Children of Incarcerated Caregivers

MINNESOTA PRETRIAL RELEASE 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 pretrial detention. CIC recognizes that not every parent will be eligible for pretrial release and that it won't always be in a child's best interest to have their parent in the community. However, in the cases where imposing a community-based alternative to detention 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 the research shows, that community-based alternatives to detention can support the needs of children while also benefiting society as a whole.

Introduction

This resource provides an overview of the law governing pretrial release in the Minnesota criminal legal system and the relevance of family ties to the decision to detain a defendant pretrial.

Minnesota establishes a “liberty interest” in pretrial release and a right to bail. When bail is set, it must be related to either assuring the defendant’s appearance or protecting public safety. Bail and other conditions of release may only be set after a consideration of all of the relevant statutory factors, including family ties. In addition to the statutorily mandated consideration of family ties, relevant research makes clear that parenting responsibility decreases a defendant’s risk of re-offending and increases the defendant’s compliance with conditions of release, thus mitigating the possibility that high bail is necessary to protect public safety or assure appearance. Research also makes clear that the incarceration of a parent is a traumatic event for a child and is classified as an adverse childhood experience that can cause lasting harm into adulthood. Thus, in many cases, the pretrial detention of a caregiver may actually harm the community. The presumption of innocence is the foundation of our criminal legal system and should always be taken into account at pretrial detention hearings, along with the constitutional limits on bail amount. Recognizing these harms and constitutional principles, jurisdictions around the country, and the world, have begun to reform their pretrial detention policies in favor of pretrial release.

This primer will (1) summarize research on the harms of parental incarceration both generally and at the pretrial stage as well as research indicating that parental responsibility increases a defendant's chance of success on pretrial release; (2) provide a detailed overview of Minnesota law, the right to bail, and the requirements for setting the conditions of release; (3) discuss how the research fits into the law and constitutional policies; and (4) provide an overview of the national and international move towards more opportunities for pretrial release.

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; Kristin 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.

Parental Incarceration in the United States and in Minnesota

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] In Minnesota, an estimated 9,898 minor children have a parent incarcerated in a county correctional facility on any given day.[6] Approximately two out of every three adults in Minnesota county correctional facilities are parents to at least one minor child.[7] Parents in Minnesota jails have an average of about two minor children each.[8] Of minor children with parents in Minnesota jails, approximately 37 percent are under the age of 5, and 79 percent are under the age of 12.[9] Considering how parental incarceration is highly prevalent in the United States and in Minnesota, understanding the effects of the criminal legal system on criminal defendants' family members and specifically, their children, is paramount.

Harmful Impacts 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

[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] Rebecca Shlafer & J.B. Saunders, *Parents in Minnesota Jails and their Minor Children*, UNIV. MINN. (2017).
[7] *Id.* at 1.
[8] *Id.* at 2-3.
[9] *Id.* at 4.
[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.

adulthood.[11] Even if the incarceration occurs prior to early childhood, parental incarceration can have long-term adverse impacts on children.[12] Moreover, the long-lasting effects of parental incarceration are not remedied by subsequent reunification.[13] Additionally, because women generally fulfill the role of primary caregiver, maternal incarceration can be especially harmful.[14] The extent of the harm caused by parental incarceration significantly depends on the children's current caregiver maintaining a relationship with the incarcerated parent.[15] 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.[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 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

[11] *Id.*
[12] Anderson, Henrich, & Mrug, *supra* note 1, at 1229.
[13] 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.
[14]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.
[15] *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.
[16] 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.
[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).
[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/.

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

[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.*
[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).

- 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, parental 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]
    - 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 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]

[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.
[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.

- 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]

- 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]

[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.
[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.*

- **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]
    - 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]

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[41] *Id.*
[42] Roettger et al., *supra* note 28, at 121–32.
[43] Heard-Garris et al., *supra* note 20; *see also* N. Heard-Garris et al., *Heard-Garris N, Winkelman TNA, Choi H, et al. Health Care Use and Health Behaviors Among Young Adults With History of Parental Incarceration.* Pediatrics. *2018;142(3):e20174314*, 143 Pediatrics e20190534 (2019), https://doi.org/10.1542/peds.2019-0534 [hereinafter "Heard-Garris et al., *Correction*"].
[44] Provencher & Conway, *supra* note 23.
[45] WAKEFIELD & WILDEMAN, *supra* note 27.
[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).

