



Children of Incarcerated Caregivers

February 10, 2026

Judge Carlton W. Reeves, Chair
United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002

RE: Proposed Amendment Section 3E1.2 (Post-Offense Rehabilitation) & Miscellaneous

Dear Judge Reeves:

Children of Incarcerated Caregivers (CIC) is a non-profit based in Minnesota comprised of lawyers, student researchers, criminal legal system professionals, and individuals with lived experience devoted to promoting the best interests of children impacted by a parent or caregiver's incarceration.¹ In furtherance of its mission, CIC uses applied research to encourage courts to consider how children are affected when deciding their parent or caregiver's sentence. CIC writes (1) to express its support for consideration of family ties and responsibilities at sentencing contained in the proposed amendment to add a new adjustment at § 3E1.2 (Post-Offense Rehabilitation); and (2) to share additional considerations for the amendment and provide corresponding recommendations.

I. Family ties and responsibilities are important considerations for sentencing.

CIC supports consideration of family ties and responsibilities at sentencing because (1) an incredible number of children are impacted by sentencing decisions; (2) the harmful effects of parental incarceration unfairly punish children, and these impacts are devastating and consequential; (3) family ties and responsibilities can provide significant context when determining whether a criminal defendant poses any risk to public safety and can function as a protective factor against future misconduct and criminality; and (4) national and international movements towards integrating these considerations into sentencing procedures, as well as recent changes in the federal sentencing guidelines, demonstrate that now is the best time to introduce these factors into the sentencing guidelines.

A. Prevalence of Parental Incarceration in the U.S. Federal Criminal Legal System

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 through generations.²

¹ For more information, visit CIC's website at: <https://cicmn.org/>.

² 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>.



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Children of incarcerated parents are “hidden victims” of the criminal legal system and “collateral consequences” of criminal convictions.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 More than 220 thousand minor children have a parent in federal prison.⁶ Over half of incarcerated individuals in federal prisons are parents to at least one minor child.⁷ Approximately 13 percent of minor children with a parent in federal prison are under four years old, and around 20 percent were between 15 and 17 years old.⁸ The average age of minor children with a parent in federal prison is 10 years old.⁹

B. Harms of Parental Incarceration

Parental incarceration is considered an adverse childhood experience (ACE).¹⁰ ACEs can result in long-term consequences in both childhood and adulthood relating to health, well-being, and life opportunities, including academic achievement and job potential.¹¹ ACEs are associated with an increased risk of developing chronic diseases and other health issues, including toxic stress and multiple leading causes of death.¹² Toxic stress, or extended or prolonged stress, can severely impact childhood health and development.¹³

³ 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.”).

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 LAURA M. MARUSCHAK, JENNIFER BRONSON & MARIEL ALPER, U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, SURVEY OF PRISON INMATES, 2016: PARENTS IN PRISON AND THEIR MINOR CHILDREN 2 (2021), <https://bjs.ojp.gov/content/pub/pdf/pptmcspi16st.pdf>.

⁷ *Id.* at 1.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ 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>.

¹¹ *About Adverse Childhood Experiences*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 24, 2025), <https://www.cdc.gov/aces/about/index.html>.

¹² *Id.* (discussing increased risks for teen pregnancy, pregnancy complications, fetal death, cancer, diabetes, heart disease, and suicide).

¹³ *Id.* (discussing negative affect on children’s brain development, immune system, and stress-response systems and subsequent impacts on attention, decision-making, and learning).



Parental incarceration affects children in numerous areas of life and is associated with a variety of tangible harms:¹⁴

First, parental incarceration impacts mental health by increasing the risk of depression, post-traumatic stress disorder, anxiety,¹⁵ internalizing symptoms, self-injury, suicidal ideation, and suicide attempts,¹⁶ as well as antisocial problems.¹⁷ Maternal incarceration, specifically, increases the rate of suicide in girls.¹⁸ One study found that children impacted by parental incarceration were three times as likely to have experienced mental health problems.¹⁹ Another study concluded that experiencing familial incarceration during childhood increased the odds of experiencing poor mental health outcomes by 123 percent.²⁰ Research also suggests children internalize the stigma of parental incarceration, leading to self-isolation to avoid possible ostracization.²¹

Second, parental incarceration impacts delinquency, criminality, and criminal justice contact for its correlation to increased physical aggression, attention problems, behavioral problems and school punishments, rule-breaking, and other behavioral problems.²² Parental incarceration can also increase a child's risk of contact with the criminal legal system in

¹⁴ See also CHILD. OF INCARCERATED CAREGIVERS, MASS PARENTAL INCARCERATION & SENTENCING REFORM IN MINNESOTA 1 (2022), <https://cicmn.wpenginepowered.com/wp-content/uploads/2022/02/Parental-Incarceration-Impacts.pdf>.

¹⁵ 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).

¹⁶ Laurel Davis & Rebecca J. Shlafer, *Mental Health of Adolescents with Currently and Formerly Incarcerated Parents*, 54 J. ADOLESCENCE 120, 120–34 (2017).

¹⁷ 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).

¹⁸ Jocelyn I. Meza et al., *Risk Profiles of Suicide Attempts Among Girls with Histories of Commercial Sexual Exploitation: A Latent Class Analysis*, 137 CHILD ABUSE & NEGLECT e106036 (2023), <https://doi.org/10.1016/j.chiabu.2023.106036>.

¹⁹ C. A. Rhodes et al., *Enhancing the Focus: How Does Parental Incarceration Fit into the Overall Picture of Adverse Childhood Experiences (ACEs) and Positive Childhood Experiences (PCEs)?*, 51 RSCH. CHILD & ADOLESCENT PSYCHOPATHOL. 1933, 1933–44 (2023), <https://doi.org/10.1007/s10802-023-01142-0>.

²⁰ Ashley Provencher & James Conway, *Incarcerations' Costs for Families* (Oct. 2, 2019), <https://publichealthpost.org/health-equity/incarcerations-costs-for-families/>.

