Children of Incarcerated Caregivers

MINNESOTA SENTENCING DEFENSE SUPPLEMENT



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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 Defense Supplement 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 the 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 the research shows, that community-based alternatives to incarceration can support the needs of children while also benefiting society as a whole.

How to Evaluate Family Circumstances[1]

The following information is relevant for evaluating the client's relationship with his or her child or children and assessing the impact of sentencing on a child or children, and each topic is followed by relevant questions to ask the client or the client's family members.

- **How and the extent to which the caregiver is engaged with his or her child:**
    - *How often does the client see his or her child or children? What does that contact look like? When and where does that contact occur? How does the client typically interact with his or her child or children? Does the client live with his or her child or children?*
    - *For some specific examples, does the client help with rides to and from school or other extracurricular activities? Does the client help with homework? Does the client help his or her child or children with participation in extracurricular activities, such as practicing an instrument for band, preparing for an audition*

[1] The information in the following list of relevant considerations for evaluating the caregiver-child relationship is based on two reports. *See* BEKAH MUTA, CHILD. OF INCARCERATED CAREGIVERS, FAMILY IMPACT STATEMENTS 2–3 (2024), https://cicmn.org/wp-content/uploads/2024/11/Bekah-Muta-Family-Impact-Statement-Report-2024.pdf; Eleanor Bush, *Considering the Defendant's Children at Sentencing*, 2 FED. SENT'G REP. 194, 194–98 (Dec. 1989 – Jan. 1990), https://doi.org/10.2307/20639225.

for theater, practicing a sport, etc.? Is the client involved with his or her child or children's religious beliefs or education, such as rides to religious education classes, religious peer groups, or religious services or meetings at a church, mosque, synagogue, or temple?

- **Contact between the caregiver and child, including contact prior to a caregiver's indictment, arrest, and if applicable, pretrial detention:**

    - *Has the client stayed in contact with his or her child or children? If the client has not been able to stay in contact with his or her child or children, what obstacles have prevented contact? Are these barriers directly imposed or indirectly caused by the client's pretrial detention, and if so, would they also result from the client's incarceration?*

    - *If the client has stayed in contact with his or her child or children while on pretrial release, how have the client's conditions of release and/or the client's hearings and court dates affected his or her contact with his or her child or children?*

    - *If the client has stayed in contact with his or her child or children while in custody, how has the client stayed in contact? Letters? Phone or video calls? In-person visits?*

        - *If the client has stayed in contact via phone or video calls, has that imposed financial costs on the client or the client's family, and if so, what are those costs?*

        - *If the client has stayed in contact via in-person visits, what factors, if any, impact the family's ability to have in-person visits? For example, what limitations are imposed by travel time and costs imposed by travel, such as gas money, the cost of staying in a hotel, the loss of income caused by a spouse or caregiver taking time off for visits, etc.? What limitations are imposed by time constraints, such as when designated visiting hours for the facility align with (or fail to align with) schooling, a spouse or caregiver's work schedule, a spouse or caregiver's flexibility*

with changing his or her work schedule or requesting time off, etc.? What are the emotional costs imposed by in-person visits on the child or children?

- *See questions above for additional relevant considerations regarding a client's contact with his or her child or children prior to indictment, arrest, and if applicable, pretrial detention.*

- **In the event of pretrial detention, opportunity and accessibility for contact during a caregiver's detention and what this would look like if the caregiver was incarcerated:**

  - *See questions above for questions related to evaluating the opportunity and accessibility for contact during a client's detention.*

  - *How would the client's contact with his or her child or children change with a sentence of imprisonment? Considering the locations of facilities where the client could be incarcerated if he or she receives a sentence of imprisonment, how would the geographic locations of prisons affect the client's contact with his or her child or children?*

- **Whether the caregiver is the child's primary caregiver.**

- **Whether the child has any special needs that the defendant assists in addressing:**

  - *Does the client's child have any learning, intellectual, or physical disabilities that the client helps to address? (For example, dyslexia, dyscalculia, dysgraphia, auditory processing disorder (APD), non-verbal learning disability (NVLD), down syndrome, fragile X syndrome, fetal alcohol spectrum disorders (FASD), autism spectrum disorder (ASD), etc.) If so, what are those disabilities, and how does the client assist in addressing them?*

  - *Does the client's child have any mental health disorders that the client helps to address? (For example, attention-deficit hyperactivity disorder (ADHD), generalized anxiety disorder (GAD), post-traumatic stress disorder (PTSD),*

bipolar disorder, obsessive-compulsive disorder (OCD), etc.) If so, what are those mental health disorders, and how does the client assist in addressing them?