- 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]

- 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]

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[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).
[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.

- 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]

- 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

[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).
[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 20.
[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).

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]

- 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]

[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.
[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).

- 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 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]

[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).
[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 Kjellstrand & J. Mark Eddy, *Parental Incarceration During Childhood, Family Context, and Youth Problem Behavior Across Adolescence*, JOURNAL OF OFFENDER REHABILITATION, 50(1), 18–36, https://doi.org/10.1080/10509674.2011.536720.

- 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 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.

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[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).
[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.

- 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]

  - 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]

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[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).
[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, at 1196.
[92] Dallaire & Zeman, *supra* note 80, at 22.
[93] *Id.*
[94] Wildeman & Turney, *supra* note 71.

- **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 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

[95] Jacinda K. Dariotis et al., *Parentification Vulnerability, Reactivity, Resilience, and Thriving: A Mixed Methods Systematic Literature Review*, 20 INT'L J. ENVIRONMENTAL 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.
[97] Ray M. Merrill, *Adverse Childhood Experiences Promote Increased and Selective Caregiving in Adulthood*, 23 INT'L J. ENVIRONMENTAL 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.

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 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]

Harmful Impacts of Pretrial Incarceration

In addition to these general harms of parental incarceration, pretrial detention, specifically, may have unique social costs that affect the family and children. For instance, one study indicates that pretrial detainees may have a higher risk of losing a family attachment.[111] Additionally, since pretrial detention is often of an indefinite length and detainees may be moved between facilities during this time, it can be especially hard for a detainee to communicate consistently, or at all,

[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.*
[107] Mary 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*, 12 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. ENVIRONMENTAL RSCH. & PUB. HEALTH 11454 (2021), https://doi.org/10.3390/ijerph182111454.
[110] Masiran et al., *supra* note 95.
[111] Sara Wakefiled & Lars Hojsgaard Andersen, *Pretrial Detention and the Costs of System Overreach for Employment and Family Life*, 7 SOCIOLOGICAL SCIENCE 342, 342 (2020).

with their children.[112] Lost contact with a parent can lock a child into immaturity and lead to rebellious behaviors and an increased risk of detachment disorders.[113] There also may be a higher incidence of failing to fully explain to children the true reason for the caregiver's absence during the pretrial detention period.[114] This can inhibit the child's ability to work through emotional issues linked to parent's absence and can play a role in a child's withdrawal, depression, or anti-social behavior.[115] Further, the parent may lose their job and housing due to failure to pay rent during the period of pretrial detention, even if it is brief.[116] These disruptions to the stability of the family can have lasting effects on the child.

All of this is true despite the fact that during the pretrial detention period, the caregiver remains presumed innocent of the crime with which they are charged. People detained pretrial are also more likely to be convicted and receive a harsher sentence due to the increased likelihood that the defendant will take a plea deal.[117] These correlations create a cycle where children of caregivers detained pretrial are then more likely to suffer from the harms discussed above regarding parental incarceration generally. Additionally, pretrial detention significantly impairs financial stability in the short term and long term due to the loss of employment, housing, and public benefits.[118] This financial instability will affect the defendant's children, and it rarely ends upon release; people detained pretrial are substantially less likely to be employed in the years following detention.[119] Thus, pretrial detention imposes unique harms to the child and the family.

