Children of Incarcerated Caregivers

Children's Best Interest: A Child Rights' Approach to Pretrial Detention

Children of Incarcerated Caregivers

Children's Best Interest: A Child Rights' Approach to Pretrial Detention[1]

Table of Contents

Introduction 3
Pretrial Detention Around the Globe 4
Harms of Parental Incarceration Generally 5
Harms of Pretrial Detention 9
The Movement Forward 10
Recommendations 12
Appendix A: Examples of Pretrial Detention Practices that Consider the Defendant's Child 13
Appendix B: Alternatives to Pretrial Detention Generally 16

[1] This report was compiled from research conducted by CIC over multiple years. Contributions were made by Elise Busse, Brandon Garcia, Heather Grab, Emma Schubert, Marta Zurn, Carley Mossbrook, Bekah Muta, and Elizabeth Wehby.

Introduction

The pretrial stage of the criminal legal system is the period between a person's arrest or charge and the resolution of their case. This time is defined by uncertainty and instability for both the person being detained and their family. Pretrial detention is often indefinite and can last for months and even years.[2] This indefinite period follows the potentially abrupt arrest of the parent, which can lead to a sudden loss of stability in living arrangements, income, and housing for which the defendant's family and children are unprepared.

Globally, pretrial detention is generally over-relied upon.[3] Up to one-third of the world's prison population is in pretrial custody on any given day, which is a primary factor in the global trends of overincarceration and prison overcrowding.[4] As more attention is being given to addressing the human rights' violations in criminal legal systems across the globe, the pretrial period has been largely overlooked despite being in critical need of reform. This is especially true of the impact of pretrial detention on defendants' children, which is under-researched and insufficiently understood.[5] This lack of research is potentially another consequence of the uncertainty of pretrial detention. Post-sentencing is easier to study since there is a clearer timeline, allowing researchers to control more variables in collecting data.[6] As pointed out by researchers Sara Wakefield and Chase Montagnet, this is especially concerning because it means that "[t]he largest pool of people with incarceration experiences is among the least studied."[7]

The research that does exist, however, confirms that the pretrial detention of a parent can have devastating impacts on a child that are unique and in addition to the general harms of parental incarceration. As is the case with parental incarceration in general, this research uncovers a critical need for courts to consider the best interests of a defendant's child starting from the point of arrest and continuing throughout all legal proceedings. To explain this need, this article will describe pretrial detention in general to highlight the scope of the problem; summarize the small collection of existing research of the harms of the pretrial detention of a caregiver on a child; discuss the promising ways in which countries and legal systems have begun to recognize these harms while also explaining why these efforts must be amplified and more focus must be given to the pretrial period; lay out the recommendations that experts have proposed in order to mitigate the harm to children caused by the pretrial detention of caregivers; and provide examples of good practices around the world.

---

[2] Noah Boden & Rachel Brett, *Impacts of Pre-Trial Detention Procedures on Children with Parents in Conflict with the Law*, CHILDREN OF PRISONERS EUROPE (2021).
[3] *Id.* at 2.
[4] *Id.*
[5] Bryce Peterson et al., *Children of Incarcerated Parents Framework Document: Promising Practices, Challenges, and Recommendations for the Field* (Urban Institute, June 2025): 1, https://www.urban.org/sites/default/files/publication/53721/2000256-Children-of-Incarcerated-Parents-Framework-Document.pdf ("We do not know much about the effects of the earlier stages of parental criminal justice involvement.").
[6] Dr. Rebecca Shlafer (Associate Professor in General Pediatrics and Adolescent Health, University of Minnesota Department of Pediatrics), email message to author, January 27, 2025.
[7] Sara Wakefield and Chase Montagnet, "Parental Criminal Justice Involvement," Handbook on Children with Incarcerated Parents: Research, Policy and Practice (2019): 27, https://doi.org/10.1007/978-3-030-16707-3_3.

Pretrial Detention Around the Globe

At any given moment, an estimated 3 million people are being detained pretrial, and every year, approximately 10 million people will pass through pretrial detention.[8] In some countries, over three quarters of all prisoners are pretrial detainees.[9] The average length of pretrial detention in Europe is 167 days, or five-and-a-half months, which is likely a very conservative estimate for the global average.[10] The actual number of people experiencing pretrial detention is also almost certainly higher than these estimates due to the difficulty of measuring pretrial detention.[11] Even with these conservative estimates, it is clear that millions of people a day experience pretrial detention and the consequences that come with it, and pretrial detention rates have also been rising steadily across the globe.[12]

These numbers continue to rise despite the fact that unnecessary and arbitrary pretrial detention is recognized by many organizations as a human rights abuse.[13] Not only is pretrial detention a violation of the principle of the presumption of innocence,[14] but the loss of freedom and the potential losses of family, health, housing, employment, educational opportunities, and community most severely impact those of a lower socioeconomic status.[15] In addition to being more severely affected by pretrial detention, people without adequate financial resources are also more likely to be detained pretrial in the first place.[16] People with fewer resources are more likely to come into conflict with the law and less likely to be able to afford bail in countries with a cash bail system or pay bribes in countries plagued by corruption in the legal system.[17] This creates a cyclical effect and violates human rights.