- *Does the client's child have any other medical circumstances that the client helps to address? (For example, if the client's child has a terminal illness, cancer, autoimmune disorders such as Celiac disease, severe and life-threatening allergies that commonly occur in day-to-day activities, etc.) If so, what are those medical circumstances, and how does the client assist in addressing them?*

- **Information regarding the defendant's ability to fulfill his or her requirements and responsibilities for maintaining custodial rights:**
  - *In instances where a client's child or children may be placed in foster care, what access, if any, will the client have to caseworkers and his or her children?*
- **The number of minor children who will be impacted and their ages:**
  - *In addition to the client's child or children, will any other children be affected, such as the children of the caregiver who takes the client's child or children in? If so, include the number and ages of minor children who will be indirectly affected by the client's incarceration.*
- **The child or children's current living situation(s):**
  - *How has this changed as a result of the client's pretrial detention, if applicable?*
  - *How will this change in the event of the client's incarceration?*
- **The financial and emotional qualities of the caregiver-child relationship:**
  - *How does the client support his or her child or children financially?*
    - *For example, does the client consistently pay child support or pay for the child's participation or involvement in an extracurricular activity?*

- *How does the client support his or her child or children emotionally?*
    - *For example, is the child experiencing bullying at school, grieving the loss of a family member, pet, friend, or friendship, struggling with social or school situations, etc.?*

- **The financial needs of the child or children:**
    - *For example, what are the child or children's expenses related to school, extracurricular activities, childcare/daycare, transportation to school and extracurricular activities, etc.?*
    - *Does the child have any specific conditions that require additional financial support? (For example, if the child has Celiac disease and is unable to eat gluten, so the child's food costs more for gluten-free alternative foods; if the child has diabetes, so the child's care requires additional money to cover insulin; if the child has a mental health condition that requires medication, so the child's care requires additional money to cover those medications; etc.)*

- **The location of the child or children's residence:**
    - *Where is this in relation to the facilities where the client could be incarcerated?*

- **The economic costs relating to the loss of the caregiver's income or the financial status of the child or children's caregiver during the caregiver's pretrial detention and/or incarceration:**
    - *How has the client's pretrial detention, if applicable, affected the total income of the household?*
    - *How would the client's incarceration affect the total income of the household?*
    - *Will the client no longer be eligible for welfare programs that will in turn affect the client's child or children?*

- *If the child or children's caregiver in the client's absence had to work additional hours to get additional jobs, has this adequately addressed the economic loss related to the client's pretrial detention and/or possible incarceration? What are the costs imposed on the child or children by the caregiver's increased workload? For example, how has the caregiver's time with the child or children been limited?*

- **The loss of care and support resulting from the separation of the caregiver and child or children:**

  - *Has the child or have the children had to give up anything as a result of the client's pretrial detention and/or possible incarceration? For example, are the client's children able to continue their participation in all the same extracurricular activities?*

  - *Will the client's incarceration (or has the client's pretrial detention) affect the child or children's routine? If so, how?*

- **The potential impact on the child or children's mental health, social behavior, and educational prospects:**

  - *How has the client's pretrial detention, if applicable, affected his or her child or children's mental health or behavior?*

  - *Has the client's child or children's schooling been affected by the client's pretrial detention, if applicable? How might the client's child or children's schooling be affected by the client's incarceration?*

  - *Has the client's child or children experienced any negative mental health consequences, such as depression or increased anxiety, concurrent to the client's pretrial detention, if applicable? How might the client's child or children experience any negative mental health consequences, such as depression or increased anxiety, concurrent to the client's incarceration?*

- *Has the client's child or children demonstrated any behavioral problems or presented any behavioral concerns concurrent to the client's pretrial detention, if applicable? How might the client's child or children demonstrate any behavioral problems or present any behavioral concerns concurrent to the client's incarceration?*

- **The structural changes that the child or children may experience as a result of the client's sentence:**

