

New York Initiative for Children of Incarcerated Parents

A special project of the Osborne Center for Justice Across Generations

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Columbia County Reentry Task Force

Hour Children

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Office of Children and Family Services

NYC Mentoring Children Collaboration

Permanent Judicial Commission on Justice for Children

Sills Family Foundation

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ACS Children of Incarcerated Parents Program

NYS Center for School Safety

NYS Office of Children and Family Services

Department of Corrections and Community Supervision

NYC Department for the Aging- Grandparent Resource Center

Office of Alcoholism & Substance Abuse Services

Membership includes more than 50 representatives from government agencies and community and faith based partners throughout New York State.

The Honorable William H. Pryor, Jr., Acting Chair
United States Sentencing Commission
1 Columbus Circle, NE, Suite 2-500, South Lobby
Washington, DC 20002-8002

August 9, 2018

Attn: Public Affairs – Priorities Comment

Dear Judge Pryor:

The New York Initiative for Children of Incarcerated Parents (NYCIP) is a collaborative of over 60 diverse organizations and New York State and City government agencies that come together to raise awareness, promote policy and practice change, and build partnerships to ensure that children's rights are upheld, important relationships supported, and their potential nurtured during their parent's involvement in the criminal legal system. NYCIP strongly supports the Commission's proposal to conduct studies of the operation of §5H1.6 (Family Ties and Responsibilities with respect to the loss of caretaking or financial support of minors) and whether the Bureau of Prisons is following the Commission's encouragement to file a motion for compassionate release whenever "extraordinary and compelling reasons" exist as part of its policy priorities for the 2018-2019 amendment cycle.

It is critical to consider the impact of sentencing options on children, so much so that **"I have the right to be considered when decisions are made about my parent"** is included in the Children of Incarcerated Parents' Bill of Rights.¹ Having an incarcerated parent is an Adverse Childhood Experience, a measure of childhood trauma developed by the Centers for Disease Control and Prevention that places children at risk for experiencing negative short and long-term health and mental health outcomes. These children also experience higher rates of homelessness and infant mortality, are more likely to forego health care, experience stigma, and bullying, and struggle in school (and, research finds that teachers have lower expectations of them).² In order to support children and mitigate these risks, it is important to explore alternatives to incarceration so that children are not unnecessarily separated from their parents, and when a sentence of imprisonment of the parent is warranted it should be incumbent upon the courts to consider the minimum sentence, or a downward departure to reduce the length of time the family is separated. No matter the number of years, the time spent away missing moments and milestones of childhood can't be recaptured, and these missed experiences can affect children's well-being and development into adulthood.

More than 2.7 million children in the United States experience parental incarceration on any given day. Approximately, 63% of men and 56% of the women who are incarcerated in federal correctional institutions report being a parent of at least one child under 18 years old.³ The racial disparity inherent in the criminal legal system is reflected among the children who experience parental incarceration: 1 in 9 African-American, 1 in 28 Latino, and 1 in 58 white children experience the incarceration of a parent. According to *Children of the Prison Boom, Mass Incarceration and the Future of American Inequality* (2014), the racial disparity among children who experience the incarceration of a parent leads to intensifying intergenerational inequalities for children of color. For example, the authors cite research that finds “mass incarceration is associated with about a 65 percent increase in the already large black-white disparities in the risk of child homelessness.”

The proposed study of §5H1.6 will better help us understand the scope of children affected, and potentially illuminate the need for Judges to require that information about children be made available and to have greater discretion in making sentencing decisions so that the needs of children are considered. We do not know many details specific to children of people sentenced to serve time in our federal prison system, nor do we know how sentencing decisions impact them. How many minor children do parents convicted of breaking a federal law have and what are their demographics? What type of information about the convicted individual’s family ties and responsibilities do federal judges seek? How many children enter foster care as a result of a parent’s incarceration? How does a sentence of imprisonment impact compliance with or the amount of child support payments? How do parents sentenced to alternatives to incarceration outcomes compare to those who serve terms of imprisonment? How does the loss of the parent’s financial or caretaking contributions to the family affect the child? How might the Sentencing Guidelines be amended to allow more judicial discretion when considering the appropriate sentence for a father or mother with minor children?

