Children of Incarcerated Caregivers

NATIONAL TOOLKIT



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Who We Are

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

Introduction

As a Minnesota-based organization, CIC developed toolkits for Minnesota legal practitioners that provides an overview of relevant Minnesota law and the importance of considering a defendant's caregiving responsibilities when deciding whether to incarcerate him/her. Although the law governing pretrial release and sentencing will vary by state, the evidence supporting the argument that the best interest of the children must be considered before incarcerating a defendant is universal.

Research makes clear that parenting responsibility decreases a defendant's risk of re-offending and increases the defendant's compliance with conditions of release. This evidence supports both the argument that pretrial detention is not necessary to protect public safety or assure appearance and the argument that a defendant would be successful if given a community-based sentence. Additionally, research makes clear that the incarceration of a parent is a traumatic event for a child and is classified as an adverse childhood experience that can cause lasting harm into adulthood. Thus, in many cases, the incarceration of a caregiver may actually harm the community. Further, constitutional justifications, such as the presumption of innocence at the pretrial stage and the purposes of punishment at sentencing, support the release of caregivers when it is in the best interest of the child. Recognizing these harms and constitutional principles, jurisdictions around the country, and the world, have begun to reform their legal systems to consider the effect that incarceration has on a defendant's children.

This resource will (1) summarize research on the harms of parental incarceration as well as research indicating that parental responsibility increases a defendant's chance of success on release; (2) describe how this research relates to universal policies regarding pretrial detention (3) discuss how the research supports policies underlying sentencing decisions; and (4) provide an overview of the national and international movement towards considering the best interest of children before incarcerating caregivers. At the end of this resource, you will find a sample filing of a family impact statement, which is one way in which information about a defendant's caregiving responsibilities can be brought before the court.

Parental Incarceration and Family Circumstances

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

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

Moreover, family circumstances are relevant to a criminal defendant's recidivism risk and likelihood of rehabilitation and success in the community. Family circumstances protect

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

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

criminal defendants against reoffending and provide a basis for motivation to change. Both actual and potential familial ties can support criminal defendants' success following their convictions.

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

Parental Incarceration in the United States

Parental incarceration is no longer uncommon in the United States.[3] Over five million children in the United States have experienced the detention or incarceration of a parent at some point during their childhood.[4] By high school, one in seven students has experienced the detention or incarceration of a parent or guardian.[5] Nearly half of all people in state prisons are parents to minor children, affecting approximately 1.25 million children.[6] Considering how parental incarceration is highly prevalent in the United States, understanding the effects of the criminal legal system on criminal defendants' family members and specifically, their children, is paramount.

Harmful Impacts of Parental Incarceration

Parental incarceration is considered an adverse childhood experience (ACE).[7] ACEs are potential traumatic events that occur in childhood and are known to affect well-being into adulthood.[8] Even if the incarceration occurs prior to early childhood, parental incarceration can have long-term adverse impacts on children.[9] Moreover, the long-lasting effects of parental incarceration

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[3] Julie Poehlmann-Tynan & Kristin Turney, *A Developmental Perspective on Children With Incarcerated Parents*, 15 CHILD DEVELOPMENT PERSPECTIVES 3, 3 (2021), https://doi.org/10.1111/cdep.12392.
[4] The Annie E. Casey Found., A Shared Sentence 2 (2016), https://assets.aecf.org/m/resourcedoc/aecf-asharedsentence-2016.pdf (estimating 5.1 million children); Nazgol Ghandnoosh, Emma Stammen & Kevin Muhitch, The Sent'g Project, Parents in Prison 1 (2021), https://www.sentencingproject.org/app/uploads/2022/09/Parents-in-Prison.pdf (estimating 5.2 million children).
[5] Elizabeth A. Swedo et al., Adverse Childhood Experiences and Health Conditions and Risk Behaviors Among High School Students—Youth Risk Behavior Survey, United States, 2023, 73 MORB. & MORTAL. WKLY. REP. 39, 46 (2024), http://dx.doi.org/10.15585/mmwr.su7304a5.
[6] Leah Wang, *Both Sides of the Bars: How mass Incarceration Punishes Families*, PRISON POLICY INITIATIVE (Aug. 2022), https://www.prisonpolicy.org/blog/2022/08/11/parental_incarceration/.
[7] 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.
[8] Id.
[9] Anderson, Henrich, & Mrug, *supra* note 1, at 1229.

are not remedied by subsequent reunification.[10] Additionally, because women generally fulfill the role of primary caregiver, maternal incarceration can be especially harmful.[11] The extent of the harm caused by parental incarceration significantly depends on the children's current caregiver maintaining a relationship with the incarcerated parent.[12] 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.[13]

Parental incarceration can have negative impacts in the following areas:

- **Mental Health:**
    - Parental incarceration increases a child's risk of depression, post-traumatic stress disorder, anxiety,[14] internalizing symptoms, self-injury, suicidal ideation, suicide attempts,[15] and antisocial problems.[16] Maternal incarceration, specifically, is also associated with high-risk behaviors including having sex for money[17] and self-harm.[18] One study found that the incarceration of a household member in childhood increased the likelihood of that child's later suicide attempt by 50 percent.[19] Another study concluded that experiencing familial incarceration

[10] 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.
[11] 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.
[12] *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.
[13] 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.
[14] 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).
[15] Laurel Davis & Rebecca J. Shlafer, *Mental Health of Adolescents with Currently and Formerly Incarcerated Parents*, 54 J. OF ADOLESCENCE 120, 120–34 (2017).
[16] 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).
[17] Nia Heard-Garris et al., *Health Care Use and Health Behaviors Among Young Adults With History of Parental Incarceration*, 142 PEDIATRICS e20174314 (2018), https://publications.aap.org/pediatrics/article/142/3/e20174314/38619/Health-Care-Use-and-HealthBehaviors-Among-Young.
[18] Craig Cumming et al., *Maternal Incarceration Increases the Risk of Self-Harm but not Suicide: A Matched Cohort Study*, 32 EPIDEMIOLOGY & PSYCH. SCI. e33 (2023),https://pmc.ncbi.nlm.nih.gov/articles/PMC10227533/.
[19] Melissa T. Merrick et al., *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, 69 CHILD ABUSE & NEGLECT 10, 10–19 (2017).

during childhood increased the odds of experiencing poor mental health outcomes as an adult by 123 percent.[20]

- Parental incarceration is associated with the child having learning disabilities, ADD/ADHD, developmental delays, and speech or language problems, which are conditions some researchers believe are related to stress.[21]

- Children who live with a parent or caregiver who is subsequently incarcerated are especially vulnerable to experiencing "traumatic separation," which refers to the intense psychological distress a child undergoes specifically within the context of incarceration and is unique compared to other child trauma experiences characterized by ambiguity, uncertainty, and loss of a parent.[22] Even the incarceration of a nonresident parent may cause the child to experience traumatic separation.[23]

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

  - Parental incarceration is correlated with an increased risk of physical aggression, attention problems, behavioral problems and school punishments, rule-breaking, all of which can come with an increased risk of arrest for children with an incarcerated parent.[24]

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[20] Ashley Provencher & James Conway, *Incarcerations' Costs for Families* (Oct. 2, 2019), https://publichealthpost.org/health-equity/incarcerations-costs-for-families/.
[21] Turney, *supra* note 1, at 311, 313–14.
[22] Joyce A. Arditti, *Child Trauma Within the Context of Parental Incarceration: A Family Process Perspective*, 4 J. FAM. THEORY & REV. 181, 195 (2012), https://doi.org/10.1111/j.1756-2589.2012.00128.x.
[23] *Id.*
[24] *See* Amanda Geller et al., *Beyond Absenteeism: Father Incarceration and Child Development*, 49 DEMOGRAPHY 49, 65–66 (2012); Wade C. Jacobsen, *The Intergenerational Stability of Punishment: Paternal Incarceration and Suspension or Expulsion in Elementary School*, J. RES. CRIME & DELINQ. (2019); SARA WAKEFIELD & CHRISTOPHER WILDEMAN, CHILDREN OF THE PRISON BOOM: MASS INCARCERATION AND THE FUTURE OF AMERICAN INEQUALITY (2014); Christopher Wildeman, *Paternal Incarceration and Children's Physically Aggressive Behaviors: Evidence from the Fragile Families and Child Wellbeing Study*, 89 SOC. FORCES 285, 285–309 (2010).

- Parental incarceration can also increase a child's risk of contact with the criminal legal system into adulthood[25] and is a risk factor for teen delinquency.[26]

    - Specifically, parental incarceration increased the risk of delinquency related to "violent, destructive, or aggressive behavior" more than "offending that has the potential to result in monetary gain."[27]

    - Children impacted by paternal incarceration, specifically, are more likely to have early behavior problems, which subsequently poses a greater risk for teen delinquency.[28] At least one study, however, has found that children of incarcerated mothers are more likely to be incarcerated as adults than children of incarcerated fathers.[29]

        - Children impacted by paternal incarceration are at an increased risk of arrest by age 25 and an increased risk of delinquent behavior in adolescence and young adulthood.[30] In contrast, the experience of maternal incarceration during childhood increased the odds of adult probation placement by 400 percent and the odds of having a criminal conviction by nearly 300 percent.[31]

    - Parental incarceration causes emotional stress, acting out in response to other adverse experiences, and weakened parental attachment, all of which only further increase risk of teen delinquency.[32]

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[25] 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).
[26] Lauren C. Porter & Ryan D. King, *Absent Fathers or Absent Variables? A New Look at Paternal Incarceration and Delinquency*, 52 J. RSCH. CRIME & DELINQ. 414, 433 (2015), https://doi.org/10.1177/0022427814552080.
[27] *Id.*
[28] Children whose fathers were incarcerated prior to their first year of life had increased behavior problems by age 5. Anderson, Henrich & Mrug, *supra* note 1, at 1234.
[29] Danielle H. Dallaire*, Incarcerated Mothers and Fathers: A Comparison of Risks for Children and Families*, 56 FAM. RELS.: INTERDISC. J. APPLIED FAM. SCI. 440, 448 (2007), https://doi.org/10.1111/j.1741-3729.2007.00472.x.
[30] Michael E. Roettger & Raymond R. Swisher, *Associations of Fathers' History of Incarceration with Sons' Delinquency and Arrest Among Black, White, and Hispanic Males in the United States*, 49 CRIMINOLOGY 1109, 1110 (2011), https://doi.org/10.1111/j.1745-9125.2011.00253.x.
[31] Huebner & Gustafson, *supra* note 28, at 283–96.
[32] Porter & King, *supra* note 29.

- Children impacted by parental incarceration are at a greater risk of offending, particularly when their incarcerated parent has a significant criminal history and his or her criminal history includes serious offenses.[33]

- Children impacted by parental incarceration who have low emotional independence are particularly more likely to engage in criminal activity as young adults.[34]

- Parental incarceration is associated with child internalization of negative labels, such as being a troublemaker/partier. Children impacted by parental incarceration are more likely to experience this labelling, as well as more likely to perceive others as labelling them. Internalization of negative labels is associated with young adults' offending.[35]

- Parental incarceration is also linked to more reported violence, anger, and rule violations than other incarcerated individuals.[36]

    - For children who experience parental incarceration and are subsequently incarcerated, their adjustment to incarceration is worse than other incarcerated individuals, as they reportedly experience more prison violence, anger, and rule violations.[37]

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[33] VANESSA GOODWIN & BRENT DAVIS, AUSTRALIAN INST. CRIMINOLOGY, CRIME FAMILIES: GENDER AND THE INTERGENERATIONAL TRANSFER OF CRIMINAL TENDENCIES 5 (2011), https://www.aic.gov.au/sites/default/files/2020-05/tandi414.pdf.
[34] Jessica G. Finkeldey et al., *An Exploratory Investigation of Parental Incarceration, Emotional Independence, and Adult Children's Criminal Activity*, 7 J. DEVELOPMENTAL & LIFE-COURSE CRIMINOLOGY 151, 167 (2021), https://doi.org/10.1007/s40865-021-00164-w [hereinafter "Finkeldey et al. (2021)"]; *see also* Jessica G. Finkeldey et al., *Identifying as a Troublemaker/Partier: The Influence of Parental Incarceration and Emotional Independence*, 29 J. CHILD & FAM. STUD. 802, 813 (2020), https://doi.org/10.1007/s10826-019-01561-y [hereinafter "Finkeldey et al. (2020)].
[35] Finkeldey et al. (2021), *supra* note 37, at 169.
[36] 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).
[37] *Id.*

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

    - Young adults who have experienced parental incarceration can have an increased risk of substance-abuse issues, including cigarette smoking, alcohol abuse, and prescription drug abuse.[38]

    - Children who experience paternal incarceration are more likely to report using illegal drugs during their transition from adolescence to adulthood.[39]

    - Maternal incarceration is associated with high-risk behaviors including having sex in exchange for money.[40]

    - One study determined that experiencing familial incarceration during childhood increased the odds of engaging in risky health behaviors by nearly 200 percent.[41]

- **Physical Health and Healthcare Access:**

    - Recent parental incarceration is associated with a nearly 50% increase in early infant mortality.[42]

    - Research shows that "mass incarceration has almost certainly exacerbated disparities in child health" in the United States.[43]

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[38] *Id.*
[39] Roettger et al., *supra* note 28, at 121–32.
[40] Heard-Garris et al., *supra* note 20; *see also* N. Heard-Garris et al., *Heard-Garris N, Winkelman TNA, Choi H, et al. Health Care Use and Health Behaviors Among Young Adults With History of Parental Incarceration.* Pediatrics. *2018;142(3):e20174314*, 143 Pediatrics e20190534 (2019), https://doi.org/10.1542/peds.2019-0534 [hereinafter "Heard-Garris et al., *Correction*"].
[41] Provencher & Conway, *supra* note 23.
[42] WAKEFIELD & WILDEMAN, *supra* note 27.
[43] Christopher Wildeman, Alyssa W. Goldman, & Kristin Turney, *Parental Incarceration and Child Health in the United States*, 40 EPIDEMIOL. REVS. 146, 153 (2018), https://doi.org/10.1093/epirev/mxx013.