  - *Will the client's child or children change schools?*

  - *Will the client's child or children have to move to a different city or state?*

  - *Will the client's child or children be separated from siblings or other family members?*

  - *Will the client's child or children experience any trauma related to the client's sentence?*

  - *How might the client's child or children experience the negative stigma of parental incarceration?*

- **The child or children's upcoming events, experiences, and/or milestones that may be impacted by the client's sentence:**

  - *Will the client's child or children experience any of the following upcoming events, experiences, or milestones that the client's absence will affect directly or indirectly?*

    - *Learning to drive and getting a learner's permit or driver's license;*

    - *Graduation from any grade;*

    - *Upcoming sports games or tournaments;*

        - *Upcoming competitions or tournaments, such as mock trial, talent shows, spelling bees, debate competitions, etc.;*
        - *Birthdays;*
        - *Important tests or exams, either for school or for college applications;*
        - *College tours;*
        - *Important presentations for school;*
        - *Religion-affiliated events, such as a bat or bar mitzvah, confirmation or other sacramental milestones, etc.*

- **The living and care arrangements for the child or children in the event of the client's incarceration and subsequent unavailability:**
    - *Who will be the primary caregiver for the client's child or children?*
    - *Who will the client's child or children live with, including other relatives in the home?*
    - *Where will the client's child or children live? What city and state? What type of home or residence?*

- **The quality of the connection between the child or children and their prospective "stand-in" caregiver, such as a relative or friend, in the event of the client's incarceration:**
    - *What kind of relationship, if any, exists between the client's child or children and their caregiver in the event of the client's incarceration?*

- **The financial and care resources and stability of the child or children's alternative care arrangements in the event of their caregiver's incarceration:**
    - *Does the caregiver have stable housing and a consistent income?*
    - *If something were to happen to the client's child or children's caregiver, where will the child or children go? Who will they live with?*
- **Proposed conditions of release that would be in the best interest of the child or children:**
    - *Are there any conditions that could be imposed that would allow the client to serve a probationary sentence or supervised release term while also promoting the best interests of the client's child or children?*

How to Consider Potential Family Ties

The following information is relevant for assessing whether the client's potential family ties with his or her child or children may be beneficial to introduce and discuss at sentencing:

- **The number of minor children the client has;**
- **The age(s) of the client's child or children;**
- **Where the client's child or children reside;**
- **The relationship(s) the client has with his or her child or children's caregiver(s);**
- **The client's historical relationship(s) with his or her child or children;**
- **The client's interest in having a relationship or relationships with his or her child or children;**

- **The client's ability to have a relationship or relationships with his or her child or children;**

- **The client's willingness to provide financial, emotional, or other support to his or her child or children.**

How to Investigate Family Circumstances, Ties, and Responsibilities

To investigate family circumstances, defense counsel can ask the client, the client's family members (including the client's child or children, if they are old enough to understand), and/or community members who have a relationship with the client or the client's child or children for information related to family circumstances or potential family ties as outlined above. Defense counsel can collect this information through interviews, requesting written letters of support, or other relevant records or documentation. For example, recent pictures of a client's child or children with the client doing an extracurricular activity can demonstrate the client's involvement in his or her child's or children's lives. It also may be beneficial to seek additional consultation, such as seeking an expert to consult on the impact of parental incarceration or a mitigation specialist to discuss how family circumstances relate to mitigation at sentencing. If the client's child or children are involved in any open child protection cases, consider contacting the social worker(s) involved in the proceedings.

How to Argue Family Circumstances at Sentencing

A sentencing judge may depart from the MN Sentencing Guidelines if "there exist identifiable, substantial, and compelling circumstances that distinguish a case and overcome a presumption in favor of the guidelines sentence."[2] When considering a departure, the sentencing court tends to focus on the defendant's characteristics to determine whether the defendant is particularly suitable for probation.[3] The following factors cannot be used as justifications for departure: race, sex, employment factors, living arrangements at time of sentencing, length of residence, educational attainment, marital status, and the defendant's

[2] State v. Soto, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted); Minn. Sent. Guidelines 2.D.1 (2024).
[3] State v. Solberg, 882 N.W.2d 618, 623 (Minn. 2016); *see also* State v. Trog, 323 N.W.2d 28, 31 (Minn. 1982) (listing several factors relevant to the suitability of probation).

exercise of constitutional rights during the adjudication process.[4] The Guidelines also provide a "nonexclusive list" of aggravating and mitigating factors that may be used as reasons for departure.[5] Two of the mitigating factors include "[o]ther substantial grounds exist that tend to excuse or mitigate the offender's culpability, although not amounting to a defense," and "[t]he offender is particularly amenable to probation." The latter factor "may, but need not, be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting."[6] This factor will be most relevant for bringing in arguments about the defendant's family ties and parenting responsibilities.

