

# CRIMINOLOGY

PARENTS BEHIND BARS | FIRST IN A SERIES

## PARENTAL INCARCERATION: WHAT WE KNOW AND WHERE WE NEED TO GO

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*As the introduction to a series of articles, this Article summarizes the state of the art in a field that has advanced enormously in the past ten years: parental incarceration. On the heels of a summer 2013 workshop held in the White House Executive Office Building, entitled “Parental Incarceration in the United States: Bringing Together Research and Policy to Reduce Collateral Costs to Children,” we here summarize five key lessons from this research, and then consider new directions for the next generation of research and policy. In this way, this Article lays the foundation for a series of important forthcoming articles in the Journal of Criminal Law and Criminology.*

### INTRODUCTION

Incarceration in the United States ripples outward to affect families, communities, and markets.<sup>1</sup> But when television programs like *Sesame Street* begin tackling topics such as parental incarceration, it sends a clear signal that the issue has also penetrated public consciousness.<sup>2</sup> At such moments, it is increasingly urgent for researchers to share what we have learned. Although responsible scholars are often more comfortable telling us

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<sup>1</sup> See generally Sara Wakefield & Christopher Uggen, *Incarceration and Stratification*, 36 ANN. REV. SOC. 387 (2010).

<sup>2</sup> See SESAME WORKSHOP, LITTLE CHILDREN, BIG CHALLENGES: INCARCERATION (2013).

what we do not know than what we *do* know,<sup>3</sup> the recent wave of research has established five important facts about parental incarceration. This Article reviews the knowledge presented at a 2013 workshop, “Parental Incarceration in the United States: Bringing Together Research and Policy to Reduce Collateral Costs to Children,”<sup>4</sup> while outlining a basic programmatic agenda for further inquiry and policy change. Conveying these basic facts to broader audiences represents an important step toward aligning policy with research—and, ultimately, ameliorating the negative effects of parental incarceration on children. As we describe below, there may be no more compelling and urgent prerogative for researchers, policymakers, and advocates in the field of criminal justice.

### I. FIVE BASIC FACTS

**Change.** The first and most basic story to be told concerns the enormous rise in parental incarceration over the last generation, such that more kids are affected today than ever before. To a great extent, this rise is the result of sentencing choices rather than a rise in crime rates.<sup>5</sup> Consistent with imprisonment patterns for adults, the rate of children with an incarcerated parent has more than doubled in the last generation.<sup>6</sup> As a recent Pew Charitable Trusts study noted, “2.7 million children have a parent behind bars—1 in every 28 children (3.6 percent) has a parent incarcerated, up from 1 in 125 just 25 years ago.”<sup>7</sup> This has enormous implications for how we treat the parents in our prisons, the children in our schools, and conduct our daily lives. Communities of color have long been disproportionately

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<sup>3</sup> See generally Hans Peter Peters, *Scientists as Public Experts*, in HANDBOOK OF PUBLIC COMMUNICATION OF SCIENCE AND TECHNOLOGY 131, 133–34 (Massimiano Bucchi & Brian Trench eds., 2008) (noting some scientists’ reluctance to speak as public experts due in part to the uncertainty involved in the research process); see also Herbert J. Gans, *A Sociology for Public Sociology: Some Needed Disciplinary Changes for Creating Public Sociology*, in HANDBOOK OF PUBLIC SOCIOLOGY 123, 128 (Vincent Jeffries ed., 2009) (noting the small number of people who seek to communicate their science to the general public, in part due to institutional disincentives and disparagement by colleagues).

<sup>4</sup> The workshop, jointly sponsored by the American Bar Foundation and the National Science Foundation, was held in the White House Executive Office Building on August 20, 2013.

<sup>5</sup> See Christopher Uggen & Suzy McElrath, *Six Social Sources of the U.S. Crime Drop*, in CRIME AND THE PUNISHED 3, 10–11 (Douglas Hartmann & Christopher Uggen eds., 2014); see also Michael Tonry, *Why Are U.S. Incarceration Rates So High?*, 45 CRIME & DELINQ. 419, 422, 427 (1999) (arguing that the “exceptionally” high incarceration rates in the United States relative to Western democracies reflect differences in politics, public perceptions, and punitive policy responses rather than crime rates).

<sup>6</sup> See PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION’S EFFECT ON ECONOMIC MOBILITY 19 fig.9 (2010).