- Parental incarceration is associated with a multitude of health issues, such as a higher risk of poor health-related quality of life in adulthood,[44] and limited access to healthcare.[45]

- Parental incarceration is associated with increased risk of high cholesterol, asthma, migraines, HIV/AIDS, poor health,[46] obesogenic behaviors, drinking sugary drinks, smoking cigarettes,[47] poor oral health,[48] and a greater risk of developing adult-onset hypertension and other coronary disease biomarkers.[49]

- Women who experienced parental incarceration have higher Body Mass Indexes than women who did not.[50]

- Children of incarcerated parents are more likely to experience fair or poor overall health and a range of physical health conditions.[51]

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[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.
[45] Rohan Khazanchi, Nia J. Heard-Garris & Tyler N.A. Winkelman, *Health Care Access and Use Among Children & Adolescents Exposed to Parental Incarceration—United States, 2019*, 23 ACAD. PEDIATRICS 464, 466–71 (2022).
[46] Lee, Fang, & Luo, *supra* note 17, at 1191; Holly Ventura Miller & J.C. Barnes, *The Association Between Parental Incarceration and Health, Education, and Economic Outcomes in Young Adulthood*, 40 AM. J. CRIM. JUST. 765, 765–84 (2015).
[47] Heard-Garris et al., *supra* note 20.
[48] Alexander Testa & Dylan B. Jackson, *Parental Incarceration and Children's Oral Health in the United States: Findings from the 2016-2018 National Survey of Children's Health*, 49 CMTY. DENT. & ORAL EPIDEMIOL. 166, 173 (2020), https://doi.org/10.1111/cdoe.12588 (finding that children impacted by parental incarceration were more likely to have poor or fair teeth conditions, toothaches, gum bleeding, and cavities/tooth decay).
[49] Elizabeth L. Tung et al., *Childhood Parental Incarceration and Adult-Onset Hypertension and Cardiovascular Risk*, 8 JAMA CARDIOLOGY 927, 928 (2023), https://doi.org/10.1001/jamacardio.2023.2672 (finding that childhood parental incarceration was associated with 33% and 60% higher adjusted odds of developing adult-onset hypertension and elevated high-sensitivity C-reactive protein, a marker of inflammation used to estimate risk of future coronary events ("hsCRP"), respectively).
[50] Michael E. Roettger & Jason D. Boardman, *Parental Incarceration and Gender-Based Risks for Increased Body Mass Index: Evidence from the National Longitudinal Study of Adolescent Health in the United States*, 175 J. EPIDEMIOLOGY 636, 636–44 (2012); *see also* Hedwig Lee et al., *A Heavy Burden: The Cardiovascular Health Consequences of Having a Family Member Incarcerated*, 104 AM. J. PUB. HEALTH 421, 421–27 (2014) (finding that the experience of family incarceration increases the likelihood of female obesity by 44 percent; increases the odds of women reporting poor or fair health by 200 percent; and the chances of heart attack or stroke for women with currently incarcerated family members is two-and-a-half times greater than women without currently incarcerated family members).
[51] Turney, *supra* note 1, at 314–15.

- One study determined that experiencing familial incarceration during childhood increased the odds of poor physical health by 47 percent. [52]

- Limits to healthcare access begin for children impacted by parental incarceration during childhood itself.[53]

- Specifically, children impacted by parental incarceration struggle to access preventative, mental health, and primary care.[54]

- Parental incarceration is associated with poor access to a usual source of care,[55] unmet dental care needs,[56] and unmet mental health care needs.[57]

- One study estimated that over 100 thousand children exposed to parental incarceration have no usual source of care and have forgone dental care needs.[58] That same study further estimated that more than 75 thousand children exposed to parental incarceration have delayed mental health care needs and over 53 thousand have forgone mental health care needs.[59]

- Research further suggests that insurance status alone does not cause children impacted by parental incarceration to experience limited healthcare access.[60]

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[52] Provencher & Conway, *supra* note 23; *see also* Turney, *supra* note 1, at 311, 314–15 (finding that children of incarcerated parents are more likely to experience fair or poor overall health and a range of physical health conditions).
[53] Khazanchi, Heard-Garris, & Winkelman, *supra* note 48, at 466.
[54] *Id.* at 470.
[55] *See* Heard-Garris et al., *supra* note 20; Khazanchi, Heard-Garris, & Winkelman, *supra* note 48, at 470.
[56] *See* Testa & Jackson, *supra* note 51, at 173.
[57] Heard-Garris et al., *supra* note 20; *see also* Kristin Turney, *Unmet Health Care Needs Among Children Exposed to Parental Incarceration*, 21 MATERNAL & CHILD HEALTH J. 1194, 1198 (2017), https://doi.org/10.1007/s10995-016-2219-2 (finding that children exposed to parental incarceration are 60 percent more likely than their counterparts to have unmet mental health care needs).
[58] Khazanchi, Heard-Garris, & Winkelman, *supra* note 48, at 470 (estimating that parental incarceration was associated with an additional 123,703 children with no usual source of care and 114,795 with forgone dental care needs).
[59] *Id.* (estimating that parental incarceration was associated with an additional 75,434 children with delayed mental health care needs and 53,678 with forgone mental health care needs).
[60] *Id.* (finding that public insurance status did not ameliorate access to a usual source of care, dental care, and mental health care).

- Parental incarceration is associated with a doubled likelihood of children utilizing emergency room services rather than primary care and an increased risk of foregoing healthcare overall.[61]

- **Education:**

  - Parental incarceration can negatively impact educational readiness and attainment. One in three adults in the United States with less than a high school degree has experienced parental incarceration.[62] Parental incarceration is also associated with decreased education attainment in emergent adulthood, as well as significantly lower GPAs, lower levels of education achieved, lower levels of college completion,[63] more grade retention and high school dropout,[64] and greater unhappiness in school than peers.[65]

  - Paternal incarceration, in particular, is associated with decreased likelihood of college graduation and lower personal satisfaction with academic achievement, as children who have experienced paternal incarceration have a reduced likelihood of graduating from college as a young adult by 46 percent and decreased self-reported satisfaction with personal educational attainment.[66]

  - Parental incarceration is a significant predictor of teacher-reported internalizing and externalizing problems.[67]

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[61] Heard-Garris et al., *supra* note 20.
[62] 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).
[63] Holly Foster & John Hagan, *The Mass Incarceration of Parents in America: Issues of Race/Ethnicity, Collateral Damage to Children, and Prisoner Reentry*, 623 ANNALS AM. ACAD. POL. & SOC. SCIENCE 179, 179–94 (2009); John Hagan & Holly Foster, *Intergenerational Educational Effects of Mass Imprisonment in America*, 85 SOC. EDUC. 259, 259–86 (2012).
[64] Christian Brown, *Maternal Incarceration and Children's Education and Labor Market Outcomes*, 31 LABOUR 43 (2017).
[65] Marcus Shaw, *The Reproduction of Social Disadvantage Through Educational Demobilization: A Critical Analysis of Parental Incarceration*, 27 CRITICAL CRIMINOLOGY 275-90 (2019).
[66] Miller & Barnes, *supra* note 49.
[67] Erin C. Casey, Rebecca J. Shlafer & Ann S. Masten, *Parental Incarceration as a Risk Factor for Children in Homeless Families*, 64 FAM. RELS.: INTERDISC. J. APPLIED FAM. SCI. 490, 498 (2015), https://doi.org/10.1111/fare.12155.

- Experiencing maternal incarceration is associated with increased inattention, assertion problems, oppositional problems, and cooperation problems, as reported by teachers.[68]

- For boys who experience paternal incarceration by age five, there is an increased likelihood of placement in special education classes by age nine due to lower non-cognitive skills, including the ability to concentrate and emotionally self-regulate when entering school.[69]

- Although school connectedness may function as a protective factor for children exposed to parental incarceration,[70] youth who experienced school connectedness that had incarcerated parents were still at greater risk for worse school-based outcomes.[71]

- Moreover, because children impacted by parental incarceration are more likely to exhibit negative behaviors at school,[72] they are less likely to receive adequate teacher support,[73] effectively rendering children in the greatest need of intervention without teacher support.[74]

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[68] Christopher Wildeman & Kristin Turney, *Positive, Negative, or Null? The Effects of Maternal Incarceration on Children's Behavioral Problems*, 51 DEMOGRAPHY 1041, 1041–68 (2014).
[69] Anna R. Haskins, *Unintended Consequences? Effects of Paternal Incarceration on Child School Readiness and Later Special Education Placement*, 1 SOC. SCI. 141 (2014).
[70] Niamh Taggart & John McAloon, *The Association Between Parental Incarceration and Children's Educational Outcomes: A Systematic Review*, PSYCHIATRY, PSYCH. & L., 2025, at 1, 2–3, https://doi.org/10.1080/13218719.2025.2578536.
[71] Elizabeth L. Shaver et al., *School Connectedness as a Protective Factor for School-Based Outcomes of Youth with a History of Parental Incarceration*, 55 SCH. PSYCH. REV. 133, 139 (2026), https://doi.org/10.1080/2372966X.2024.2424743.
[72] *See, e.g.*, Novero, Loper, & Warren, *supra* note 39, at 761–78 (association between parental incarceration and high-risk behaviors); Wildeman, *supra* note 27, at 285–309 (association between parental incarceration and physical aggressive behaviors); Murray & Farrington, *supra* note 19, at 1269–78 (association between parental incarceration and antisocial behavior).
[73] Kristin P. Kremer et al., *Risk and Resilience among Children with Incarcerated Parents: Examining Heterogeneity in Delinquency and School Outcomes*, 29 J. CHILD & FAM. STUD. 3239, 3245 (2020), https://doi.org/10.1007/s10826-020-01822-1.
[74] Taggart & McAloon, *supra* note 73, at 1-2; *see also* Casey, Shlafer, & Masten, *supra* note 70, at 498 (finding that parental incarceration is a significant predictor of teacher-reported internalizing and externalizing problems in children).

- **Social and Economic Harms:**

    - Parental incarceration exacerbates social inequality and childhood disadvantage.[75]

    - Parents who were incarcerated during their children's youth have less education, fewer work hours, lower incomes, lower socioeconomic status, and receive more government assistance, leading their children to have less family social advantages than their peers.[76]

    - Children experiencing parental incarceration are also more likely to be rated as aggressive by their peers.[77]

    - Reduced economic contribution and other family strains,[78] as well as lower instrumental support,[79] exacerbate the economic and material[80] hardship experienced by children who are impacted by parental incarceration.

    - Children impacted by parental incarceration are more likely to experience food insecurity overall, and particularly in instances when a residential parent is incarcerated.[81] The impact of food insecurity may further be exacerbated by an

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[75] Christopher Wildeman, *Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage*, 46 DEMOGRAPHY 265, 276–77 (2009), https://doi.org/10.1353/dem.0.0052.
[76] Jean M. Kjellstrand & J. Mark Eddy, *Parental Incarceration During Childhood, Family Context, and Youth Problem Behavior Across Adolescence*, 50 J. OFFENDER REHAB. 18, 18–36 (2011).
[77] 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.
[78] Offira Schwartz-Soicher, Amanda Geller & Irwin Garfinkel, *The Effect of Paternal Incarceration on Material Hardship*, 85 SOC. SERV. REV. 447, 447–78 (2011).
[79] Kristin Turney, Jason Schnittker & Christopher Wildeman, *Those They Leave Behind: Paternal Incarceration and Maternal Instrumental Support*, 74 J. MARRIAGE & FAMILY 1149, 1149–65 (2012).
[80] Kristin Turney, *The Consequences of Paternal Incarceration for Maternal Neglect and Harsh Parenting*, 92 SOC. FORCES 1607, 1607–36 (2014).
[81] Luke Muentner, C. Blair Burnette & Rebecca Shlafer, *Parental Incarceration and Adolescent Food Insecurity*, 42 FAMS., SYS., & HEALTH 386, 398–91 (2024), https://psycnet.apa.org/doi/10.1037/fsh0000909; s*ee also* Karen M. Davison et al., *Food Security in the Context of Paternal Incarceration: Family Impact Perspectives*, 16 INT'L J. ENV'T RSCH. & PUB. HEALTH 776 (2019), https://doi.org/10.3390/ijerph16050776 (finding that food insecurity and paternal incarceration mutually reinforce one another); Robynn Cox & Sally Wallace, *Identifying the Link Between Food Security and Incarceration*, 82 S. ECON. J. 1062, 1074 (2016), https://doi.org/10.1002/soej.12080 (suggesting that parental incarceration increases the likelihood of food insecurity to 12.5 percent); Jude Al Abosy, Anna Grossman & Kimberly R. Dong, *Determinants and Consequences of Food and Nutrition Insecurity in Justice-Impacted Populations*, 11 CURRENT NUTRITION REPS. 407, 407–15 (2022), https://doi.org/10.1007/s13668-022-

inability to access government assistance programs with stricter eligibility criteria, multiple application hurdles, and requirements for enrollment that are difficult for the child or children's family to satisfy.[82]

- Additionally, formerly incarcerated parents may struggle to find stable employment due to a lack of skills or the stigma associated with incarceration,[83] which may prevent the family from experiencing economic security and stability long after a parent's sentence of incarceration ends.

