Id.*
[232] Dole, II, *supra* note 228.
[233] NAT'L INST. OF JUST., *supra* note 230.
[234] *See, e.g.*, Kimberly Howard et al., *Early Mother–Child Separation, Parenting, and Child Well-Being in Early Head Start Families*, 13 ATTACHMENT & HUM. DEV. 5, 20 (2011) https://doi.org/10.1080/14616734.2010.488119 (finding that even brief separations can be associated with later behavior problems among children); Melissa De Witte, *Separation from Parents Removes Children's Most Important Protection and Generates a New Trauma, Stanford Scholar Says*, STANFORD REP. (June 26, 2018) https://news.stanford.edu/stories/2018/06/psychological-impact-early-life-stress-parental-separation (noting how parental separation causes uncertainty for children that could exacerbate feelings of anguish, despair, guilt, blame, and depression, all of which disrupt child development and how children learn life skills); Robert Ewing, *ASU Psychologists Agree — Unexpected Separation from Parents is Harmful to Children Both in the Short and Long Term*, ARIZ. STATE UNIV. NEWS (June 21, 2018), https://news.asu.edu/20180621-asu-psychologists-unexpected-separation-children-harmful (describing how short-term separation results in deprivation of basic psychological needs, leading to chronic activation of physiological

facility where a parent or caregiver is held does not meaningfully change the effects of parental incarceration.[235] Thus, when defendants experience pretrial detention, they learn how incarceration may impact their families. Considering family circumstances at sentencing therefore would not affect a defendant's understanding of the possible consequences his or her family will experience if the defendant engages in future criminal conduct. Instead, understanding the consequences of future criminal conduct would promote specific deterrence.

Incapacitation and § 3553(a)(2)(C): What sentence will protect the public?

The need for the sentence imposed "to protect the public from further crimes of the defendant" implicates the purpose of incapacitation, which asks, "What sentence will protect the public?"[236] Incapacitation primarily concerns how individuals behind bars cannot commit additional crime.[237] But the underlying purpose of incapacitation—promoting public safety—does not necessarily require imprisonment. Considering family circumstances promotes public safety—and accordingly serves the purpose of incapacitation—in four meaningful ways.

First, consideration of family circumstances promotes public safety by mitigating the impacts of parental incarceration that increase the likelihood of children with incarcerated parents engaging in delinquent and criminal behavior. Parental incarceration is associated with delinquency, criminality, and criminal justice contact for its link to increased physical aggression, attention problems, risk of arrest, behavioral problems and school punishments, rule-breaking, and other behavioral problems.[238] Specifically, parental incarceration increases the risk of delinquency related to "violent, destructive, or aggressive behavior,"[239] which poses an additional risk of harm to the community. Parental incarceration creates the risk of future delinquency and criminality of children by causing children to experience emotional stress, weakened parental attachment, internalization of negative labels, and other risk factors for criminal behavior.[240] Likewise, parental engagement functions as a protective factor against

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stress processes and emotional distress, which is linked to development of serious emotional disorders, worse cognitive performance, and changes in physiology).

[235] Christopher Wildeman, Kristin Turney & Youngmin Yi, *Paternal Incarceration and Family Functioning: Variation across Federal, State, and Local Facilities*, 665 ANNALS AM. ACAD. POL. & SOC. SCI. 80, 91–93 (2016), https://doi.org/10.1177/0002716215625042.

[236] Tapia v. United States, 564 U.S. 319, 325 (2011); Esteras v. United States, 606 U.S. 185, 192 (2025).

[237] NAT'L INST. OF JUST., *supra* note 230.

[238] *See supra* note 27 and accompanying text.

[239] Porter & King, *supra* note 29, at 433.

[240] *Id.*; Finkeldey et al. (2021), *supra* note 37, at 169, 171.

children's participation in risky and delinquent behaviors.[241] Thus, parental incarceration undermines public safety by creating an environment that creates a greater likelihood of children having criminal justice contact themselves. Consideration of family circumstances therefore serves public safety by assessing potential future harm.

Second, consideration of family circumstances promotes public safety by providing an accurate representation of a criminal defendant's needs to prevent reoffending. Familial support significantly decreases an individual's risk of recidivism[242] and provides motivation for law-abiding behavior.[243] By understanding a defendant's family circumstances at sentencing, judges can impose a sentence that is tailored to address the defendant's criminogenic needs and risk factors without over-supervision. Over-supervision can harm the community by increasing a low-risk defendant's probability of reoffending.[244] This phenomenon, known as the "risk principle," is well-supported by research and supports the notion that "the level of supervision and treatment should be commensurate with the offender's level of risk."[245] Thus, the "most intensive correctional treatment and intervention programs should be reserved for offenders who are higher risk."[246] Likewise, individuals with lower probabilities of recidivating should receive supervision that reflects their lower-risk status because placing defendants with lower risk in structured programs intended for defendants with higher risk, whether treatment- or supervision-oriented, can increase recidivism.[247] Therefore, "[t]o have the greatest impact on recidivism, length of supervision and services provided should be clearly tied to an offender's risk level."[248] Imposing conditions of probation or supervised release terms that are tailored to address the defendant's specific needs prevents sentences that over-supervise defendants, decrease recidivism, and promote public safety by protecting against further crimes of the defendant.