In addition to the financial harms associated with pretrial detention, pretrial detention centers are often overcrowded and can be unsanitary.[18] Further, because pretrial detention is temporary, many pretrial detention facilities do not provide the education, training, and even healthcare services associated with prisons.[19] The conditions of pretrial detention centers may even hasten some detainees' decisions to plead guilty in order to be transferred to a permanent facility where conditions may be better or to be released to community supervision.[20]

Internationally, the purposes of pretrial detention are to prevent flight and increase public safety.[21] In practice, however, pretrial detention rarely serves either purpose. One study of nearly 1.5 million pretrial detainees over 9 years found that there was no statistically significant

---

[8] David Berry, *The Socioeconomic Impact of Pretrial* Detention, OPEN SOCIETY FOUNDATIONS (2011).
[9] *Id.* at 24.
[10] *Id.* at 22.
[11] *Id.*
[12] Elise Busse, Brandon Garcia, Heather Grab, Emma Schubert, & Marta Zurn, *Considering the Well-Being of Defendant's Children Pretrial*, CHILDREN OF INCARCERATED CAREGIVERS (2025).
[13] Martin Schönteich, *Presumption of Guilt: The Global Overuse of Pretrial Detention* (Open Society Justice Initiative, 2014): 1–6, https://www.justiceinitiative.org/uploads/de4c18f8-ccc1-4eba-9374-e5c850a07efd/presumption-guilt-09032014.pdf.
[14] *Id.*
[15] Berry, *supra* note 8, at 11.
[16] *Id.*
[17] *Id.*
[18] *Id.* at 20.
[19] *Id.*
[20] *Id.*; The Bail Project, *How Real Bail Reform Creates a Safer America*, at 2 (2024).
[21] Berry, *supra* note 8, at 17.

deterrent effect of pretrial detention on either failure to appear or recidivism.[22] Pretrial detention can actually undermine public safety by significantly and substantially increasing the likelihood of future penal system involvement for pretrial detainees.[23] This effect is especially pronounced for low-risk individuals who would likely not have had further criminal legal system involvement if they had not been detained pretrial.[24] Although many factors can contribute to recidivism, research indicates that the higher recidivism rates of people detained pretrial is linked to evidence that even short periods of incarceration cut people off from prosocial attachments such as jobs and relationships, which tends to increase the likelihood of rearrest.[25] Additionally, while a person is detained, any existing criminogenic needs that are not being addressed, such as deviant peer influences or antisocial attitudes, may increase the likelihood of rearrest.[26] In sum, incarceration, even for a short period of time, has negative consequences that make up many of the identified risk factors for criminal behavior.

Research also indicates that court systems have other ways to ensure court appearances without the need to rely on pretrial detention.[27] Further, jurisdictions that have implemented bail reform in a way that significantly reduces pretrial detention have generally not seen an increase in recidivism.[28] Thus, pretrial detention rarely serves either of its purposes and reducing instances of pretrial detention does not undermine these purposes.

Harms of Parental Incarceration Generally

Parental incarceration is considered an adverse childhood experience (ACE).[29] ACEs are potential traumatic events that occur in childhood and are known to affect well-being into adulthood.[30] Even if the incarceration occurs prior to early childhood, parental incarceration can have long-term adverse impacts on children.[31] Moreover, the long-lasting effects of parental incarceration are not remedied by subsequent reunification.[32] Additionally, because women generally fulfill the role of primary caregiver, maternal incarceration can be especially harmful.[33]

---

[22] Alexander M. Holsinger, Christopher T. Lowenkamp, & Travis C. Pratt, *Is Pretrial Detention an Effective Deterrent? An Analysis of Failure to Appear and Rearrest Says "No,"* 87 PRETRIAL DETENTION AND DETERRENCE 3, 6 (2023).
[23] Sandra Susan Smith, *Pretrial Detention, Pretrial Release & Public Safety*, Arnold Ventures Public Safety Series, July 2022.
[24] *Id.* at 6.
[25] Holsinger, Lowenkamp, & Pratt, *supra* note 22, at 6.
[26] *Id.*
[27] Smith, *supra* note 23.
[28] *Id.*
[29] 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.
[30] *Id.*
[31] 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.
[32] 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.
[33] 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.

The extent of the harm caused by parental incarceration significantly depends on the children's current caregiver maintaining a relationship with the incarcerated parent.[34] 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.[35]

Parental incarceration affects children in numerous areas of life and is associated with a variety of tangible harms.[36] Parental incarceration impacts mental health by increasing the risk of depression, post-traumatic stress disorder, anxiety,[37] internalizing symptoms, self-injury, suicidal ideation, and suicide attempts,[38] as well as antisocial problems.[39] Maternal incarceration, specifically, increases the rate of suicide in girls.[40] One study found that children impacted by parental incarceration were three times as likely to have experienced mental health problems.[41] Another study concluded that experiencing familial incarceration during childhood increased the odds of experiencing poor mental health outcomes by 123 percent.[42] Research also suggests children internalize the stigma of parental incarceration, leading to self-isolation to avoid possible ostracization.[43]

As with mental health, parental incarceration is associated with a multitude of physical health issues, such as a higher risk of poor health-related quality of life in adulthood,[44] and limited access to healthcare. Recent parental incarceration is associated with a nearly 50 percent