- Children impacted by parental incarceration exhibit decreased political participation and more distrust in the government as a result of the long-lasting consequences of parental incarceration.[84]

- **Housing and Family Disruption:**

  - Parental incarceration is associated with an increased risk of experiencing homelessness in childhood and adulthood,[85] and an increased risk of foster-care placement.[86]

  - Children impacted by maternal incarceration, in particular, are at a greater risk of being placed in foster care, orphanages, or other nonfamilial care situations.[87]

00421-4 (discussing how criminal justice contact exacerbates food insecurity by creating additional barriers to healthcare coverage through public insurance and welfare benefits).

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

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

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

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

[86] 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).

[87] Dallaire, *supra* note 32, at 448–49; *see also* Christopher A. Swann & Michell Sheran Sylvester, *The Foster Care Crisis: What Caused Caseloads to Grow*, 43 DEMOGRAPHY 309, 309–35 (2006) (finding the growth of female incarceration accounted for 31.1 percent of the growth in foster-care caseloads between 1985 to 2000 in the United States).

- 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.[88]

- Children impacted by parental incarceration are less likely to demonstrate empathetic behaviors at home.[89]

- Because the restructuring of children's homelife may result in a breakdown of the family unit and a depletion of emotional resources in the home, children impacted by parental incarceration are likely to have less motivation and skills to reach out to others in prosocial, empathetic ways.[90]

- Maternal incarceration is associated with increases in rule-breaking behavioral problems at home, based on caregiver reports.[91]

- **Child Parentification:**

    - Parental incarceration may also lead to parentification of children. "Parentification" refers to when children assume developmentally inappropriate parent- or adult-like roles and responsibilities,[92] resulting in a sort of reversal of roles between parent and child.[93] ACEs, such as parental incarceration, prompt parentification.[94] Parentification often occurs when a parent is unable to fulfill his or her role as a caregiver, forcing a child to step in and take care of younger siblings and other domestic labor; thus, the absence of a parent as a result of his or her incarceration may result in a child taking on more responsibility and lead

[88] Geller et al., *supra* note 86.
[89] Dallaire & Zeman, *supra* note 80, at 22.
[90] *Id.*
[91] Wildeman & Turney, *supra* note 71.
[92] Jacinda K. Dariotis et al., *Parentification Vulnerability, Reactivity, Resilience, and Thriving: A Mixed Methods Systematic Literature Review*, 20 INT'L J. ENVTL. RSCH. & PUB. HEALTH 6197 (2023), https://doi.org/10.3390/ijerph20136197; *see also* Ruziana Masiran et al., *The Positive and Negative Aspects of Parentification: An Integrated Review*, 144 CHILD. & YOUTH SERVS. REV. 106709 (2023), ("Parentification occurs when children are assigned excessive instrumental or emotional caregiving roles.").
[93] Mary West, *What to Know About Parentification*, MEDICAL NEWS TODAY (Apr. 29, 2022), https://www.medicalnewstoday.com/articles/parentification.
[94] Ray M. Merrill, *Adverse Childhood Experiences Promote Increased and Selective Caregiving in Adulthood*, 23 INT'L J. ENVTL. RSCH. & PUB. HEALTH 213 (2026), https://doi.org/10.3390/ijerph23020213.

to parentification.[95] Moreover, because parentification also can occur when a parent relies on his or her child for comfort and reassurance during a difficult time, parental incarceration may lead to parentification when incarcerated parents rely on their children for emotional support.[96]

- Parentification is associated with numerous adverse consequences that may extend well into adulthood. Parentification can lead to negative mental health outcomes, including feelings of anxiety, depression, low self-esteem, and psychological stress, as well as chronic stress and anxiety in adulthood.[97] These mental health experiences, in turn, can increase the risk of developing physical health problems, such as heart disease and autoimmune disorders.[98] Imposter syndrome, which occurs when a person doubts their skills, knowledge, or talents, is a significant long-term effect of childhood parentification in adulthood.[99] Parentification also is associated with difficulty with boundary-setting and strong people-pleasing tendencies, which may lead to difficulty forming healthy relationships in adulthood.[100] Additionally, parentification is associated with being overly responsible and feeling guilty when failing to meet others' expectations.[101] Moreover, in households with multiple children, siblings of a parentified child may foster feelings of resentment towards their parentified sibling, leading to feelings of isolation and being without support.[102] Parentification also can significantly strain family dynamics.[103] Adults who were parentified during childhood or adolescence may experience issues with substance use, one or more eating disorders, symptoms of dissociation (such as losing track of time and forgetfulness), and symptoms of personality disorders, such as difficulty managing emotions or challenges relating to self-image.[104]

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[95] *Parentification Trauma: What it is and How to Heal*, CHARLIE HEALTH (Apr. 23, 2023), https://www.charliehealth.com/post/parentification-trauma-what-it-is-and-how-to-heal.
[96] *Id.*
[97] *Id.*; Masiran et al., *supra* note 95.
[98] *Parentification Trauma*, CHARLIE HEALTH, *supra* note 98.
[99] Masiran et al., *supra* note 95.
[100] *Parentification Trauma*, CHARLIE HEALTH, *supra* note 98; *see also* Masiran et al., *supra* note 95 (finding parentification to be associated with difficulty in future interpersonal relationships).
[101] *Parentification Trauma*, CHARLIE HEALTH, *supra* note 98.
[102] *Id.*
[103] *Id.*
[104] West, *supra* note 96.

Research suggests that parentification may affect academic achievement[105] and that parentified children and teenagers have tendencies toward alcohol use disorder and perfectionism.[106] Importantly, parentification can significantly and negatively impact a parentified child's caregiving ability as an adult.[107]

Family Circumstances as a Protective Factor

Family circumstances may be evidence of actual or potential protective factors against recidivism. The term "protective factor" is "an umbrella term that can encompass social, environmental, or psychological features that help to lower the risk of reoffending."[108] Research consistently shows that "family support is a powerful and substantively meaningful protective factor against recidivism."[109] Further, potential familial ties can also provide a social context that supports the transformation of identity and accordingly protects against recidivism.[110] Thus, actual and potential family circumstances are associated with a decreased likelihood of reoffending and increased odds of specific deterrence.

Family Circumstances as an Actual Protective Factor

Although not in the pretrial context, research studies have shown that, for parents who are placed on probation rather than sent to prison, parenting is a salient part of their lives[111] and an especially powerful motivator to be successful on probation.[112] In one study, parents on probation put significant effort into being there for their children and overcame multiple challenges to be physically, emotionally, and financially invested in their children's lives.[113] Even

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[105] Judyta Borchet et al., *The Relations Among Types of Parentification, School Achievement, and Quality of Life in Early Adolescence: An Exploratory Study*, FRONTIERS PSYCH., (Mar. 2021), https://doi.org/10.3389/fpsyg.2021.635171.
[106] Piotr Połomski et al., *Exploring Resiliency and Parentification in Polish Adolescents*, 18 INT'L J. ENVTL. RSCH. & PUB. HEALTH 11454 (2021), https://doi.org/10.3390/ijerph182111454.
[107] Masiran et al., *supra* note 95.
[108] ROSIE KITSON BOYCE & ALICE BETTERIDGE, DESISTANCE FROM CRIME: WORKING WITH PROTECTIVE FACTORS 2 (Aug. 2022), https://irep.ntu.ac.uk/id/eprint/48302/1/1728228_Kitson-Boyce.pdf; *see also* Stephane M. Shepherd, Stefan Luebbers & James R. O. Ogloff, *The Role of Protective Factors and the Relationship with Recidivism for High-Risk Young People in Detention*, 43 CRIM. JUST. & BEHAV. 863, 863 (2016), https://doi.org/10.1177/0093854815626489 (defining "protective factors" as "[i]tems that reduce the risk of offending" that also "largely entail the positive attributes and strengths of an individual").
[109] John H. Boman, IV & Thomas J. Mowen, *Building the Ties that Bind, Breaking the Ties that Don't*, 16 CRIMINOLOGY & PUB. POL'Y 753, 767 (2017), https://doi.org/10.1111/1745-9133.12307 (citing Carol Shapiro & Meryl Schwartz, *Coming Home: Building on Family Connections*, 5 CORR. MGMT. Q. 52, 52–61 (2001)).
[110] Id.
[111] 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.
[112] Id.
[113] *Id.* at 406.

in moments where trying to balance parenthood and probation caused significant stress, supervised parents maintained the perspective that parenthood and their children were positive influences and protective factors for "surviving" probation and desisting from substance abuse.[114] Another study found that more routine parenting activities were associated with fewer probation and parole violations in the 18 months after starting supervision.[115] Research indicates that parenting responsibilities may function as a protective factor in preventing reoffending, particularly for women.[116] Moreover, the salient role of family does not diminish when individuals receive other forms of social support.[117]

Research on the role of family ties and responsibilities during reentry also suggests that parenting responsibilities and parent-child relationships lower the risk of recidivism. Parents who maintain relationships with their children during their incarceration have lower recidivism rates upon release.[118] Familial support is associated with job attainment, better health outcomes, and stronger emotional support during reentry.[119] Family relationships, and parent-child relationships in particular, are powerful motivators for successful rehabilitation,[120] providing a construct that discourages recidivism.[121] Family ties also deter reoffending by offering an additional level of supervision and accountability.[122] Familial and community support are

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[114] Id.
[115] 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.
[116] 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).
[117] Lin Liu, Patricia Becker & Thomas J. Mowen, *Social Support During Reentry: Family, Mentor, Religious, Parole Officer, and Social Service Roles*, 50 CRIM. JUST. & BEHAV. 1053, 1064 (2023), https://doi.org/10.1177/00938548231166154.
[118] LINDSEY CRAMER ET AL., URB. INST., PARENT-CHILD VISITING PRACTICES IN PRISONS AND JAILS: A SYNTHESIS OF RESEARCH AND PRACTICE 8 (2017), https://www.urban.org/sites/default/files/publication/89601/parent-child_visiting_practices_in_prisons_and_jails_0.pdf (noting how visits are important motivators for improving parent outcomes and how visits can motivate parents to comply with facility rules, leading to fewer disciplinary reports, and participate in correctional programming).
[119] *See* Thomas J. Mowen, Richard Stansfield & John H. Boman, IV, *Family Matters: Moving Beyond "If" Family Support Matters to "Why" Family Support Matters during Reentry from Prison*, 56 J. RSCH. CRIME & DELINQ. 483, 485 (2019), https://doi.org/10.1177/0022427818820902 (concluding that family support is associated with decreased recidivism, an increased likelihood of employment, and better health outcomes during the reentry process); DAVID B. MUHLHAUSEN, NAT'L INST. OF JUST., AN OVERVIEW OF OFFENDER RE-ENTRY 3 (2016), https://nij.ojp.gov/library/publications/overview-offender-reentry (finding that familial ties offer "the greatest tangible and emotional support" to individuals reentering the community following their incarceration).
[120] 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.
[121] *Id.* at 3.
[122] Boman & Mowen, *supra* note 121, at 755 (citing Bruce Western et al., *Stress and Hardship after Prison*, 120 AM. J. SOCIO. 1512, 1512–1547 (2015)).

critical for successful reentry,[123] but parenthood in particular offers a unique opportunity for responsibility, rehabilitation, and social support during reentry. For this reason, "fostering strong parent-child bonds should be a priority."[124]