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[241] Anderson, Henrich, & Mrug, *supra* note 1, at 1229; *see also* United States v. Concepcion, 795 F. Supp. 1262, 1282 (E.D.N.Y. 1992) ("Removing the mother in such a matriarchal setting destroys the children's main source of stability and guidance and enhances the possibility of their engaging in destructive behavior.").
[242] *See infra*, Rehabilitation and § 3553(a)(2)(C): What sentence is most likely to help the defendant rehabilitate for transition back into society?, at 33-35.
[243] *See supra*, Deterrence and § 3553(a)(2)(B): What sentence will deter criminal conduct in the future?, at 29-31.
[244] Christopher T. Lowenkamp, Edward J. Latessa & Alexander M. Holsinger, *The Risk Principle in Action: What Have We Learned From 13,676 Offenders and 97 Correctional Programs?*, 52 CRIME & DELINQ. 77, 88 (2006), https://doi.org/10.1177/0011128705281747.
[245] *Id.*; *see also* Lori Brusman Lovins et al., *Application of the Risk Principle to Female Offenders*, 23 J. CONTEMP. CRIM. JUST. 383, 394–96 (2007), https://doi.org/10.1177/1043986207309437 (finding that the risk principle applies to female defendants).
[246] Lowenkamp, Latessa & Holsinger, *supra* note 244, at 88.
[247] *Id.* at 89.
[248] *Id.* at 90.

Third, consideration of family circumstances promotes public safety because a defendant's children are part of the public that sentencing seeks to protect the safety of. The harms children of incarcerated parents face[249] should be considered when determining a sentence that best serves the public interest.

Fourth, consideration of family circumstances promotes public safety by deterring crime and supporting rehabilitation, which in turn protects the public from further crimes of the defendant. Family circumstances promote specific deterrence by motivating individuals to remain law-abiding and avoid behavior that could result in inflicting harm on their children.[250] Family circumstances further support rehabilitation by providing a range of social support to assist individuals' rehabilitation.[251]

Rehabilitation and § 3553(a)(2)(D): What sentence is most likely to help the defendant rehabilitate for transition back into society?

The need for the sentence imposed "to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner" concerns the purpose of rehabilitation, which asks, "What sentence is most likely to help the defendant rehabilitate for transition back into society?"[252]

Considering family circumstances promotes rehabilitation[253] because family circumstances relate to decreased recidivism and increased odds of successful reentry for defendants who were incarcerated.[254] Research shows that family support is significantly related to lower levels of criminal offending, recidivism, and substance abuse.[255] Some research suggests that "self-

[249] *See*, *supra*, Harms of Parental Incarceration, at 4-15.
[250] *See*, *supra*, Deterrence and § 3553(a)(2)(B): What sentence will deter criminal conduct in the future?, at 29-31.
[251] *See*, *infra*, Rehabilitation and § 3553(a)(2)(C): What sentence is most likely to help the defendant rehabilitate for transition back into society?, at 33-35.
[252] Tapia v. United States, 564 U.S. 319, 325 (2011); Esteras v. United States, 606 U.S. 185, 192 (2025).
[253] Rehabilitation has many conceptions. Forsberg & Douglas, *supra* note 219 (discussing five conceptions of criminal rehabilitation related to anti-recidivism, harm reduction, therapy, moral improvement, and restoration); Chad Flanders, *The Supreme Court and the Rehabilitative Ideal*, 49 GA. L. REV. 383, 388–402 (2015) (describing three models of rehabilitation as treatment, training, and moral reform). For purposes of this Toolkit, "rehabilitation" refers to interventions addressing the underlying problem or situation that led to the offense conduct with the purpose of preventing recidivism or harmful conduct. *See* Forsberg & Douglas, *supra* note 219, at 112.
[254] Mowen, Stansfield & Boman, IV, *supra* note 123.
[255] Boman & Mowen, *supra* note 112, at 767.

defined family support [is] the *strongest* predictor of individual success."[256] Family circumstances provide a wide range of supports that help prevent recidivism, including "badly needed" social ties,[257] assistance with reentry and reestablishment within the community,[258] and an additional layer of supervision and accountability.[259] In addition to the support families offer individuals, they also motivate individuals to change for the better. Family relationships, and parent-child relationships in particular, are powerful motivators for successful rehabilitation[260] and provide a social construct that discourages recidivism and encourages transformation.[261]

Family circumstances also support rehabilitation because family support relates to increased odds of employment,[262] and employment is strongly associated with a decreased likelihood of recidivism.[263] Being unemployed is a risk factor for criminal behavior.[264] But challenges with finding, securing, and maintaining employment cause individuals to be at high risk of economic insecurity.[265] Research shows that individuals, formerly incarcerated or with criminal records, can attain economic security and stability through employment when coupled with familial social support.[266] Sustained economic security, however, is rarely achievable absent strong social

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[256] Marta Nelson, Perry Deess & Charlotte Allen, *The First Month Out: Post-Incarceration Experiences in New York City*, 24 FED. SENT'G REP. 72, 73 (2011), https://doi.org/10.1525/fsr.2011.24.1.72 (emphasis added).
[257] Boman & Mowen, *supra* note 112, at 755; *see also* Rebecca L. Naser & Nancy G. La Vigne, *Family Support in the Prisoner Reentry Process: Expectations and Realities*, 43 J. OFFENDER REHAB. 93, 93–106 (2006), https://doi.org/10.1300/J076v43n01_05 (finding that incarcerated individuals upon release relied on family members extensively for support in navigating "virtually every aspect of the reentry experience").
[258] *See* Christopher Uggen, Jeff Manza & Angela Behrens, *'Less than the Average Citizen': Stigma, Role Transition and the Civic Reintegration of Convicted Felons*, *in* AFTER CRIME AND PUNISHMENT 258, 258–90 (Shadd Maruna & Russ Immarigeon eds., 1st ed. 2004), https://doi.org/10.4324/9781843924203.
[259] Boman & Mowen, *supra* note 112, at 755 (citing Bruce Western et al., *Stress and Hardship after Prison*, 120 AM. J. SOCIO. 1512, 1512–1547 (2015)).
[260] HAZEL ET AL., *supra* note 124, at 2-4.
[261] Boman & Mowen, *supra* note 112, at 755 (citing Sheldon Ekland-Olson et al., *Postrelease Depression and the Importance of Familial Support*, 21 CRIMINOLOGY 253, 253–75 (1983), https://doi.org/10.1111/j.1745-9125.1983.tb00261.x).
[262] Mark T. Berg & Beth M. Huebner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, 28 JUST. Q. 382, 402 (2011), https://doi.org/10.1080/07418825.2010.498383 (finding that individuals with good quality ties to relatives were more likely to be employed and that good quality ties to relatives also moderated the negative effects of a history of frequent unemployment).
[263] Simon Kolbeck, Steven Lopez & Paul Bellair, *Does Stable Employment after Prison Reduce Recidivism Irrespective of Prior Employment and Offending*, 41 JUST. Q. 38, 56 (2024), https://doi.org/10.1080/07418825.2023.2201330 (finding that post-prison employment reduces recidivism, including for defendants with extensive criminal history and no meaningful connection to the labor market prior to prison); *see also* Anke Ramakers et al., *Not Just Any Job Will Do: A Study on Employment Characteristics and Recidivism Risks After Release*, 61 INT'L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 1795, 1812 (2016), https://doi.org/10.1177/0306624X16636141 (finding that job retention and stability and working in a job with "a higher occupation level" decreased the likelihood of reoffending).
[264] Harding et al., *supra* note 136, at 440-41.
[265] *Id.* at 441.
[266] *Id.* at 440, 461, 464–65.

