

BREAKING THE CYCLE: A FAMILY-FOCUSED APPROACH TO CRIMINAL SENTENCING IN ILLINOIS

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Abstract

The collateral damage of parental incarceration to children is a hidden cost of current punitive criminal sentencing policies that overlook the needs of children and impose barriers to maintaining strong parent-child bonds. This paper presents a family-focused approach to criminal sentencing, which aims to promote better outcomes for offenders and their children by aligning sentencing decisions to the severity of the crime committed, the risks and strengths of the offender, and the offender's family context. It will address existing gaps in federal and state sentencing guidelines and provide policy and practice recommendations to help advance family-focused sentencing in Illinois.

More than half of incarcerated adults in the United States have children (Pew Charitable Trusts 2010). Between 1991 and 2007, the number of incarcerated adults with children (under eighteen years of age) increased by 79 percent (Glaze and Maruschak 2008). In Illinois alone, there were approximately ninety thousand minor children affected by a parent's incarceration (Lowenstein 2007)—most of these parents are nonviolent offenders, currently serving an average sentence of eighty months in prison facilities over one hundred miles from where their children live (La Vigne, Davies, and Brazzell 2008). Most incarcerated parents were, at the time of their sentencing, emotionally and economically central in their children's life prior to their imprisonment (Travis, McBride, and Solomon 2005); over half were the primary financial provider for their children and 48 percent lived with at least one of their minor children prior to incarceration (Glaze and Maruschak 2008). Children of incarcerated parents thus comprise a particularly high-risk subgroup of youth.

International human rights advocates have declared parental incarceration “the greatest threat to child well-being” in the United States (The Osborne Association 2010). It is a threat that disproportionately impacts disadvantaged children already coping with the burdens of

poverty, unstable housing, unemployment, and community violence prior to their parent's incarceration (Drucker 2011; Travis, Solomon, and Waul 2001). This confluence of risk factors compounded by the financial and emotional afflictions imposed by parental imprisonment augments the risk of undesirable economic, psychological, and social outcomes throughout the life course of children of the incarcerated. These children are more likely to experience physical, mental and behavioral health problems, antisocial and delinquent outcomes, developmental delays, substance abuse, homelessness, foster care placement, school failure, and unemployment (Turney 2014; Murray and Farrington 2005; Murray and Farrington 2008; Wildeman 2014; Drucker 2011; Johnson 2009; Pew Charitable Trusts 2010). Children with incarcerated fathers are nearly six times more likely to experience school suspension and expulsion compared to children with non-incarcerated fathers (Pew Charitable Trusts 2010) and three to six times more likely to exhibit violent behavior or serious delinquent behavior (Lee 2005). Not surprisingly, research shows that many youth with incarcerated parents eventually end up in prison themselves (Murray and Farrington 2005; Jones, Dinsmore, and Massoglia 2014). Parental criminal involvement is perhaps the strongest predictor of later offending among youth (Besemer et al. 2011), with more than half of the children in the juvenile justice system reporting having at least one parent in prison (Crain 2008).

The way in which parental incarceration affects children varies as a function of the complex interplay between individual and contextual factors at the relational, community, and societal level (Christian 2009). Individual factors include but are not limited to the child's age, temperament, gender, and coping skills. Examples of contextual factors include the gender of the incarcerated parent, the quality of the parent-child relationship—emotional and financial—prior to the arrest of the parent, the relationship between the child's caregiver and the incarcerated parent, whether or not the child witnessed the arrest of the parent, the length of incarceration, the amount of time the child spends with the incarcerated parent, the distance between the child's home and the prison, prison visiting arrangements and policies, and access to programs for incarcerated parents and their children. To take just one example, children who experience maternal incarceration are more likely to suffer from internalizing problems, such as anxiety and depression, and to go into foster care; whereas paternal incarceration is associated with externalizing problems, including violence and aggression (Drucker 2011).

The collateral consequences of parental incarceration can be addressed by identifying malleable factors associated with child outcomes and implementing interventions to impede risk trajectories (Moore 1995). For

instance, 50 percent of arrests take place at home with children present (Drucker 2011). In 30 percent of these cases weapons are drawn (Bernstein 2005). The trauma of witnessing a parent's arrest can induce significant psychological distress for the child, including post-traumatic symptoms. According to a 2010 study, children who witnessed the arrest of someone who lived in their household were 57 percent more likely to have elevated post-traumatic symptoms compared to children who never witnessed an arrest (Phillips and Zhao 2010). To minimize trauma and distress to children, California and New Mexico have instituted child-sensitive arrest protocols, including talking to the child about what is happening to the parent, providing counseling to children at the scene of arrest, and helping the arrestee identify appropriate child care arrangements (Christian 2009).