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."[120] Research

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[112] *Impacts of Pre-Trial Detention Procedures on Children with Parents in Conflict with the Law*, Children of Prisoners Europe (2021).
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] Leon Digard & Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*, Vera Institute of Justice (2019).
[118] Will Dobbie, Jacob Goldin, & Crystal S. Yang, *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, AMERICAN ECONOMIC REVIEW 108 (2): 201–40.
[119] *Id.*
[120] 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-*

consistently shows that "family support is a powerful and substantively meaningful protective factor against recidivism."[121] Further, potential familial ties can also provide a social context that supports the transformation of identity and accordingly protects against recidivism.[122] 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

Although not in the pretrial context, research studies have shown that, for parents who are placed on probation rather than sent to prison, parenting is a salient part of their lives[123] and an especially powerful motivator to be successful on probation.[124] 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.[125] 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.[126] Another study found that more routine parenting activities were associated with fewer probation and parole violations in the 18 months after starting supervision.[127] Research indicates that parenting responsibilities may function as a protective factor in preventing reoffending, particularly for women.[128] Moreover, the salient role of family does not diminish when individuals receive other forms of social support.[129]

Risk Young People in Detention, 43 CRIM. JUST. & BEHAV. 863, 863 (2016), 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").

[121] 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)).

[122] *Id.*

[123] 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.

[124] *Id.*

[125] *Id.* at 406.

[126] *Id.*

[127] 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.

[128] 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).

[129] 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.

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 who maintain relationships with their children during their incarceration have lower recidivism rates upon release.[130] Familial support is associated with job attainment, better health outcomes, and stronger emotional support during reentry.[131] Family relationships, and parent-child relationships in particular, are powerful motivators for successful rehabilitation,[132] providing a construct that discourages recidivism.[133] Family ties also deter reoffending by offering an additional level of supervision and accountability.[134] Familial and community support are critical for successful reentry,[135] 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."[136]

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

[130] 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).
[131] *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).
[132] 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.
[133] *Id.* at 3.
[134] Boman & Mowen, *supra* note 121, at 755 (citing Bruce Western et al., *Stress and Hardship after Prison*, 120 AM. J. SOCIO. 1512, 1512–1547 (2015)).
[135] 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 129, 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").
[136] HAZEL ET AL., *supra* note 132, at 4.

influence recidivism rates as a potential protective factor. Family, and specifically children, are extremely strong motivators for change.[137] Parenthood is "a major turning point upon which people embark on a trajectory of crime desistance."[138] Parenthood is a strong motivating factor of desistance, and if individuals act on their desire to desist, their risk of recidivism will decrease.[139] Becoming a parent is a "key transition event" that may function as an "important catalyst" for making significant life changes,[140] 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.[141] Thus, mere adoption of a parental identity is significant for desistance.[142] To embody a "good" parent, individuals are motivated to veer away from deviant lifestyles and themes of quick and easy money and the party life.[143] Instead, parenthood motivates individuals to find employment or other legal means of financial support and to stay away from drugs and alcohol.[144] Importantly, being a parent may be an important motivator to individuals with children of all ages, including adult children.[145]

Moreover, individuals adopt role expectations for parents, recognizing the need to be role models, providers, caregivers, and protectors of their children.[146] Parenthood requires nurturing children, financially providing for them, and being emotionally invested and involved in their lives.[147] 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

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[137] 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)).
[138] 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.
[139] *Id.*
[140] 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.
[141] *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.
[142] Liu & Miller, *supra* note 138, at 872.
[143] 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.
[144] 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.
[145] *Id.*
[146] Liu & Miller, *supra* note 138, at 872.
[147] *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.

children.[148] By making these changes in routines, individuals will have fewer opportunities to associate with criminal peers and engage in offending.[149] Some researchers have described this desire to desist associated with parenthood as opening a door to cognitive transformation.[150] Thus, probation officers and correctional staff can use a defendant's desire to take on a prosocial parental role as a "hook for change."[151]

Importantly, even emotionally strained family relationships may promote desistance through instrumental family support.[152] Thus, defendants' familial relationships characterized by stress and emotional turmoil may still protect against future criminality and promote successful rehabilitation.[153]

Overview of MN State Law Regarding Pretrial Detention

Minnesota not only protects defendants from excessive bail, as required by the U.S. Constitution, but also guarantees bail as an absolute right.[154] Because bail is an absolute right in Minnesota, bail is used for the purpose of assuring a defendant's presence at future court proceedings.[155] The Minnesota Supreme Court, however, has implied that public safety may also be considered when setting bail.[156] The Court's implication contrasts with how courts in many other right-to-bail states have held that pretrial detention cannot be justified by public safety alone.[157]