support, such as the support offered by families.[267] Thus, family circumstances promote rehabilitation by increasing employment outcomes and stability and playing a significant role in the attainment of economic security and stability.

Moreover, family circumstances further promote rehabilitation because family support is associated with better mental health outcomes,[268] which are associated with a decreased likelihood of recidivism.[269] Research suggests that familial ties support positive mental health outcomes during stressful, dramatic life changes.[270] Familial ties can reduce the chances of suicide, buffer the stress of unemployment, and improve reentry adjustment.[271] By improving mental health outcomes, family circumstances also serve rehabilitation by decreasing the likelihood of recidivism.[272]

Overall, family relationships positively affect a defendant's rehabilitation in many ways.[273] Thus, considering family circumstances at sentencing furthers the purpose of rehabilitation.

Family Circumstances and § 3553(a)(3)

At sentencing, judges should also consider "the kinds of sentences available" to determine the particular sentence to be imposed that is "sufficient, but not greater than necessary," to comply

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[267] *Id.*
[268] Danielle Wallace et al., *Examining the Role of Familial Support During Prison and After Release on Post-Incarceration Mental Health*, 60 INT'L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 3, 14–16 (2016), https://doi.org/10.1177/0306624X14548023 (finding association between familial support and mental health outcomes); *see also* Johanna B. Folk et al., *Behind Bars but Connected to Family: Evidence for the Benefits of Family Contact During Incarceration*, 33 J. FAM. PSYCH. 453, 461 (2019), https://doi.org/10.1037/fam0000520 (finding that family connectedness during incarceration promotes better post-release mental health).
[269] J. Steven Lamerti, *Preventing Criminal Recidivism Through Mental Health and Criminal Justice Collaboration*, 67 PSYCHIATRIC SERVS. 1206, 1206–10 (2016), https://doi.org/10.1176/appi.ps.201500384; *see also* Danielle Wallace & Xia Wang, *Does In-Prison Physical and Mental Health Impact Recidivism?*, 11 SSM – POPULATION HEALTH, 10–11 (2020), https://doi.org/10.1016/j.ssmph.2020.100569 (finding that positive mental health lowered rates of recidivism); Nathan W. Link, Jeffrey T. Ward & Richard Stansfield, *Consequences of Mental and Physical Health for Reentry and Recidivism: Toward a Health-Based Model of Desistance*, 57 CRIMINOLOGY 544, 563 (2019), (finding that negative mental health outcomes like depression indirectly increases likelihood of future criminal behavior and reincarceration).
[270] Ekland-Olson et al., *supra* note 261, at 268.
[271] *Id.* at 268–71.
[272] *See supra* note 269 (collecting research studies finding that positive mental health outcomes decrease the likelihood of recidivism).
[273] Naser & Visher, *supra* note 114, at 121 (noting the significant role of strong family relationships for ensuring successful reintegration after incarceration); George C. Kiser, *Female Inmates and Their Families*, 55 FED. PROB. 56, 63 (1991); *see* C.F. Hairston, *Family Ties During Imprisonment: Do they Influence Future Criminal Activity?*, 52 FED. PROB. 48 (1988).

with the purposes of sentencing.[274] Subject to statutory limitations,[275] judges may impose a term of imprisonment or a sentence of non-incarceration, such as probation. Other kinds of sentences include pretrial or presentence diversion[276] and supervised release.[277] Pursuant to a probationary or supervised release term, judges may impose community confinement,[278] home detention,[279] and community service[280] as specific conditions of a defendant's supervision. Considering family circumstances alongside the kinds of sentences available enables judges to make more informed decisions about the kind of sentence to impose that best serves the purposes of sentencing.

Imprisonment, for example, is not suitable for the purpose of promoting rehabilitation.[281] Imprisonment does not promote specific deterrence because prison sentences are unlikely to deter future crime and may even have the opposite effect by desensitizing individuals to the treat of future imprisonment.[282] However, imprisonment may also amplify retribution by magnifying the severity of the punishment experienced by a defendant while incarcerated. Specifically, imprisonment may heighten the severity of the defendant's punishment by interfering with a defendant's ability to maintain contact with his or her family or children. Prisons often inadequately support incarcerated individuals with maintaining connections with family members. For example, in most states and municipalities, individuals in prisons and jails must pay for phone and video calling services.[283] Often times, the cost of maintaining connections