---

[34] *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.
[35] 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.
[36] *See also* CHILD. OF INCARCERATED CAREGIVERS, MASS PARENTAL INCARCERATION & SENTENCING REFORM IN MINNESOTA 1 (2022), https://cicmn.wpenginepowered.com/wp-content/uploads/2022/02/Parental-Incarceration-Impacts.pdf.
[37] 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).
[38] Laurel Davis & Rebecca J. Shlafer, *Mental Health of Adolescents with Currently and Formerly Incarcerated Parents*, 54 J. ADOLESCENCE 120, 120–34 (2017).
[39] 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).
[40] Jocelyn I. Meza et al., *Risk Profiles of Suicide Attempts Among Girls with Histories of Commercial Sexual Exploitation: A Latent Class Analysis*, 137 CHILD ABUSE & NEGLECT e106036 (2023), https://doi.org/10.1016/j.chiabu.2023.106036.
[41] C. A. Rhodes et al., *Enhancing the Focus: How Does Parental Incarceration Fit into the Overall Picture of Adverse Childhood Experiences (ACEs) and Positive Childhood Experiences (PCEs)?* 51 RSCH. CHILD & ADOLESCENT PSYCHOPATHOL. 1933, 1933–44 (2023), https://doi.org/10.1007/s10802-023-01142-0.
[42] Ashley Provencher & James Conway, *Incarcerations' Costs for Families* (Oct. 2, 2019), https://publichealthpost.org/health-equity/incarcerations-costs-for-families/.
[43] Susan D. Phillips & Trevor Gates, *A Conceptual Framework for Understanding the Stigmatization of Children of Incarcerated Parents*, 20 J. CHILD & FAM. STUD. 286, 286–94 (2011), https://doi.org/10.1007/s10826-010-9391-6; *see also* Joshua C. Cochran, Sonja E. Siennick & Daniel P. Mears, *Social Exclusion and Parental Incarceration Impacts on Adolescents' Networks and School Engagement*, 80 J. MARRIAGE & FAM. 478, 478–98 (2018), https://doi.org/10.1111/jomf.12464 (concluding that parental incarceration may adversely affect children's social exclusion).
[44] 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.

increase in early infant mortality.[45] Parental incarceration is also associated with increased risk of high cholesterol, asthma, migraines, HIV/AIDS, and poor health,[46] obesogenic behaviors, drinking sugary drinks, smoking cigarettes, and having 10 or more sexual partners.[47] One study determined that experiencing familial incarceration during childhood increased the odds of poor physical health by 47 percent.[48] Parental incarceration is also associated with a doubled likelihood of children utilizing emergency room services rather than primary care[49] and an increased risk of forgoing healthcare overall.[50]

Additionally, parental incarceration impacts delinquency, criminality, and criminal justice contact for its correlation to increased physical aggression, attention problems, school punishments, rule-breaking, and other behavioral problems.[51] Parental incarceration can also increase a child's risk of contact with the criminal legal system in adulthood.[52] In cases where adult children of incarcerated parents become incarcerated themselves, parental incarceration is linked to more reported violence, anger, and rule violations in prison than other incarcerated individuals.[53] There are also increased odds of high risk behavior, such as substance-abuse, in young adults who experience parental incarceration, including cigarette smoking, alcohol abuse, and prescription drug abuse.[54] Additionally, maternal incarceration is associated with high-risk behaviors including having sex in exchange for money[55] and self-harm.[56] One study determined that experiencing familial incarceration during childhood increased the odds of engaging in risky health behaviors by nearly 200 percent.[57]

Parental incarceration also impacts educational readiness and attainment. One in three adults in the United States who did not obtain a high school degree has experienced parental

---

[45] SARA WAKEFIELD & CHRISTOPHER WILDEMAN, CHILDREN OF THE PRISON BOOM: MASS INCARCERATION AND THE FUTURE OF AMERICAN INEQUALITY (2014).
[46] Lee, Fang, & Luo, *supra* note 37, 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).
[47] Nia Heard-Garris et al., *Health Care Use and Health Behaviors Among Young Adults With History of Parental Incarceration*, 142 PEDIATRICSe20174314 (2018), https://publications.aap.org/pediatrics/article/142/3/e20174314/38619/Health-Care-Use-and-HealthBehaviors-Among-Young.
[48] Provencher & Conway, *supra* note 42.
[49] Heard-Garris et al., *supra* note 47.
[50] *Id.*
[51] 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); WAKEFIELD & WILDEMAN, supra note 45; 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).
[52] 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).
[53] 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).
[54] *Id.*
[55] Heard-Garris et al., *supra* note 47.
[56] Craig Cumming et al., *Maternal Incarceration Increases the Risk of Self-Harm but not Suicide: A Matched Cohort Study*, 32 EPIDEMIOL. & PSYCHIATR. SCI. e33 (2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10227533/.
[57] Provencher & Conway, *supra* note 42.

incarceration.[58] Parental incarceration is associated with decreased educational attainment in emerging adulthood, including significantly lower GPAs, lower levels of education achieved, and lower levels of college completion;[59] a higher instance of having to repeat a grade and a higher instance of dropping out of high school;[60] and greater unhappiness in school than peers.[61] In addition to the education readiness of the children, parents who were incarcerated during their children's youth have less education, fewer work hours, lower incomes, lower socioeconomic status, less access to credit, and receive more government assistance; thus, their children have fewer social advantages than their peers.[62] In some circumstances, children may be subject to additional strain imposed by bans on public benefits for formerly incarcerated individuals, such as lifetime bans on TANF and SNAP benefits.[63]