Family Circumstances as a Potential Protective Factor

Close familial relationships are not necessary for family circumstances to function as a protective factor. Rather, even in the absence of close familial ties, family circumstances can influence recidivism rates as a potential protective factor. Family, and specifically children, are extremely strong motivators for change.[125] Parenthood is "a major turning point upon which people embark on a trajectory of crime desistance."[126] Parenthood is a strong motivating factor of desistance, and if individuals act on their desire to desist, their risk of recidivism will decrease.[127] Becoming a parent is a "key transition event" that may function as an "important catalyst" for making significant life changes,[128] but incorporating a parental role into routine offers an ongoing opportunity for a rehabilitative transformation. The decision to be a "good" parent necessitates the perception that offending and deviant behaviors are incompatible with the prosocial parental identity.[129] Thus, mere adoption of a parental identity is significant for desistance.[130] To embody a "good" parent, individuals are motivated to veer away from deviant lifestyles and themes of quick and easy money and the party life.[131] Instead, parenthood

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[123] Simon D. Venema et al., *Fatherhood and Reoffending after Release from Prison: The Importance of Co-Residing with a Partner and Children*, 71 CRIME & DELINQ. 1462, 1481–82 (2025), https://doi.org/10.1177/00111287231193991 (finding that fathers who resided with a partner and children six months after release were significantly less likely to be reconvicted 18 months after release than nonfathers and fathers who did not reside with a partner and children); Liu, Becker & Mowen, *supra* note 129, at 1064 (finding that support from family members, parole officers, and social service agencies functioned as protective factors for reentry); Lin Liu & Christy A. Visher, *Decomposition of the Role of Family in Reentry: Family Support, Tension, Gender, and Reentry Outcomes*, 67 CRIME & DELINQ. 970, 984 (2021), https://doi.org/10.1177/0011128720987195 (describing family as "a social institution that keeps people from drifting—engaging in unruled and deviant behaviors").
[124] HAZEL ET AL., *supra* note 132, at 4.
[125] Tammy Rinehart Kochel & Edmund F. McGarrell, *Voices from Inside Focused Deterrence: Implications for Implementation*, 100 J. CRIM. JUST. 1, 7 (2025), https://doi.org/10.1016/j.jcrimjus.2025.102483 (finding that the top motivation for change was family (72 percent), and most notably offenders' children (44 percent)).
[126] Lin Liu & Susan L. Miller, Reclaiming Parenthood After Incarceration: The Nexus of Determination to Desist, Fulfillment of Parental Responsibilities, and Recidivism, 50 CRIM. JUST. & BEHAV. 870, 871 (2023), https://doi.org/10.1177/00938548231164965.
[127] Id.
[128] Peggy C. Giordano et al., *Parenthood and Crime: The Role of Wantedness, Relationships with Partners, and Ses*, 39 J. CRIM. JUST. 405, 405 (2011), https://doi.org/10.1016/j.jcrimjus.2011.05.006.
[129] *See* Ray Paternoster & Shawn Bushway, *Desistance and the Feared Self: Toward an Identity Theory of Criminal Desistance*, 99 J. CRIM. L. & CRIMINOLOGY 1103, 1120–21 (2009), https://www.jstor.org/stable/20685067.
[130] Liu & Miller, *supra* note 138, at 872.
[131] Ronet Bachman et al., *Desistance for a Long-Term Drug-Involved Sample of Adult Offenders: The Importance of Identity Transformation*, 43 CRIM. JUST. & BEHAV. 164, 167–68 (2016), https://doi.org/10.1177/0093854815604012.

motivates individuals to find employment or other legal means of financial support and to stay away from drugs and alcohol.[132] Importantly, being a parent may be an important motivator to individuals with children of all ages, including adult children.[133]

Moreover, individuals adopt role expectations for parents, recognizing the need to be role models, providers, caregivers, and protectors of their children.[134] Parenthood requires nurturing children, financially providing for them, and being emotionally invested and involved in their lives.[135] The role expectations for parenthood may drive individuals to reshape their networks to include more family and to secure stable and legitimate work to financially support their children.[136] By making these changes in routines, individuals will have fewer opportunities to associate with criminal peers and engage in offending.[137] Some researchers have described this desire to desist associated with parenthood as opening a door to cognitive transformation.[138] Thus, probation officers and correctional staff can use a defendant's desire to take on a prosocial parental role as a "hook for change."[139]

Importantly, even emotionally strained family relationships may promote desistance through instrumental family support.[140] Thus, defendants' familial relationships characterized by stress and emotional turmoil may still protect against future criminality and promote successful rehabilitation.[141]

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[132] David J. Harding et al., *Making Ends Meet After Prison*, 33 J. POL'Y ANALYSIS & MGMT. 440, 462 (2014), https://doi.org/10.1002/pam.21741.
[133] Id.
[134] Liu & Miller, *supra* note 138, at 872.
[135] *See* William J. Doherty, Edward F. Kouneski & Martha F. Erickson, *Responsible Fathering: An Overview and Conceptual Framework*, 60 J. MARRIAGE & FAM. 277 (1998), https://doi.org/10.2307/353848; Chris Knoester & David J. Eggebeen, *The Effects of the Transition to Parenthood and Subsequent Children on Men's Well-Being and Social Participation*, 27 J. FAM. ISSUES 1532 (2006), https://doi.org/10.1177/0192513X06290802.
[136] Paternoster & Bushway, *supra* note 141.
[137] Derek A. Kreager, Ross L. Matsueda & Elena A. Erosheva, *Motherhood and Criminal Desistance in Disadvantaged Neighborhoods*, 48 CRIMINOLOGY 221, 224–25 (2010), https://doi.org/10.1111%2Fj.1745-9125.2010.00184.x.
[138] Peggy C. Giordano, Stephen A. Cernkovich & Jennifer L. Rudolph, *Gender, Crime, and Desistance: Toward a Theory of Cognitive Transformation*, 107 AM. J. SOCIO. 990 (2002), https://doi.org/10.1086/343191.
[139] Id. at 1000; see also Eric J. Wodahl, Thomas J. Mowen & Brett E. Garland, The Effect of Individual Characteristics and Supervision Experiences on the Perceived Quality of the Supervision Relationship, 32 CRIM. JUST. POL'Y REV. 523, 537–41 (2020), https://doi.org/10.1177/0887403420967070 (finding that family support effects the supervision relationship, and high-quality relationship between individuals on probation/parole and their supervising officers, together with family support, can reduce recidivism and increase compliance).
[140] Mowen, Stansfield, & Boman, IV, *supra* note 131, at 510–11.
[141] Id.

Parental Incarceration at the Pretrial Stage

The harms of parental incarceration and evidence of caregiving as a protective factor for success on release is applicable at both the pretrial and the sentencing stages. Each stage, however, has unique legal principles and policy justifications that caution against incarceration for caregivers when release would be in the best interest of the child. At the pretrial stage, it is important to recognize that pretrial detention is sudden and highly disruptive to families. Thus, in addition to these general harms of parental incarceration, pretrial detention can have unique social costs that affect the family and children. Further, at this stage, defendants are presumed innocent, so release should be granted unless detention is justified by public safety or flight risk concerns.

Harms Caused by the Pretrial Detention of Caregivers

Pretrial detention has unique consequences for children. For instance, one study indicates that pretrial detainees may have a higher risk of losing a family attachment.[142] 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.[143] Lost contact with a parent can lock a child into immaturity and lead to rebellious behaviors and an increased risk of detachment disorders.[144] 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.[145] 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.[146] Further, the parent may lose their job and housing due to failure to pay rent during the period of pretrial detention, even if it is brief.[147] These disruptions to the stability of the family can have lasting effects on the child.

All of this is true despite the fact that during the pretrial detention period, the caregiver remains presumed innocent of the crime with which they are charged. People detained pretrial are also more likely to be convicted and receive a harsher sentence due to the increased likelihood that

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[142] Sara Wakefiled & Lars Hojsgaard Andersen, *Pretrial Detention and the Costs of System Overreach for Employment and Family Life*, 7 SOCIOLOGICAL SCIENCE 342, 342 (2020).
[143] Impacts of Pre-Trial Detention Procedures on Children with Parents in Conflict with the Law, Children of Prisoners Europe (2021).
[144] Id.
[145] Id.
[146] Id.
[147] Id.

the defendant will take a plea deal.[148] These correlations create a cycle where children of caregivers detained pretrial are then more likely to suffer from the harms discussed above regarding parental incarceration generally. Additionally, pretrial detention significantly impairs financial stability in the short term and long term due to the loss of employment, housing, and public benefits.[149] 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.[150] Thus, pretrial detention imposes unique harms to the child and the family.

Bail and The Presumption of Innocence

Both law and empirical research establish that family ties are an important consideration in pretrial detention hearings. Nearly every jurisdiction in the United States utilizes cash bail to some extent.[151] The purposes of bail are to assure the defendant's appearance in court and, in some jurisdictions, to protect public safety.[152] This gives courts a wide latitude in considering whether a defendant's pretrial detention is actually necessary, and caregiving responsibilities are relevant to whether pretrial detention would be more harmful to the community in a particular case due to the harm imposed on the children. As explained above, caregiving responsibility mitigates the risk of re-offending and increases compliance with conditions. Information about a defendant's caregiving responsibilities should thus be considered when deciding whether pretrial detention, or a high bail, is necessary.

Moreover, the Constitution supports pretrial release whenever possible. The presumption of innocence is "that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.'"[153] Pretrial detention is at odds with this bedrock principle. "Unless this right to bail before trial is reserved, the presumption of

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[148] Leon Digard & Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*, Vera Institute of Justice (2019).
[149] Will Dobbie, Jacob Goldin, & Crystal S. Yang, The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, AMERICAN ECONOMIC REVIEW 108 (2): 201–40.
[150] Id.
[151] Isabella Jorgensen & Sandra Susan Smith, The Current State of Bail Reform in the United States: Results of a Landscape Analysis of Bail Reforms Across All 50 States, HARVARD KENNEDY SCHOOL (2021).
[152] American Bar Ass'n, *How Courts Work: Bail*, https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/bail/.
[153] *In re* Winship, 397 U.S. 358, 363, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) (quoting *xi*, 156 U.S. 432, 453, 15 S. Ct. 394, 39 L.Ed. 481 (1895)).

innocence, secured only after centuries of struggle, would lose its meaning."[154] If a monetary bail amount were fixed "as an assurance [the defendant] would remain in jail, . . . [that would be] contrary to the whole policy and philosophy of bail."[155] The Supreme Court further emphasized the significance of the presumption of innocence before trial in *Bandy v. United States*, stating, "It would be unconstitutional to fix excessive bail to assure that a defendant will not gain his freedom."[156] Thus, both the Constitution and the harm of pretrial detention to children support the argument that courts should set bail no higher than necessary to fulfill its purposes.

Parental Incarceration at Sentencing

The Supreme Court has recognized four legitimate penological justifications that underly sentencing law: rehabilitation, retribution, deterrence, and incapacitation.[157] Family circumstances are relevant to each of these justifications.

Retribution: What sentence does the defendant deserve?

Retribution concerns punishment for the purpose of punishment, that is, imposing a punishment for the purpose of imposing a harm on a convicted individual.[158] Retribution also implicates proportionality considerations.[159] As such, retributivist principles support sentence mitigation in circumstances that suggest limited culpability, with the "unifying theory behind those facts and circumstances [being] whether they indicate that a defendant either caused less

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[154] Stack v. Boyle, 342 U.S. 1, 4, 72 S. Ct. 1, 3, 96 L.Ed. 3 (1951).
[155] *Id.* at 6.
[156] Bandy v. United States, 82 S. Ct. 11, 13, 7 L. Ed. 2d 9 (1961) (citing Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951)).
[157] Graham v. Florida, 560 U.S. 48, 71 (2010).
[158] *See* Michael S. Moore, *The Moral Worth of Retribution*, *in* PRINCIPLED SENTENCING: READINGS ON THEORY AND POLICY 150, 150 (Andrew von Hirsch & Andrew Ashworth eds., 2d ed. 1998) ("Retributivism is a very straightforward theory of punishment: we are justified in punishing because and only because offenders deserve it."); Michael Tonry, *Obsolescence and Immanence in Penal Theory and Policy*, 105 COLUM. L. REV. 1233, 1240(2005) ("[F]or retributivists, a just punishment is one that is morally appropriate, or proportionate, for this offender for that offense."); Albert W. Alschuler, *The Changing Purposes of Criminal Punishment: A Retrospective on the Past Century and Some Thoughts About the Next*, 70 U. CHI. L. REV. 1, 15 (2003) ("A retributivist believes that the imposition of deserved punishment is an intrinsic good."); ANDREW ASHWORTH, SENTENCING AND CRIMINAL JUSTICE 72 (3d ed. 2000) (stating that the touchstone of retributivism is proportionality concerning "the relative seriousness of offences among themselves").
[159] *See, e.g.*, Paul J. Hofer & Mark H. Allenbaugh, *The Reason Behind the Rules: Finding and Using the Philosophy of the Federal Sentencing Guidelines*, 40 AM. CRIM. L. REV. 19, 66 (2003), ("In all cases the goal [of retributivism] is to achieve proportionate punishment, where more harm means great punishment."); Ewing v. California, 538 U.S. 11, 31, 123 S. Ct. 1179, 1191, 155 L. Ed. 2d 108 (2003) (Scalia, J., concurring) (observing that proportionality "is inherently a concept tied to the penological goal of retribution").

harm than other defendants or was less culpable than other defendants."[160] The consideration of family circumstances at sentencing serves the purpose of retribution in two ways.