²¹ Susan D. Phillips & Trevor Gates, *A Conceptual Framework for Understanding the Stigmatization of Children of Incarcerated Parents*, 20 J. CHILD & FAM. STUD. 286, 286–94 (2011), <https://doi.org/10.1007/s10826-010-9391-6>; see also Joshua C. Cochran, Sonja E. Siennick & Daniel P. Mears, *Social Exclusion and Parental Incarceration Impacts on Adolescents' Networks and School Engagement*, 80 J. MARRIAGE & FAM. 478, 478–98 (2018), <https://doi.org/10.1111/jomf.12464> (concluding that parental incarceration may adversely affect children's social exclusion).

²² 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).



adulthood.²³ In cases where adult children of incarcerated parents become incarcerated themselves, parental incarceration is linked to more reported violence, anger, and rule violations in prison than other incarcerated individuals.²⁴

Third, there are increased odds of high risk behavior, such as substance-abuse, in young adults who experience parental incarceration, including cigarette smoking, alcohol abuse, and prescription drug abuse.²⁵ Additionally, maternal incarceration is associated with high-risk behaviors including having sex in exchange for money²⁶ and self-harm.²⁷ One study determined that experiencing familial incarceration during childhood increased the odds of engaging in risky health behaviors by nearly 200 percent.²⁸

Fourth, parental incarceration is associated with a multitude of health issues, such as a higher risk of poor health-related quality of life in adulthood,²⁹ and limited access to healthcare. Recent parental incarceration is associated with a nearly 50 percent increase in early infant mortality.³⁰ Parental incarceration is also associated with increased risk of high cholesterol, asthma, migraines, HIV/AIDS, and poor health,³¹ obesogenic behaviors, drinking sugary drinks, smoking cigarettes, and having 10 or more sexual partners.³² One study determined that experiencing familial incarceration during childhood increased the odds of poor physical health by 47 percent.³³ Parental incarceration is also associated with a doubled likelihood of children utilizing emergency room services rather than primary care³⁴ and an increased risk of forgoing healthcare overall.³⁵

²³ 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).

²⁴ 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).

²⁵ *Id.*

²⁶ 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>.

²⁷ Craig Cumming et al., *Maternal Incarceration Increases the Risk of Self-Harm but not Suicide: A Matched Cohort Study*, 32 EPIDEMIOL. & PSYCHIATR. SCI. e33 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10227533/>.

²⁸ Provencher & Conway, *supra* note 20.

²⁹ 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>.

³⁰ WAKEFIELD & WILDEMAN, *supra* note 22.

³¹ Lee et al., *supra* note 15, 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).

³² Heard-Garris et al., *supra* note 26.

³³ Provencher & Conway, *supra* note 20.

³⁴ Heard-Garris et al., *supra* note 26.

³⁵ *Id.*



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Fifth, parental incarceration impacts educational readiness and attainment. One in three adults in the United States who did not obtain a high school degree has experienced parental incarceration.³⁶ Parental incarceration is associated with decreased educational attainment in emerging adulthood, including significantly lower GPAs, lower levels of education achieved, and lower levels of college completion;³⁷ a higher instance of having to repeat a grade and a higher instance of dropping out of high school;³⁸ and greater unhappiness in school than peers.³⁹

Sixth, parents who were incarcerated during their children's youth have less education, fewer work hours, lower incomes, lower socioeconomic status, less access to credit, and receive more government assistance; thus, their children have fewer social advantages than their peers.⁴⁰ In some circumstances, children may be subject to additional strain imposed by bans on public benefits for formerly incarcerated individuals, such as lifetime bans on TANF and SNAP benefits.⁴¹

Seventh, parental incarceration is associated with an increased risk of experiencing homelessness in childhood and adulthood⁴² and an increased risk of foster-care placement.⁴³

³⁶ 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).

³⁷ Holly Foster & John Hagan, *The Mass Incarceration of Parents in America: Issues of Race/Ethnicity, Collateral Damage to Children, and Prisoner Reentry*, 623 ANNALS AM. ACAD. POL. & SOC. SCI. 179, 179-94 (2009); John Hagan & Holly Foster, *Intergenerational Educational Effects of Mass Imprisonment in America*, 85 SOC. EDUC. 259, 259-86 (2012).

³⁸ Christian Brown, *Maternal Incarceration and Children's Education and Labor Market Outcomes*, 31 LABOUR 43 (2017).

³⁹ Marcus Shaw, *The Reproduction of Social Disadvantage Through Educational Demobilization: A Critical Analysis of Parental Incarceration*, 27 CRITICAL CRIMINOLOGY 275-90 (2019).

⁴⁰ 9 Jean M. Kjellstrand & J. Mark Eddy, *Parental Incarceration During Childhood, Family Context, and Youth Problem Behavior Across Adolescence*, 50 J. OFFENDER REHABILITATION 18, 18-36 (2011); REBECCA VALLAS ET AL., REMOVING BARRIERS TO OPPORTUNITY FOR PARENTS WITH CRIMINAL RECORDS AND THEIR CHILDREN: A TWO-GENERATION APPROACH 3-14 (Dec. 2015), <https://www.americanprogress.org/article/removing-barriers-to-opportunity-for-parents-with-criminal-records-and-their-children/> (discussing intergenerational effects of criminal records regarding income, savings and assets, education, housing, and family strength and stability).

⁴¹ U.S. COMM'N ON CIV. RTS., COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION, AND THE EFFECTS ON COMMUNITIES 81-82, 134-35 (June 2019), <https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf> (discussing how lifetime bans on TANF and SNAP benefits disproportionately impact children by proxy of their formerly incarcerated caregivers).

⁴² WAKEFIELD & WILDEMAN, *supra* note 22.

⁴³ 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).