[274] 18 U.S.C. § 3553(a)(3).
[275] Some offenses require a sentence to include a term of imprisonment. *See, e.g.*, 21 U.S.C. § 841(b)(1)(A)–(C) (preventing judges from placing defendants on probation or suspending their sentences if convicted under these statutory provisions).
[276] *See Problem-Solving Courts Toolkit*, U.S. SENT'G COMM'N, https://www.ussc.gov/education/problem-solving-courts-toolkit (last visited May 7, 2026) (compiling information on court-sponsored programs relating to diversion, alternative-to-incarceration, and reentry across federal jurisdictions).
[277] *See* 18 U.S.C. § 3583.
[278] U.S. SENT'G GUIDELINES MANUAL § 5F1.1 (U.S. SENT'G COMM'N 2025) ("Community confinement may be imposed as a condition of probation or supervised release.").
[279] *Id.* § 5F1.2 ("Home detention may be imposed as a condition of probation or supervised release, but only as a substitute for imprisonment.").
[280] *Id.* § 5F1.3 ("Community service may be ordered as a condition of probation or supervised release.").
[281] 18 U.S.C. § 3582(a) (recognizing that "imprisonment is not an appropriate means of promoting correction and rehabilitation"); *see also* Tapia v. United States, 564 U.S. 319, 327 (2011) (describing 18 U.S.C. § 3582(a) as "tell[ing] courts that they should acknowledge that imprisonment is not suitable for the purpose of promoting rehabilitation.").
[282] NAT'L INST. OF JUST., *supra* note 230.
[283] Katie Rose Quandt, *What Happens when Jails and Prisons make Phone Calls Free?*, Washington Post, (May 5, 2026, at 1:17 PM CDT), https://www.washingtonpost.com/ripple/2026/05/05/jails-prisons-phone-calls-free/ (noting how calls are free in several dozen jail systems and six prison systems, including the Federal Bureau of Prisons, Connecticut, California, Minnesota, Massachusetts, and New York).

falls on incarcerated individuals' family members.[284] Prison and jail visitation policies that limit in-person visits further exacerbate the financial strain imposed on families for phone and video calling services[285] because phone and video calls are the most accessible means for maintaining contact with incarcerated loved ones.[286] On average, 84 percent of incarcerated parents in federal prisons and 62 percent of incarcerated parents in state facilities live more than 100 miles from their prior homes.[287] Nearly half of incarcerated parents in federal prisons are serving their sentences over 500 miles from their last household.[288] Further, the financial consequences of incarceration for families are devastating.[289] Incarceration-related expenses often lead to family members working multiple jobs so they can afford to stay connected with their incarcerated loved ones.[290] Nearly two-thirds of families with an incarcerated family member are unable to meet their basic needs, like food or housing,[291] yet they often make sacrifices to stay in contact with their incarcerated family member. In one research study, one third of families with an incarcerated family member reported going into debt to pay for phone calls or visitation.[292]

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[284] *See* SANETA DEVUONO-POWELL ET AL., WHO PAYS? THE TRUE COST OF INCARCERATION ON FAMILIES 30 (Sept. 2015), https://ellabakercenter.org/wp-content/uploads/2022/09/Who-Pays-FINAL.pdf (finding that 82 percent of participants in research study reported that family members were primarily responsible for phone and visitation costs); *see also Stay in Touch*, FED. BUREAU OF PRISONS, https://www.bop.gov/inmates/communications.jsp (last visited May 6, 2026) (explaining how the receiving party pays for calls with incarcerated individuals in some cases); Ryan Shanahan & Sandra Villalobos Agudelo, *The Family and Recidivism*, AMERICAN JAILS, Sept. | Oct. 2012, at 17, 21–22, https://www.prisonpolicy.org/scans/vera/the-family-and-recidivism.pdf (finding that many family members reported the cost of phone calls as a significant barrier to communication); DREW KUKOROWSKI, THE PRICE TO CALL HOME: STATE-SANCTIONED MONOPOLIZATION IN THE PRISON PHONE INDUSTRY 3 (Sept. 11, 2012), https://www.ojp.gov/ncjrs/virtual-library/abstracts/price-call-home-state-sanctioned-monopolization-prison-phone (describing high prison phone rates as an "additional tax" on taxpayers whose family members are incarcerated).

[285] Timothy B. Lee, *Jails are Replacing Visits with Video Calls—Inmates and Families Hate it*, ARS TECHNICA (May 14, 2018, at 6:15 AM), https://arstechnica.com/tech-policy/2018/05/jails-are-replacing-in-person-visits-with-video-calling-services-theyre-awful/; *see also* KUKOROWSKI, *supra* note 284, at 1–2 (noting that the price of phone calls from prison was one of the two most significant barriers to family contact during incarceration).

[286] BAHIYYAH M. MUHAMMAD, BRITANY J. GATEWOOD & SYDNI TURNER, CHILDREN INCARCERATED PARENTS: PATHWAYS TO RESILIENCE & SUCCESS RESEARCH REPORT 22 (Jan. 2021) (finding that over half of children of incarcerated parents reported staying in contact with their incarcerated parent through phone and video calls).

[287] CHRISTOPHER J. MUMOLA, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., INCARCERATED PARENTS AND THEIR CHILDREN 5 (Aug. 2000).

[288] *Id.*

[289] *See* BRIAN ELDERBROOM, PETER MAYER & FELICITY ROSE, WE CAN'T AFFORD IT. MASS INCARCERATION AND THE FAMILY TAX 1–55 (June 2025), https://www.wecantaffordit.us/ (breaking down the cost of incarceration for families and concluding that incarceration costs families with incarcerated loved ones nearly 350 billion dollars annually).

[290] Nazish Dholakia, *The FCC is Capping Outrageous Prison Phone Rates, but Companies are still Price Gouging*, VERA INST. OF JUST.: NEWS & STORIES (Sept. 4, 2024), https://www.vera.org/news/the-fcc-is-capping-outrageous-prison-phone-rates-but-companies-are-still-price-gouging.

[291] Quandt, *supra* note 283; *see also* SANETA DEVUONO-POWELL ET AL., *supra* note 284, at 30 ("Families are often forced to choose between supporting incarcerated loved ones and meeting the basic needs of family members who are outside.").

[292] DEVUONO-POWELL ET AL., *supra* note 284, at 30.