Early trends suggest that family-focused alternatives to incarceration have been successful. For example, in Washington State, the Family and Offender Sentencing Alternative (Substitute Senate Bill 6639) provides a community-based diversion program for parents at sentencing (FOSA) as well as an opportunity to serve the last year of one’s sentence in the community parenting children (Community Parenting Alternative). According to a December 1, 2013, Washington Department of Correction Report to the legislature, “None of the [parents] who successfully completed the FOSA program have returned to prison on a new felony within the three year period.”⁴ Participants in the Community Parenting Alternative program were significantly less likely to recidivate after two years of release compared to a matched group.⁵ Similarly, Oregon is piloting the Family Sentencing Alternative Program (House Bill 3503, 2015), a diversion program for parents. Likewise, lawmakers have introduced a Primary Caretaker bill in Massachusetts (Senate Bill 770), and a Connecticut bill (HB 07216) would allow for a defendant to submit a Family Impact Statement.

Federal Judges appear to be eager to examine ways to mitigate the harms of parental incarceration on children. In the United States Sentencing Commission’s report of March 2003, it is reported that more than half of both district and circuit court judges “would like to see more emphasis at sentencing placed on ... the offender’s family ties and responsibilities.” We urge that the USSC consider the utility of a family responsibility statement (i.e., family impact statement) that ensure children are considered as part of the sentencing determination and that parents have the opportunity to fulfill their parenting responsibilities

while taking accountability for breaking a law. In some instances, judges have considered parenting responsibilities when making sentencing decisions in Federal cases. For example, Enron Executive Andrew Fastow served a 10-year sentence only after his wife Lea completed her one-year sentence and was home to raise their two sons. Staggered sentencing was also granted to Joe and Teresa Giudice so that one of them was home with their four daughters. A pre-sentence investigation report that includes information about a person's children, parenting responsibilities, and an analysis of the impact of various sentencing options empowers judges to make informed sentencing and supervision decisions. Further, we urge that the USSC deem that family ties and responsibilities *are relevant* in determining whether a departure to the sentencing guideline may be warranted.

NYCIP also supports the proposal to study whether the Bureau of Prisons is following the Commission's encouragement to file a motion for compassionate release whenever "extraordinary and compelling reasons" exist. Too many children grow into adulthood navigating years and decades of separation from a parent. To allow the opportunity for children and adult children of incarcerated parents to spend the final moments with their parent in the community is the moral and humane response that will allow for families to grieve with dignity and heal from the loss.

Parental incarceration has a devastating impact on children and families, and increases and perpetuates racial inequalities among children. The United States can and must do better. We urge the USSC to adopt the proposed priorities mentioned herein and determine how federal court judges might best mitigate the detrimental impacts on children while maintaining public safety and holding parents accountable for lawbreaking.

Sincerely,

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1. Developed by the San Francisco Children of Incarcerated Partnership in collaboration with youth who have incarcerated parents in 2005. <https://www.sfcipp.org/>
 2. Wakefield, Sara & C. Wildeman. (2014). *Children of the Prison Boom: Mass Incarceration and the Future of American Inequality*. Oxford University Press, Oxford.; Nia Heard-Garris, et al. (2018) Health Care Use and Health Behaviors Among Young Adults With History of Parental Incarceration. *Pediatrics*, e20174314.; Dallaire, Danielle H., A. Ciccone & L.C. Wilson (2010). Teachers' Experiences with and Expectations of Children with Incarcerated Parents. *Journal of Applied Developmental Psychology* 31:281-290.
 3. Laura E. Glaze & Maruschak, L. *Parents in Prison and Their Minor Children*. U.S. Department of Justice, Bureau of Justice Statistics Report #NCJ 222984. Revised March 10, 2010.
 4. http://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=Community%20Parenting%20Alternative%20-%202013%20report_8304d371-fb19-45eb-8c10-28f814aec02c.pdf
 5. Chyla M. Aguiar MA & Susan Leavell (2017) *A Statewide Parenting Alternative Sentencing Program: Description and Preliminary Outcomes*, Smith College Studies in Social Work, 87:1, 78-93, DOI: 10.1080/00377317.2017.1248629