

ADDRESSING THE IMPACT OF PARENTAL INCARCERATION ON CHILDREN IN THE  
UNITED STATES OF AMERICA

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**Justice Strategies** is a nonprofit research organization dedicated to providing analysis and solutions to advocates and policymakers pursuing more humane and cost-effective approaches to criminal justice and immigration reform. Justice Strategies was launched in 2003 to alter the laws, policies and practices that drive mass incarceration and racial disparity in the U.S. criminal justice and immigration systems.

## I. INTRODUCTION

1. Recent research documents the harmful impact of parental incarceration on children and has led to a growing interest from policymakers and practitioners to mitigate the long-term harms to children. Over two million children in the United States experience parental incarceration. Recent research on the problem has described how mass incarceration involving generations of young Black men and women has had devastating effects on their vulnerable children, increasing mental health and behavioural problems, contributing to child homelessness, and intensifying intergenerational inequalities.
2. Approximately 50 percent of incarcerated individuals in U.S. prisons are parents. 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.<sup>1</sup> Indigenous and Latino children also experience alarming rates of parental incarceration that far exceeds their white counterparts. Decades of research documenting the detrimental impact of parental incarceration on children has shown a close yet complex connection between parental incarceration and adverse outcomes for children. Parental incarceration is considered an adverse childhood experience (ACE), or as an experience that may affect children long after the event has occurred. Studies have documented children’s experiences during parental incarceration, which have documented the difficulties that can occur for some children, including, psychological distress, confused explanations given to children, changes in child care arrangements, difficulties in maintaining contact with incarcerated parents, loss of family income, stigma associated with parental incarceration and home and school moves.<sup>2</sup>
3. Additionally, parental incarceration has significant social costs, among those being the intergenerational transmission of inequality.<sup>3</sup> Research has found that the concentration of risk found within many families and communities facing parental incarceration, such as poverty, adverse neighbourhood conditions, and violence exposure, may be predictive of an intergenerational cycle of criminality.<sup>4</sup>

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<sup>1</sup> Christopher Wildeman, (2009). *Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage*, 46 *Demography* 265. Available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2831279/>

<sup>2</sup>Mark Eddy and Julie Poehlman. Editors (2010) p.56. “Children of Incarcerated Parents: A Handbook for Researchers And Practitioners.” Washington, D.C., Urban Institute Press.

<sup>3</sup> Sara Wakefield and Christopher Wildeman. (2011) “Mass imprisonment and racial disparities in childhood behavioral problems.” *Criminology and Public Policy*. Vol. 10, Issue 3.

<sup>4</sup> Mark Eddy and Julie Poehlman. Editors (2010) p.147. “Children of Incarcerated Parents: A Handbook for Researchers And Practitioners.” Washington, D.C., Urban Institute Press.

4. Further warranting response, these outcomes fall disproportionately on Black and Latino children.<sup>5</sup> 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, “increase[d] racial gaps in homelessness affect children by a staggering 65 percent.”<sup>6</sup> The authors have taken us a step further in our understanding, pointing to how the long-term consequences of imprisonment may last over many decades due to the intergenerational transmission of racial inequality. “This information is especially important because it suggests that the prison boom might have long-term consequences for racial inequalities even if the imprisonment rate were to return to its 1970s level today.”<sup>7</sup>

## II. LEGAL FRAMEWORK

5. The State Party’s practice of over incarcerating parents of colour without proper regard to alternative to incarceration contravenes the Universal Declaration of Human Rights (UDHR) Articles 2, 3, 16 and 25.<sup>8</sup>
6. In 2014, Justice Strategies raised the need for US policymakers to consider the diversion of parents before the United Nations’ CERD committee (Convention for the Elimination of all forms of Racial Discrimination). In its concluding observations on the combined seventh to night periodic reports of the United States of America, the committee expressed the following to the US government under the criminal justice system observations:

“The Committee is also concerned at the negative impact of parental incarceration on children from racial and ethnic minorities (arts. 2, 5 and 6).”

And:

“The Committee calls upon the State party to take concrete and effective steps to eliminate racial disparities at all stages of the criminal justice system... including by...ensuring that the impact of incarceration on children and/or other dependents is taken into account when sentencing an individual convicted of a non-violent offence and promoting the use of alternatives to imprisonment.”<sup>9</sup>

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<sup>5</sup> Sara Wakefield and Christopher Wildeman. (2011) “Mass imprisonment and racial disparities in childhood behavioral problems.” *Criminology and Public Policy*. Vol. 10, Issue 3.

<sup>6</sup> Sara Wakefield and Christopher Wildeman, “Children of Imprisoned Parents and the Future of Inequality in the United States,” *Scholars Strategy Network Key Findings*, January 2014. <http://www.scholarsstrategynetwork.org/brief/children-imprisoned-parents-and-future-inequality-united-states>.

<sup>7</sup> Sara Wakefield and Christopher Wildeman. (2011) “Mass imprisonment and racial disparities in childhood behavioral problems.” *Criminology and Public Policy*. Vol. 10, Issue 3; *Children of the Prison Boom: Mass Incarceration and the Future of American Inequality*. (2014) Oxford and New York: Oxford University Press

<sup>8</sup> United Nations Declaration of Human Rights, arts. 2, 3, 16 and 25.

<sup>9</sup> <https://www.state.gov/documents/organization/235644.pdf>.

### III. U.S. COMPLIANCE WITH ITS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

7. As of September 2019, three states have passed legislation to facilitate a parent's ability to care for his or her children, even when facing a conviction for a non-violent offence.
8. For instance, Washington State has developed an excellent model program for diversion that provides supervision and guidance for fathers and mothers as they care for their children in the community. The Family and Offender Sentencing Alternative (FOSA)<sup>10</sup> program gives judges the option to divert parents at sentencing to care for their children.
9. According to the Washington State Department of Corrections, "The focus of the legislation is the child(ren), family, and the importance of maintaining the family bond so that participants under DOC jurisdiction can be productive contributors in their families and communities. The goal of these programs is to help stop the cycle of criminal activity."<sup>11</sup>

### IV. RECOMMENDATIONS

10. The State Party should offer, through the Bureau of Justice Assistance in the Department of Justice, funding opportunities to encourage other state correctional agencies to develop parental diversion programs similar to the Washington State's Department of Corrections' Family and Offender Sentencing Alternative program.
11. The State Party should also encourage its agencies to develop a Family Impact Statement (FIS)<sup>12</sup> protocol to facilitate a proper sentencing assessment prior to sentencing an individual. FISs create an opportunity for judges in courts at all levels to consider the consequences of sentencing and incarceration on the families of those being sentenced. A pre-sentence investigation report that includes the defendant's responses to family impact questions empowers judges to make informed sentencing and supervision decisions that take into account the potential consequences for the defendant's family.

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<sup>10</sup> Family and Offender Sentencing Alternative: <https://www.doc.wa.gov/corrections/justice/sentencing/parenting-alternative.htm#fosa>

<sup>11</sup> Ibid

<sup>12</sup> For models and a toolkit summarizing information learned from key stakeholder interviews in San Francisco and New York regarding the design and implementation of family impact statements: <http://www.urban.org/sites/default/files/publication/53651/2000253-Toolkit-for-Developing-Family-Impact-Statements.pdf>.