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[148] Paternoster & Bushway, *supra* note 141.
[149] 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.
[150] 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.
[151] *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).
[152] Mowen, Stansfield, & Boman, IV, *supra* note 131, at 510–11.
[153] *Id.*
[154] *See* 8 Henry W. McCarr & Jack S. Nordby, *Minnesota Practice Series—Criminal Law & Procedure* § 15:2 (4th ed. 2024) (discussing history of language in Minnesota constitution's bail provision); State v. Pett, 253 Minn. 429, 435, 92 N.W.2d 205, 209 (1958).
[155] *See* State v. Mastrian, 266 Minn. 58, 59, 122 N.W.2d 621, 622 (1963); State v. Brooks, 604 N.W.2d 345, 50 (Minn. 2000).
[156] *See* State v. LeDoux, 770 N.W.2d 504, 514 (Minn. 2009).
[157] While many state bail statutes provide that money bail can be based on public safety considerations, several courts in right-to-bail states (i.e., states with constitutions having a right to pretrial release) have recognized that money bail cannot be used to detain a defendant for public safety purposes. *See* State v. Pray, 346 N.W.2d 227, 229 (Vt. 1975); Ex Parte Harris, 733 S.W.2d 712, 714 (Tex.App.-Austin 1987); Harp v. Hinkley, 410 So.2d 619

Because Minnesota defendants have a "liberty interest" in pretrial release, due process requirements apply during bail hearings.[158] This includes the right to call a witness if the court decides that witness testimony will lead to the defendant's release from custody.[159] Persuasive authority, however, suggests that these procedural due process rights should only be considered applicable in cases when bail is set for public safety reasons, not when it is set to assure a defendant's appearance.[160]

With the right to bail and a "liberty interest" in pretrial release, Minnesota criminal defendants at first appearance "*must* be released on personal recognizance or an unsecured bond unless a court determines that release will endanger the public safety or will not reasonably assure the defendant's appearance."[161] If the court determines that unsupervised release will endanger the public or will not assure the defendant's appearance, the court is instructed to "place the defendant under the supervision of a person who, or organization that, agrees to supervise."[162] The court may place the defendant under supervision "either in lieu of or in addition to release on personal recognizance or on an unsecured appearance bond.[163] If the court determines that such supervision will not reasonably assure the person's appearance, the court may impose any combination of the following conditions, including bail:

(a) Place the defendant under the supervision of a person who, or organization that, agrees to supervise;

(b) Place restrictions on travel, association, or residence during release;

(c) Require an appearance bond, cash deposit, or other security; or

(Fla.App. 1982); *contra* State v. Anderson, 127 A.3d 100 (Conn. 2015); *see also* United States v. Salerno, 481 U.S. 739, 762–67 (1987) (Marshall, J., dissenting) (describing the scope of a constitutional right pretrial release that he would have recognized in the federal constitution). In Vermont and Florida, following the aforementioned cases, the state constitutions were amended to eliminate the right to bail for at least some offenses.

[158] *LeDoux*, 770 N.W.2d at 513 (holding that the due process required at a bail hearing is similar to that at a probable cause hearing).

[159] *Id.* at 514.

[160] *See* Aime v. Commonwealth, 611 N.E.2d 204 (Mass. 1993) (holding that the procedural due process requirements of the Federal Bail Reform Act of 1984 - the right to testify, present witnesses, and cross examine witnesses - are applicable to a defendant whose bail has been set for public safety reasons); Querubin v. Commonwealth, 795 N.E.2d 534 (Mass. 2003) (holding that the evidentiary hearing granted to defendants by *Aime* is not applicable to a defendant whose bail had been set to reasonably assure his appearance in court).

[161] Minn. R. Crim. P. 6.02, subd. 1 (emphasis added).

[162] Minn. R. Crim. P. 6.02, subd. 1(a) (emphasis added).

[163] *Id.*

(d) Impose other conditions necessary to assure appearance as ordered.[164]

Courts may also order electronic home monitoring (EHM) as a condition of pretrial release.[165] This can be a beneficial alternative to pretrial incarceration when the court determines that the caregiver-defendant needs some degree of supervision, but it is in the best interest of the child for the parent to remain in the home during the pretrial period.