In considering whether a defendant is "particularly amenable to probation," courts have considered age, prior record, remorse, cooperation, attitude while in court, and the support of family or friends.[7] The Minnesota Supreme Court has recognized that familial support is an appropriate factor justifying a departure based on the defendant being particularly amenable to probation[8] and more recently determined that a district had not improperly considered that a defendant might be motivated by his desire to focus on his minor son's upbringing.[9]

In Minnesota, the sentencing court can "stay" a defendant's sentence. This means that the court accepts a finding or plea of guilty and then either does not impose a prison sentence or pronounces a prison sentence but does not execute it, depending on the type of stay.[10] The Guidelines "urge courts to utilize the least restrictive conditions of stayed sentences that are consistent with the objectives of the sanction . . . [and] to consider [several additional] principles in establishing the conditions of stayed sentences."[11] The severity of a retributive sanction should be proportional to the severity of the offense and the offender's prior criminal record.[12] Importantly, the absence of a rehabilitative resource "should not be a basis for enhancing the retributive objective" and "should not be the basis for more extensive use of

[4] Minn. Sent. Guidelines 2.D.2 (2025).
[5] Minn. Sent. Guidelines 2.D.3 (2025).
[6] Minn. Sent. Guidelines 2.D.3.a (2025) (providing nonexclusive list of mitigating factors that may be considered for departure).
[7] State v. Trog, 323 N.W.2d 28, 31 (Minn. 1982) (listing several factors relevant to the suitability of probation).
[8] *Id.*; *see also* State v. King, 337 N.W.2d 674, 675 (Minn. 1983) ("One of the factors which apparently motivated [the] defendant to accept the harsher probationary sentence was a financial factor: his desire to continue working on work release so that he could help pay the bills and keep his family together.").
[9] State v. Soto, 855 N.W.2d 303, 312 (Minn. 2014).
[10] Minn. Sent. Guidelines 1.B.19 (2025).
[11] Minn. Sent. Guidelines 3.A.2 (2025).
[12] Minn. Sent. Guidelines 3.A.2.(1) (2025).

incarceration than is justified on other grounds."[13] The Guidelines urge courts to use restitution and community work orders as conditions of a stayed sentence and instruct that "supervised probation should be a primary condition of stayed sentences."[14]Any fines imposed should be "day fines" to standardize the financial impact.[15]

How to Present Family Circumstances Information to the Court

When bringing evidence of family ties to the court to show that a defendant is "particularly amenable to probation," attorneys should always start with the case-specific facts. For more information on gathering these relevant facts, see "How to Evaluate Family Circumstances" at the beginning of these materials. Research on the harms of parental incarceration, however, can provide further support for an argument that a defendant's parental responsibility makes them more amenable to probation or that the defendant's release is in the best interest of the child. For example, if a client indicates that he or she is primarily responsible for getting his or her child to and from school, then the argument should be based around that case-specific fact, but the research below indicated that having an incarcerated parent is associated with decreased education attainment can be used as support.

These arguments are only relevant when the parent facing incarceration has a positive relationship with or impact on their children. The best interest of the child should be the focus, and the research on protective factors and the harms of parental incarceration would be irrelevant, and thus unpersuasive, if the parent was absent or was negatively having a negative impact on the child prior to receiving criminal charges. Since the relevant inquiry is whether the defendant is "particularly amenable to probation," defense attorneys should first frame a defendant's parental responsibilities as a protective factor contributing to his or her likelihood of success on probation. For information on the research regarding the harms of parental incarceration and family circumstances serving as a protective factor, see "Parental Incarceration and Family Circumstances" in CIC's Minnesota Sentencing Toolkit, which can be found on our website.