Finally, parental incarceration is associated with an increased risk of experiencing homelessness in childhood and adulthood[64] and an increased risk of foster-care placement.[65] Children impacted by maternal incarceration, in particular, are at a greater risk of being placed in foster care, orphanages, or other nonfamilial care situations.[66] 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.[67] Children impacted by parental incarceration are less likely to demonstrate empathetic behaviors at home.[68] 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

---

[58] 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).
[59] 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. SCI. 179, 179–94 (2009); John Hagan & Holly Foster, *Intergenerational Educational Effects of Mass Imprisonment in America*, 85 SOC. EDUC. 259, 259–86 (2012).
[60] Christian Brown, *Maternal Incarceration and Children's Education and Labor Market Outcomes, 31 LABOUR 43 (2017)*.
[61] Marcus Shaw, *The Reproduction of Social Disadvantage Through Educational Demobilization: A Critical Analysis of Parental Incarceration*, 27 CRITICAL CRIMINOLOGY 275-90 (2019).
[62] 9 Jean M. Kjellstrand & J. Mark Eddy, *Parental Incarceration During Childhood, Family Context, and Youth Problem Behavior Across Adolescence*, 50 J. OFFENDER REHABILITATION 18, 18–36 (2011); REBECCA VALLAS ET AL., REMOVING BARRIERS TO OPPORTUNITY FOR PARENTS WITH CRIMINAL RECORDS AND THEIR CHILDREN: A TWO-GENERATION APPROACH 3–14 (Dec. 2015), https://www.americanprogress.org/article/removing-barriers-to-opportunity-for-parents-with-criminal-records-and-their-children/ (discussing intergenerational effects of criminal records regarding income, savings and assets, education, housing, and family strength and stability).
[63] U.S. COMM'N ON CIV. RTS., COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION, AND THE EFFECTS ON COMMUNITIES 81–82, 134–35 (June 2019), https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf (discussing how lifetime bans on TANF and SNAP benefits disproportionately impact children by proxy of their formerly incarcerated caregivers).
[64] Wakefield & Wildeman, *supra* note 45.
[65] 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).
[66] Danielle H. Dallaire*, Incarcerated Mothers and Fathers: A Comparison of Risks for Children and Families*, 56 FAM. RELS.: INTERDISC. J. APPLIED FAM. SCI. 440, 448-49 (2007), https://doi.org/10.1111/j.1741-3729.2007.00472.x.; *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).
[67] Geller et al., *supra* note 51, at 1196.
[68] 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.

motivation and skills to reach out to others in prosocial, empathetic ways.[69] Maternal incarceration is associated with increases in rule-breaking behavioral problems at home, based on caregiver reports.[70] Overall, the harms of parental incarceration are all-encompassing and life-changing.[71]

Harms of Pretrial Detention

As discussed above, pretrial detention is harmful and unnecessary in many instances, costing both individuals and society with only marginal return. In addition to the millions of detained persons suffering from these harms directly, there are even more children being harmed by the pretrial detention of their parents.

When a parent is arrested and detained, families are often given no opportunity to prepare like they may have at the sentencing stage. This can be devastating for families, causing a loss of income, housing, custody, and stability for a child. For instance, one study indicates that pretrial detainees may have a higher risk of losing a family attachment.[72] 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, with their children.[73] Lost contact with a parent can lock a child into immaturity and lead to rebellious behaviors and an increased risk of detachment disorders.[74] 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.[75] 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.[76]

Some children may even be detained themselves, especially when women are placed in pretrial detention.[77] Approximately 166 jurisdictions permit children to stay in prison, including during

---

[69] *Id.*
[70] Christopher Wildeman & Kristin Turney, *Positive, Negative, or Null? The Effects of Maternal Incarceration on Children's Behavioral Problems*, 51 DEMOGRAPHY 1041, 1041–68 (2014).
[71] Research demonstrates that even brief separation caused by pretrial detention can have lasting affects on children. *See* Sara Wakefield & Lars Hojsgaard Andersen, *Pretrial Detention and the Costs of System Overreach for Employment and Family Life*, 7 SOCIO. SCI. 342, 342 (2020) (suggesting high risk of losing family attachment); CHILD. OF PRISONERS EUR., IMPACTS OF PRE-TRIAL DETENTION PROCEDURES ON CHILDREN WITH PARENTS IN CONFLICT WITH THE LAW 1–18 (2021), https://childrenofprisoners.eu/wp-content/uploads/2022/01/Impacts-of-pre-trial-detention-procedures-on-children-with-parents-in-conflict-with-the-law_COPE.pdf (discussing difficulty of maintaining consistent communication, if any, with children during pretrial detention, and describing how lost contact with a parent can be consequential); LÉON DIGARD & ELIZABETH SWAVOLA, VERA INST. OF JUST., JUSTICE DENIED: THE HARMFUL AND LASTING EFFECTS OF PRETRIAL DETENTION 1–3 (2019), https://vera-institute.files.svdcdn.com/production/downloads/publications/Justice-Denied-Evidence-Brief.pdf (noting how pretrial detention is associated with a higher likelihood of conviction and receiving a harsher sentence).
[72] Wakefield & Andersen, *supra* note 71, at 342.
[73] Boden & Brett, *supra* note 2.
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] Berry, supra note 8.