First, considering family circumstances serves retributive principles by providing a full picture of the harms associated with a particular sentence that a defendant will experience. Thus, considering family circumstances can prevent incarcerated parents from receiving punishment disproportionate to the severity of their crimes.[161] Incarcerated parents often experience "double punishment" due to their separations from their children.[162] Separation caused by incarceration often results in the loss of parental rights, compounding the harm defendants otherwise experience from incarceration.[163] While the harms incarcerated parents face due to separation from their children are not viewed as criminal penalties, termination of parental rights, concern about disruption to their children's lives, and inadequate access to child visitation are all severe, painful consequences that incarcerated parents experience.[164] Where the "same" sentence has an inconsistent impact on different defendants with the same underlying convictions, then the punishments are not equivalent or consistent. "Justice requires considering the consequences of a sentence for the defendant's children where they lead to such different effective quantities of punishment."[165]

Second, considering family circumstances serves retributive principles by ensuring that the culpable party is punished. "The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender."[166] "Permitting

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[160] Carissa Byrne Hessick & Douglas A. Berman, *Towards a Theory of Mitigation*, 96 B.U. L. REV. 161, 182 (2016).
[161] Ilene H. Nagel & Barry L. Johnson, The Role of Gender in a Structured Sentencing System: Equal Treatment, Policy Choices, and the Sentencing of Female Offenders Under the United States Sentencing Guidelines, 85 J. CRIM. L. & CRIMINOLOGY 181, 204 (1994); Eleanor Bush, Considering the Defendant's Children at Sentencing, 2 FED. SENT'G REP. 194, 194 (Dec. 1989 – Jan. 1990), https://doi.org/10.2307/20639225.
[162] Myrna S. Raeder, Gender and Sentencing: Single Moms, Battered Women, and Other Sex-Based Anomalies in the Gender-Free World of the Federal Sentencing Guidelines, 20 PEPP. L. REV. 905, 954 (1993).
[163] Nagel & Johnson, *supra* note 177, at 204. Under the Adoption and Safe Families Act of 1997, proceedings to terminate parental rights begin after a child has been in foster care for a specified period unless "reasonable efforts" have been made to support reunification, or that termination is not in a child's best interest. *See* S.F. CHILD. OF INCARCERATED PARENTS P'SHIP, FROM RIGHTS TO REALITIES: AN AGENDA FOR ACTION (2005), https://affcny.org/wp-content/uploads/2008/11/billofrights.pdf; Lauren Feig, *Breaking the Cycle: A Family-Focused Approach to Criminal Sentencing in Illinois*, U. CHI., June 1, 2015, https://crownschool.uchicago.edu/student-life/advocates-forum/breaking-cycle-family-focused-approach-criminal-sentencing-illinois; 42 U.S.C. §§ 673(b), 678, 679(b).
[164] Raeder, *supra* note 178, at 962.
[165] Bush, *supra* note 177.
[166] Tison v. Arizona, 481 U.S. 137, 149 (1987); *see also* Williams v. New York, 337 U.S. 241, 247 (1949) ("[T]he punishment should fit the offender and not merely the crime."); Pennsylvania ex rel. Sullivan v. Ashe, 302 U.S. 51, 55 (1937) ("For the determination of sentences, justice generally requires consideration of more than the particular

sentencing courts to consider the widest possible breadth of information about a defendant [including family circumstances] 'ensures that the punishment will suit not merely the offense but the individual defendant.'"[167] Sentencing parents can have devastating effects on children and families.[168] When the defendant's family is punished, the harmful impacts undermine the sentencing principle of avoiding harm to innocent parties, including that harm of breaking up families.[169] Thus, considering family circumstances and imposing a sentence that prevents the victimization of innocent children would promote retributive principles by punishing the defendant as the culpable party.

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

Deterrence: What sentencing will deter criminal conduct in the future?

Deterrence comprises general and specific deterrence.[170] General deterrence is the response to the *threat* of punishment, and specific deterrence is the response to the *experience* of punishment.[171] Accordingly, specific deterrence seeks to disincentivize a specific person from committing future crimes through that person's experience of punishment.[172] The consideration of family circumstances at sentencing is particularly significant to specific deterrence.

Considering family circumstances at sentencing significantly relates to specific deterrence. Family circumstances—and parenthood and a defendant's children in particular—are powerful motivators that deter defendants from committing crime. Defendants sentenced to probation are especially motivated by their families and children to remain law-abiding.[173] Parents on probation put significant effort into being part of their children's lives and work hard to overcome multiple challenges to be physically, emotionally, and financially invested in their

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acts by which the crime was committed and that there be taken into account the circumstances of the offense together with the character and propensities of the offender.").
[167] Pepper v. United States, 562 U.S. 476, 488 (2011) (quoting Wasman v. United States, 468 U.S. 559, 564 (1984)).
[168] *See supra* "Harms of Parental Incarceration" at 4-16.
[169] Bush, *supra* note 177.
[170] Andrew W. Grindrod, *Bottom-Up Federal Sentencing Reform*, 65 WM. & MARY L. REV. 785, 822 (2024).
[171] Daniel S. Nagin, Deterrence: A Review of the Evidence by a Criminologist for Economists, 5 ANN. REV. ECON. 83, 95 (2013) (emphasis added).
[172] *Id.* at 84.
[173] Shlafer et al., *supra* note 116.

children's well-being and success.[174] Parenting activities are also associated with fewer probation and supervised release violations.[175] Defendants' children are positive influences and protective factors for successfully completing supervision and desisting from criminal behavior, such as substance abuse.[176] Moreover, even if a defendant does not have strong familial ties at sentencing, emotionally-strained or potential family ties may also deter reoffending.[177]

Additionally, specific deterrence can be achieved without severe penalties or punishments. Punishment does not effectively deter criminal behavior because most people who commit crimes do not believe they will be caught.[178] Thus, they do not believe they will experience the punishment and will not be deterred by it.[179] "The *certainty* of being caught is a vastly more powerful deterrent than the punishment."[180] For example, increased police presence strengthens an offender's perception of the certainty of being caught and has a greater deterrent effect than the possible punishment for the crime.[181] Considering family circumstances at sentencing therefore does not affect the most influential aspect of specific deterrence. Furthermore, crime prevention strategies effectively deter crime through "preemptive deterrence."[182] Consideration of family circumstances can inform decisions about what preemptive deterrence strategies to employ to deter an offender in a specific case. Thus, considering family circumstances does not preclude sentences from promoting specific deterrence.

Moreover, the consequences of a parent being charged, arrested, or convicted further promote specific deterrence by showing defendants what future punishments could look like for their children if they commit future crimes. By the time a case reaches sentencing, the offender has already experienced the most powerful deterrent: certainty of being caught.[183] But the offender also gets a taste of the penalties he or she could face for future criminal behavior. Even brief

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[174] *See id.* at 406.
[175] Adams et al., *supra* note 120 (finding association between routine parenting activities and fewer probation and parole violations by in the 18 months after a defendant started supervision).
[176] Shlafer et al., *supra* note 116; *see also* Adams et al., *supra* note 120 (finding that parenting responsibilities for female defendants are especially motivating to prevent reoffending).
[177] *See supra* "Family Responsibility as a Potential Protective Factor" at 18-19.
[178] Joseph R. Dole, II, *Disinfecting the Criminal Legal System of Punitive Deterrence*, 17 DEPAUL J. FOR SOC. JUST. 1, 9 (2023).
[179] Id.
[180] NAT'L INST. OF JUST., U.S. DEP'T OF JUST., FIVE THINGS ABOUT DETERRENCE 1 (May 2016) (emphasis added), https://www.ojp.gov/pdffiles1/nij/247350.pdf.
[181] Id.
[182] Dole, II, *supra* note 194.
[183] Nat'l Inst. of Just., U.S. Dep't of Just., *supra* note 196.

periods of separation can have devastating consequences for children.[184] Likewise, the type of facility where a parent or caregiver is held does not meaningfully change the effects of parental incarceration.[185] Thus, when offenders experience pretrial detention, they learn how incarceration may impact their families. Considering family circumstances at sentencing therefore would not affect a defendant's understanding of the possible consequences his or her family will experience if the defendant engages in future criminal conduct. Instead, understanding the consequences of future criminal conduct would promote specific deterrence.

Incapacitation: What sentence will protect the public?

Incapacitation primarily concerns how individuals behind bars cannot commit additional crime.[186] But the underlying purpose of incapacitation—promoting public safety—does not require imprisonment. Considering family circumstances promotes public safety—and accordingly serves the purpose of incapacitation—in four meaningful ways.

First, consideration of family circumstances promotes public safety by mitigating the impacts of parental incarceration that increase the likelihood of children with incarcerated parents engaging in delinquent and criminal behavior. Parental incarceration is associated with delinquency, criminality, and criminal justice contact for its link to increased physical aggression, attention problems, risk of arrest, behavioral problems and school punishments, rule-breaking, and other behavioral problems.[187] Specifically, parental incarceration increases the risk of delinquency related to "violent, destructive, or aggressive behavior,"[188] which poses an additional risk of harm to the community. Parental incarceration creates the risk of future

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[184] *See, e.g.*, Kimberly Howard et al., *Early Mother–Child Separation, Parenting, and Child Well-Being in Early Head Start Families*, 13 ATTACHMENT & HUM. DEV. 5, 20 (2011) https://doi.org/10.1080/14616734.2010.488119 (finding that even brief separations can be associated with later behavior problems among children); Melissa De Witte, *Separation from Parents Removes Children's Most Important Protection and Generates a New Trauma, Stanford Scholar Says*, STANFORD REP. (June 26, 2018) https://news.stanford.edu/stories/2018/06/psychological-impact-early-life-stress-parental-separation (noting how parental separation causes uncertainty for children that could exacerbate feelings of anguish, despair, guilt, blame, and depression, all of which disrupt child development and how children learn life skills); Robert Ewing, *ASU Psychologists Agree — Unexpected Separation from Parents is Harmful to Children Both in the Short and Long Term*, ARIZ. STATE UNIV. NEWS (June 21, 2018), https://news.asu.edu/20180621-asu-psychologists-unexpected-separation-children-harmful (describing how short-term separation results in deprivation of basic psychological needs, leading to chronic activation of physiological stress processes and emotional distress, which is linked to development of serious emotional disorders, worse cognitive performance, and changes in physiology).
[185] Christopher Wildeman, Kristin Turney & Youngmin Yi, *Paternal Incarceration and Family Functioning: Variation across Federal, State, and Local Facilities*, 665 ANNALS AM. ACAD. POL. & SOC. SCI. 80, 91–93 (2016), https://doi.org/10.1177/0002716215625042.
[186] Nat'l Inst. of Just., U.S. Dep't of Just., *supra* note 196.
[187] *See supra* note 27 and accompanying text.
[188] Porter & King, *supra* note 29.

delinquency and criminality of children by causing children to experience emotional stress, weakened parental attachment, internalization of negative labels, and other risk factors for criminal behavior.[189]

Likewise, parental engagement functions as a protective factor against children's participation in risky and delinquent behaviors.[190] Thus, parental incarceration undermines public safety by creating an environment that creates a greater likelihood of children having criminal justice contact themselves. Consideration of family circumstances therefore serves public safety by assessing potential future harm.

Second, consideration of family circumstances promotes public safety by providing an accurate representation of a criminal defendant's needs to prevent reoffending. Familial support significantly decreases an individual's risk of recidivism[191] and provides motivation for law-abiding behavior.[192] By understanding a defendant's family circumstances at sentencing, judges can impose a sentence that is tailored to address the defendant's criminogenic needs and risk factors without over supervision. Over-supervision can harm the community by increasing a low-risk defendant's probability of reoffending.[193] This phenomenon, known as the "risk principle," is well-supported by research and supports the notion that "the level of supervision and treatment should be commensurate with the offender's level of risk."[194] Thus, the "most intensive correctional treatment and intervention programs should be reserved for offenders who are higher risk."[195] Likewise, individuals with lower probabilities of recidivating should receive supervision that reflects their lower-risk status because placing offenders with lower risk in structured programs intended for offenders with higher risk, whether treatment- or supervision-oriented, can increase recidivism.[196] Therefore, "[t]o have the greatest impact on recidivism, length of supervision and services provided should be clearly tied to an offender's

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[189] *Id.*; Finkeldey et al. (2021), *supra* note 37, at 171.
[190] Anderson, Henrich, & Mrug, *supra* note 1, at 1229; *see also* United States v. Concepcion, 795 F. Supp. 1262, 1282 (E.D.N.Y. 1992) ("Removing the mother in such a matriarchal setting destroys the children's main source of stability and guidance and enhances the possibility of their engaging in destructive behavior.").
[191] *See infra* "Rehabilitation," at 29-31.
[192] *See supra* "Deterrence," at 25-27.
[193] Christopher T. Lowenkamp, Edward J. Latessa & Alexander M. Holsinger, *The Risk Principle in Action: What Have We Learned From 13,676 Offenders and 97 Correctional Programs?*, 52 CRIME & DELINQ. 77, 88 (2006), https://doi.org/10.1177/0011128705281747.
[194] *Id.*; *see also* Lori Brusman Lovins et al., *Application of the Risk Principle to Female Offenders*, 23 J. CONTEMP. CRIM. JUST. 383, 394–96 (2007), https://doi.org/10.1177/1043986207309437 (finding that the risk principle applies to female offenders).
[195] Lowenkamp, Latessa, & Holsinger, *supra* note 209, at 88.
[196] *Id.* at 89.

risk level."[197] Imposing conditions of probation or supervised release terms that are tailored to address the defendant's specific needs prevents sentences that over-supervise defendants, decrease recidivism, and promote public safety by protecting against further crimes of the defendant.