Considerations for Pretrial Release

If the court determines that some conditions of release are necessary to assure the defendant's appearance at future court dates, the court "*must* consider" the following factors when deciding which conditions to impose:

> **(a) the nature and circumstances of the offense charged;**
>
> **(b) the weight of the evidence;**
>
> **(c) *family ties;***
>
> **(d) employment;**
>
> **(e) financial resources;**
>
> **(f) character and mental condition;**
>
> **(g) length of residence in the community;**
>
> **(h) criminal convictions;**
>
> **(i) prior history of appearing in court;**
>
> **(j) prior flight to avoid prosecution;**
>
> **(k) the victim's safety;**
>
> **(l) any other person's safety;**

[164] *Id.* subd. 1(a)-(c).
[165] Minn. R. Crim. P. 629.531.

(m) the community's safety.[166]

Therefore, courts are not only authorized to consider family ties in determining pretrial release conditions; in fact, they are required to.[167] Courts consider the factors set forth in Rule 6.02, subdivision 2, to determine which, if any, conditions of release are necessary to assure appearance, not to justify pretrial detention.[168] Additionally, conditions must be imposed on a case-by-case basis and be justified by the particular facts.[169] For example, a standard practice of imposing a condition of drug testing any time there is a history of drug use violates Rule 6.02.[170] Similarly, each defendant's unique family ties and parenting responsibilities should be individually considered in each case to determine if the family ties specific to *this* defendant make him or her more amenable to pretrial release.

The Minnesota Supreme Court has outlined the following additional factors in setting the bail amount:

> (1) The seriousness of the offense charged and the severity of the punishment to be imposed if defendant is found guilty;
>
> (2) The physical condition of defendant;
>
> (3) The ability of defendant to provide bail in an amount less than that initially fixed adequate to meet the minimal requirements of the situation; and
>
> (4) The circumstances of the case pointing to the likelihood of the defendant's appearance if released on bail, including his past

[166] Minn. R. Crim. P. 6.02, subd. 2 (emphasis added).
[167] *See* Minn. R. Crim. P. 6.02, subd. 2(c).
[168] State v. Martin, 743 N.W.2d 261 (Minn. 2008) (discussing whether the court had properly considered the particular facts of the case in relation to these factors when imposing a drug-testing requirement as a condition of release); State v. Mastrian, 266 Minn. 58, 122 N.W.2d 621 (1963) ("The purpose of arrest and confinement of a person charged with a crime is to assure his presence at the time fixed for his trial. The purpose of bail in cases such as this is to permit his release if appearance at trial can otherwise be guaranteed.").
[169] *Martin*, 743 N.W.2d at 267.
[170] "Because Rule 6.02, subdivision 2, requires the district court to "take into account the nature and circumstances of the offense charged" when determining the reasonable likelihood of the defendant's appearance, the "use of unlawful substances" is more appropriately considered on a case-by-case basis as a factor under the rule. Here, it appears that the basis for imposing the condition that Martin comply with drug testing was the fact that imposing such a condition was the district court's standard practice. Such a practice violates the rule." *Id.*

> history, his relationship to the community at the time of his arrest, and the circumstances of his apprehension.[171]

The court may investigate the defendant's background before or at the defendant's court appearance to determine conditions of release.[172] Although pre-release investigations may be conducted by probation services or by any other qualified agency at the direction of the court, the Minnesota Rules of Criminal Procedure do not preclude independent investigations by defense attorneys.[173]

Importantly, "[i]nformation obtained in the pre-release investigation from the defendant in response to an inquiry during the investigation and any derivative evidence must not be used against the defendant at trial."[174] In contrast, the evidence obtained by a defense attorney's independent investigation may be used at trial.[175]

Successive Bail Arguments

Defendants who are initially denied pretrial release may bring successive bail arguments under certain circumstances. The Minnesota Rules of Criminal Procedure provide that: "The court must review conditions of release on request of any party."[176] Case law suggests that the review mechanism outlined in Rule 6.02, subdivision 4, only arises when new information—information not available at the time of the original detention hearing—becomes available to either party.[177] Absent changed circumstances, the failure to consider the factors outlined in Minnesota Rule of Criminal Procedure 6.02 may also serve as grounds for reviewing a pretrial detention decision.[178] Thus, if the court fails to consider the defendant's family ties, one of the factors under 6.02, when setting the defendant's conditions of release, the setting of those conditions may be held to be an abuse of discretion.[179]