Minimizing the collateral damage done to children requires criminal justice policies and practices that are accountable to children at each stage of the incarceration process. This would therefore extend beyond arrest, and include considerations of the child at sentencing, intake, incarceration, and re-entry (Christian 2009). Evidence from cross-national research suggests that family-friendly prison policies serve as a protective factor, buffering the adverse effects of parental incarceration (Murray, Janson, and Farrington 2007). This paper presents a family-focused approach to these steps in the incarceration process, a holistic model to sentencing decisions that moves beyond the individual offender's experience in the criminal justice system to considering the system's broader impact within the context of the offender's social ecology. It will address existing gaps in federal and state sentencing guidelines and provide policy and practice recommendations to help advance family-focused sentencing in Illinois.

THE SENTENCING CONTEXT

More than half of incarcerated adults with children are serving time for non-violent offenses (Glaze and Maruschak 2008) and the price paid by their children is an enormous hidden cost of harsh sentencing policies such as mandatory minimums for non-violent drug offenses and technical parole violations. Illinois alone has experienced a six-fold increase in its prison population over the past three decades (Vera Institute of Justice 2013). Such retributive treatment of offenders costs Illinois taxpayers more than \$1.7 billion annually while failing to deter criminal involvement, with 51.7 percent of Illinois inmates in state prisons returning to prison within three years of their release (the national average is 43.3 percent) (Vera Institute of Justice 2013; Pew Center on the States 2011). These costs do not include expenditures related to mental health, child welfare, and medical and economic services for incarcerated parents' children, who

are more likely to utilize such services than children of non-incarcerated parents (Washington State Department of Social Health and Services 2010). It is therefore no surprise that these sentencing policies are increasingly seen as counterproductive to public safety and a significant drain on resources (Henrichson and Delaney 2012).

Moreover, these sentencing policies do not mandate that judges consider the interests of children and families in sentencing decisions and, in the case of mandatory minimums, explicitly forbid such practices (Bernstein 2005). They therefore pose detrimental effects by: (1) altering family dynamics and support; (2) hindering economic and social mobility for both the parent and child; and (3) damaging and/or permanently severing parent-child relationships (Travis, McBride, and Solomon 2005). Illinois in particular has been quick to terminate incarcerated parents' parental rights—the “death sentence” to a parent-child relationship (Conway and Hutson 2007).

In response to these collateral costs, the Department of Justice's National Institute of Corrections established an interagency working group called the Children of Incarcerated Parents. It provides guidance to local and state governments trying to implement policy and practice reforms that mitigate the impact of parental imprisonment on children (Council of State Governments 2013). As result of this and other efforts, family-focused justice reforms are growing (Dizerega and Verdone 2011).

A FAMILY-FOCUSED APPROACH

In the sentencing context, a family-focused approach facilitates sentencing decisions that align with the severity of the crime committed, the risks and strengths of the offender, and the offender's family context (Dizerega and Verdone 2011). This is in accordance with guidelines for fair and effective criminal sentencing established by the National Conference of State Legislatures (2011). A family-focused approach is multidisciplinary. It extends beyond the criminal justice system to include the various systems that families interact with, such as child welfare and education. It is strengths-based, capitalizing on individual and family resources while addressing challenges. While it generally extends the definition of family in order to expand the number of individuals who can provide support (Dizerega and Verdone 2011), this article limits the discussion to legally recognized parent-child relationships and in cases where maintaining this relationship would benefit the child.

Experts suggest that the most effective time to intervene on behalf of children with a parent convicted of a crime is during the front end of the criminal justice continuum, which includes sentencing (National Institute

of Corrections 2011). Expanding sentencing options for nonviolent offenders with minor children to facilitate family involvement could significantly reduce prison-related expenditures since new interventions could help to prevent trauma related to parental separation due to imprisonment. To date, where these alternatives have been used they have “yielded reduced recidivism and increased family preservation – outcomes that have positive implications for children’s adjustment” (Parke and Clarke-Stewart 2003, 215). This is consistent with other research identifying family support as a “rehabilitative opportunity,” such that offenders who report higher levels of family contact and positive family relationships have better post-release employment outcomes and lower recidivism rates (La Vigne, Davies, and Brazzell 2008).