[13] Minn. Sent. Guidelines 3.A.2.(2) (2025).
[14] Minn. Sent. Guidelines 3.A.2.(3)-(4) (2025).
[15] Minn. Sent. Guidelines 3.A.2.(5) (2025).

Family impact information can be presented to a sentencing court through various avenues, including through reports (e.g., bail and presentence investigations reports), statements (e.g., a statement made by the impacted family member or read in to the record), and through impact assessments (e.g., impact of race and culture assessments, as well as victim impact assessments), among others.[16] For sentencing departure arguments, family impact information can be presented to the court by integrating it into a memorandum or addendum in support of a motion to departure, such as through the framework provided by the sample memorandum in the Appendix at the end of this toolkit.

Other Considerations

In addition to the information above, it may also be beneficial to seek additional consultation, such as considering a consultation with an expert on the impact of parental incarceration. If the child is involved in any open child protection cases, consider contacting the social worker(s) involved in the proceedings.

It is also important to discuss factors important to maintaining the child-caregiver relationship in the event that the caregiver is incarcerated. Consider requesting a commitment to a specific facility that would allow easier access for visitation. Research and discuss available programs for all potential dispositions that would also support the child-caregiver relationship. Lastly, ensure that your client has clear expectations about necessary steps for maintaining custody in the event of a prison commit.[17]

[16] See 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; Emily W. Andersen, "*Not Ordinarily Relevant": Bringing Family Responsibilities to the Federal Sentencing Table*, 56 BOS. COLL. L. REV. 1501, 1512 (2015); FED. R. CRIM. P. 32(d)(2)(B) (indicating that the presentence investigation report must include an assessment of victim impact).

[17] *See* BILL DE BLASIO & DAVID A. HANSELL, N.Y.C. ADMIN. OF CHILD.'S SERVS., OUT OF SIGHT, NOT OUT OF MIND: IMPORTANT INFORMATION FOR INCARCERATED PARENTS WHOSE CHILDREN ARE IN FOSTER CARE 2–9 (2007), https://www.nyc.gov/assets/acs/pdf/immigrant_services/translations/fps/OutofSight.pdf (outlining a parent's requirements and responsibilities for maintaining custodial rights during incarceration).

Conclusion

We appreciate you taking the time to learn more about the harms of parental incarceration and how you can take into account the best interests of the minor children of your clients. If you utilize any of the arguments or resources from this primer, please contact us to share your outcomes. Additionally, please reach out if you are aware of any other resources on the harms of parental incarceration of which we have not included here.

Publicly Accessible Minnesota Sentencing Materials

- *Minnesota Sentencing Guidelines and Commentary*, MINN. SENT'G GUIDELINES COMM'N (Aug. 1, 2024), https://mn.gov/sentencing-guidelines/assets/2024_Minn_Sentencing_Guidelines_Commentary_tcm30-639154.pdf

- *Minnesota Court Rules: Sentencing Guidelines*, OFF. OF REVISOR OF STATUTES, https://www.revisor.mn.gov/court_rules/sg/id/1/pdf/ (last visited June 29, 2025)

- *Minnesota Sentencing Guidelines Commission Departure Report*, MINN. SENT'G GUIDELINES COMM'N, https://mn.gov/sentencing-guidelines/assets/Fillable_DepartureReportForm_Apr2022_tcm30-63117.pdf (Aug. 2022)

- *2024 Sentencing Guidelines and Commentary*, MINN. SENT'G GUIDELINES COMM'N, https://mn.gov/sentencing-guidelines/guidelines/currentguidelines.jsp (last visited June 29, 2025)

- *Previous Years Guidelines and Commentary*, MINN. SENT'G GUIDELINES COMM'N, https://mn.gov/sentencing-guidelines/guidelines/archive.jsp#/list/appId/1/filterType/Date/filterValue/2016-08/page/1/sort//order/ (last visited June 29, 2025)

- *Minnesota Sentencing Guidelines and Commentary*, MINN. SENT'G GUIDELINES COMM'N (1980), https://www.ojp.gov/pdffiles1/Digitization/68866NCJRS.pdf

Other Resources for Sentencing Arguments

- *How to Use Structured Fines (Day Fines) as an Intermediate Sanction*, U.S. DEP'T OF JUST. BUREAU OF JUST. ASSISTANCE (Nov. 1996), https://vera-institute.files.svdcdn.com/production/downloads/publications/How_to_use_day_fines.pdf