the pretrial period, almost always with their mother.[78] The legislation controlling these practices varies widely, with no global consensus regarding age restrictions or the duration for which a child can stay with a caregiver in prison.[79] The most common maximum age limit is 3 years, which is the limit in 32 percent of countries with available data, but the maximum age limit ranges from 3 months to 9 years.[80] Especially for older children, living with a parent in prison can interrupt the child's education and make it more different for him or her to return to school and later find employment.[81]

People detained pretrial are also more likely to be convicted and receive a harsher sentence.[82] These correlations create a cycle where children of caregivers detained pretrial are then more likely to suffer from the harms regarding parental incarceration generally, discussed above. Additionally, pretrial detention significantly impairs financial stability in the short term and long term due to the loss of employment, housing, and public benefits.[83] 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.[84] Thus, pretrial detention imposes unique harms to the child and the family.

The Movement Forward

Given the crisis of arbitrary and excessive pretrial detention, countries and organizations across the globe are beginning to recognize the need to study and implement changes to pretrial detention processes. In response to these concerns about pretrial detention and arbitrary detention in general, the United Nations Human Rights Council (HRC) has established the Working Group on Arbitrary Detention.[85] This group gathers data on the number of pretrial detainees in all United Nations Member States and encourages these States to consider alternatives to pretrial detention and end arbitrary detention once and for all.[86] In October 2025, the HRC adopted a Resolution that extended the Working Group's mandate for a three-year period.[87] In this Resolution, the HRC also encouraged member States to "respect and promote the right of anyone deprived of their liberty by arrest or detention" by bringing court proceedings so that "the court may decide without delay on the lawfulness of their detention."[88] The HRC also instructed States to "consider reviewing laws and practices that may give rise to arbitrary detention."[89] Having identified specific challenges faced by women, pregnant women,

---

[78] An estimated 19,000 children worldwide are living with their incarcerated parent. Marie Claire Van Hout, Ulla-Britt Klankwarth, Simon Fleibner, & Heino Stover, *Children Living with a Primary Caregiver: A Global Mapping of Age Restrictions and Duration of Stay*, THE LANCET (2023).
[79] *Id.*
[80] *Id.*
[81] Berry, *supra* note 8.
[82] Digard & Swavola, *supra* note 71.
[83] Anna Hall et al., *Towards Safety, Liberty, and Equity: A Community-Centered Framework for Redesigning Minnesota's Pretrial System*, MCJRC (2025).
[84] *Id.*
[85] Commission on Human Rights, *Question of Arbitrary Detention*, U.N. COHR, 44th Sess., U.N. Doc. E/CN.4/RES/1991/42 (1991).
[86] Id.
[87] G.A. Res. 60/8, ¶ 15, U.N. Doc. A/HRC/RES/60/8 (Oct. 6, 2025).
[88] *Id.* at ¶ 8(e).
[89] *Id.* at ¶ 8(k).

and children, the HRC further encouraged States to give "due consideration" to these challenges and "redouble efforts to close the gap between international standards."[90]

Many countries have joined this movement away from arbitrary pretrial detention. In 2016, Italy decriminalized many minor offenses and classified them as administrative infractions instead.[91] 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.[92] The United Nations Committee on the Rights of the Child (UNCRC) declares that in all proceedings concerning children, the best interests of the child shall be a primary consideration.[93] Additionally, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women offenders (known as the Bangkok Rules) 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.[94]

Further, the Inter-American Commission on Human Rights (IACHR) has highlighted the need to reduce pretrial detention of parents with caregiving responsibilities. 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 their primary caregivers.[95] 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.[96] This disruption to the child's life caused by the mother's incarceration renders the child vulnerable to poverty, marginalization, and neglect.[97] 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 consider ordering the pretrial detention of people who are responsible for children and adolescents."[98]

These efforts and international standards "demonstrate a strong international consensus to protect the dignity and rights of individuals in pretrial detention."[99] With varying degrees of enforceability, however, such standards have not been able to effectively remedy the issues prevalent in pretrial detention practices across the world. Actual mechanisms currently in place to mitigate harm to children or prioritize their best interests remain sparse and are typically underutilized.[100] For example, many of the countries that have ratified the UNCRC lack implementation and policies that address the best interests of children.[101] Further, many

---

[90] *Id.* at ¶ 8(m).
[91] *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.
[92] New Zealand Police, *Adult Diversion Scheme Policy and Factsheet*, http://www.police.govt.nz/about-us/publication/adult-diversion-scheme.
[93] G.A. Res. 44/25, art. 3, Convention on the Rights of the Child (Nov. 20, 1989).
[94] UN Bangkok Rules, Preliminary Observations, para 9.
[95] *Id.* at 125.
[96] *Id.* at 129.
[97] *Id.*
[98] *Id.*
[99] Berry, *supra* note 8.
[100] Busse et al., *supra* note 12, at 2.
[101] *Id.* at 3.

standards focus on the harm being done to the individual directly experiencing pretrial detention, overlooking the lasting and traumatic harm caused to the children and community of that individual. Thus, although the acknowledgement of the need to consider children's best interests when making pretrial decisions is promising, it is just one step towards the implementation of laws, policies, and practices that reduce harm to children caused by the pretrial detention of caregivers.