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[171] *Mastrian*, 266 Minn. at 59, 122 N.W.2d at 623.
[172] Minn. R. Crim. P. 6.02, subd. 3.
[173] *Id.*
[174] *Id.*
[175] *Id.* (emphasis added).
[176] Minn. R. Crim. P. 6.02, subd. 4.
[177] State v. Powers, No. A23-0837, 2024 WL 1713894 at *3 (Minn. Ct. App. Apr. 22, 2024) ("As a result, implied in the language of subdivision 4 is the authority of a district court to modify the conditions of bail, in accordance with the purposes of bail, upon request of either party when new information is available.").
[178] State v. Rasmussen, No. A14-2043, 2015 WL 7693357 (Minn. Ct. App. Nov. 30, 2015) (appealing a denial of a motion to suppress evidence found during a warrantless search unlawfully prescribed as a condition of release).
[179] *Id.*

Policy Justifications for Considering Family Circumstances at the Pretrial Stage

Both law and empirical research establish that family ties are an important and mandatory consideration in pretrial detention hearings. Minnesota law gives defendants a right to bail and a "liberty interest" in pretrial release, making clear that bail can only be set for the purpose of assuring the defendant's appearance or for ensuring public safety.[180] This gives courts a wide latitude in considering whether a defendant's pretrial detention is actually necessary, including the consideration of whether pretrial detention would actually be more harmful to the community in a particular case due to the harm imposed on the family unit and children. The fact that parenting responsibility mitigates the risk of re-offending and increases compliance with conditions is a relevant consideration as to whether a higher bail is actually necessary. Moreover, the Constitution supports pretrial release whenever possible. The presumption of innocence, as is explained in more detail below, is the foundation of our criminal legal system and should always be taken into account during pretrial detention hearings. Finally, since pretrial detention and high bail amounts impose unique costs to the family due to financial strain, it is important to set bail no higher than necessary to fulfill its purposes, as required by both the Constitution and MN law.

The National and Global Movement Towards Considering Family Impact at the Pretrial Stage

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 in considering whether to detain a parent pretrial. In the United States, many jurisdictions have begun to reform their pretrial detention practices such as through cite and release policies, the elimination of cash bail, and by providing more pretrial support for defendants who are parents of minor children. Globally, the effects of parental detention have been recognized through pretrial diversion programs and mandatory considerations of a defendant's family circumstances. The global movement towards considering family impact at the pretrial stage demonstrates a national and international consensus that the adverse effects of parental incarceration should be mitigated to promote the best interests of children.

[180] Minn. R. Crim. P. 6.02, subd. 1; State v. LeDoux, 770 N.W.2d 504, 513 (Minn. 2009).

National Movement

Many jurisdictions have recognized that pretrial detention has become too pervasive of a practice and needs to be reformed. The Minnesota Justice Research Center, for example, recommends that police cite and release—rather than arrest and book—people accused of low-level crimes, because the research suggests that this practice does not decrease court appearances or impair public safety.[181] When New Jersey eradicated cash bail, it also changed its cite-and-release policies to encourage the practice and decrease the number of pretrial detainees.[182] This practice did not increase pretrial crime, with the majority of those released pretrial successfully completing the pretrial period without acquiring a new charge.[183] The American Bar Association supports policies that favor citations over detentions; the ABA's pretrial release standards provide, "[i]t should be the policy of every law enforcement agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law."[184]

Other U.S. jurisdictions recognize the need to change pretrial detention practices. For example, Illinois passed the Pretrial Fairness Act, which requires a prompt detention hearing with counsel present, a clear and convincing evidence standard, discovery disclosure prior to the detention hearing, written judicial findings, and the right to appeal.[185] New York City's Mayor's Office of Criminal Justice is working with the Criminal Justice Agency to find alternatives to pretrial detention using transparency, expansive case management, evidence-based practices, and a comprehensive referral system of nonprofits and service organizations.[186]