- Beth A. Colgan, *Graduating Economic Sanctions According to Ability to Pay*, 103 IOWA L. REV. 53, 56–57 (2017), https://ilr.law.uiowa.edu/sites/ilr.law.uiowa.edu/files/2023-02/ILR-103-1-Colgan.pdf

- BEKAH MUTA, FAMILY IMPACT STATEMENTS (2024), https://cicmn.org/wp-content/uploads/2024/11/Bekah-Muta-Family-Impact-Statement-Report-2024.pdf

- LINDSEY CRAMER ET AL., TOOLKIT FOR DEVELOPING FAMILY IMPACT STATEMENTS 1 (2015), https://www.urban.org/sites/default/files/publication/53651/2000253-Toolkit-for-Developing-Family-Impact-Statements.pdf

- 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

- BILL DE BLASIO & DAVID A. HANSELL, N.Y.C. ADMIN. OF CHILD.'S SERVS., OUT OF SIGHT, NOT OUT OF MIND: IMPORTANT INFORMATION FOR INCARCERATED PARENTS WHOSE CHILDREN ARE IN FOSTER CARE (2007), https://www.nyc.gov/assets/acs/pdf/immigrant_services/translations/fps/OutofSight.pdf

Appendix: Sample Sentencing Memo

STATE OF MINNESOTA DISTRICT COURT

County of: ****	Court File Number: **
Judicial District: ***	Case Type: Criminal

State of Minnesota,

Plaintiff,

v.

**********,

Defendant.

NOTICE OF MOTION AND MOTION FOR DOWNWARD DISPOSITIONAL DEPARTURE

To: The Honorable _____ and the State of Minnesota, by and through its prosecuting attorney, _____.

NOTICE OF MOTION

PLEASE TAKE NOTICE, that at the sentencing hearing scheduled on _____, at _____, _____, by and through his/her attorney, will move for a downward dispositional departure.

MOTION FOR DOWNWARD DISPOSITIONAL DEPARTURE

_____ respectfully requests that this Court grant him/her a downward dispositional departure based on his/her demonstrated particular amenability to probation/treatment and the substantial and compelling reasons that distinguish this matter from other typical cases.

Minnesota courts have a great deal of discretion in sentencing. *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014). This discretion is limited, though, by the Minnesota Sentencing Guidelines, which prescribe sentences "presumed to be appropriate for the crimes to which they apply." Minn. Sent. Guidelines 2.D.1 (2024). Accordingly, in order to depart from the guidelines, the court must determine that "there exist identifiable, substantial, and compelling circumstances that distinguish a case and overcome the presumption in favor of the guidelines sentence." *Soto*, 855 N.W.2d at 308 (Minn. 2014) (quotation omitted).

The Guidelines provide a nonexclusive list of mitigating factors that can justify a downward dispositional departure or allow for a probationary sentence rather than imprisonment. One factor is that the defendant is "particularly amenable to probation." Minn. Sent. Guidelines 2.D.3.a.(7). In determining whether a defendant is particularly amenable to probation, courts consider a variety of circumstances, such as "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

While the Guidelines specify that social or economic factors cannot, on their own, justify a sentencing departure, facts related to those considerations may be relevant to determining whether a defendant is particularly amenable to probation. Minn. Sent. Guidelines Cmt. 2.D.303 (citing *Soto*, 855 N.W.2d at 309); *see* Minn. Sent. Guidelines 2.D.2 (instructing that social factors, including "living arrangements" and "marital status," cannot be used to justify a sentencing departure). Correspondingly, a defendant's familial connections may be considered in determining whether he or she is particularly amenable

to probation. The Minnesota Supreme Court has evaluated sentencing departures that were based, in part, on familial considerations in a number of cases.

In *Trog*, the Minnesota Supreme Court affirmed a downward dispositional departure from a presumptive executed prison sentence where a number of considerations suggested particular amenability to probation, including family connections. 323 N.W.2d at 28. At sentencing, several people in Trog's life made compelling statements about their relationships with him, and his defense attorney emphasized "the strong support shown him by family and friends" in arguing for the departure. *Id.* at 30. In affirming the probationary sentence, the supreme court concluded that Trog's familial support system was an appropriate factor justifying a departure from the Guidelines sentence. *Id.* at 31.