Recommendations

Although there is still a critical need for research on the effect of pretrial detention on detainees' children, it is clear that children are being harmed. Thus, in order to center children during pretrial proceedings and mitigate this harm,

- **Judges should consider the impact on children when making pretrial decisions about their parents.**[102] The impact on a defendant's child can be introduced to the court through a child or family impact statement, which provides information to a judge regarding the best interests of a defendant's child when the judge is considering detention or incarceration.[103] Defense attorneys should also be educated on asking clients about parenting responsibilities and bringing this information to the court's attention during pretrial detention proceedings. Efforts should also be made to pass legislation that requires courts to consider the best interest of a child throughout the entire criminal process to best ensure that children are being centered in the decisions to incarcerate a parent.

- **Alternatives to pretrial detention should be evaluated and expanded**.[104] When it is in the best interests of the child, non-custodial options should be prioritized for parents of young children. Utilizing non-custodial alternatives allows parents and caregivers to perform caregiving responsibilities and meet the needs of their children, thereby mitigating the harms of parental incarceration.

---

[102] G.A. Res. 44/25, art. 3, Convention on the Rights of the Child (Nov. 20, 1989). As mentioned in this report, much of the work on this issue is in the sentencing context. These sources, however, still support the overarching concept of considering the child's best interest when incarcerating a parent. Hayli Millar et al., *Considering the Best Interests of the Child in Sentencing and Other Decisions Concerning Parents Facing Criminal Sanctions: An Overview for Practitioners,* INT'L. CENTRE FOR CRIM. L. REFORM AND CRIM. JUST. POL'Y (2023); Hayli Millar & Yvon Dandurand, *The Best Interests of the Child and the Sentencing of Offenders with Parental Responsibilities*, 29 CRIM. L. FORUM 227 (2018).
[103] Bekah Muta, *Family Impact Statements*, CHILDREN OF INCARCERATED CAREGIVERS (2026), https://cicmn.org/wp-content/uploads/2024/11/Bekah-Muta-Family-Impact-Statement-Report-2024.pdf.
[104] UN Bangkok Rules, Preliminary Observations, para 9; Council of Europe, Committee of Ministers, *Recommendation CM/Rec(2018)5) of the Committee of Ministers to member States concerning children with imprisoned parents*, (2018); Holly Mason-White & Helen F. Kearney, *Children of (Alleged) Offenders: Revised Draft Framework for Decision-Making*, QUAKER UNITED NATIONS OFFICE (2012).

Appendix A: Examples of Pretrial Detention Practices that Consider the Defendant's Child

United States	Illinois passed the Children's Best Interest Act which requires judges to consider the mitigating factors of a defendant's pregnancy and/or the impact of the defendant's absence on their child's well-being during pretrial detention and sentencing decisions.[105] The Act also allows for the introduction of family impact statements.[106] ReMerge is a nonprofit organization in Oklahoma with a pretrial diversion program for mothers who have legal rights, or custody, of at least one child.[107] Eligible women may request a diversion screening, which measures their risk of recidivism, determines their substance abuse needs and barriers to treatment, and considers the person's childcare responsibilities.[108] The program typically lasts two years and is designed to lay the foundation to recovery for participants by enhancing their parenting and practical skills.[109] One caveat about the ReMerge program is that the mother is not reunited with her child until graduating from the program.[110] Thus, although ReMerge provides a general framework for a diversion program, the exact model may not be the best practice for reducing harm to children since it involves a prolonged period of parent-child separation.
Italy	In Italy, a Memorandum of Understanding between the Ministry of Justice, the National Ombudsman for Childhood and Adolescence, and Bambinisenasbarre (an NGO) asks judicial authorities to consider the rights and

[105] 730 Ill. Comp. Stat. 5/5-5-3.1 (2019).
[106] *Id.*
[107] Sullyari Bautista, *Community-Based Solutions for Alternatives to Parental Incarceration*, CHILDREN OF INCARCERATED CAREGIVERS (2023).
[108] *Id.*
[109] *Id.*
[110] ReMerge, *About Us*, UNITED WAY, https://www.remergeok.org/about-us.

	requirements of minor children when deciding pretrial measures and give priority to alternatives to pretrial detention.[111]
Africa	The African Committee adopted the South African Constitutional Court's approach in *S v. M* when the Committee developed the African Charter on the Rights & Welfare of the Child. In a General Comment interpreting the Charter, the African Committee instructed that "the best interests of the child must be the primary consideration in relation to all actions that may affect children whose parents are in conflict with the law" including during pretrial measures.[112]
France	In France, a person who has sole parental authority over a child under the age of 16 cannot be placed in pretrial detention without first implementing certain child welfare measures "to prevent the endangering of the minor's health, safety or morals or the serious compromising of his education."[113]
Multiple Countries (EHM)	Many countries with alternatives to pretrial detention for caregivers use house arrest or electronic home monitoring (EHM) to supervise the parent.[114] For example, Argentina uses home arrest and EHM as an alternative to incarceration (including pretrial detention) for pregnant women and mothers of young children.[115] Additionally, since 2018, Brazil has mandated house arrest