In contrast, consistent phone calls between incarcerated individuals and family members promote parent-child relationships.[293] In turn, children of incarcerated parents benefit by having parental support for their mental and physical development as children and learning as adolescents.[294] Children who maintain contact with their incarcerated parent report increased success in their personal and professional lives as a result of their positive parent-child relationship.[295] Frequent calls with family members also increase prison safety and serve rehabilitation because incarcerated parents with parent-child relationships express better self-esteem as an active parent and display better behavior while in prison.[296]

Additionally, prison may insufficiently prepare parents for fulfilling their parental roles upon release. Prison programming targeting parents and families is often inadequate for meeting the needs of incarcerated parents and setting them up for success upon release.[297] Thus, considering family circumstances in this context enables the judge to understand the extent of harm a term of imprisonment may inflict on a defendant and his or her family.

Moreover, family circumstances are relevant to supervision besides incarceration as a kind of sentence, such as probation[298] and supervised release.[299] The adverse impacts of parental incarceration are mitigated by a probationary sentence in comparison to a sentence of imprisonment.[300] Likewise, a sentence of time served and a supervised release term affords the same mitigation as probation while promoting rehabilitation and successful reentry.[301] In turn,

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[293] Danielle L. Haverkate & Kevin A. Wright, *The Differential Effects of Prison Contact on Parent-Child Relationship Quality and Child Behavioral Changes*, 5 CORR. 222, 237–39 (2020), https://doi.org/10.1080/23774657.2018.1485529.
[294] Yanhong Shao & Shumin Kang, *The Link Between Parent-Child Relationship and Learning Engagement Among Adolescents: The Chain Mediating Roles of Learning Motivation and Academic Self-Efficacy*, FRONTIERS EDUC. (2022), https://doi.org/10.3389/feduc.2022.854549.
[295] Nicole Loonstyn & Alice Galley, *Low-Cost Phone Calls Benefit Incarcerated People, Their Families, and Criminal Legal Institutions*, URB. WIRE (Aug. 30, 2023), https://www.urban.org/urban-wire/low-cost-phone-calls-benefit-incarcerated-people-their-families-and-criminal-legal (citing MUHAMMAD, GATEWOOD & TURNER, *supra* note 286).
[296] *Id.*
[297] Muentner et al., *supra* note 114, at 350.
[298] 18 U.S.C. § 3561.
[299] 18 U.S.C. § 3583.
[300] *See, e.g.*, Raeder, *supra* note 210, at 953 ("Children of incarcerated mothers have also been found to change schools more often than children of mothers given probation, suffer a decline in academic performance and have more behavioral problems than the children of mothers on probation.").
[301] *See* U.S. SENT'G GUIDELINES MANUAL ch. 5, pt. D, introductory cmt. (U.S. SENT'G COMM'N 2025) ("[A] court should consider whether the defendant needs supervision in order to ease transition into the community or to provide further rehabilitation and whether supervision will promote public safety." (citations omitted)); United States v. Johnson, 529 U.S. 53, 59 (2000) (explaining that supervised release "fulfills rehabilitative ends, distinct from those served by incarceration."); *see also* S. Rep. No. 225, 98th Cong., 1st Sess. 124 (1983) (indicating that a "primary

both serve retributive principles by limiting the harm experienced by innocent third parties and promote public safety by protecting against risk factors for children and future criminality. Supervision itself, whether via probation or supervised release, is punishment.[302] As a sentence in and of itself,[303] the primary purpose of probation is punishment.[304] Because probation substantially restricts liberty through several statutory conditions, and because probation primarily serves as punishment, a probationary sentence especially serves retributive principles.[305]

Family circumstances also are relevant to consider alongside the kinds of sentences available at resentencing. A defendant may be granted a resentencing hearing through the context of compassionate release[306] or in instances where retroactive reductions are instituted by Guidelines amendments or the U.S. Supreme Court.[307] If given the opportunity to resentence a defendant who has been in prison, considering family circumstances enables judges to assess whether a non-incarceration sentence would serve the purposes of sentencing. For example, maintaining familial ties during incarceration is relevant to determining the kind of sentence to impose. Increased contact between incarcerated individuals and their children increases incarcerated individuals' involvement with their children after release.[308] Upon release, formerly incarcerated individuals who maintained ties with loved ones while serving time behind bars have better reentry outcomes, including a greater likelihood of securing stable housing and employment.[309] Incarcerated individuals who have more contact with their families and report

goal of [a term of supervised release] is to ease the defendant's transition into the community . . . or to provide rehabilitation to a defendant who spent a fairly short period in prison for punishment or other purposes but still needs supervision and training programs after release").

[302] *See* Johnson v. United States, 529 U.S. 694, 700–01 (2000) (recognizing the punitive nature of supervision); *see also* U.S. SENT'G COMM'N, AMENDMENTS TO THE SENTENCING GUIDELINES (PRELIMINARY): SENTENCING OPTIONS 3 (Apr. 16, 2026), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202604_prelim-RF.pdf (acknowledging the accepted, punitive nature of supervision in a pending amendment to Chapter 5 of the Sentencing Guidelines).

[303] *See* 18 U.S.C. § 3561.

[304] *See* U.S. SENT'G GUIDELINES MANUAL ch. 5, pt. B, introductory cmt. (U.S. SENT'G COMM'N 2025) (describing the statutory purposes of probation as a sentence as "promoting respect for law, providing just punishment for the offense, achieving general deterrence, and protecting the public from further crimes by the defendant").

[305] *See* Gall v. United States, 552 U.S. 38, 48–49 (2007) (discussing how probation substantially restricts freedom and liberty).

[306] *See* 18 U.S.C. § 3582(c)(1)(A).

[307] *See* 18 U.S.C. § 3582(c)(2).

[308] Nancy G. La Vigne et al., *Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships*, 21 J. CONTEMP. CRIM. JUST. 314, 328 (2005), https://doi.org/10.1177/1043986205281727.