Third, consideration of family circumstances promotes public safety because a defendant's children are part of the public that sentencing seeks to protect the safety of. The harms children of incarcerated parents face[198] should be considered when determining a sentence that best serves the public interest.

Fourth, consideration of family circumstances promotes public safety by deterring crime and supporting rehabilitation, which in turn protects the public from further crimes of the defendant. Family circumstances promote specific deterrence by motivating individuals to remain law-abiding and avoid behavior that could result in inflicting harm on their children.[199] Family circumstances further support rehabilitation by providing a range of social support to assist individuals' rehabilitation.[200]

Rehabilitation: What sentence is most likely to help the defendant rehabilitate for transition back into society?

Considering family circumstances promotes rehabilitation[201] because family circumstances relate to decreased recidivism and increased odds of successful reentry for defendants who were incarcerated.[202] Research shows that family support is significantly related to lower levels of criminal offending, recidivism, and substance abuse.[203] Some research suggests that "self-defined family support [is] the *strongest* predictor of individual success."[204] Family

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[197] *Id.* at 90.
[198] *See supra* "Harms of Parental Incarceration," at 4-16.
[199] *See supra* "Deterrence," at 25-27.
[200] *See infra* "Rehabilitation," at 29-31.
[201] Rehabilitation has many conceptions. Lisa Forsberg & Thomas Douglas, *What is Criminal Rehabilitation?*, 16 CRIM. L. & PHIL. 103, 110– 17 (2022), https://doi.org/10.1007/s11572-020-09547-4 (discussing five conceptions of criminal rehabilitation related to anti-recidivism, harm reduction, therapy, moral improvement, and restoration); Chad Flanders, *The Supreme Court and the Rehabilitative Ideal*, 49 GA. L. REV. 383, 388–402 (2015) (describing three models of rehabilitation as treatment, training, and moral reform). For purposes of this Toolkit, "rehabilitation" refers to interventions addressing the underlying problem or situation that led to the offense conduct with the purpose of preventing recidivism or harmful conduct. *See* Forsberg & Douglas, *supra* note 217, at 112.
[202] Mowen, Stansfield, & Boman, IV, *supra* note 124.
[203] Boman, IV & Mowen, *supra* note 112, at 767.
[204] Marta Nelson, Perry Deess & Charlotte Allen, *The First Month Out: Post-Incarceration Experiences in New York City*, 24 FED. SENT'G REP. 72, 73 (2011), https://doi.org/10.1525/fsr.2011.24.1.72 (emphasis added).

circumstances provide a wide range of supports that help prevent recidivism, including "badly needed" social ties,[205] assistance with reentry and reestablishment within the community,[206] and an additional layer of supervision and accountability.[207] In addition to the support families offer individuals, they also motivate individuals to change for the better. Family relationships, and parent-child relationships in particular, are powerful motivators for successful rehabilitation[208] and provide a social construct that discourages recidivism and encourages transformation.[209]

Family circumstances also support rehabilitation because family support relates to increased odds of employment,[210] and employment is strongly associated with a decreased likelihood of recidivism.[211] Being unemployed is a risk factor for criminal behavior.[212] But challenges with finding, securing, and maintaining employment cause individuals to be at high risk of economic insecurity.[213] Research shows that individuals, formerly incarcerated or with criminal records, can attain economic security and stability through employment when coupled with familial social support.[214] Sustained economic security, however, is rarely achievable absent strong social support, such as the support offered by families.[215] Thus, family circumstances promote

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[205] Boman, IV & Mowen, *supra* note 112, at 755; *see also* Rebecca L. Naser & Nancy G. La Vigne, *Family Support in the Prisoner Reentry Process: Expectations and Realities*, 43 J. OFFENDER REHAB. 93, 93–106 (2006), https://doi.org/10.1300/J076v43n01_05 (finding that incarcerated individuals upon release relied on family members extensively for support in navigating "virtually every aspect of the reentry experience").
[206] *See* Christopher Uggen, Jeff Manza & Angela Behrens, *'Less than the Average Citizen': Stigma, Role Transition and the Civic Reintegration of Convicted Felons*, *in* AFTER CRIME AND PUNISHMENT 258, 258–90 (Shadd Maruna & Russ Immarigeon eds., 1st ed. 2004), https://doi.org/10.4324/9781843924203.
[207] Boman, IV & Mowen, *supra* note 112, at 755 (citing Bruce Western et al., *Stress and Hardship after Prison*, 120 AM. J. SOCIO. 1512, 1512–1547 (2015)).
[208] HAZEL ET AL., *supra* note 125.
[209] Boman, IV & Mowen, *supra* note 112, at 755 (citing Sheldon Ekland-Olson et al., *Postrelease Depression and the Importance of Familial Support*, 21 CRIMINOLOGY 253, 253–75 (1983), https://doi.org/10.1111/j.1745-9125.1983.tb00261.x).
[210] Mark T. Berg & Beth M. Huebner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, 28 JUST. Q. 382, 402 (2011), https://doi.org/10.1080/07418825.2010.498383 (finding that individuals with good quality ties to relatives were more likely to be employed and that good quality ties to relatives also moderated the negative effects of a history of frequent unemployment).
[211] Simon Kolbeck, Steven Lopez & Paul Bellair, *Does Stable Employment after Prison Reduce Recidivism Irrespective of Prior Employment and Offending*, 41 JUST. Q. 38, 56 (2024), https://doi.org/10.1080/07418825.2023.2201330 (finding that post-prison employment reduces recidivism, including for offenders with extensive criminal history and no meaningful connection to the labor market prior to prison); *see also* Anke Ramakers et al., *Not Just Any Job Will Do: A Study on Employment Characteristics and Recidivism Risks After Release*, 61 INT'L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 1795, 1812 (2016), https://doi.org/10.1177/0306624X16636141 (finding that job retention and stability and working in a job with "a higher occupation level" decreased the likelihood of reoffending).
[212] Harding et al., *supra* note 137, at 440–41 (explaining how former prisoners and individuals with criminal records are at high risk of economic insecurity due to challenges with finding, securing, and maintaining employment).
[213] *Id.* at 441.
[214] *Id.* at 440, 461, 464–65.
[215] Id.

rehabilitation by increasing employment outcomes and stability and playing a significant role in the attainment of economic security and stability.

Moreover, family circumstances further promote rehabilitation because family support is associated with better mental health outcomes,[216] which are associated with a decreased likelihood of recidivism.[217] Research suggests that familial ties may support positive mental health outcomes during stressful, dramatic life changes.[218] Familial ties can reduce the chances of suicide, buffer the stress of unemployment, and improve reentry adjustment.[219] By improving mental health outcomes for family members, family circumstances also serve rehabilitation by decreasing the likelihood of recidivism.[220]

Overall, family relationships positively affect a defendant's rehabilitation in many ways.[221][21] Thus, considering family circumstances at sentencing serves the purpose of rehabilitation.

The National and Global Movement Towards Considering the Best Interest of the Child

Recognizing the harms experienced by children affected by parental incarceration, many jurisdictions across the United States and around the world have started to consider a defendant's familial circumstances, ties, and responsibilities in considering whether to incarcerate a parent. In the United States, the consideration of familial circumstances has led to

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[216] Danielle Wallace et al., *Examining the Role of Familial Support During Prison and After Release on Post-Incarceration Mental Health*, 60 INT'L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 3, 14–16 (2016), https://doi.org/10.1177/0306624X14548023 (finding association between familial support and mental health outcomes); *see also* Johanna B. Folk et al., *Behind Bars but Connected to Family: Evidence for the Benefits of Family Contact During Incarceration*, 33 J. FAM. PSYCH. 453, 461 (2019), https://doi.org/10.1037/fam0000520 (finding that family connectedness during incarceration promotes better post-release mental health).
[217] J. Steven Lamerti, *Preventing Criminal Recidivism Through Mental Health and Criminal Justice Collaboration*, 67 PSYCHIATRIC SERVS. 1206, 1206–10 (2016), https://doi.org/10.1176/appi.ps.201500384; *see also* Danielle Wallace & Xia Wang, *Does In-Prison Physical and Mental Health Impact Recidivism?*, SSM – POPULATION HEALTH, 10–11 (2020), https://doi.org/10.1016/j.ssmph.2020.100569 (finding that positive mental health lowered rates of recidivism); Nathan W. Link, Jeffrey T. Ward & Richard Stansfield, *Consequences of Mental and Physical Health for Reentry and Recidivism: Toward a Health-Based Model of Desistance*, 57 CRIMINOLOGY 544, 563 (2019), (finding that negative mental health outcomes like depression indirectly increases likelihood of future criminal behavior and reincarceration).
[218] Ekland-Olson et al., *supra* note 225.
[219] *Id.* at 268–71.
[220] *See supra* note 233 (collecting research studies finding that positive mental health outcomes decrease the likelihood of recidivism).
[221] Naser & Visher, *supra* note 115, at 21 (noting the significant role of strong family relationships for ensuring successful reintegration after incarceration); George C. Kiser, *Female Inmates and Their Families*, 55 FED. PROB. 56, 63 (1991); *see* C.F. Hairston, *Family Ties During Imprisonment: Do they Influence Future Criminal Activity?*, 52 FED. PROB. 48 (1988).

a national movement towards family-focused alternatives to incarceration, such as the creation of diversion programs for parents; the consideration of parenting responsibility as a mitigating factor; and the use of family impact statements. Globally, the effects of parental incarceration have been recognized through pretrial diversion programs, mandatory considerations of a defendant's family circumstances, and international treaties and laws governing the sentencing of parents. The global movement towards considering family impact at the pretrial stage demonstrates a national and international consensus that the adverse effects of parental incarceration should be mitigated to promote the best interests of children.

National Movement

At the pretrial stage, community-based organizations are increasingly providing support for parents during the pretrial period. The New York City Legal Aid Society created the Women's Pretrial Release Initiative with the goal of reducing the number of women detained pretrial.[222] In Oklahoma, both Still She Rises and The Education and Employment Ministry (TEEM) are dedicated to meeting the pretrial needs of women and people who are low-income and unhoused, respectively.[223] In Minnesota, We Resolve supports families as their loved one goes through the criminal legal process in an effort to mitigate the harm the criminal justice system can have on families. These are just a few of the many efforts at the state level aimed at reforming pretrial release.[224]

Jurisdictions have also begun to recognize the need to consider the best interests of the defendant's child before incarcerating a parent. Many states have created mitigation or diversion programs for caregivers of minor children at the sentencing phase,[225] and the movement towards implementing these laws at the pretrial stage is a necessary next step that states are beginning to recognize. In Illinois, for example, the Children's Best Interest Act states that one of its purposes is to "prevent unnecessary harm to children caused by separation from parents during pre-trial detention…".[226] Additionally, in California, the Primary Caregiver Diversion law allows for pretrial diversion.[227] Thus, the recognition that any period of

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[222] Erica King et. al., *Gender Justice Pretrial Toolkit*, Center for Effective Public Policy (2024).
[223] Id.
[224] *State Pretrial Reforms*, Nat'l Ass'n. Crim. Def. L. (2020), https://www.nacdl.org/Content/Legislation-and-State-Practices (listing all of the state reforms).
[225] Ross Jackson and Nikki Pressley, Caregiver Mitigation and Diversion Programs: A Family-Centered Alternative to Incarceration, Right on Crime (2024).
[226] Illinois Public Act 101-0471 (HB2444).
[227] Cal. Penal Code § 1001.83, Ch. 2.9E (2019).

incarceration can be harmful to a defendant's child and the need to consider this before detaining a parent is a growing movement.

This movement towards considering the best interest of the child has made more progress at the sentencing stage. Family-based alternative sentencing or diversion programs have been implemented or permitted at the local or state level across the country, including in Nevada,[228] Alabama,[229] Washington,[230] Texas,[231] Oregon,[232] Wisconsin,[233] Oklahoma,[234] Massachusetts,[235] California,[236] Tennessee,[237] Missouri,[238] and Minnesota.[239] These community-based programs allow parents to remain with their children while receiving any necessary treatment and programming.

