

# **JUSTICE STRATEGIES**

## **Policy Memorandum**

# **Prioritizing the Needs of Children of Incarcerated Parents in New York State**

**March 26 , 2015**

## **Prioritizing the Needs of Children of Incarcerated Parents in New York State**

Over two million children in the United States are lost in a sea of draconian laws that have led to mass 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. It is time to refocus our attention on the children left behind. By honoring the right to family integrity of children who have a mother or father facing a possible prison term, promoting alternatives to incarcerating parents, and offering the necessary socio-economic supports to help families thrive, New York can lead the way in prioritizing children, families and communities. To undo decades of damage, reform needs to take place at all levels of government.

### **Background**

- The United Nations has recognized that African-American, Latino and Indigenous children and their parents who are involved in the criminal justice system are more likely to be denied recognition and enjoyment of their fundamental right to maintain family integrity,<sup>1</sup> and that children of African descent are particularly vulnerable.
- Acute racial disparity within the prison system is reflected among the children of incarcerated parents, where Black children are 7.5 times more likely than white children to experience parental incarceration. For those born in 1990, white children have a 1 in 25 rate of experiencing parental incarceration by age 14 – for Black children, the rate is 1 in 4. Indigenous and Latino children also experience alarming rates of parental incarceration that far exceeds their white counterparts.<sup>2</sup>
- As of 2011, the New York State Department of Corrections and Community Supervision (DOCCS) reports that 60 percent of individuals in prison are the parents of minor children.<sup>3</sup>
- The DOCCS survey found that 85 percent of these mothers and fathers had significant involvement with their children prior to incarceration, including 81 percent who reported physically caring for their children, 80 percent who contributed financial support and 74 percent who were involved in decision-making about their children's daily activities.<sup>4</sup>
- Maintaining contact between parents and children during incarceration is excruciatingly difficult, especially given the travel costs and distances involved in making face-to-face visits, children's limited access to telephones, and the cost of collect calls.<sup>5</sup>

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<sup>1</sup>United Nations A/60/18 Report of the Committee on the Elimination of Racial Discrimination, Sixty-Sixth Session (2005) and Sixty-Seventh Session (2005), Convention in General Recommendation XXXI. Geneva.

<sup>2</sup> Christopher Wildeman, (2009). *Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage*, 46 DEMOGRAPHY 265.

<sup>3</sup> NYS Division of Criminal Justice Services, 2013 Children of Incarcerated Parents in New York State: Data Analysis.

<sup>4</sup>Ibid

<sup>5</sup>Ibid

- While the vast majority of parents plan to reconnect with their children post-release, these families face serious barriers, including the difficulty of rebuilding the child-parent bond, and finding housing and employment.<sup>6</sup>

### **Impacts of Parental Incarceration**

A large body of empirical research findings show that parental incarceration causes long-term harm irrespective of whether the parent is a father or a mother. These painful human costs to over two million children translate to a high price for entire communities as well. When future generations struggle with the significant trauma and bereavement of parental incarceration, so too does the surrounding community struggle to cope with widespread family instability, financial strain, and young people's sense of detachment, distrust, hopelessness, and apathy.<sup>7</sup>

While children of incarcerated parents can succeed with support, children who face multiple adverse experiences including parental incarceration are at an increased risk for experiencing negative outcomes, many stemming from experiencing alienation from systems that should be there to support them: schools, foster care, after-school programs, etc., and thus, increasing the likelihood of their social disconnection.

There is a close yet complex connection between parental incarceration and adverse short- and long-term outcomes for children. Justice Strategies conducted extensive focus group and structured interviews with children of prisoners, their parents, their caregivers, social workers, child welfare workers, and educators to document the specific impacts of parental incarceration on the children.<sup>8</sup>

- ***An undermined sense of stability and safety*** due to the sudden removal of a parent from daily life and separation from siblings.
- ***A compromised sense of connectedness and worthiness***, as children experience a sense of abandonment, coupled with social stigma and shame, leaving children more vulnerable to peer-pressure, risky behaviour, and, possible, involvement with the criminal justice system.
- ***Loss of attachments and ability to trust***, which can result in a diminished ability to establish stable lives and relationships as adults.
- ***No sense of having a place in the world***. Children typically experience parental incarceration as a form of rejection, and often personalize this loss. Children are saddled with a complex and ambiguous grief that forces them to become adults before their time, connected to the many challenges related to having to start over, yearning for mother and father figures, and anxiety about aging grandparents.

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<sup>6</sup>Ibid

<sup>7</sup>Sarah Wakefield and Christopher Wildeman. (2014) *Children of the Prison Boom: Mass Incarceration and the Future of American Inequality*. New York: Oxford University Press.

<sup>8</sup>Patricia Allard and Judith Greene. Justice Strategies. (2011). *Children on the Outside: Voicing the Pain and Human Costs of Parental Incarceration*. New York, New York.  
<http://www.justicestrategies.org/publications/2011/children-outside-voicing-pain-and-human-costs-parental-incarceration>; Judith Greene and Patricia Allard. Justice Strategies. (2014). *Children on the Outside 2014: An Agenda for Change*. New York, New York.  
[http://justicestrategies.org/sites/default/files/publications/COIP\\_COTO\\_9-2-14.pdf](http://justicestrategies.org/sites/default/files/publications/COIP_COTO_9-2-14.pdf).

- ***Threats to economic security.*** Loss of parental support often results in increased poverty, caregiver strain and accompanying child strain. It is also closely connected to compromised educational experience and increased risk of involvement with drugs to earn money.