[111] *Id.* at 6.
[112] Rachel Brett, *Best Interests of the Child when Sentencing a Parent: Some Reflections on International and Regional Standards and Practices* (Children of Prisons Europe, May 2018), 3 https://childrenofprisoners.eu/wp-content/uploads/2020/06/Brett_best_interests_sentencing.pdf.
[113] Brett, *supra* note 112, at 7.
[114] *See generally id*.
[115] Anya Lindberg, *2024 Argentina Prison Nursery Country Report* (Children of Incarcerated Caregivers, 2024), https://cicmn.org/wp-content/uploads/2024/11/2024-Argentina-Prison-Nursery-Country-Report.pdf.

	in place of pretrial detention for eligible mothers of children under the age of 12.[116] EHM may not always be the best practice, however, because it can prevent the mother from accessing resources outside the home, including reported difficulty in accessing medical care for both the mother and the children.[117] Recognizing this harm, Sweden, for example, implements travel prohibitions and obligations to report, rather than strict house arrest, in order to allow accused persons to maintain employment and carry out parenting responsibilities.[118] A report by the City University of New York identifies this as one of the best practices of alternatives to pretrial detention in Europe.[119]
Northern Ireland	The Department of Justice of Northern Ireland is piloting a bail support program for women.[120] This program will utilize organizations with relevant experience to provide support for women on bail.[121] The primary aims of the program are to prevent re-offending while on bail and support pathways of desistance, reserve custodial remand for the essential cases, and promote the appearance of defendants at court and ultimately reduce delay.[122]

[116] Brazil Federal Senate, "Law No. 13,769 of December 19, 2018," https://legis.senado.leg.br/norma/30753434/publicacao/30753796; Corina Giacomello & Teresa Garcia Castro, *Imprisoned at Home: Women Under House Arrest in Latin America*, WOLA (2020), https://www.wola.org/wp-content/uploads/2020/07/Imprisoned-at-Home.pdf.
[117] Yael Barrera & Tamara Santoro Neiman, "Mujeres presas y tareas de cuidado: Un castigo diferencial para las 'Malas Madres,'" *Debate Público: Reflexión de Trabajo Social* 11(2021):176–183.
[118] Jerry Cho et al., Alternatives to Pretrial Detention: Global Best Practice Catalog, CUNY (2017), at 53.
[119] *Id.*
[120] Department of Justice, *Pre-Market Engagement: Bail Support Pilot for Women* (Sept. 2025), https://consultations.nidirect.gov.uk/doj/pre-market-engagement-bail-support-pilot-for-women/.
[121] *Id.*
[122] *Id.*

Appendix B: Alternatives to Pretrial Detention Generally

As discussed above, pretrial detention practices in general have garnered attention from human rights organizations due to the issues of overcrowding and arbitrary detention. The consensus among these organizations and leading experts is that pretrial detention should always be a last resort. For that reason, a number of countries have developed alternatives to pretrial detention that are unrelated to the defendant's status as a parent. Although being a parent is not a requirement to access these alternatives, parents facing incarceration may otherwise be eligible for these alternatives. Thus, these can still be utilized to mitigate the harms of parental incarceration.

United States	In Iowa, Johnson County started a pretrial GPS diversion program in 2022 in an effort to keep people out of jail while awaiting trial.[123] The program allows people to maintain jobs, education, and treatment.[124] From its inception to September 2025, the program has saved 4,134 bed days for offenders on pretrial release.[125] Some jurisdictions in the U.S. have decreased pretrial detention by decreasing arrests in general.[126] These "cite-and-release" procedures involve giving a person a citation and a summons to return to court without setting a bail.[127] Another model used in the U.S. is Law Enforcement Assisted Diversion (LEAD).[128] LEAD is a community-based collaborative that diverts people with unmet behavioral health needs from the criminal justice system to community-based systems.[129] An evaluation of the model as implemented in Seattle, Washington found that LEAD is associated with positive effects for shorter- and longer-term recidivism outcomes.[130]

[123] Trish Mehaffey, *Johnson County Sheriff's GPS Monitoring Program Helps Keep Jail Population Down*, THE GAZETTE (2026), https://www.thegazette.com/news/crime-and-courts/johnson-county-sheriff-s-gps-monitoring-program-helps-keep-jail-population-down/article_04e256c1-c617-5045-bcc7-77081cc0b416.html.
[124] *Id.*
[125] *Id.*
[126] Christi M. Smith, *Targeted Strategies to Reduce Disparities in Jail Populations*, R Street Pol'y Study No. 250, at 6 (Jan. 2022), https://www.rstreet.org/wp-content/uploads/2022/02/FINAL_RSTREET250.pdf.
[127] *Id.*
[128] *What is Lead?*, LEAD Support Bureau, https://leadbureau.org/lead/.
[129] *Id.*
[130] Susan E. Collins, Heather S. Lonczak, & Seema L. Clifasefi, *Seattle's Law Enforcement Assisted Diversion (LEAD): Program Effects on Recidivism Outcomes*, 64 EVALUATION AND PROGRAM PLANNING 49, 54 (2017).