Finally, children impacted by parental incarceration experience three times more ACEs compared to their peers.⁴⁴ The harms of parental incarceration are all-encompassing and life-changing.⁴⁵

C. Association Between Family Ties and Reduced Recidivism Rates

Family ties and support are significant to a defendant's likelihood of successful rehabilitation.⁴⁶ Research suggests that family ties and responsibilities, and parenting responsibilities in particular, reduce an individual's risk of recidivism by increasing motivation for success. For parents who are placed on probation rather than sent to prison, parenting is a salient part of their lives⁴⁷ and an especially powerful motivator to be successful on probation.⁴⁸ 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.⁴⁹ Even 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.⁵⁰ Another study found that more routine parenting activities were associated with fewer probation and parole violations in the 18 months after starting supervision.⁵¹ Research suggests

⁴⁴ Samantha J. Boch, Barbara J. Warren & Jodi L. Ford, *Attention, Externalizing, and Internalizing Problems of Youth Exposed to Parental Incarceration*, 40 ISSUES IN MENT. HEALTH NURS. 466, 466–75 (2019), <https://doi.org/10.1080/01612840.2019.1565872>; see also Rhodes et al., *supra* note 19, (finding that children with incarcerated parents had higher odds of experiencing other ACEs and experienced fewer positive childhood experiences compared to other children).

⁴⁵ Research demonstrates that even brief separation caused by pretrial detention can have lasting affects on children. See Sara Wakefield & Lars Hojsgaard Andersen, *Pretrial Detention and the Costs of System Overreach for Employment and Family Life*, 7 SOCIO. SCI. 342, 342 (2020) (suggesting high risk of losing family attachment); CHILD. OF PRISONERS EUR., IMPACTS OF PRE-TRIAL DETENTION PROCEDURES ON CHILDREN WITH PARENTS IN CONFLICT WITH THE LAW 1–18 (2021), https://childrenofprisoners.eu/wp-content/uploads/2022/01/Impacts-of-pre-trial-detention-procedures-on-children-with-parents-in-conflict-with-the-law_COPE.pdf (discussing difficulty of maintaining consistent communication, if any, with children during pretrial detention, and describing how lost contact with a parent can be consequential); LÉON DIGARD & ELIZABETH SWAVOLA, VERA INST. OF JUST., JUSTICE DENIED: THE HARMFUL AND LASTING EFFECTS OF PRETRIAL DETENTION 1–3 (2019), <https://vera-institute.files.svdcn.com/production/downloads/publications/Justice-Denied-Evidence-Brief.pdf> (noting how pretrial detention is associated with a higher likelihood of conviction and receiving a harsher sentence).

⁴⁶ Cf. Rebecca Naser & Christy A. Visser, *Family Members' Experiences with Incarceration and Reentry*, 18 W. CRIMINOLOGY REV. 18 (2006) (noting the significant role of strong family relationships for ensuring successful reintegration after incarceration).

⁴⁷ Rebecca J. Schlafer et al., *Parents on Probation: Custody, Co-residence, and Care of Minor Children During Community Supervision*, 62 J. OFFENDER REHABILITATION 391, 394 (2023), <https://doi.org/10.1080/10509674.2023.2246455>.

⁴⁸ *Id.*

⁴⁹ *Id.* at 406.

⁵⁰ *Id.*

⁵¹ 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>.



parenting responsibilities may function as a protective factor in preventing reoffending, particularly for women.⁵²

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.⁵³ Familial support is associated with job attainment, better health outcomes, and stronger emotional support during reentry.⁵⁴ Family relationships, and parent-child relationships in particular, are powerful motivators for successful rehabilitation,⁵⁵ providing a construct that discourages recidivism.⁵⁶ For this reason, “fostering strong parent-child bonds should be a priority.”⁵⁷

D. Global Acceptance of the Relevance of Family Ties and Responsibilities in Sentencing

Jurisdictions across the United States and around the globe have recognized these harms of parental incarceration and the benefits of allowing defendants to maintain family ties. In the United States, the U.S. Sentencing Commission contemplated the relevance of family ties and responsibilities in promulgating the first federal sentencing guidelines, and while this consideration has remained in the guidelines to some extent since, the Commission and Congress have limited the circumstances in which they should be considered. Many judges, however, recognize the importance of considering family ties and responsibility in sentencing, and state courts and legislatures across the United States have increasingly recognized the harms of parental incarceration and implemented a wide range of avenues by which to mitigate this harm, including diversion programs for parents with minor children, treating parental responsibility as a mitigating factor, and allowing for family-impact statements at sentencing. Internationally, courts and legislatures recognize the harms of parental incarceration, with the United Nations Convention on

⁵² 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).

⁵³ 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).

⁵⁴ 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. JUSTICE, 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).

⁵⁵ 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>.

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* at 4.



the Rights of the Child encouraging the consideration of the best interests of the child in any legal proceeding that involves them, and many regions and nations implementing ways to discourage the incarceration of parents when it is in the best interest of the children involved.

i. United States Sentencing Guidelines

The recognition of family ties and responsibilities as significant or at least relevant to sentencing is not new. Family ties and responsibilities were contemplated as a potential departure in the first federal sentencing guidelines in 1987; section 5H1.6 acknowledged their relevance to imposition of restitution and fines, disposition where the sentencing provided probation as an option, and where probation or supervised release was imposed, determination of the length and conditions of supervision.⁵⁸ In 1991, the consideration of family ties was retained in the guidelines, but limited to decisions regarding restitution and fines.⁵⁹ In 2003, Congress passed the PROTECT Act, limiting the circumstances required to merit a family-based departure,⁶⁰ which the Commission then incorporated into the sentencing guidelines in the commentary of the departure chapter.⁶¹ The amendments in 1991 and 2003 demonstrate that family ties and responsibilities continued to be relevant to sentencing, even if only in limited circumstances. The U.S. Supreme Court then decided *United States v. Booker*,⁶² rendering the guidelines “effectively advisory”⁶³ and expanding judicial discretion generally, including as to family factors.⁶⁴

Since then, family ties and responsibilities in the sentencing guidelines have largely been undisturbed. In 2018, the Commission implicitly recognized the significance of considering family ties and responsibilities at sentencing with its proposed priorities for 2018–19.⁶⁵ Judges continued to consider family ties and responsibilities when granting departures or variances⁶⁶ until

⁵⁸ U.S. SENT’G GUIDELINES MANUAL § 5H1.6 (U.S. SENT’G COMM’N 1987).