In *State v. King*, the supreme court likewise affirmed a downward sentencing departure, which granted the defendant an extended probation and work release instead of the Guidelines-mandated, year-long prison sentence, where family considerations had clearly motivated the sentencing decision. 337 N.W.2d 674, 675 (Minn. 1983). The court highlighted that "[o]ne of the factors which apparently motivated [the] defendant to accept the harsher probationary sentence was a financial factor: his desire to continue working on work release so that he could help pay the bills and keep his family together." *Id.* While cautioning that social and financial factors cannot be the sole basis for a departure, the supreme court noted that they can bear indirectly on whether a defendant is "particularly amenable" to probation. *Id.* at 675–76.

In *Soto*, a more recent case, the supreme court reiterated that the district court may consider a defendant's familial status—specifically, status as a parent—as a factor for

determining amenability to probation. 855 N.W.2d at 312. While the supreme court ultimately reversed the district court's decision to grant a downward departure, the court determined that the district court had not improperly considered that Soto "seemed to have some family support" and might be motivated by the desire to focus on his minor son's upbringing. *Id.* at 312.

FINDINGS OF FACT AND PROCEDURAL HISTORY

Insert brief description of procedural posture of the case, including when the pre-sentence investigation was ordered and conducted, if applicable, and the findings relevant to the request for a sentencing departure

***

ANALYSIS

_____ requests a downward dispositional departure based on his/her particular amenability to probation/treatment, and because substantial and compelling circumstances justify a departure in this case.

I. _____ demonstrates _____'s particular amenability to probation/treatment, and substantial and compelling circumstances support _____'s request for a downward dispositional departure.

Insert analysis here assessing the Trog factors, including specific facts that demonstrate a particular amenability to probation/treatment and/or substantial and compelling circumstances that distinguish this matter from typical cases. Provide specific details on the defendant's relationship with his/her child/children, such as the following examples of parenting responsibilities:

- *How and the extent to which the caregiver is engaged with his or her child;*
- *Contact between the caregiver and child, including, if applicable, contact prior to and, if the client was able to interact with his or her child, during the client's pretrial detention;*
- *Whether the caregiver is the child's primary caregiver;*
- *Whether the child has any special needs that the defendant assists in addressing;*
- *Information regarding the defendant's ability to fulfill his or her requirements and responsibilities for maintaining custodial rights, including access to caseworkers and his or her children, in instances where a defendant's child or children may be placed in foster care;*
- *The number of minor children who will be impacted by the defendant's sentence and their ages;*

- *The child or children's living situation;*
- *The financial and emotional qualities of the caregiver-child relationship;*
- *The financial needs of the child or children;*
- *The location of the child or children's residence;*
- *The economic costs relating to the loss of the caregiver's income;*
- *The loss of care and support resulting from the separation of the caregiver and child or children;*
- *The potential impact on the child or children's mental health, social behavior, and educational prospects;*
- *The structural changes that the child or children may experience as a result of the caregiver's incarceration, including changing schools or separating siblings, trauma, and the negative stigma of parental incarceration;*
- *The child or children's upcoming events, experiences, and/or milestones that may be impacted by their caregivers' sentence;*
- *The living and care arrangements for the child or children in the event of their caregiver's incarceration and subsequent unavailability;*
- *The quality of the connection between the child or children and their prospective "stand-in" caregiver, such as a relative or friend, in the event of their caregiver's incarceration;*
- *The financial and care resources and stability of the child or children's alternative care arrangements in the event of their caregiver's incarceration;*
- *Proposed conditions of release that would be in the best interest of the child or children.*

***

II. Parental ties and responsibilities are protective factors against recidivism and demonstrate ____'s particular amenability to probation/treatment.