	In 2017, New Jersey passed legislation signaling a move from a pretrial system predominantly reliant on cash bail to a risk-based system prioritizing pretrial release for low-risk defendants.[131] To quantify a defendant's risk, New Jersey uses the Public Safety Assessment, which analyzes nine factors proven to be associated with a risk of new criminal activity or failure to appear.[132] From 2015 to 2020, the pretrial detention population decreased by nearly 50 percent, but the pretrial population surged again amidst the COVID-19 pandemic.[133] As of 2026, the pretrial detention population has reduced 29 percent since December 31, 2015.[134] Washington D.C. also utilizes a risk assessment tool and releases over 94 percent of arrestees pretrial.[135] In Cook County, Illinois, the Chief Judge of the Circuit Court issued General Order 18.8A (GO18.8A) which created a presumption of release without monetary bail for most defendants.[136] If bail is required, the order requires that bail should be set at an amount affordable to the defendant.[137] After the implementation of GO18.8A, the number of defendants released without a monetary bond more than doubled, saving defendants and their families a total of $31.4 million in the first six months after the order was released.[138]

[131] *Criminal Justice Reform*, NJ Courts, https://www.njcourts.gov/public/concerns/criminal-justice-reform.
[132] *Public Safety Assessment*, NJ Courts (2018), https://www.njcourts.gov/sites/default/files/psariskfactor.pdf.
[133] *Criminal Justice Reform Statistics: Jan. 1 – June 30, 2026*, NJ Courts, https://www.njcourts.gov/sites/default/files/courts/criminal/criminal-justice-reform/cjrreport2026.pdf; Sarah Staudt, *Releasing People Pretrial Doesn't Harm Public Safety*, PRISON POLICY INITIATIVE (2023), https://www.prisonpolicy.org/blog/2023/07/06/bail-reform/.
[134] Criminal Justice Reform Statistics, supra note 133.
[135] Colin Doyle, Chiraag Bains, Brook Hopkins, *Bail Reform: A Guide for State and Local Policymakers*, CRIMINAL JUSTICE POLICY PROGRAM (2019), https://static.prisonpolicy.org/scans/Harvard%20Guide%20to%20Bail%20Reform.pdf.
[136] Don Stemen & David Olson, *Dollars and Sense in Cook County: Examining the Impact of General Order 18.8A on Felony Bond Court Decisions, Pretrial Release, and Crime*, LOYOLA UNIV. CHICAGO (2020), https://safetyandjusticechallenge.org/wp-content/uploads/2021/06/Report-Dollars-and-Sense-in-Cook-County.pdf.
[137] *Id.*
[138] *Id.*

Canada	The Toronto Bail Program (TBP) is an NGO that works with the criminal law system in Ontario as an alternative to pretrial detention.[139] TBP provides supervisory services and assistance with navigating the pretrial process.[140] The program also refers participants to support systems and other community-resources to meet a defendant's specific needs.[141] In the fiscal years between 2019 and 2022, the court appearance rate of participants was 96 percent.[142] Further, on average, nearly half of all participants had all charges withdrawn or stayed.[143]
Nigeria	In 2004, the Open Society Initiative and Legal Aid Council of Nigeria collaborated to develop the Police Duty Solicitor Scheme.[144] The program places lawyers in police stations to provide legal services at the point of arrest in an effort to reduce pretrial detention rates.[145] Although the initial program largely fell into disuse, the program was strengthened, and a more sustainable model was introduced in Anambra, Edo, FCT, and in Lagos state, which has had promising results.[146]
Belgium	Like most countries, one alternative to pretrial detention in Belgium is to release on conditions, but the Belgium practice is unique in some ways.[147] For instance, in Belgium, Probation Services are responsible for providing social assistance to defendants, rather than merely supervision and reporting

[139] Toronto Bail Program, *Criminal Division: Overview*, https://torontobailprogram.com/criminal-division/.
[140] *Id.*
[141] *Id.*
[142] David Scott, *Toronto Bail Program: Reducing Pretrial Detention Through Supervision and Support*, JUSTICE TRENDS (2022), https://justice-trends.press/toronto-bail-program-reducing-pretrial-detention-through-supervision-and-support/.
[143] *Id.*
[144] Maliza Bonane & Hadiza Usman, *Increasing Access to Justice for Pretrial Detainees in Nigeria*, PARTNERS GLOBAL, https://www.partnersglobal.org/newsroom_topics/access-to-justice/.
[145] *Id.*
[146] *Rule of Law and Anti-Corruption in Nigeria*, British Council (2022), https://www.justice-security.ng/sites/default/files/web_rolac_case_study_on_pdss_final.pdf.
[147] Eric Maes & Alexia Jonckheere, *Well Meant Is Not Always Well Done: Pre-Trial Detention in Belgium*, in EUROPEAN PERSPECTIVES ON PRE-TRIAL DETENTION: A MEANS OF LAST RESORT? 35, 40–49 (Christine Morgenstern et al. eds., Routledge 2023).

	violations.[148] Probation officers are social workers, and they regularly send reports to the judiciary, which can include a request for modification or removal of conditions if the defendant's needs have changed.[149] Additionally, non-compliance with conditions is not a separate offense in Belgium.[150] Upon non-compliance, an arrest warrant may be issued, but release is revoked in only about 3 percent of cases.[151] Belgium's pretrial detention population, however, remains high.[152] Further, the number of persons under judicial supervision has quadrupled since this alternative became available.[153] Some advocates therefore question whether this "alternative" should be modeled as a best practice.[154]

[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*