⁵⁹ See U.S. SENT’G GUIDELINES MANUAL § 5H1.6 (U.S. SENT’G COMM’N 1991).

⁶⁰ See Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, § 401(b)(4), 117 Stat. 650-69 (2003).

⁶¹ See U.S. SENT’G GUIDELINES MANUAL § 5H1.6 cmt. n.1(B) (U.S. SENT’G COMM’N 2003).

⁶² 543 U.S. 220 (2005).

⁶³ *Id.* at 245.

⁶⁴ Tali Yahalom Leinwand, *Family Matters: The Role of “Family Ties and Responsibilities” in Sentencing*, 2 STAN. J. CRIM. L. & POL’Y 63, 65 (2015).

⁶⁵ See Proposed Priorities for Amendment Cycle, 83 Fed. Reg. 30477 (proposed June 28, 2018), <https://www.ussc.gov/policymaking/federal-register-notices/federal-register-notice-proposed-2018-2019-priorities> (priority number (9)(B): “Consideration of other miscellaneous issues, including . . . study of the operation of §5H1.6 (Family Ties and Responsibilities (Policy Statement)) with respect to the loss of caretaking or financial support of minors”). The Commission did not include this proposed priority in its final priorities for the 2018–19 cycle. See U.S. SENT’G COMM’N, FEDERAL REGISTER NOTICE OF FINAL 2018–2019 PRIORITIES (n.d.), <https://www.ussc.gov/policymaking/federal-register-notices/federal-register-notice-final-2018-2019-priorities>. It does not appear that the Commission conducted any study of the operation of § 5H1.6 (Family Ties and Responsibilities (Policy Statement)) following the notice of the proposed priority.

⁶⁶ Departures are “sentences outside of the guideline range authorized by specific policy statements” in the sentencing guidelines; in comparison, variances are “sentences outside of the guideline range that are not imposed within the guidelines framework.” U.S. SENTENCING COMM’N, PRIMER: DEPARTURES AND VARIANCES 1 (2024), https://www.ussc.gov/sites/default/files/pdf/training/primers/2024_Primer_Departure_Variance.pdf. For a more detailed discussion of the substantive and procedural differences between departures and variances, see *id.* at 1–5.



2024.⁶⁷ Departures were then removed from the 2025 sentencing guidelines.⁶⁸ The Commission explained:

The Commission envisioned and framed this 2025 amendment to be outcome neutral, intending that judges who would have relied upon *facts previously identified as a basis for a departure* would continue to have the authority to rely upon such facts to impose a sentence outside of the applicable guideline range *as a variance* under 18 U.S.C. § 3553(a). The removal of departures from the Guidelines Manual *does not limit the information courts may consider* in imposing a sentence nor does it reflect a view from the Commission that such facts should no longer inform a court for purposes of determining the appropriate sentence.⁶⁹

Although the extent to which the guidelines endorsed consideration of family ties and responsibilities in the sentencing guidelines varied over time, some semblance of their relevance consistently remained, and judges continued to demonstrate that family circumstances were important to them.⁷⁰

ii. *National Movement*

Due to the harms associated with parental incarceration, many jurisdictions across the United States have started to consider a defendant's parenting responsibilities at or before sentencing. This national movement towards family-focused alternatives to incarceration has included the creation of diversion programs for parents, the consideration of parenting responsibility as a mitigating factor, and the use of family impact statements.

⁶⁷ See, e.g., *United States v. Proserpi*, 686 F.3d 32, 48–49 (1st Cir. 2012) (affirming downward variances for a defendant who cared for wife battling terminal cancer and a defendant who provided care for daughter with disabilities); *United States v. White*, 301 F. Supp. 2d 289 (S.D.N.Y. 2004) (granting downward departure for defendant who was guardian and sole provider for six children); *United States v. Baker*, 502 F.3d 465, 467 (6th Cir. 2007) (upholding variance where defendant's son would be adversely affected by defendant's incarceration and defendant demonstrated remorse); *United States v. Schroeder*, 536 F.3d 746 (7th Cir. 2008) (vacating and remanding for resentencing where the district court failed to properly consider defendant's family circumstances); *United States v. Lehmann*, 513 F.3d 805 (8th Cir. 2008) (affirming a downward variance where the district court found that a prison sentence would negatively affect the defendant's young son with disabilities); *United States v. Barnes*, 890 F.3d 910, 918–19 (10th Cir. 2018) (affirming sentences below guidelines range where district court adequately considered defendants' family circumstances and sentences fell within permissible discretionary bounds despite appellate court's view that higher sentences would have been appropriate); *United States v. Rose*, 722 F. Supp. 2d 1286, 1290 (M.D. Ala. 2010) (granting downward departure for extraordinary family circumstances based on defendant's role as caretaker for his girlfriend's nephew who had severe autism).

⁶⁸ See U.S. SENTENCING GUIDELINES MANUAL § 5H (U.S. SENT'G COMM'N 2025) (deleted section on departures).

⁶⁹ U.S. SENT'G GUIDELINES MANUAL ch. 1, pt. A, introductory cmt. (U.S. SENT'G COMM'N 2025) (emphasis added).

⁷⁰ U.S. SENT'G COMM'N, RESULTS OF SURVEY OF UNITED STATES DISTRICT JUDGES JANUARY 2010 THROUGH MARCH 2010 tbl.13 (2010) (reporting that 62% of judges surveyed believed that “family ties and responsibilities” should be mitigating factors in sentencing); PRIMER: DEPARTURES AND VARIANCES, *supra* note 66, at 37–38 n.224 (listing cases where family ties provided partial basis for variance).



