

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 10, 2018

Attn: Public Affairs – Priorities Comment

Dear Judge Pryor:

The undersigned applaud the Commission’s consideration of conducting “a study of the operation of §5H1.6 (Family Ties and Responsibilities with respect to the loss of caretaking or financial support of minors” as part of its policy priorities for the amendment cycle 2018-2019. Recent research documenting the harmful impact of parental incarceration on children, as well as a growing interest from policymakers and practitioners to mitigate the long-term harms to children and their communities suggests that the time is ripe for research and policy reform to provide alternatives to incarceration for parents in consideration of their children’s needs.

Over two million children in the United States experience parental incarceration. Approximately 50 percent of incarcerated individuals in U.S. prisons are parents. Decades of research documenting the detrimental impact of parental incarceration on children has traced a close yet complex connection between parental incarceration and adverse outcomes for children: psychological distress, disrupted arrangements for housing, childcare and schooling, difficulties in maintaining contact with incarcerated parents, loss of family income, and the stigma associated with parental incarceration. No matter the number of years, the time spent away missing moments of childhood can’t be recaptured and these missed experiences may be crucial for a child’s well-being and development into adulthood.

Recent research on the problem has described how mass incarceration involving generations of young Black men and women has had devastating effects on their children, increasing mental health and behavioral problems, contributing to child homelessness, and intensifying intergenerational inequalities. The acute racial disparity within the prison system is reflected among the children of incarcerated parents, where Black children are eight times more likely than White children to experience parental incarceration. For those born in 1990, White children have a 1 in 25 rate of experiencing parental incarceration by age 14 – for Black children, the rate is 1 in 4. Indigenous and Latino children also experience alarming rates of parental incarceration that far exceeds their White counterparts.

Parental incarceration is an experience that may affect children long after the event has occurred. The authors of the recent book, *Children of the Prison Boom: Mass Incarceration and the Future of American Inequality*, examined how parental incarceration perpetuates the stark racial inequalities between White and Black children. For instance, they have found that, “mass

incarceration is associated with about a 65 percent increase in the already large black-white disparities in the risk of child homelessness.”

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.”

Yet little is known about the specific impacts of incarceration on the children of people sentenced to serve time in our federal prison system. How many children are impacted? What type of information about the convicted individual’s family ties and responsibilities do federal judges seek? 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?

We urge the USSC, in undertaking its research assessment of the scope of the problem, to consider whether the guidelines should be amended to provide judges more authority to depart from a recommended guideline sentence range when appropriate to address the needs of children whose parents are facing a federal conviction.

Additionally, we urge that the USSC consider the utility of a family impact statement. A pre-sentence investigation report that includes an analysis of family impact empowers judges to make informed sentencing and supervision decisions that take into account the potential consequences for a defendant’s children and, as appropriate, may recommend an alternative sentencing options that is both warranted in light of a parent’s offense, as well as suitable for meeting the needs of their children. For example, in Washington State, the Family and Offender Sentencing Alternative (RCW9.94A.655) provides a community based diversion program for parents at sentencing as well as an opportunity to serve the last year of one’s sentence in the community parenting children. Since Washington State has developed its Family Offender Sentencing Program, other states are following suit, including Massachusetts and Oregon.

Parental incarceration will affect individuals, their families and our communities for years to come. In sum, we urge the USSC to undertake a research project to determine the scope of the problem, and to determine how federal court judges might best mitigate the detrimental impacts on children while maintaining public safety.

Sincerely,

(Undersigned organizations and individuals)

Organizational Signatures



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