Additionally, community-based organizations are increasingly providing support for parents during the pretrial period. The New York City Legal Aid Society created the Women's Pretrial Release Initiative with the goal of reducing the number of women detained pretrial.[187] In Oklahoma, both Still She Rises and The Education and Employment Ministry (TEEM) are dedicated to meeting the pretrial needs of women and people who are low-income and

[181] *Id.* at 17.
[182] *Id.*
[183] *Id.*
[184] American Bar Association, *ABA Standards for Criminal Justice: Pretrial Release* (3rd Ed., 2007), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/pretrial_release.authcheckdam.pdf.
[185] 725 Ill. Comp. Stat. 5/110, 2025.
[186] *Alternatives to Incarceration*, Mayoral's Office of Criminal Justice, https://criminaljustice.cityofnewyork.us/programs/alternatives-to-incarceration/.
[187] Erica King et. al., *Gender Justice Pretrial Toolkit*, Center for Effective Public Policy (2024).

unhoused, respectively.[188] In Minnesota, We Resolve supports families as their loved one goes through the criminal legal process in an effort to mitigate the harm the criminal justice system can have on families. These are just a few of the many efforts at the state level aimed at reforming pretrial release.[189]

Along with recognizing the general issues with pretrial detention practices, jurisdictions have also begun to recognize the need to consider the best interests of the defendant's child before incarcerating a parent. Many states have created mitigation or diversion programs for caregivers of minor children at the sentencing phase,[190] and the movement towards implementing these laws at the pretrial stage is a necessary next step that states are beginning to recognize. In Illinois, for example, the Children's Best Interest Act states that one of its purposes is to "prevent unnecessary harm to children caused by separation from parents during pre-trial detention…".[191] Additionally, in California, the Primary Caregiver Diversion law allows for pretrial diversion.[192] Thus, the recognition that any period of incarceration can be harmful to a defendant's child and the need to consider this before detaining a parent is a growing movement.

Global Movement

Other countries and international organizations have also recognized the growing issue of pretrial detention and implemented ways to address it. The Human Rights Council has established a Working Group dedicated to ending arbitrary pretrial detention.[193] This group gathers data on the number of pretrial detainees in all of its Member States and encourages these States to consider alternatives to pretrial detention and end arbitrary detention once and for all.[194]

Many countries have joined this movement away from arbitrary pretrial detention. In 2016, Italy

[188] *Id.*
[189] *State Pretrial Reforms*, Nat'l Ass'n. Crim. Def. L. (2020), https://www.nacdl.org/Content/Legislation-and-State-Practices (listing all of the state reforms).
[190] Ross Jackson and Nikki Pressley, *Caregiver Mitigation and Diversion Programs: A Family-Centered Alternative to Incarceration*, Right on Crime (2024).
[191] Illinois Public Act 101-0471 (HB2444).
[192] Cal. Penal Code § 1001.83, Ch. 2.9E (2019).
[193] *Report of the Working Group on Arbitrary Detention*, Human Rights Council (2025).
[194] *Id.*

decriminalized many minor offenses and classified them as administrative infractions instead.[195] In New Zealand, the full court process is reserved for serious offenses and offenders, with eligible offenders of less-serious offenses being given the opportunity to avoid full prosecution through a diversion program.[196] For example, Ukraine places time limits on pretrial detention.[197] In relation to bail, the European Court of Human Rights mandates that courts consider the defendant, their assets, and their relationship with the guarantor when setting bail amounts. Thus, there is a widespread effort to address the issues surrounding pretrial detention.