Children of Incarcerated Caregivers

Family-based alternative sentencing or diversion programs have been implemented or permitted at the local or state level across the country, including in Nevada,⁷¹ Alabama,⁷² Washington,⁷³ Texas,⁷⁴ Oregon,⁷⁵ Wisconsin,⁷⁶ Oklahoma,⁷⁷ Massachusetts,⁷⁸ California,⁷⁹ Tennessee,⁸⁰ Missouri,⁸¹ and Minnesota.⁸² 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.⁸³ Impact on the family is also a mitigative factor in North Carolina,⁸⁴ Hawaii,⁸⁵ California,⁸⁶ and Colorado.⁸⁷

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.⁸⁸ Illinois⁸⁹ has officially adopted the use of these statements, and

⁷¹ 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).

⁷² KINSEY BUTTON, DALLAS COUNTY FAMILY PRESERVATION PROGRAM: A COMMUNITY-BASED ALTERNATIVE TO PARENTAL INCARCERATION, CHILD. OF INCARCERATED CAREGIVERS 1–7 (2025).

⁷³ HENRY BORKGREN ET AL., THE WASHINGTON PARENTING SENTENCING ALTERNATIVE, CHILD. OF INCARCERATED CAREGIVERS 1–12 (2025); *see also* R.C.W. § 9.94A.6551.

⁷⁴ GAVIN REPMAN, THE BABY AND MOTHER BONDING INITIATIVE, CHILD. OF INCARCERATED CAREGIVERS 1–6 (2025).

⁷⁵ MEG HINSON & NICOLAS GUO, OREGON'S FAMILY SENTENCING ALTERNATIVE PILOT PROGRAM, CHILD. OF INCARCERATED CAREGIVERS 1–6 (2023).

⁷⁶ SULLYARI BAUTISTA, COMMUNITY-BASED SOLUTIONS FOR ALTERNATIVES TO PARENTAL INCARCERATION, CHILD. OF INCARCERATED CAREGIVERS 1–5 (2023).

⁷⁷ *Id.*

⁷⁸ ANTHONY PIMENTEL, ADVANCING JUSTICE IN MASSACHUSETTS: THE IMPACT AND EVOLUTION OF PRIMARY CARETAKERS LEGISLATION, CHILD. OF INCARCERATED CAREGIVERS 1–6 (2024).

⁷⁹ ZOE VIKSTROM & KARSEN MELGARD, ALTERNATIVES TO INCARCERATION FOR PARENTS IN CALIFORNIA - PROGRESS IN SAN FRANCISCO, CHILD. OF INCARCERATED CAREGIVERS 1–3 (2023).

⁸⁰ TENN. CODE ANN. § 40-35-103.

⁸¹ § 559.120, RSMo (2021).

⁸² MINN. DEP'T OF CORR., HEALTHY START ACT (2021) (allowing community alternatives for pregnant and postpartum women).

⁸³ 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>.

⁸⁴ G.S. § 15A-1340.16(e)(17)-(18).

⁸⁵ H.R.S. § 706-621(2)(i) (2024).

⁸⁶ CAL. PENAL CODE § 5068(c)(2)(a).

⁸⁷ C.R.S. § 18-1.3-401(4)(c)(II)(D); *see also* C.R.S. § 18-1.3-103.7.

⁸⁸ LINDSEY CRAMER ET AL., URB. INST., TOOLKIT FOR DEVELOPING FAMILY IMPACT STATEMENTS 1 (2015), <https://www.urban.org/sites/default/files/publication/53651/2000253-Toolkit-for-Developing-Family-Impact-Statements.pdf>.

⁸⁹ TYLER & MUTA, *supra* note 83.



Children of Incarcerated Caregivers

Massachusetts,⁹⁰ North Dakota,⁹¹ and Oklahoma⁹² statutorily allow judges to consider a defendant's parental status and the impact the defendant's incarceration would have on their children. San Francisco,⁹³ New York,⁹⁴ Louisville,⁹⁵ Connecticut,⁹⁶ and Minnesota⁹⁷ 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 sentencing a parent. These considerations are appropriate given the harms of parental incarceration and the fact that nearly half of all inmates in state prisons are parents of minor children.⁹⁸ In the federal prison system, a majority of inmates are parents of minor children,⁹⁹ making it even more important to consider the best interests of children and to avoid imposing sentences that significantly harm innocent members of the community. The Commission should therefore be aware of the national movement towards considering parental responsibility and encourage federal courts to consider parental responsibility broadly when sentencing caregivers.

iii. International Movement

International law supports the consideration of caregiver responsibility during sentencing. 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.¹⁰⁰

⁹⁰ MASS. GEN. LAWS ch. 279, § 6B(b).

⁹¹ N.D. CENT. CODE ANN. § 12.1-32-04(11).

⁹² OKLA. STAT. § 22-20.

⁹³ 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>.

⁹⁴ *Id.*

⁹⁵ 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>.

⁹⁶ 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>.

⁹⁷ Minnesota allows statements about family relationships to be made on behalf of a defendant at sentencing but has not formally adopted any policies on family impact statements. MINN. STAT. § 611A.038(c).

⁹⁸ GHANDNOOSH, STAMMEN & MUHITCH, *supra* note 4, at 1.

⁹⁹ *Id.*

¹⁰⁰ G.A. Res. 44/25, art. 3, Convention on the Rights of the Child (Nov. 20, 1989).



The Committee of Ministers of the Council of Europe encourages states to consider parental status at the time of sentencing.¹⁰¹ Additionally, the African Charter on the Rights and welfare of the Child requires states to consider non-custodial punishments for mothers,¹⁰² and the European Parliament also encourages alternatives to prison for mothers.¹⁰³

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.¹⁰⁴ South Africa¹⁰⁵ and Australia¹⁰⁶ 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.¹⁰⁷ Argentina authorizes judges to grant non-custodial detention to pregnant women and mothers with children under 5 years of age.¹⁰⁸ A few countries, such as Kyrgyzstan, provide 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.¹⁰⁹ Thus, there is a well-established international acceptance of the need to consider the impacts on the child when sentencing parents.

Again, the international movement adds support to the wide consensus that parental incarceration is a significant harm that must be mitigated. United States courts, including the Supreme Court, have considered international law specifically in reference to the appropriateness of criminal punishments.¹¹⁰ The Commission should also take into account the international movement, as further support for the importance of considering parental responsibility.