The Minnesota Supreme Court has recognized that family connection can make a person particularly amenable to probation, *Trog*, 323 N.W.2d at 31, which is supported by research indicating that family ties and responsibilities, and parenting responsibilities in particular, increase a defendant's motivation for success on release and thus reduce his or her risk of reoffending. Parenting responsibilities have been shown to help parents comply with their supervision conditions. One study on parents on probation found that parents put significant effort into being physically, emotionally, and financially invested in their children's lives, and maintained that parenthood was a positive influence on complying

with conditions of supervision, even in moments of significant stress.[18] Another study found that more routine parenting activities were associated with fewer probation and parole violations in the 18 months after starting supervision.[19] These studies, along with other research, indicates that parenting responsibilities may factor as a protective factor in preventing reoffending, particularly for women.[20]

Parent-child relationships are also associated with lower rates of recidivism upon release from a sentence of confinement and with job attainment, better health outcomes, and stronger emotional support during reentry.[21] In general, many studies have found that increasing community supervision can actually increase recidivism, partially because there is more opportunity for technical violations.[22] Thus, the best practice may be to reduce conditions of supervision generally, but for conditions that are imposed, parent-child relationships are powerful motivators for successful rehabilitation, providing structure that

[18] 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.
[19] 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.
[20] 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).
[21] *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. JUSTICE, 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).
[22] Jennifer L. Doleac, *Strategies to Productively Reincorporate the Formerly-Incarcerated Into Communities: A Review of the Literature*, SSRN, 2018, at 37.

discourages recidivism.[23] Thus, parenting responsibility is a protective factor that supports a defendant's chance of success on probation.

III. The harms of parental incarceration further reveal how a sentence of imprisonment will punish individuals who lack culpability for the offense.[24]

Parental incarceration is considered an Adverse Childhood Experience (ACE), which is known to affect well-being into adulthood. Parental incarceration impacts mental health; delinquency, criminality, and criminal justice contact; substance abuse and high-risk behaviors; physical health; healthcare access; educational readiness and attainment; economic hardship; and displacement. First, parental incarceration impacts mental health by increasing the risk of depression, post-traumatic stress disorder, anxiety, internalizing symptoms, self-injury, suicidal ideation, and suicide attempts, as well as antisocial problems.

Second, parental incarceration impacts delinquency, criminality, and criminal justice contact for its link to increased physical aggression, increased attention problems, increased risk of arrest, increased behavioral problems and school punishments, increased rule-breaking, and other behavioral problems, as well as increased risk of delinquent behavior, arrest, adult probation placement, and criminal conviction. Additionally, parental

[23] 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.

[24] The information contained in this section, along with more detail about the harms of parental incarceration, can be found in CIC's Minnesota Sentencing Toolkit.

incarceration is linked to more reported violence, anger, and rule violations than other incarcerated individuals.

Third, there are increased odds of substance-abuse issues in young adults with experiences of parental incarceration, including cigarette smoking, alcohol abuse, and prescription drug abuse. Additionally, maternal incarceration is associated with high-risk behaviors including having sex in exchange for money.

Fourth, recent parental incarceration is associated with a nearly 50% increase in early infant mortality. Parental incarceration is also associated with increased risk of high cholesterol, asthma, migraines, HIV/AIDS, and poor health, obesogenic behaviors, drinking sugary drinks, smoking cigarettes, and having 10 or more sexual partners.

Fifth, parental incarceration is associated with a doubled likelihood of children utilizing emergency room services rather than primary care and an increased risk of forgoing healthcare overall.

Sixth, parental incarceration impacts educational readiness and attainment. One in three adults in the United States with less than a high school degree has experienced parental incarceration. Parental incarceration is also associated with decreased educational attainment in emerging adulthood, as well as significantly lower GPAs, lower levels of education achieved, and lower levels of college completion; more grade retention and high school dropout; and greater unhappiness in school than peers.

Seventh, 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; thus, children have less family social advantages than their peers.

Lastly, parental incarceration is associated with an increased risk of experiencing homelessness in childhood and adulthood, and an increased risk of foster-care placement.

The harms of parental incarceration will be mitigated by granting _____'s request for a downward dispositional departure by affording _____ the opportunity to continue providing support and care to his/her child/children. Moreover, a probationary sentence would protect _____'s children as part of the public, thereby promoting public safety. Finally, a probationary sentence would ensure that the punishment harms only the culpable party, _____, and not innocent third parties, including his/her child/children.

CONCLUSION

Based on the foregoing reasons, _____ respectfully requests that this Court grant his/her request for _____ and _____.

Respectfully submitted,

Dated: _____

_____

By: **********

_____

License No. ********

_____

_____

_____

ATTORNEY[S] FOR DEFENDANT