[309] MARGARET DIZEREGA & SANDRA VILLALOBOS AGUDELO, VERA INST. OF JUST., PILOTING A TOOL FOR REENTRY: A PROMISING APPROACH TO ENGAGING FAMILY MEMBERS 4 (Mar. 2011), https://www.vera.org/publications/piloting-a-tool-for-reentry-a-promising-approach-to-engaging-family-members.

positive familial relationships overall are less likely to be reincarcerated.[310] These considerations relate to the purposes of sentencing by demonstrating a greater likelihood of successful reentry and lower likelihood of recidivism, both of which promote public safety. Moreover, maintaining family connections during incarceration relates to deterrence because incarcerated individuals with strong family connections are 25 percent more likely to not reoffend.[311] This, in turn, reduces jail populations and eases the burden of supervision on correctional staff.[312]

[310] Damian J. Martinez & Johnna Christian, *The Familial Relationships of Former Prisoners: Examining the Link between Residence and Informal Support Mechanisms*, 38 J. CONTEMPORARY ETHNOGRAPHY 201, 205–06, 221–22 (2009), https://doi.org/10.1177/0891241608316875.
[311] Loonstyn & Alice Galley, *Low-Cost Phone Calls*, *supra* note 295.
[312] *Id.*

Policy Justifications for Considering Family Circumstances at Sentencing

Consideration of family ties and responsibilities at sentencing resonates with utilitarian principles intended to further the best interests of society and the public. As previously mentioned, the trauma resulting from a caregiver's incarceration can lead to various behavioral problems in children impacted by the separation, including an increased likelihood of future criminal activity.[313] In addition to the costs of future criminality, parental incarceration may impose societal costs related to foster care to replace an incarcerated parent or caregiver, permanent dissolution of the family when the incarceration provides grounds for terminating parental rights, and children's dependence upon government aid.[314] The costs of certain child placements can be disastrous.[315] On the other hand, considering family circumstances and imposing a sentence that minimizes the harms experienced by the defendant's children would reflect a decision that society's interest in punishing the defendant "is outbalanced at least to a partial degree by its interest in protecting the welfare of innocent third parties: by providing for children."[316] Furthermore, considering family circumstances would enable sentencing decisions to "be designed to ensure that prison resources are, first and foremost, reserved for those violent and serious criminal offenders who pose the most dangerous threat to society."[317] Considering family ties and responsibilities therefore serves utilitarian principles and promotes appropriate use of societal resources.[318]

The National and Global Movement Towards Considering Family Impact at Sentencing

Recognizing the harms experienced by children affected by parental incarceration, many jurisdictions across the United States and around the world have started to consider a defendant's familial circumstances, ties, and responsibilities at or before sentencing. In the United States, the consideration of familial circumstances has led to a national movement towards family-focused alternatives to incarceration, such as the creation of diversion programs for parents; the consideration of parenting responsibility as a mitigating factor; and the use of family impact statements. Globally, the effects of parental incarceration have been recognized through international treaties and national laws governing the sentences of parents. The global movement towards considering family impact at sentencing demonstrates a national and international consensus that the adverse effects of parental incarceration should be mitigated to promote the best interests of children.

National Movement

Family-based alternative sentencing or diversion programs have been implemented or permitted at the local or state level across the country, including in Nevada,[319] Alabama,[320] Washington,[321] Texas,[322] Oregon,[323] Wisconsin,[324] Oklahoma,[325] Massachusetts,[326] California,[327] Tennessee,[328] Missouri,[329] and Minnesota.[330] These community-based programs allow parents to remain with their children while receiving any necessary treatment and programming.

In some instances, states have acted to create avenues for considering a person's parental status at the time of sentencing. For example, Illinois established a list of mitigating factors related to a

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[313] Raeder, *supra* note 210, at 953; CHILD. OF INCARCERATED CAREGIVERS, MASS PARENTAL INCARCERATION & SENTENCING REFORM IN MINNESOTA 1 (2022), https://cicmn.wpenginepowered.com/wp-content/uploads/2022/02/Parental-Incarceration-Impacts.pdf.
[314] Raeder, *supra* note 210, at 953, 959 (footnotes omitted).
[315] *See, e.g.*, United States v. Perez, 756 F. Supp. 698 (E.D.N.Y. 1991) (permitting a downward departure because of the sudden, unexpected, and inexplicable death of the defendant's only child who was born during the mother's incarceration and later given to her relatives).
[316] Patricia M. Wald, "*What About the Kids?": Parenting Issues in Sentencing*, 8 FED. SENT'G REP. 137, 138 n.19 (1995) (citations omitted); *see also* MASS PARENTAL INCARCERATION & SENTENCING REFORM IN MINNESOTA, *supra* note 313, at 1–2 (listing consequences to children caused by mass parental incarceration).
[317] Cecilia Klingele, *What's Missing? The Absence of Probation in Federal Sentencing Reform*, 34 FED. SENT'G REP. 322, 323 (2022).
[318] *See* DOUG BURRIS, U.S. PROB. OFF. FOR THE E. DIST. OF MO., A GUIDE TO UNDERSTANDING SUPERVISION FOR FAMILY AND FRIENDS 1 (2009), https://www.moep.uscourts.gov/sites/moed/files/documents/probation/FamiliesGuide.Final_.pdf ("Assisting both defendants/offenders and their families reduces recidivism, lowers costs to taxpayers and creates a better future for us all." (quoting then Chief Judge Catherine D. Perry of the U.S. District Court in the Eastern District of Missouri)).
[319] HENRY BORKGREN, HOW A HEALTH CLINIC IS ADDRESSING PARENTAL INCARCERATION: SUNRISE HEALTH CLINIC'S FAMILY FIRST PROGRAM IN LAS VEGAS, NEVADA, CHILD. OF INCARCERATED CAREGIVERS 1–7 (2025).
[320] KINSEY BUTTON, DALLAS COUNTY FAMILY PRESERVATION PROGRAM: A COMMUNITY-BASED ALTERNATIVE TO PARENTAL INCARCERATION, CHILD. OF INCARCERATED CAREGIVERS 1–7 (2025).
[321] HENRY BORKGREN ET AL., THE WASHINGTON PARENTING SENTENCING ALTERNATIVE, CHILD. OF INCARCERATED CAREGIVERS 1–12 (2025); *see also* R.C.W. § 9.94A.6551.
[322] GAVIN REPMAN, THE BABY AND MOTHER BONDING INITIATIVE, CHILD. OF INCARCERATED CAREGIVERS 1–6 (2025).
[323] MEG HINSON & NICOLAS GUO, OREGON'S FAMILY SENTENCING ALTERNATIVE PILOT PROGRAM, CHILD. OF INCARCERATED CAREGIVERS 1–6 (2023).
[324] SULLYARI BAUTISTA, COMMUNITY-BASED SOLUTIONS FOR ALTERNATIVES TO PARENTAL INCARCERATION, CHILD. OF INCARCERATED CAREGIVERS 1–5 (2023).
[325] *Id.*
[326] ANTHONY PIMENTEL, ADVANCING JUSTICE IN MASSACHUSETTS: THE IMPACT AND EVOLUTION OF PRIMARY CARETAKERS LEGISLATION, CHILD. OF INCARCERATED CAREGIVERS 1–6 (2024).
[327] ZOE VIKSTROM & KARSEN MELGARD, ALTERNATIVES TO INCARCERATION FOR PARENTS IN CALIFORNIA - PROGRESS IN SAN FRANCISCO, CHILD. OF INCARCERATED CAREGIVERS 1–3 (2023).
[328] TENN. CODE ANN. § 40-35-103.
[329] § 559.120, RSMo (2021).
[330] MINN. DEP'T OF CORR., HEALTHY START ACT (2021) (allowing community alternatives for pregnant and postpartum women).