II. Because departures were removed from the guidelines in 2025, the Sentencing Commission should clarify how family ties and responsibilities can be considered at sentencing, starting with the Post-Offense Rehabilitation proposed amendment.

¹⁰¹ Eur. Council Comm. of Ministers, *Explanatory Memorandum to Recommendation CM/Rec(2018)5 Concerning Children with Imprisoned Parents*, 1312th Sess., (April 4, 2018).

¹⁰² African Charter on the Rights and Welfare of the Child, Org. of African Unity [OAU], art. 30.

¹⁰³ 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).

¹⁰⁴ UNCRC (Incorporation) (Scotland) Act 2024, (ASP 1).

¹⁰⁵ *M v. The State* 2007 (3) SA 232 (CC) at 32–33 (S. Afr.).

¹⁰⁶ *Crimes Act 1914* (Cth) s 16A(2)(p) (Austl.).

¹⁰⁷ 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).

¹⁰⁸ Law No. 26.472 unit 33, Jan. 20, 2009 (Arg.).

¹⁰⁹ Oliver Robertson, *Children Imprisoned by Circumstance*, QUAKER UNITED NATION OFF. (2008).

¹¹⁰ *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).



When the departures were removed from the guidelines in 2025, this included the language in § 5H1.6 which considered family ties and responsibility “not ordinarily relevant,” thus suggesting such ties should only be considered in extraordinary circumstances. As the Commission made clear, the deletion of this language was not meant to preclude courts from considering any of the factors that were contained in the departures. In line with this intention, the Post-Offense Rehabilitation proposed amendment makes clear that family ties and responsibilities are relevant to sentencing reductions. CIC agrees with this proposition but encourages the Commission to consider that (1) financial support is just one of many important and relevant forms of parental responsibility when considered the best interests of the child; (2) pre-offense family ties and responsibility should be considered a mitigating factor; (3) the Post-Offense Rehabilitation amendment should not preclude variances or additional sentence reductions under 8 U.S.C. § 3553(a); and (4) the Post-Offense Rehabilitation Amendment can serve as a starting point for additional standards that allow for broader considerations of parental responsibilities in other sections of the guidelines.

A. If the Commission adopts Option 1, the Commission should expand the language in § 3E1.2(b)(8) to include parenting responsibilities and other forms of support, not just financial support.

Meaningful parental support extends beyond finances.¹¹¹ Parental support includes supporting a child’s learning and promoting their physical and emotional well-being¹¹² and nurturing their holistic development through a balanced diet and physical activity.¹¹³ Social support is a particularly significant aspect of parenting responsibilities. Social support helps children develop resilience.¹¹⁴ Daily contact with a parent for play time, emotional support, and guidance is a form of parental social support, one that is especially emotionally difficult to lose.¹¹⁵ Parental support can also look like helping children with their homework, taking them to and from school and activities, and connecting them with other groups in the community, like religious groups (e.g., church religious education classes or youth groups) and club sports. When a single parent is at risk of being separated from his or her children due to incarceration, children may be at risk of losing all support and entering the foster-care system, a system that is unstable,

¹¹¹ Cf. U.S. SENT’G GUIDELINES MANUAL § 5H1.6 cmt. n.1(B) (U.S. SENT’G COMM’N 2003) (recognizing both financial support *and* caretaking as essential and significant enough to warrant a departure by itself under extraordinary circumstances).

¹¹² Anita Cleare, *15 Ways Parents can Support Children to do Well at School*, POSITIVE PARENTING PROJECT: THINKING PARENTING BLOG, <https://anitacleare.co.uk/ways-parents-can-support-children-to-do-well-at-school/> (last visited Feb. 7, 2026).

¹¹³ See, e.g., *How to Support Your Child’s Physical and Mental Well-Being*, KIDS FIRST (Mar. 20, 2025), [https://www.kidsfirstservices.com/first-insights/how-to-support-your-child-s-physical-and-mental-well-being](https://www.kidsfirstservices.com/first-insights/how-to-support-your-child-s-physical-and-mental-well-being;); *Family Engagement*, YOUTH.GOV, <https://youth.gov/youth-topics/family-engagement> (last visited Feb. 7, 2026).

¹¹⁴ Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, NAT’L INST. JUST. J., Mar. 2017, at 1, 4, <https://nij.gov/journals/278/Pages/impact-ofincarceration-on-dependent-children.aspx>.

¹¹⁵ NEIL DAMRON, POVERTY FACT SHEET: LIFE BEYOND BARS: CHILDREN WITH AN INCARCERATED PARENT (Nov. 2014), <https://www.irp.wisc.edu/publications/factsheets/pdfs/Factsheet7-Incarceration.pdf>.



unfamiliar, and sometimes even abusive.¹¹⁶ Under such circumstances, children may even be separated from their siblings.¹¹⁷ Because parenting responsibilities and support involve more than financial support, the Commission should expand the language pertaining to support to family members or dependents to include more forms of support, such as:

The defendant provided consistent **caretaking or** financial support to family members or dependents.*

*Recommended additional language in **blue**.

B. Because the proposed amendment is limited to post-offense familial support, the Commission should clarify that family ties and responsibilities prior to the offense are also relevant considerations at sentencing.

The more involved a parent is pre-incarceration, the worse the disruption to the family will be and the greater the harm to the children.¹¹⁸ Some of the greatest harms—including the potential loss of parental rights and the placement of the child in foster care—will most harshly impact children with an involved parent. That is why the policies behind the national and international movement towards family-focused sentencing are centered on the best interests of the child.¹¹⁹

This is not to say that post-offense familial support is not important. CIC only asks that the Commission recognize and clarify that family ties and responsibilities are important in other ways as well. As the prior sections have established, the best interests of the child are an important and necessary consideration at sentencing to mitigate harm to the community. Additionally, pre-offense family ties and responsibilities are part of the “history and characteristics of the defendant” and are thus an appropriate consideration under 18 U.S.C. § 3553(a). To ensure that courts are considering pre-offense family responsibility, the Commission should add language to the proposed amendment such as:

The considerations and fact patterns relevant to sentencing reductions are diverse, and this guideline is not intended to restrict other considerations, including the defendant’s family ties and responsibilities prior to the offense.

