

JUSTICE STRATEGIES

TO: The United States Sentencing Commission, Submitted via email to pubaffairs@ussc.gov on Tuesday, July 29, 2014

FROM: Patricia Allard and Judith Greene

Re: Comments to USSC on 2015 Commission Priorities: Alleviating the Impact of Parental Incarceration on Indigenous, African-American and Latino Children Through Sentencing Reform

You have requested comments on possible priority policy issues for the amendment cycle ending May 1, 2015. We urge you to consider taking measures that can reduce the egregious and long term impact of prison sentences on the children of people convicted of drug crimes and other nonviolent offenses. Our comments are drawn from the findings contained in our recent research report, *Children on the Outside: Voicing the Pain and Human Costs of Parental Incarceration*.¹

Justice Strategies is a nonprofit research organization dedicated to providing analysis and solutions to advocates and policymakers pursuing more humane and cost-effective approaches to criminal justice and immigration reform. Our organization was launched in 2003 to inform on the laws, policies and practices that drive mass incarceration and racial disparity in the U.S. criminal justice and immigration systems. A project of the Tides Center, Inc., Justice Strategies conducts research on sentencing and correctional policy, the political economy of incarceration, and the detention and imprisonment of immigrants.

Issue Summary

1. In 2008, the U.S. Bureau of Justice Statistics (BJS) estimated that more than half (53 percent) of the 1.5 million people in U.S. prisons were parents of one or more minor children – translating into more than 1.7 million minor children with an incarcerated parent. This represented an increase of 80 percent since 1991. Nearly one-quarter of these children were age four or younger, and more than a third would become adults while their parent remained behind bars.

It will come as no surprise that the data compiled by BJS show that the acute problem of racial disparity behind bars is reflected among the children of incarcerated parents. Black children are seven and a half times more likely than white children to have a parent in prison. The rate for Latino children is two and a half times the rate for whites.² The estimated risk of parental imprisonment by age 14 for white children born in 1990 is one in 25; for black children born in the same year, it is one in four.³ Since “on a per capita

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basis, American Indians had a rate of prison incarceration about 38 percent higher than the national rate”⁴, it is safe to say that American Indian children experience a higher rate of separation from their parents because of parental incarceration.

2. Undergirding this striking racial disparity is the sheer number of people behind bars in the U.S. The advent of the modern “war on drugs” and its accompanying “lock ‘em up and throw away the key” crime policies largely explain the evolution of mass incarceration in the U.S. and account for much of the pain caused to children who have lost their parents to long prison sentences. In the federal prison system the impact of the “drug war” is especially pronounced, given that 50 percent of the federal prison population is made up of peoples sentenced for drug crimes, while in state prisons that population just 17 percent.⁵

3. The real costs of mass incarceration on children and the communities in which they grow up cannot be ignored. Too often, society dismisses the children of incarcerated parents simply as future liabilities to public safety, while overlooking opportunities to address the pain and trauma with which these children struggle. Research has shown a close yet complex connection between parental incarceration and adverse outcomes for children:

- increased likelihood of engaging in antisocial or delinquent behavior, including drug use;
- increased likelihood of school failure;
- increased likelihood of unemployment; and
- increased likelihood of developing mental health problems.

4. Insufficient attention has been focused on the most direct reform avenue for reducing or eliminating the social and emotional impact of parental incarceration on the child-victims of the drug war: reducing the number of parents who are sentenced to prison in the first place. The primary goal is the reduced use of prisons to address nonviolent, victimless crime such as drug offenses. There are countless policies, laws and practices that are being explored, and, increasingly, implemented in various states across the nation.

Needless to say, the impetus behind state-based sentencing reforms as they relate to drug crimes are emerging primarily because of the fiscal crisis many states are facing as a result of mass incarceration over the last three decades. That said, by reducing reliance on incarceration in tackling the “drug problem” in the United States through sentencing reform – there will be a positive impact on reducing the number of children being separated from their parents, thereby reducing the negative emotional and psychological impact on children. Aiding parents in combating their addiction outside of prison walls is the most sensible criminal justice policy to address the needs of children who are caught in the cross-fire of the war on drugs.

At the federal level the tide has finally begun to turn. We are tremendously appreciative of Attorney General Holder’s leadership and his willingness to champion basic drug law

and policy reforms. Moreover, no one was more grateful to receive news just this month that the USSC has voted to apply the reduction in sentencing guidelines for drug trafficking retroactively. Building on this progress, we urge that you consider taking further steps to reduce the impact of the federal war on drugs on children.

Recommendations for the U.S. Sentencing Commission

Justice Strategies offers the following two suggestions as an opportunity for the United States government to honor and address the psychological, emotional and physical needs of children, especially Indigenous, African-American and Latino children, who have a parent who may face a term of incarceration in the future.

1. At the sentencing hearing of an individual convicted of a non-violent federal offense and who is the parent of one or more children, the court should be invited to inquire about the possible impact of a sentence to prison on the psychological, emotional and physical well-being these children. Federal sentencing judges should be afforded a “safety valve” provision so they can exercise discretion with respect to sentencing a parent to an alternative to a prison term (i.e. probation, drug treatment, an education or job training program).⁶
2. In order to assist judges in assessing the impact of parental incarceration on children, family impact statements should be submitted to the court for their review before a sentencing determination is completed. The purpose would be to ensure that the children of individuals convicted of a crime are considered as part of the sentencing determination.

Sincerely,

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¹ Patricia Allard and Judith Greene, available at <http://www.justicestrategies.org/publications/2011/children-outside-voicing-pain-and-human-costs-parental-incarceration>

² Lauren E. Glaze & Laura M. Maruschak, U.S. Department of Justice, Bureau of Justice Statistics Special Report, Parents in Prison and Their Minor Children (Aug. 2008) available at <http://bjs.ojp.usdoj.gov/content/pub/p/df/pptmc.pdf>

³ Christopher Wildeman, *Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage*, 46 DEMOGRAPHY 265 (2009).

⁴ Lawrence A. Greenfeld and Steven K. Smith, “American Indians and Crime,” U.S. Department of Justice (1999), <http://bjs.gov/content/pub/pdf/aic.pdf>

⁵ E. Ann Carson & Daniela Golinelli, U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012*. (December 2013)

⁶ Such consideration is not unprecedented. In Australia, the Crimes Act governing matters to be taken into account when sentencing people convicted of federal offenses specifies an even more inclusive provision that judges must consider “the probable effect that any [sentence](#) or [order](#) under consideration would have on any of the person’s [family](#) or dependants” defined as follows:

For the purposes of a reference in this Part to a [family](#), the members of a person's [family](#) are taken to include the following (without limitation):

- (a) a de facto partner of the person; (b) someone who is the [child](#) of the person, or of whom the person is the [child](#)...; and
- (c) anyone else who would be a member of the person's [family](#) if someone mentioned in paragraph (a) or (b) is taken to be a member of the person's [family](#).

Australian Consolidated Acts - Crimes Act 1914 -Section 29.25 - 16A 2(p)
http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s16a.html