parent's role and child's needs that are to be given weight in favor of withholding or minimizing a sentence of incarceration.[331]

Another significant way to implement family-focused sentencing is through the use of family impact statements, in which an impacted family member details the effects of parental incarceration on the family.[332] Illinois[333] has officially adopted the use of these statements, and Massachusetts,[334] North Dakota,[335] and Oklahoma[336] statutorily allow judges to consider a defendant's parental status and the impact the defendant's incarceration would have on their children. San Francisco,[337] New York,[338] Louisville,[339] and Connecticut[340] have either informally implemented these statements or have considered implementing them.

Thus, jurisdictions across the United States have recognized the importance of considering the best interests of the child when sentencing a parent. These considerations are appropriate given the harms of parental incarceration and the fact that nearly half of all inmates in state prisons are parents of minor children.[341] In the federal prison system, a majority of inmates are parents of minor children,[342] making it even more important to consider the best interests of children and to avoid imposing sentences that significantly harm innocent members of the community. Courts should therefore be aware of the national movement towards considering parental responsibility and consider parental responsibility broadly when sentencing caregivers.

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[331] AMANDA TYLER & BEKAH MUTA, CHILD. OF INCARCERATED CAREGIVERS, THE ILLINOIS CHILDREN'S BEST INTEREST ACT 2 (2024), https://cicmn.org/wp-content/uploads/2024/06/Illinois-Report-Final-Draft-Formatted-2024-v3.docx.pdf.
[332] CRAMER ET AL., *supra* note 122.
[333] TYLER & MUTA, *supra* note 331.
[334] MASS. GEN. LAWS ch. 279, § 6B(b).
[335] N.D. CENT. CODE ANN. § 12.1-32-04(11).
[336] OKLA. STAT. § 22-20.
[337] JESSICA JAHN, BRINGING INFORMATION TO PROSECUTORS AND COURTS ON THE IMPACT OF SENTENCING DECISIONS ON OFFENDERS' FAMILIES AND CHILDREN 7–13 (2023), https://icclr.org/wp-content/uploads/2023/07/Bringing-Child-Impact-Information-to-the-Court.pdf
[338] *Id.*
[339] THE SPECIAL PROJECT & LOUISVILLE METRO. CTR. FOR HEALTH EQUITY, PARENTAL INCARCERATION, CHILDREN'S HEALTH, AND AN OPPORTUNITY TO SHIFT THE FUTURE 9 (2022), https://familyjusticeadvocates.org/wp-content/uploads/2022/06/parental-incarceration-childrens-health-and-an-opportunity-to-shift-the-future.pdf.
[340] H.B. 7216, 2017 Gen. Assemb., Jan. Sess. (Conn. 2017), https://ctsentencingcommission.org/wp-content/uploads/2018/01/An_Act_Concerning_Family_Impact_Statements.pdf; S.B. 361, 2014 Gen. Assemb., Feb. Sess. (Conn. 2014); H.B. 6660, 2013 Gen. Assemb., Jan. Sess. (Conn. 2013); S.B. 361, 2014 Judiciary Comm. J. Favorable Rep. (Conn. 2014), https://www.cga.ct.gov/2014/jfr/s/2014SB-00361-R00JUD-JFR.htm; *cf.* S.B. 1233, 2023 Gen. Assemb., Jan. Sess. (Conn. 2023), https://www.cga.ct.gov/2023/TOB/S/PDF/2023SB-01233-R00-SB.PDF.
[341] GHANDNOOSH, STAMMEN, & MUHITCH, *supra* note 4.
[342] *Id.*

International Movement

International law supports the consideration of caregiver responsibility during sentencing. The United Nations Convention on the Rights of the Child declares that in all proceedings concerning children, the best interests of the child shall be a primary consideration.[343]

The Committee of Ministers of the Council of Europe encourages states to consider parental status at the time of sentencing.[344] Additionally, the African Charter on the Rights and welfare of the Child requires states to consider non-custodial punishments for mothers,[345] and the European Parliament also encourages alternatives to prison for mothers.[346]