¹¹⁶ Stephanie Taylor, *Separating Families: The Hidden Collateral Damage of Incarcerating Mothers*, HUM. RTS. MAG., 2025 Mar., <https://www.americanbar.org/groups/crsj/resources/human-rights/2025-march/hidden-collateral-damage-incarcerating-mothers/>.

¹¹⁷ Julie Poehlmann et al., *Factors Associated With Young Children’s Opportunities for Maintaining Family Relationships During Maternal Incarceration*, 57 FAM. RELS. 267, 275 (2008), <https://doi.org/10.1111/j.1741-3729.2008.00499.x>.

¹¹⁸ See generally SARA WAKEFIELD & CHRISTOPHER WILDEMAN, NAT’L COUNCIL ON FAM. RELS., HOW PARENTAL INCARCERATION HARMS CHILDREN AND WHAT TO DO ABOUT IT 1–3 (2018), https://www.ncfr.org/sites/default/files/2018-01/How%20Parental%20Incarceration%20Harms%20Children%20NCFR%20Policy_Full%20Brief_Jan.%202018_0.pdf (discussing the instability caused by losing a parent).

¹¹⁹ Hayli Millar et al., *Considering the Best Interests of the Child in Sentencing and Other Decisions Concerning Parents Facing Criminal Sanctions: An Overview for Practitioners*, INT’L CTR. FOR CRIM. L. REFORM & CRIM. JUST. POL’Y (July 18, 2023), <https://icclr.org/publications/considering-the-best-interests-of-the-child-in-sentencing-and-other-decisions-concerning-parents-facing-criminal-sanctions-an-overview-for-practitioners/>.



C. Post-Offense Rehabilitation should not preclude variances or additional sentence reductions under 18 U.S.C. § 3553(a).

Due to the recent deletion of departures from the sentencing guidelines and considering how Proposed Amendment § 3E1.2, as it currently stands, does not address how courts should evaluate all relevant family ties and responsibilities, the Commission should consider further reductions than the currently proposed level reductions of 1–3 points. When appropriate under section 3553(a), the Commission should endorse reductions that go as far as a court sees fit in each individual case.

Variances relating to family ties and responsibilities are appropriate because they fall within “the history and characteristics of the defendant.”¹²⁰ They are also appropriate in light of the purposes set forth in section 3553(a)(2). Sentences must be “sufficient, but not greater than necessary” to comply with specific sentencing purposes, which include that the sentence reflect the severity of the offense, afford adequate deterrence, protect the public from future crimes of the defendant, and provide necessary educational or vocational training, medical care, or other correctional treatment for the defendant in the most effective manner.¹²¹

Retribution largely concerns punishment for the purpose of punishment, that is, imposing a punishment for the purpose of imposing a harm on a convicted individual.¹²² Retribution also implicates proportionality considerations.¹²³ 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 harm than

¹²⁰ 18 U.S.C. § 3553(a)(1); *see, e.g.*, *United States v. Thavaraja*, 740 F.3d 253, 255, 262–63 (2d Cir. 2014) (considering family ties under section 3553(a)(1)); *United States v. Cox*, 271 F. Supp. 3d 1085, 1087 (S.D. Iowa 2017) (granting variance after considering defendant’s minor children in the section 3553(a) analysis, and concluding that to fashion a sentence “sufficient, but not greater than necessary” under the statute, “the welfare of a defendant’s children *must be fully considered*” (emphasis added)); *United States v. Menyweather*, 447 F.3d 625, 628, 634 (9th Cir. 2006), *overruled on other grounds by* *Kimbrough v. United States*, 552 U.S. 85, 128 S. Ct. 558 (2007) (affirming downward departure for defendant mother who was a single parent, and noting that district courts “can justify consideration of family responsibilities, an aspect of the defendant’s ‘history and characteristics,’ 18 U.S.C. § 3553(a)(1), for reasons extending beyond the Guidelines”).

¹²¹ 18 U.S.C. § 3533(a)(2).

¹²² *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”).

¹²³ *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”).



other defendants or was less culpable than other defendants.”¹²⁴ In instances where additional harm would be imposed against a defendant due to separation from his or her kids, and where the offense itself is not so severe to demand incapacitation for public safety, a variance would be appropriate to the extent that the punishment is not greater than necessary.¹²⁵ It would also prevent incarcerated parents from receiving disproportionate punishment for the severity of their crimes.¹²⁶ This “double punishment” often includes the loss of parental rights—an even greater harm.¹²⁷ Additionally, a decision to vary in order to prevent the victimization of innocent children “would be making the decision that [society’s] interest in punishing the offender is outbalanced at least to a partial degree by its interest in protecting the welfare of innocent third parties: by providing for children.”¹²⁸ 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.

Considering family ties and responsibilities at sentencing also resonates with utilitarian principles intended to further the best interests of society and the public. The trauma resulting from a caregiver’s incarceration can lead to various behavioral problems in children impacted by the separation, including an increased likelihood of future criminal activity.¹²⁹ In addition to the societal costs imposed by future criminality, “[o]ther societal costs that should be considered might include foster-care to replace the incarcerated parent, permanent dissolution of the family when the incarceration provides grounds for terminating parental rights, and the child’s dependence upon government aid.”¹³⁰ Family ties and responsibilities are also relevant considerations regarding recidivism, as familial and parenting responsibilities are associated with lower rates of recidivism.¹³¹ Moreover, children are part of society and the public, and the harms they face¹³² should be considered when determining a sentence that best serves the public interest. Considering

¹²⁴ Carissa Byrne Hessick & Douglas A. Berman, *Towards a Theory of Mitigation*, 96 B.U. L. REV. 161, 182 (2016).