Dialogue around the impact of sentencing on children has focused largely on the effect of mandatory minimum sentences (Families Against Mandatory Minimums 2013). Whether or not states amend their mandatory minimum sentencing laws, they can still ensure that children’s interests are considered during sentencing (Christian 2009). State policies that focus on supporting children and families of the incarcerated include comprehensive measures and other actions in the sentencing context. Key reforms include: (1) amending state law so that judges are mandated to consider the strengths and needs of children and families when making sentencing decisions as well as the impact of a parent’s incarceration on their minor children, and (2) expanding sentencing options, such as community-based alternatives, for parents of minor children.

A number of cities (e.g., New Haven and San Francisco) and states (e.g., California, Oklahoma, Washington, New York, Hawaii, and Tennessee) have adopted—to varying degrees—family-focused sentencing practices and policies. These are characterized as strengths-based and data-driven with an emphasis on family factors in sentencing decisions (Christian 2009; Dizerega and Verdone 2011). In 2009, San Francisco added a family impact statement, which incorporates information regarding family strengths, risks, and needs, to the pre-sentence investigation as part of the city’s evidence-based sentencing program (Dizerega 2011). Oklahoma requires judges to inquire about the offender’s parental status and childcare arrangements (Christian 2009). Hawaii and California have legislation in place that mandates corrections officials consider the interests of the family and maintaining the parent-child relationship when making decisions around prison placement (e.g., housing parent inmates in facilities that are close to their children’s homes). Both of these states have also adopted the “Children of Incarcerated Parents Bill of Rights” with the goal of breaking the intergenerational cycle of incarceration. Washington State has embraced

family-focused justice reform, amending the state's corrections law to consider children of offenders across the criminal justice continuum, including the sentencing stage (Eitenmiller 2014). In 2010, the state enacted the Parenting Sentencing Alternative, which provides two types of sentencing alternatives for nonviolent offenders who have minor children: (1) The Family and Offender Sentencing Alternative (FOSA), a judicial sentencing alternative that gives eligible offenders the option to continue parenting their child while serving their sentence in the community under intensive supervision, and (2) The Community Parenting Alternative (CPA), a partial confinement program that allows eligible incarcerated parents to serve the last twelve months of their sentence in the community under electronic monitoring and intensive supervision. Early evidence from Washington State suggests that family-centered sentencing reform is an effective recidivism reduction tool, with only two out of a total of two hundred and thirty FOSA/CPA participants returning to prison between June 2010 and January 2013, while saving the state money by reducing unnecessary duplication of services provided by state agencies (Eitenmiller 2014; Leavell 2013).

Despite this progress in family-focused sentencing, resistance to such reforms remains. It is said that offenders do not deserve special treatment just because they are parents and that they should have thought about how their actions could harm their child before committing the offense (Markel, Collins, and Leib 2007). This argument reasons erroneously that an emphasis on family preservation somehow fails to hold parents accountable for their crime. Such issue framing upholds an ineffective and costly retributive policy response. It is also said that criminal proceedings are between the state and the offender and adopting a more holistic approach to sentencing interferes with “effective and accurate prosecution of the guilty and the exoneration of the innocent” (Markel, Collins, and Leib 2007, xvi). To the contrary, family-focused sentencing actually facilitates “effective and accurate prosecution of the guilty” because it encourages sentencing that matches the offender's risk level—excessive punishment for minor crimes increases the risk of recidivism (Pew Center on the States 2011). As mentioned earlier, most parents are non-violent offenders who receive harsh sentences that do not align with the crime committed.

Another argument against a family-focused approach is that the inclusion of family factors in sentencing decisions threatens public safety because the potential harm to the child caused by parental incarceration deters criminal activity (Markel, Collins, and Leib 2007). This argument attributes the sole cause to the individual motivations of the offender while

refusing to take into account the rights of the child. As one legal scholar explains, “as a matter of policy it would be irrational to approach criminal justice issues in a vacuum when it is possible to consider and account for all the key stakeholders in the process: victims, children, families, and communities” (Boudin 2011, 113).

POLICY RECOMMENDATIONS FOR ILLINOIS

Although current sentencing policies in Illinois overlook the needs of children and impose significant barriers to maintaining strong bonds between incarcerated parents and children, the political context is conducive to progressive criminal justice reforms. First, Senator Durbin has played an instrumental role in advocating for federal sentencing reform. Second, public support is in favor of reform that eliminates unfair punitive sentences and promotes community-based alternatives to incarceration (Families Against Mandatory Minimums 2013). Third, in 2010, Illinois enacted the Crime Reduction Act, instituting the Adult Redeploy Program and allocating \$7 million to divert nonviolent offenders from prison and into effective community-based alternatives to incarceration (Office of the Governor 2013). Finally, the Illinois General Assembly Joint Criminal Justice Reform Committee is working to develop legislation around sentencing reform, including plans to develop and implement a new risk assessment tool that “more effectively evaluate[s] the risks and needs of the inmate population” (Illinois General Assembly Joint Criminal Justice Reform Committee 2014, 5). This, in turn, will reduce new admissions in state prisons and improve the recidivism rate.