In some instances, states have acted to create avenues for considering a person's parental status at the time of sentencing. For example, Illinois established a list of mitigating factors related to a parent's role and child's needs that are to be given weight in favor of withholding or minimizing a sentence of incarceration.[240]

Another significant way to implement family-focused sentencing is through the use of family impact statements, in which an impacted family member details the effects of parental incarceration on the family.[241] Illinois[242] has officially adopted the use of these statements, and

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[228] Henry Borkgren, How a Health Clinic is Addressing Parental Incarceration: Sunrise Health Clinic's Family First Program in Las Vegas, Nevada, Child. of Incarcerated Caregivers 1–7 (2025).
[229] Kinsey Button, Dallas County Family Preservation Program: A Community-Based Alternative to Parental Incarceration, Child. of Incarcerated Caregivers 1–7 (2025).
[230] HENRY BORKGREN ET AL., THE WASHINGTON PARENTING SENTENCING ALTERNATIVE, CHILD. OF INCARCERATED CAREGIVERS 1–12 (2025); *see also* R.C.W. § 9.94A.6551.
[231] Gavin Repman, The Baby and Mother Bonding Initiative, Child. of Incarcerated Caregivers 1–6 (2025).
[232] Meg Hinson & Nicolas Guo, Oregon's Family Sentencing Alternative Pilot Program, Child. of Incarcerated Caregivers 1–6 (2023).
[233] Sullyari Bautista, Community-Based Solutions for Alternatives to Parental Incarceration, Child. of Incarcerated Caregivers 1–5 (2023).
[234] Id.
[235] Anthony Pimentel, Advancing Justice In Massachusetts: The Impact and Evolution of Primary Caretakers Legislation, Child. of Incarcerated Caregivers 1–6 (2024).
[236] Zoe Vikstrom & Karsen Melgard, Alternatives to Incarceration for Parents in California - Progress in San Francisco, Child. of Incarcerated Caregivers 1–3 (2023).
[237] TENN. CODE ANN. § 40-35-103.
[238] § 559.120, RSMo (2021).
[239] MINN. DEP'T OF CORR., HEALTHY START ACT (2021) (allowing community alternatives for pregnant and postpartum women).
[240] Amanda Tyler & Bekah Muta, Child. of Incarcerated Caregivers, The Illinois Children's Best Interest Act 2 (2024), https://cicmn.org/wp-content/uploads/2024/06/Illinois-Report-Final-Draft-Formatted-2024-v3.docx.pdf.
[241] CRAMER ET AL., *supra* note 123.
[242] TYLER & MUTA, *supra* note 256.

Massachusetts,[243] North Dakota,[244] and Oklahoma[245] statutorily allow judges to consider a defendant's parental status and the impact the defendant's incarceration would have on their children. San Francisco,[246] New York,[247] Louisville,[248] and Connecticut[249] have either informally implemented these statements or have considered implementing them. Thus, jurisdictions across the United States have recognized the importance of considering the best interests of the child when incarcerating a parent.

International Movement

As with the national movement, international laws create policies aimed at decreasing the harm caused to children by the incarceration of a parent. The United Nations Convention on the Rights of the Child declares that in all proceedings concerning children, the best interests of the child shall be a primary consideration.[250] At the pretrial stage, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women offenders recognize the particular risk of abuse faced by women who are detained pretrial, and state that when making pretrial decisions for a pregnant woman or a child's sole or primary caretaker, non-custodial measures should be preferred whenever possible.[251]

Further, the Inter-American Commission on Human Rights (IACHR) has identified that "the arbitrary and illegal application of pretrial detention is a chronic problem in the region."[252] In a report studying this issue and providing recommendations, the IACHR emphasized the

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[243] MASS. GEN. LAWS ch. 279, § 6B(b).
[244] N.D. CENT. CODE ANN. § 12.1-32-04(11).
[245] OKLA. STAT. § 22-20.
[246] Jessica Jahn, Bringing Information to Prosecutors and Courts on the Impact of Sentencing Decisions on Offenders' Families and Children 12–13 (2023), https://icclr.org/wp-content/uploads/2023/07/Bringing-Child-Impact-Information-to-the-Court.pdf.
[247] Id.
[248] The Special Project & Louisville Metro. Ctr. for Health Equity, Parental Incarceration, Children's Health, and an Opportunity to Shift the Future 9 (2022), https://familyjusticeadvocates.org/wp-content/uploads/2022/06/parental-incarceration-childrens-health-and-an-opportunity-to-shift-the-future.pdf.
[249] H.B. 7216, 2017 Gen. Assemb., Jan. Sess. (Conn. 2017), https://ctsentencingcommission.org/wp-content/uploads/2018/01/An_Act_Concerning_Family_Impact_Statements.pdf; S.B. 361, 2014 Gen. Assemb., Feb. Sess. (Conn. 2014); H.B. 6660, 2013 Gen. Assemb., Jan. Sess. (Conn. 2013); S.B. 361, 2014 Judiciary Comm. J. Favorable Rep. (Conn. 2014), https://www.cga.ct.gov/2014/jfr/s/2014SB-00361-R00JUD-JFR.htm; *cf.* S.B. 1233, 2023 Gen. Assemb., Jan. Sess. (Conn. 2023), https://www.cga.ct.gov/2023/TOB/S/PDF/2023SB-01233-R00-SB.PDF.
[250] G.A. Res. 44/25, art. 3, Convention on the Rights of the Child (Nov. 20, 1989).
[251] UN Bangkok Rules, Preliminary Observations, para 9.
[252] Sofia Gavan Puente, et al., Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, IACHR (2017).

disproportionate negative impacts faced by women detained pretrial, including the severe consequences to children when the women are responsible for raising them.[253] 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.[254] This disruption to the child's life caused by the mother's incarceration renders the child vulnerable to poverty, marginalization, and neglect.[255] 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."[256]

At the sentencing stage, the Committee of Ministers of the Council of Europe encourages states to consider parental status at the time of sentencing.[257] Additionally, the African Charter on the Rights and welfare of the Child requires states to consider non-custodial punishments for mothers,[258] and the European Parliament also encourages alternatives to prison for mothers.[259]

Individual nations have also implemented ways to consider parental responsibility at sentencing. Scotland requires that the best interests of children are considered in all decisions affecting them, including the sentencing of a parent.[260] South Africa[261] and Australia[262] both require courts to consider the impact on children or the family when sentencing a parent. The United Kingdom considers a child's right to family life in a criminal court proceeding of a parent, and the "care of dependent children" is a well-established mitigating factor in sentencing.[263] Argentina authorizes judges to grant non-custodial detention to pregnant women and mothers with children under 5 years of age.[264] A few countries, such as Kyrgyzstan, provide

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[253] *Id.* at 125.
[254] *Id.* at 129.
[255] Id.
[256] Id.
[257] Eur. Council Comm. of Ministers, Explanatory Memorandum to Recommendation CM/Rec(2018)5 Concerning Children with Imprisoned Parents, 1312th Sess., (April 4, 2018).
[258] African Charter on the Rights and Welfare of the Child, Org. of African Unity [OAU], art. 30.
[259] The Particular Situation of Women in Prison and the Impact of the Imprisonment of Parents on Social and Family Life, EUR. PARL. DOC. T6-0102/2008, art. 19 (Mar. 13, 2008).
[260] UNCRC (Incorporation) (Scotland) Act 2024, (ASP 1).
[261] M v. The State 2007 (3) SA 232 (CC) at 32–33 (S. Afr.).
[262] *Crimes Act 1914* (Cth) s 16A(2)(p) (Austl.).
[263] Hayli Millar & Yvon Dandurand, *The Impact of Sentencing and Other Judicial Decisions on the Children of Parents in Conflict with the Law* 22–24, UNIV. OF THE FRASER VALLEY & INT'L CTR. CRIM. L. REFORM & CRIM. JUST. POL'Y (2017) (an analysis submitted to the Department of Justice Canada).
[264] Law No. 26.472 unit 33, Jan. 20, 2009 (Arg.).

that women who are pregnant or have children under 14 years of age are to have their sentences suspended until the children reach the age of 14, unless the parent was convicted for a "grave" offense.[265] Thus, there is a well-established international acceptance of the need to consider the impacts on the child when sentencing parents.

United States courts, including the Supreme Court, have considered international law specifically in reference to the appropriateness of criminal punishments.[266] Thus, this global movement provides further support for the importance of considering parental responsibility in U.S. incarceration decisions.

Addressing Common Concerns

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

A common objection to considering a defendant's children for incarceration decisions is that this unfairly benefits parent-defendants. However, any "benefits" enjoyed by parent-defendants are not unfair because they arise from the parent-defendants' individual characteristics. Parents and caregivers are different for how their children and parenthood are salient parts of their lives.[267] Children are powerful motivators for successful rehabilitation[268] and compliance with conditions of supervised release.[269] Research shows that parents and caregivers who adopt/accept parental identities have lower recidivism rates.[270] Because children and parenthood positively affect a defendant's likelihood of rehabilitation and lower the likelihood of recidivism, these factors make parent-defendants unique in evaluating their likelihood of successful compliance with conditions if released.

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[265] Oliver Robertson, *Children Imprisoned by Circumstance*, QUAKER UNITED NATION OFF. (2008).
[266] Coker v. Georgia, 433 U.S. 584, 596 n.10, 97 S. Ct. 2861, 2868 n.10 (1977) (explaining that "the climate of international opinion concerning the acceptability of a particular punishment" is "not irrelevant" to Eighth Amendment analysis); Graham v. Florida, 560 U.S. 48, 80, 130 S. Ct. 2011, 2032 (2010) (considering international law in interpreting the Eighth Amendment to determine whether sentencing a minor to life in prison without the possibility of parole constitutes cruel and unusual punishment).
[267] Shlafer et al., *supra* note 123.
[268] Neal Hazel et al., *supra* note 132.
[269] *See* Adams et al., *supra* note 127.
[270] Liu & Miller, *supra* note 138, at 872; Venema et al., *supra* note 135, at 1481–82 (finding that fathers who resided with a partner and children six months after release were significantly less likely to be reconvicted 18 months after release than nonfathers and fathers who did not reside with a partner and children).

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

A common concern regarding the consideration of a defendant's children is that defendants will simply use their children as get-out-of-jail-free cards, even if they have no relationship with their children.[271] Even if this situation arises, defendants will not be successful so long as judges have sufficient information to evaluate the child-caregiver relationship. For this reason, it is crucial for judges to request this information, for probation officers to ask for this information when interviewing the defendant during pretrial evaluations, and for advocates to produce this information to supplement their legal arguments. Evaluating the actual facts related to the child-caregiver relationship, rather than considering the fact that a defendant has children to alone be a mitigating factor, will ensure that the best interests of the defendant's children are properly considered. Importantly, evidence of a defendant's desire to develop or strengthen a relationship with his or her children also is relevant to the judge's consideration because children and the parental role are strong motivators for change.[272] Thus, a defendant's desire to be more involved with his or her children or to develop or strengthen relationships with his or her children may indicate a lower likelihood of recidivism and a stronger likelihood of rehabilitation.[273] As such, this is an important consideration for evaluating a defendant's family ties to decide what conditions of release are necessary.

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[271] *See* Eleanor L. Bush, *Not Ordinarily Relevant? Considering the Defendant's Children at Sentencing*, 54 FED. PROB. 194, 20 (1990), https://www.ojp.gov/pdffiles1/Digitization/123145NCJRS.pdf (discussing considerations for scrutinizing circumstances in which a defendant may be invoking parenthood and the needs of their children "as a ploy to obtain leniency").
[272] *Accord* Liu & Miller, *supra* note 138, at 871.
[273] *See* Mowen, Stansfield, & Boman, IV, *supra* note 131.

Conclusion

The preceding information showcases how children can be impacted by the incarceration of their caregivers and how courts have begun to recognize the need to consider this impact when making incarceration determinations regarding a parent of a minor child. CIC believes that this research shows how utilizing alternatives to incarceration when it is in the best interest of the child benefits not only the parties involved but also society as a whole, and we appreciate you taking the time to learn more about this important issue. If you utilize any of the information from this primer when making arguments or decisions regarding the incarceration of caregivers, please contact us at info@cicmn.org to share your outcomes or approach. Additionally, please reach out if you are aware of any other resources on the harms of parental incarceration or the implementation of any alternatives to incarceration for caregivers of which we have not included here.

Sample Family Impact Statement Filing

STATE OF ******* DISTRICT COURT

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

State of *******,

Plaintiff,

v.

**********,

Defendant.

SUPPLEMENT TO MOTION FOR DOWNWARD DISPOSITIONAL DEPARTURE

Family impact statements are increasingly being used across the country during the sentencing phase to provide judges with information concerning the likely outcomes for the minor children and dependents of a convicted defendant. Family impact information provides details regarding the social, emotional, and economic impacts of a prison sentence and how a downward dispositional departure will mitigate these adverse effects. This information is intended to provide the Court with a complete picture of the consequences of the sentence imposed and to promote the best interests of minor children with parents or caregivers involved in the criminal legal system.