### **Opportunities for Improvement**

In an effort to honor family integrity, we offer the following four principles as guidance for reform:

1. At the pre-sentencing hearing of an individual convicted of an offense, the Court should be required to ask whether the person is a parent;
2. If the individual is a parent, the court should be required to hear and consider what the impact of incarcerating the parent will be on their children through the means of a Family Impact Statement;
3. After assessing all the facts before him or her, a sentencing judge should be encouraged to exercise sound judicial discretion with respect to sentencing a parent to an alternative to a prison term, which is likely to promote family integrity (i.e. probation, education or job training programs, housing support, health, social, and psychotherapeutic supports, and medical supports including drug treatment); and
4. When considering legislative proposals that will affect sentencing and correctional policy, lawmakers must be given estimates of the impacts on the children of individuals directly affected.

### ***New York Penal Law***

New York State Penal Law Section 65.00 authorizes, under certain circumstances, the sentence of probation. This section sets forth several criteria in determining whether a probation sentence is appropriate if otherwise allowed by law. We believe that by adding a requirement that the court examine whether the individual before the court is a parent, this section could provide an affirmative role for the court to explore whether a sentence of probation can serve a greater public interest, namely supporting family integrity and the needs and rights of children, in cases where such a sentence would not undermine public safety.

### ***New York Criminal Procedure Law***

New York Criminal Procedure Law Article 390.30 describes the scope of pre-sentence investigation and report to be provided to judges. We believe that as part of the scope of the pre-sentence investigation and report, the court should receive information concerning the impact that a prison term will have on the children of the individual being sentenced. The use of a family impact statement would be well suited to gather important information about the impact of a custodial sentence on the children of people being sentenced. The information gathered and presented to the court will offer valuable information when judicial discretion is being exercised.

### ***New York Probation Rules and Regulations***

New York State Office of Probation and Correctional Alternatives provides rules and regulations that give guidance to probation officers about conducting investigations and writing reports for the New York Courts. Section 350.6 (b)(2), specifies the need for information about a person’s “social circumstances”, including “the family and home situation.’ This rule falls short of what might be specified in order to provide a judge with information about the impact of incarceration on children. Section 350.7(b)(3) requires that a pre-sentencing report should contain a “concise description of current aspects of respondents/defendants personal and community relationships that are of significance to the respondent’s present or future functioning in the community and ability to lead a law abiding life.” While certainly important elements to present to the judge, there is no mention of a need to include information about how incarceration might adversely affect a defendant’s important relationships, if any, with his or her children.

Finally, since the vast majority of criminal convictions in the New York courts are settled through a plea bargain which specifies the sentence to be imposed, it is important to consider whether – in order to influence sentencing decisions –vital information about parental responsibilities must be provided in pre-plea investigation reports, such as are authorized by OPCA rule 350.9. Such reports are not common practice, however, in part because they require “a court order and written authorization by the defendant, defendant’s attorney, and the prosecuting attorney.”

### **Sentencing Alternatives in Other Jurisdictions<sup>9</sup>**

Section 9.94A655 of the Revised Code of Washington authorizes “parenting sentencing alternatives” for consideration of whether to allow a person to serve a sentence in the community.<sup>10</sup>The Washington State provision, unfortunately, limits the courts discretion in considering the impact of sentencing beyond primary caregivers. And the law fails to require that courts be provided information, such as might be provided in a Family Impact Statement, about the specific impact a custodial sentence would have on children and their families.

Under California’s Pregnant and Parenting Women’s Alternative Sentencing Act, a judge may sentence a mother to one of three small facilities where she may live with her children, operated by Family Foundations (a non-profit agency under contract with the California Department of Corrects and Rehabilitation).<sup>11</sup> The woman must be pregnant or have children under six years of age. She must have a drug problem, and have been sentenced to a prison term up to three years duration. The program does not admit fathers, even if they are primary caregivers.<sup>12</sup>

### **Family Impact Statements**

The Osborne Association has done pioneering work for years to advocate for policies and practices that reduce the reliance on incarceration and meets the needs and respect the rights of children of incarcerated parents.. As part of this work, the Osborne Association collaborated with the New York State Office of Probation and Correctional Alternatives (NYS OPCA) to explore how best to include information about a defendant’s parental role and responsibilities in pre-

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<sup>9</sup>We have not yet conducted a 50-state survey of laws and policies pertaining to the children of incarcerated parents.

<sup>10</sup>RCW 994A.655. <http://app.leg.wa.gov/rcw/default.aspx?cite=9.94A.655>

<sup>11</sup>California Penal Code Section 1174

<sup>12</sup>Karen Schain et al. (2010) *California’s Mother-Infant Prison Programs* San Francisco: Legal Services for Families with Children.

sentencing reports so that judges have information to assess the way various sentencing options may impact the defendant's children.<sup>13</sup>As of 2014, "Family Responsibility Statements" are highlighted as a best practice in NYS OPCA training provided to new probation officers throughout the state.

While these developments are a step in the right direction, much more remains to be done. As stated above, when a convicted person has children, it is crucial that a sentencing judge have access to complete and factual information about the consequences of the sentence on the children. This should be provided in a rigorously developed, evidence-based, well-structured Family Impact Statement. Moreover, a sentencing judge should be encouraged to exercise sound judicial discretion, as provided by PL65.00, to impose an appropriate alternative to imprisonment in order to safeguard the interests and the needs of the children.

Given both the vital importance and the apparent complexities entailed in seeking reform in this area, we urge the New York State Sentencing Commission to take up a thorough examination of these issues, a review of the current law and practice, and consider making pragmatic recommendations for improvement.

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<sup>13</sup> See: [www.osborneny.org/.../FamilyImpactStatementFactSheet\\_Osborne.pdf](http://www.osborneny.org/.../FamilyImpactStatementFactSheet_Osborne.pdf)