To promote better outcomes for offenders and their minor children, the Crime Reduction Act should be expanded in three ways. First, it should be required that the pre-sentence investigation report include a family impact statement so as to consider the needs of children in sentencing decisions. Second, sentencing options should be expanded (Christian 2009). This would ensure that guidelines are responsive to the needs of children while holding parents accountable for their crime. Community-based alternatives for low-risk non-violent offenders with minor children, such as Washington State’s Parenting Sentencing Alternative, show particular promise in reducing recidivism while supporting the parent-child relationship (Leavell 2013). Finally, in cases of incarceration, terms of confinement, such as the length and location of imprisonment, should be based on what is best for children and families rather than on immediate economic or administrative factors (Christian 2009).

The state should implement the requirement of a family-impact statement in any case that may bring with it a prison sentence (Dizerega

2011). The family impact statement focuses on the sentenced person's family context and is completed during the pre-sentence investigation report (which incorporates information such as the defendant's criminal and employment history and the severity of the offense). Specific details might include the following: number of minor children and their ages, children's living situation, parent-child relationship quality (financial and emotional), offender's status as a primary caregiver, financial needs of the child, and location of the child's residence.

Strengthening and preserving family ties and parent-child relationships will require a fundamental shift in prevailing system and public responses to offenders' children and families (Dizerega 2011). Thus, specific steps must be taken to encourage attitudinal and cultural shifts, including: (1) training and educating judges, court staff, and public defenders on the benefits of informing sentencing decisions with family impact statements; (2) public education campaigns that disseminate information regarding the deleterious effects of parental incarceration on children, the promising role of family support in rehabilitation, and the failure of current retributive sentencing policies to protect public safety; and (3) emphasizing that family-focused sentencing does not let the parent "off the hook" for their crime but aims to prevent unnecessary suffering of innocent children and promote more effective and less expensive alternatives to incarceration.

CONCLUSION

Illinois lacks formal legislation mandating the recognition of children and families when sentencing offenders. The current retributive approach is not only harming a large number of children but it is a public safety hazard since it contributes to the cycle of incarceration for both parent and child. Further, overreliance on incarcerating nonviolent offenders does not make fiscal sense when alternatives to incarceration (ATI) are significantly more cost-effective (between \$1,400 and \$13,000 per person annually for ATI versus \$60,000 per person in prison) (The Osbourne Association 2012). Cost savings realized from diverting low-risk nonviolent parents can be re-allocated toward effective prevention and rehabilitation programs, as well as providing programs and services that support children of incarcerated parents. Sentencing decisions that take into account the family system is a step toward fiscally sustainable and effective strategies to reduce incarceration rates, improve child outcomes, and enhance public safety.

However, family-focused sentencing reform is not a panacea to the problem at hand and is only part of the solution. To create meaningful change for children of the incarcerated and to finally break the cycle of intergenerational incarceration there must be consideration of families at

each stage of criminal justice involvement, including arrest, sentencing, incarceration, case management, and reentry (Dizerega and Verdone 2011). Thus, additional policies and programs are necessary to break the cycle of incarceration, including improved data collection within criminal justice agencies, special visiting areas for minor children, increased transportation and visitor support services, family support services, and parenting programs. Similarly, child-serving systems, such as schools and child welfare, are not required to provide specialized services and supports to address the needs of children affected by parental incarceration (Bernstein 2005) but could extend such services to children in need. In addition, further research is necessary to better understand and meet the unique needs of children of the incarcerated, including identifying best practices and targets of intervention. Valuable knowledge could be gained from research comparing the effects of parental incarceration across states with different criminal justice policies, such as comparing states that mandate family impact statements to those that do not have such a policy in place (Johnson 2009). Future research should also focus on developing and testing promising interventions for children of incarcerated parents, as there are currently no evidence-based interventions targeting this particularly vulnerable population of youth. Finally, amending the Adoption and Safe Families Act (ASFA), which terminates parental rights after a child has been in foster care for fifteen out of the previous twenty-two months, must be considered. Given that incarcerated parents are sentenced to an average term of eighty months in prison, ASFA is a major threat to reunification. Such efforts are critical to breaking the intergenerational cycle of incarceration and ultimately achieving better outcomes for children of the incarcerated.

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