FAMILY IMPACT STATEMENT

Defendant is the father of three minor-aged children: his sons, A and B, and his daughter, C. A is 13 years old, (*see* App. Ex. 9); B is 12 years old, (*see* App. Ex. 10); and C is 11 years old, (*see* App. Ex. 11). A, B, and C are in eighth, seventh, and sixth grade, respectively, and attend Middle School. (*See* App. Ex. 12). Defendant is A and B's primary caregiver. Although C primarily resides with Sarah Jones, Defendant's former girlfriend and C's mother, C resides with Defendant every other weekend. (*See* App. Ex. 4). Defendant also often sees C during the week when he helps Sarah Jones with school pick-ups and driving C to soccer practice. (*Id.*).

I. Defendant plays a significant role in the lives of his three minor children, A, B, and C.

Defendant is highly involved in his children's lives and provides them with significant academic, emotional, economic, spiritual, and social support. Defendant helps A and B with their homework nearly every night. (*See* App. Exs. 6, 7). When Defendant was initially arrested and was in custody overnight, he was able to help A and B with their homework that night via phone call. (*Id.*). Specifically, A has been struggling with mathematics, so Defendant has provided additional support to A with his math homework. (*See* App. Ex. 6). Defendant also reached out to A's math teacher to ask about potential tutoring opportunities recommended by the school. (*See* App. Ex. 19). Defendant's involvement and support have resulted in A receiving higher scores on his math quizzes and graded homework assignments. (*See* App. Ex. 18).

Defendant also has been supporting B with some social difficulties he is experiencing at school. B has been being bullied at school. (App. Ex. 7). As a result, B has been experiencing increased anxiety. (*Id.*). To support his son's well-being, Defendant found a therapist in the area who specializes in anxiety and offers virtual sessions in the evenings. (*See* App. Ex. 20). Defendant also reached out to B's principal to ask about how the school is handling the situation, (*see* App. Ex. 21), and asked his pastor for advice and prayers related to B being bullied at school, (*see* App. Ex. 5). Defendant provides B with ongoing support by checking in with B daily about how things are going; Defendant and B have a private conversation every night after school about how B is feeling. (App. Ex. 7).

Because A and B attend the same school as C, Defendant often picks C up from school and takes her to soccer practice in the evenings. (App. Ex. 4). Defendant also consistently makes his child support payments to Sarah Jones. (App. Ex. 22). Because Sarah Jones and Defendant have an amicable relationship, Defendant is able to be significantly involved in C's life, and Sarah Jones is grateful for how Defendant supports C. (*See* App. Ex. 4). For example, Defendant has been able to attend nearly all of C's soccer games, where he is her biggest cheerleader. (*See* App. Ex. 16). Similarly, Defendant has attended most of A and B's football games. (*See* App. Ex. 15). Because Defendant remembers how meaningful and formative his experiences playing

sports were to him growing up, Defendant supports his children's involvement in football and soccer and works hard to be able to pay for it all.

Defendant also prioritizes having dinner as a family each night. When C stays with Defendant every other weekend, Defendant makes sure that the whole family—A, B, C, and himself—has at least one meal together daily. (App. Exs. 6, 7, 8). It is important to Defendant that A and B have a relationship with their half-sister C despite how she does not live with them primarily. Having a family meal tradition every other weekend is one way that Defendant strives to maintain the feeling of a strong family unit that includes all Defendant's children. Thankfully, going to the same school has made it easy for A, B, and C to have relationships with one another, and the three have extremely close sibling relationships. (*See* App. Ex. 8).

Additionally, Defendant takes A, B, and C to church every weekend, (*see* App. Exs. 5, 8, 17), even on Sarah Jones's weekends with C, (*see* App. Exs. 4, 8). Sarah Jones is not religious, so Defendant plays a significant role in C's connection to religion. (*See* App. Exs. 4, 8). C's spirituality and faith are extremely important to her. (App. Ex. 8). For example, C is excited about having her first communion at her church in the coming months. (*Id.*).

Defendant also prioritizes A, B, and C's relationships with their paternal grandmother, Mary Doe. (App. Ex. 3). After Mary Doe's husband died in early 2023 and Mary Doe's medical circumstances required her to move into an assisted living facility, it became difficult for Mary Doe to maintain relationships with her grandchildren. (*Id.*). Defendant singlehandedly ensures that A, B, and C have a relationship with Mary Doe. (*Id.*).

II. A, B, and C will be significantly and negatively affected by Defendant's incarceration.

If Defendant is incarcerated, A and B will be placed in guardianship with their paternal uncle and aunt, John and Jane Doe, who reside in City X. (App. Exs. 1, 2, 6, 7). C will remain living with Sarah Jones in City Y. (App. Exs. 4, 8). Although both homes are appropriate, safe, and loving, neither offer the same stability that Defendant's presence did, and the homelives of A, B, and C will all be disrupted.

a. A and B

A and B will be separated from C entirely. A and B will have to change schools, moving away from the only friends and school system they've known to a different school in City X. The move will separate A and B from their friends, (*see* App. Exs. 13, 14); their football team, (*see* App. Ex. 15); and their half-sister, C, who they will no longer be able to see at school every day, (*contra* App. Ex. 8), nor at family dinners every other week, (*contra* App. Exs. 6, 7, 8).

The economic impact on John and Jane Doe will be severe because they already rely on John Doe's Social Security Disability Insurance (SSDI) after John Doe severely injured his back while working on a construction site in May 2025. (App. Ex. 1; *see also* App. Ex. 23). Even with Jane Doe working two jobs, her two incomes combined with John Doe's SSDI are not enough for them to live comfortably with their own minor children and A and B's cousins, D and E, who are 14 and 10 years old, respectively. (App. Ex. 2). Because of their limited resources and income, John and Jane Doe are unable to pay for D and E to be involved in sports and other extracurricular activities; likewise, they will be unable to pay for A and B to continue to play football. (*Id.*).

Additionally, John and Jane Doe will be unable to afford B's therapy sessions, (*see* App. Ex. 20), which will result in B's struggles with anxiety going unaddressed. Because Defendant is B's greatest supporter regarding B's mental health struggles, B may experience worse anxiety and depression due to Defendant's absence. (App. Ex. 7). Moreover, A and B both may become targets of bullying at their new school if their peers learn of Defendant's incarceration, as parental incarceration is significantly stigmatized. (*See* Jinyi Zhang & Catherine Flynn, *How do Children Describe their Experiences of Parental Imprisonment: A Qualitative Scoping Review*, 169 Child. & Youth Servs. Rev. e108085 (2025), https://doi.org/10.1016/j.childyouth.2024.108085). Any mental health struggles experienced by A and B will be without the same support offered by Defendant. Although A and B love their aunt and uncle, they do not have as close relationships with John and Jane Doe as they do with their father, and A and B will struggle with being vulnerable about their mental health struggles with two adults they don't have a close relationship with. (*See* App Exs. 6, 7).

A will be without access to support on his math homework because Jane Doe is rarely available between her two jobs, (App. Ex. 2), and John Doe does not believe he will be able to help, (App. Ex. 1). Moreover, between Jane Doe's busy work schedules and John Doe's disability preventing him from being able to drive, A and B will no longer be able to visit their grandmother Mary Doe at her assisted living facility in City Y, nor will they be able to go to the only church they've ever known. (App. Exs. 1, 2).

John and Jane Doe will also struggle with being able to take A and B to visit Defendant in prison. (Ex. App. 2). Although the facility where Defendant would be placed if incarcerated is unknown, the closest state prison to City X is approximately a 45-minute drive, (*see* App. Ex. 24). John and Jane Doe do not believe they will be able to facilitate any prison visits considering Jane's work schedule and John's inability to drive. (App. Ex. 2). A and B would struggle with being unable to visit Defendant in-person and being limited to communicating via phone call or virtual visit. (App. Exs. 6, 7).

Importantly, A is nearly old enough to get his learner's permit; a prison sentence would mean that Defendant would not only miss this important milestone, but A also would likely not learn how to drive as soon as he is old enough to. John and Jane Doe's eldest child, D, despite being old enough to get his learner's permit, has yet to obtain it and has yet to learn anything about driving. (App. Ex. 2). Jane Doe just does not have the time and flexibility between her two jobs to teach D, and John Doe's disability prevents him from being able to teach D, too. (App. Exs. 1, 2). A prison sentence would also result in Defendant missing the milestones of A and B starting high school.

b. C

Defendant's incarceration would also adversely impact C. Specifically, Defendant's incarceration will result in a significant economic impact on Sarah Jones. (App. Ex. 4). As a result, C will likely have to quit playing soccer because Sarah Jones uses Defendant's child support to fund C's participation in soccer and because Sarah Jones relies on Defendant to help with rides from school to soccer practice. (*Id.*). Without Defendant's consistent assistance with rides and economic support, Sarah Jones will struggle with getting C to soccer practices and

games and paying for the upcoming soccer season, including buying new cleats, which C is in desperate need of. (*Id.*).

Additionally, because Sarah Jones is not religious, (*id.*), C will no longer have someone to go with her to church, (App. Ex. 8). This would be especially difficult for C because she is so only a few months away from her first communion. (*Id.*). However, even if she were able to attend church for her first communion, it is important to C that her father is there to celebrate this milestone with her. (*Id.*). Sarah Jones also does not have a positive relationship with C's grandmother, Mary Doe, (App. Exs. 3, 4), so C will no longer have a way to visit Mary Doe at the assisted living facility. (App. Ex. 3).

With her work schedule, Sarah Jones also believes that she will only be able to take C to visit Defendant once or twice a month. (App. Ex. 4). Although the facility where Defendant would be placed if incarcerated is unknown, the closest state prison to City Y is approximately a 30-minute drive. (*See* App. Ex. 25). Defendant could also be placed at any of numerous facilities located at least an hour away from City Y, if not farther. (*See, e.g.*, App. Exs. 26, 27, 28, 29, 30, 31). Sarah Jones believes that visits will be extremely difficult for her to facilitate if Defendant is located at a facility located an hour or farther away. (*See* App. Ex. 4). C would struggle with being unable to visit Defendant in-person and being limited to communicating via phone call or virtual visit. (App. Ex. 8).

Moreover, C would lose the connections she has to Defendant's side of the family, including her half-brothers, A and B. The same transportation issues standing in the way of C going to soccer practice and games will bar C from visiting A and B in City X. (App. Ex. 4). C will no longer see A and B at school if they move to City X, where they will attend a new school. (App. Exs. 1, 2). A, B, and C will no longer see each other each week for church, nor will they have their family meal tradition every other weekend. (App. Exs. 6, 7, 8). C fears that Defendant's incarceration would cause her relationships with her half-brothers to weaken. (App. Ex. 8).

CONCLUSION

Defendant provides significant support to all three of his minor children. Specifically, Defendant provides academic, emotional, economic, spiritual, and social support to his children, as well as stability. If incarcerated, Defendant's absence would result in significant disruption to the homelives of his three minor children. For the foregoing reasons, a downward dispositional departure and a sentence of probation would be in the best interests of Defendant's minor children.

Respectfully submitted,

Dated: _____

_____

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

_____

License No. ********

ATTORNEY[S] FOR DEFENDANT

APPENDIX

1. Letters of Support
    a. Exhibit 1: Letter from John Doe, Defendant's brother and prospective guardian and caregiver for Defendant's minor children, A and B
    b. Exhibit 2: Letter from Jane Doe, Defendant's sister-in-law and prospective guardian and caregiver for Defendant's minor children, A and B
    c. Exhibit 3: Letter from Mary Doe, Defendant's mother and grandmother of A, B, and C
    d. Exhibit 4: Letter from Sarah Jones, Defendant's former girlfriend and mother of and primary caregiver for Defendant's minor child, C
    e. Exhibit 5: Letter from John Smith, Defendant's pastor
    f. Exhibit 6: Letter from A, Defendant's minor child
    g. Exhibit 7: Letter from B, Defendant's minor child
    h. Exhibit 8: Letter from C, Defendant's minor child
2. Photographs
    a. Exhibit 9: Picture of A
    b. Exhibit 10: Picture of B
    c. Exhibit 11: Picture of C
    d. Exhibit 12: Picture of A, B, and C outside their current school, Middle School, on the first day of classes for the 2025–2026 academic year
    e. Exhibit 13: Picture of A with his friends in City Y
    f. Exhibit 14: Picture of B with his friends in City Y
    g. Exhibit 15: Picture of A and B playing football with their City Y-based team
    h. Exhibit 16: Picture of C playing soccer with her City Y-based team
    i. Exhibit 17: Picture of Defendant at church event with A, B, and C
3. Other Relevant Records, Documentation, and Support
    a. Exhibit 18: A's academic records
    b. Exhibit 19: Screenshot of Defendant's email to A's mathematics teacher
    c. Exhibit 20: Invoice from B's therapy session
    d. Exhibit 21: Screenshot of Defendant's email to B's principal
    e. Exhibit 22: Records relating to Defendant's child support for C
    f. Exhibit 23: Records relating to John Doe's Social Security Disability Insurance
    g. Exhibit 24 - 31: Screenshots of GPS