¹²⁵ See 18 U.S.C. § 3533(a) (requiring sentences be “sufficient, but not greater than necessary”).

¹²⁶ 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 (1990).

¹²⁷ Nagel & Johnson, *supra* note 126, 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://affcnny.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).

¹²⁸ Patricia M. Wald, “*What About the Kids?*”: *Parenting Issues in Sentencing*, 8 FED. SENT’G. REP. 137, 138 n.19 (1995) (citations omitted); see also MASS PARENTAL INCARCERATION & SENTENCING REFORM IN MINNESOTA, *supra* note 14, at 1–2 (listing consequences to children caused by mass parental incarceration).

¹²⁹ 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, 953 (1993); MASS PARENTAL INCARCERATION & SENTENCING REFORM IN MINNESOTA, *supra* note 14, at 1–2 (2022).

¹³⁰ Raeder, *supra* note 129, at 953, 959 (footnotes omitted).

¹³¹ See, *supra*, Section I.D. Association Between Family Ties and Reduced Recidivism Rates.

¹³² See, *supra*, Section I.B. Harms of Parental Incarceration.



family ties and responsibilities therefore serves public safety and promotes appropriate use of societal resources.

The types of mitigation encompassed by the language set forth in Proposed Amendment § 3E1.2 are extremely diverse. These include situations where the post-offense rehabilitation addresses conditions that contributed to the offense conduct and/or criminal history, and others where it does not, a variable that can significantly inform deterrence and community safety considerations. Many are too complicated to be easily and proportionately reduced to offense level reductions of 1–3 points. If adopted, we recommend that the amendment add language along the following lines:

The considerations and fact patterns encompassed by this section are diverse, and the guideline and its offense level reductions are not intended to restrict additional sentence reductions under 18 U.S.C. § 3553(a).

D. The Commission should use Post-Offense Rehabilitation and consider adopting new standards for how family ties and responsibilities are considered at sentencing.

Until 2025, the sentencing guidelines considered the family responsibilities of a defendant when deciding whether to reduce the defendant’s sentence only when those responsibilities were extraordinary.¹³³ With the deletion of that language in November 2025, the Commission should now consider Proposed Amendment § 3E1.2 as an opportunity to make clear that courts should consider more than just extraordinary circumstances when sentencing a parent.

The general “history and characteristics” language of 18 U.S.C. § 3553(a) suggests the consideration of more than just extraordinary circumstances, which is supported by the deletion of the departures. One of the deleted provisions was § 5H1.6, which stated that family ties and responsibility are “not ordinarily relevant.”¹³⁴ The Commission made clear that the removal of the departures “does not limit the information courts may consider in imposing a sentence nor does it reflect a view from the Commission that such facts should no longer inform a court for purposes of determining the appropriate sentence.”¹³⁵ Thus, the deletion of the language surrounding family responsibility should not be read to mean that it should not be considered, and the language of 18 U.S.C. § 3553(a) actually invites a broader look at the history and characteristics of the defendant. To further support this movement away from the original departures, the Commission should make

¹³³ CHILD. OF INCARCERATED CAREGIVERS, RAISING FAMILY CIRCUMSTANCES IN FEDERAL-COURT SENTENCING PROCEEDINGS 1 (2025), <https://cicmn.org/wp-content/uploads/2025/10/Raising-Family-Circumstances-in-Federal-Court-Sentencing-Proceedings.pdf>; see also Jason Binimow, *Downward Departure from United States Sentencing Guidelines (U.S.S.G. §§ 1A1.1 et seq.) Based On Extraordinary Family Circumstances*, 145 A.L.R. FED. 559 (updated 2020) (compiling federal cases that discuss departures from the guidelines based on extraordinary family ties, circumstances, or responsibilities).

¹³⁴ U.S. SENT’G GUIDELINES MANUAL app. C (U.S. SENT’G COMM’N 2025).

¹³⁵ U.S. SENT’G GUIDELINES MANUAL ch. 1, pt. A, introductory cmt. (U.S. SENT’G COMM’N 2025).



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clear that courts can and should consider more than just extraordinary circumstances regarding parental responsibility.

Limiting courts to the consideration of family responsibility under extraordinary circumstances does not take into account the full effect of parental incarceration on any child. Parental incarceration always has the potential to be significantly harmful, even for a child that has not suffered other extraordinary events, and is a traumatic event in and of itself.¹³⁶ Thus, both the trends in administering the sentencing guidelines and the harms imposed by parental incarceration support the consideration of parental responsibility whenever it is in the best interest of the child, and not just in extraordinary circumstances. The Commission should therefore consider adopting new standards that encourage courts to take a robust look at a defendant's parental responsibility and the effects that the defendant's incarceration will have on his or her minor children, with language such as:

Family ties and responsibilities are also relevant to the history and characteristics of the defendant under 18 U.S.C § 3553(a), and this guideline is not intended to preclude the wide range of considerations encompassed by that factor, such as whether a sentence reduction for a parent of minor children is in the best interest of the child.

For the above stated reasons, CIC is writing to express its support for the consideration of family ties and responsibilities at sentencing contained in the proposed amendment to add a new adjustment at § 3E1.2 (Post-Offense Rehabilitation) but also to encourage the Commission to consider how this amendment and other areas of the Guidelines can best serve the interests of children. The incarceration of a parent or caregiver is a traumatic event for a child that can cause significant harm to the child into adulthood. The Commission should take this opportunity to reduce harm to the community by encouraging federal courts to consider this harm and the best interests of minor children when sentencing a parent or caregiver.

Thank you for your consideration.

Sincerely,

/s/ Julie Matonich

Julie Matonich

Board President of Children of Incarcerated Caregivers

/s/ Bekah Muta

Bekah Muta

Student Research Fellow

/s/ Elizabeth Wehby

Elizabeth Wehby

Student Research Fellow

¹³⁶ See, *supra*, Section I.B. Harms of Parental Incarceration; see also MASS PARENTAL INCARCERATION & SENTENCING REFORM IN MINNESOTA, *supra* note 14.