Additionally, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women offenders recognize the particular risk of abuse faced by women who are detained pretrial, and state that when making pretrial decisions for a pregnant woman or a child's sole or primary caretaker, non-custodial measures should be preferred whenever possible.[198]

Further, the Inter-American Commission on Human Rights (IACHR) has identified that "the arbitrary and illegal application of pretrial detention is a chronic problem in the region."[199] In a report studying this issue and providing recommendations, the IACHR emphasized the disproportionate negative impacts faced by women detained pretrial, including the severe consequences to children when the women are responsible for raising them.[200] In these situations, the closest relative becomes responsible for looking after the child, which can lead to separation of siblings, and in most cases, social services have to step in to provide support to the child.[201] This disruption to the child's life caused by the mother's incarceration renders the child vulnerable to poverty, marginalization, and neglect.[202] Because of these findings, the IACHR recommends that, in accordance with the best interests of the child, "judicial authorities should apply the criteria of necessity, proportionality, and reasonableness more strictly when they

[195] *Italy Decriminalizes Obscene Acts, Other Minor Crimes to Unburden Justice System*, The Japan Times (January 17, 2016), http://www.japantimes.co.jp/news/2016/01/17/world/crime-legal-world/italy-decriminalizes-obscene-acts-other-minor-crimes-to-unburden-justice-system/#.VsmVuPmLTct.
[196] New Zealand Police, *Adult Diversion Scheme Policy and Factsheet*, http://www.police.govt.nz/about-us/publication/adult-diversion-scheme.
[197] Penal Reform International, *Reducing Pre-Trial Detention*, 2016; Supreme Court of India, Writ. Petition (Crl.) No. 310 of 2005 titled as 'Bhim Singh Versus Union of India & Ors., 24 September 2014, Endst No. 29613 Gaz. II(17).
[198] UN Bangkok Rules, Preliminary Observations, para 9.
[199] Sofia Gavan Puente, et al., *Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas*, IACHR (2017).
[200] *Id.* at 125.
[201] *Id.* at 129.
[202] *Id.*

consider ordering the pretrial detention of people who are responsible for children and adolescents."[203]

United States courts, including the Supreme Court, have considered international law specifically in reference to the appropriateness of criminal punishments.[204] Thus, this global movement provides further support for the importance of considering parental responsibility in U.S. pretrial detention decisions.

Addressing Common Concerns

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

A common objection to considering a defendant's children for pretrial release decisions 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.[205] Children are powerful motivators for successful rehabilitation[206] and compliance with conditions of supervised release.[207] Research shows that parents and caregivers who adopt/accept parental identities have lower recidivism rates.[208] 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 likelihood of successful compliance with conditions if released during pretrial proceedings, including appearing at future court proceedings.

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 during pretrial proceedings.

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[203] *Id.*
[204] Coker v. Georgia, 433 U.S. 584, 596 n.10, 97 S. Ct. 2861, 2868 n.10 (1977) (explaining that "the climate of international opinion concerning the acceptability of a particular punishment" is "not irrelevant" to Eighth Amendment analysis); Graham v. Florida, 560 U.S. 48, 80, 130 S. Ct. 2011, 2032 (2010) (considering international law in interpreting the Eighth Amendment to determine whether sentencing a minor to life in prison without the possibility of parole constitutes cruel and unusual punishment).
[205] Shlafer et al., *supra* note 123.
[206] NEAL HAZEL ET AL., *supra* note 132.
[207] *See* Adams et al., *supra* note 127.
[208] Liu & Miller, *supra* note 138, at 872; Venema et al., *supra* note 135, 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).

A common concern regarding the consideration of a defendant's children during pretrial proceedings is that defendants will simply use their children as get-out-of-jail-free cards, even if they have no relationship with their children.[209] Even if this situation arises, defendants will not be successful so long as judges have sufficient information to evaluate the child-caregiver relationship. For this reason, it is crucial for judges to request this information, for probation officers to ask for this information when interviewing the defendant during pretrial evaluations, 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.[210] 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.[211] As such, this is an important consideration for evaluating a defendant's family ties—which courts are required to consider pursuant to Rule 6.02, subdivision 2(c), of the Minnesota Rules of Criminal Procedure—to decide what conditions of release are necessary to assure a defendant's appearance.

Conclusion

The preceding information showcases how children can be impacted by the pretrial detention of their caregivers and how courts have begun to recognize the need to consider this impact when making pretrial detention determinations regarding a parent of a minor child. CIC believes that this research shows how utilizing alternatives to pretrial detention 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.

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[209] *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").
[210] *Accord* Liu & Miller, *supra* note 138, at 871.
[211] *See* Mowen, Stansfield, & Boman, IV, *supra* note 131.