Individual nations have also implemented ways to consider parental responsibility at sentencing. Scotland requires that the best interests of children are considered in all decisions affecting them, including the sentencing of a parent.[347] South Africa[348] and Australia[349] both require courts to consider the impact on children or the family when sentencing a parent. The Sentencing Council for England and Wales directs courts not to impose imprisonment for offenders "on the cusp of custody" when there would be an "impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing."[350] If custody is unavoidable, the Sentencing Council instructs that the impact on dependants may be relevant to the length of the sentence or whether the sentence can be suspended.[351] Argentina authorizes judges to grant non-custodial detention to pregnant women and mothers with children under 5 years of age.[352] A few countries, such as Kyrgyzstan, provide that women who are pregnant or have children under 14 years of age are to have their sentences suspended until the children reach the age of 14, unless the parent was convicted for a "grave" offense.[353] Thus, there is a well-

[343] G.A. Res. 44/25, art. 3, Convention on the Rights of the Child (Nov. 20, 1989).
[344] Eur. Council Comm. of Ministers, *Explanatory Memorandum to Recommendation CM/Rec(2018)5 Concerning Children with Imprisoned Parents*, 1312th Sess., (April 4, 2018).
[345] African Charter on the Rights and Welfare of the Child, Org. of African Unity [OAU], art. 30.
[346] The Particular Situation of Women in Prison and the Impact of the Imprisonment of Parents on Social and Family Life, EUR. PARL. DOC. T6-0102/2008, art. 19 (Mar. 13, 2008).
[347] UNCRC (Incorporation) (Scotland) Act 2024, (ASP 1).
[348] M v. The State 2007 (3) SA 232 (CC) at 32–33 (S. Afr.).
[349] *Crimes Act 1914* (Cth) s 16A(2)(p) (Austl.).
[350] Sentencing Council, *General Guideline: Overarching Principles* (2024), https://sentencingcouncil.org.uk/guidelines/general-guideline-overarching-principles/ (Eng. and Wales).
[351] *Id.*
[352] Law No. 26.472 unit 33, Jan. 20, 2009 (Arg.).
[353] Oliver Robertson, *Children Imprisoned by Circumstance*, QUAKER UNITED NATION OFF. (2008).

established international acceptance of the need to consider the impacts on the child when sentencing parents.

Addressing Common Concerns

1. Considering a defendant's children does not unfairly benefit parents.

A common objection to considering a defendant's children at sentencing is that this unfairly benefits parent-defendants. However, any "benefits" enjoyed by parent-defendants are not unfair because they arise from the parent-defendants' individual characteristics. Parents and caregivers are different for how their children and parenthood are salient parts of their lives.[354] Children are powerful motivators for successful rehabilitation[355] and compliance with conditions of supervised release.[356] Research shows that parents and caregivers who adopt/accept parental identities have lower recidivism rates.[357] Because children and parenthood positively affect a defendant's likelihood of rehabilitation and lower the likelihood of recidivism, these factors make parent-defendants unique in evaluating their history and characteristics and the kinds of sentences available to tailor an appropriate sentence that is sufficient, but not greater than necessary, to serve the purposes of sentencing.

2. Considering a defendant's child does not allow defendants to use their children as get-out-of-jail-free cards if judges consider their children at sentencing.

A common concern regarding the consideration of a defendant's children at sentencing is that defendants will simply use their children as get-out-of-jail-free cards, even if they have no relationship with their children.[358] Even if this situation arises, defendants will not be successful so long as judges have sufficient information to evaluate the child-caregiver relationship. For

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[354] Shlafer et al., *supra* note 115, at 394.
[355] HAZEL ET AL., *supra* note 124, at 2-4.
[356] *See* Adams et al., *supra* note 119, at 1437 (finding that more routine parenting activities were associated with fewer probation and parole violations in the 18 months after starting supervision).
[357] Liu & Miller, *supra* note 130, at 872; *see also* Rodermond et al., *supra* note 120, at 15–16 (literature review on the association between crime desistance and motherhood); Venema et al., *supra* note 127, at 1481–82 (finding that fathers who resided with a partner and children six months after release were significantly less likely to be reconvicted 18 months after release than nonfathers and fathers who did not reside with a partner and children).
[358] *See* Eleanor L. Bush, *Not Ordinarily Relevant? Considering the Defendant's Children at Sentencing*, 54 FED. PROB. 194, 20 (1990), https://www.ojp.gov/pdffiles1/Digitization/123145NCJRS.pdf (discussing considerations for scrutinizing circumstances in which a defendant may be invoking parenthood and the needs of their children "as a ploy to obtain leniency").

this reason, it is crucial for judges to request this information, for probation officers to ask for this information when interviewing the defendant during presentence investigations and for advocates to produce this information to supplement their legal arguments. Evaluating the actual facts related to the child-caregiver relationship, rather than considering the fact that a defendant has children to alone be a mitigating factor, will ensure that the best interests of the defendant's children are properly considered. Importantly, evidence of a defendant's desire to develop or strengthen a relationship with his or her children also is relevant to the judge's consideration because children and the parental role are strong motivators for change.[359] Thus, a defendant's desire to be more involved with his or her children or to develop or strengthen relationships with his or her children may indicate a lower likelihood of recidivism and a stronger likelihood of rehabilitation.[360] As such, this is an important consideration for evaluating the defendant's history and characteristics and the kinds of sentences available to tailor an appropriate sentence that is sufficient, but not greater than necessary, to serve the purposes of sentencing.

Conclusion

The preceding information showcases how children can be impacted by the incarceration of their caregivers and how courts have begun to recognize the need to consider this impact when sentencing a parent of a minor child. CIC believes that this research shows how utilizing alternatives to incarceration when it is in the best interest of the child benefits not only the parties involved but also society as a whole, and we appreciate you taking the time to learn more about this important issue.

[359] *Accord* Liu & Miller, *supra* note 130, at 871.
[360] *See* Mowen, Stansfield, & Boman, IV, *supra* note 123, at 510–11.