<sup>7</sup> *Id.* at 4.

impacted by incarceration in the United States. Today, scholars such as Chris Wildeman and Sara Wakefield have shown how parental incarceration is similarly concentrated among African-American children and children of less-educated parents,<sup>8</sup> which likely worsens racial disparities in child well-being.<sup>9</sup>

**Real Parents.** The second point is that many, if not most, incarcerated parents were not “absent” or uninvolved in their children’s lives before prison. As Amanda Geller points out, most incarcerated parents have contact with their children.<sup>10</sup> A full 42% of incarcerated fathers and 60% of mothers lived with their children prior to incarceration,<sup>11</sup> and another 40% of nonresident, ever-incarcerated fathers had regular visitation with their children.<sup>12</sup> To a large extent, then, incarcerated parents were *parenting*, assuming the responsibilities associated with providing for and raising their children. Still, this is not to imply that their pre-incarceration family lives were always good or even acceptable. There are warm and loving families, as well as abusive and neglectful families, throughout every social stratum, and families with incarcerated parents well reflect this diversity.<sup>13</sup> Separation often precedes incarceration, and sometimes the separation is necessary to protect children.<sup>14</sup> But the basic fact of parental contact should dispel the myth that incarcerated parents had “checked out” and are not real parents worthy of some degree of trust and consideration. As Philip Genty’s workshop presentation pointed out, there is a yawning gap between the

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<sup>8</sup> See Christopher Wildeman, *Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage*, 46 DEMOGRAPHY 265, 276 (2009).

<sup>9</sup> See Sara Wakefield & Christopher Wildeman, *Mass Imprisonment and Racial Disparities in Childhood Behavioral Problems*, 10 CRIMINOLOGY & PUB. POL’Y 793, 802 & fig.3 (2011).

<sup>10</sup> Amanda Geller, *Paternal Incarceration and Father-Child Contact in Fragile Families*, 75 J. MARRIAGE & FAM. 1288, 1295 (2013); Amanda Geller, Remarks at the White House Parental Incarceration Workshop (Aug. 20, 2013) (slides available at <http://goo.gl/K1GqtC>).

<sup>11</sup> See LAUREN E. GLAZE & LAURA M. MARUSCHAK, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, *PARENTS IN PRISON AND THEIR MINOR CHILDREN*, at 4 tbl.7 (2010); see also Geller, *supra* note 10, at 1294 tbl.1, 1295 (who estimates that, among urban families, between 33% and approximately 43% of fathers lived with their young children prior to jail or incarceration).

<sup>12</sup> See Geller, *supra* note 10, at 1295.

<sup>13</sup> See generally SARA WAKEFIELD & CHRISTOPHER WILDEMAN, *CHILDREN OF THE PRISON BOOM: MASS INCARCERATION AND THE FUTURE OF AMERICAN INEQUALITY* (2014); Rebecca J. Schlafer & Julie Poehlmann, *Attachment and Caregiving Relationships in Families Affected by Parental Incarceration*, 12 ATTACHMENT & HUM. DEV. 395, 409 (2010).

<sup>14</sup> See WAKEFIELD & WILDEMAN, *supra* note 13, at 56–57 & fig.3.3 (showing that, in some cases, paternal incarceration may provide respite from abuse); Raymond R. Swisher, Remarks at the White House Parental Incarceration Workshop (Aug. 20, 2013) (slides available at <http://goo.gl/slWpIa>) (showing a protective effect of parental incarceration for sexually abused girls).

science and the public perceptions of the real and the hypothetical incarcerated parent and child.<sup>15</sup> If we are to ameliorate the effects of parental incarceration, it is critically important for policymakers and citizens to not only see the *children* as sympathetic and worthy of our concern, but to also see their parents, their families, and their caregivers as human beings with legitimate rights and interests.

**An Unjust Disadvantage.** The third point is perhaps the most fundamental: through no fault of their own, kids with incarcerated parents are at a terrible disadvantage. Because of the work of the researchers gathered at the workshop, we can make this statement much more confidently today than we could ten years ago. Back then, we might have believed and felt in our bones that incarcerated children were disadvantaged, but our research now demonstrates it. For example, children of incarcerated parents have more of what psychologists call “internalizing” problems (like depression<sup>16</sup>), and they also have more “externalizing” problems (like aggression and delinquency<sup>17</sup>). They have more long-term physical health problems, including migraines, asthma, and high cholesterol.<sup>18</sup> They have more school problems, such as absenteeism and dropping out.<sup>19</sup> And finally, they have more problems transitioning to the basic roles we expect adults to adopt. As Holly Foster and John Hagan’s work shows, children of incarcerated parents report lower incomes and higher rates of being uninsured, homeless, and experiencing real senses of powerlessness later in life.<sup>20</sup> Although isolating

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<sup>15</sup> See Philip M. Genty, Remarks at the White House Parental Incarceration Workshop (Aug. 20, 2013) (slides available at <http://goo.gl/8UuT3X>); see also Philip M. Genty, *Moving Beyond Generalizations and Stereotypes to Develop Individualized Approaches for Working with Families Affected by Parental Incarceration*, 50 FAM. CT. REV. 36, 39 (2012).

<sup>16</sup> See WAKEFIELD & WILDEMAN, *supra* note 13, at 71–96; Sara Wakefield, Remarks at the White House Parental Incarceration Workshop (Aug. 20, 2013) (slides available at <http://goo.gl/18jWaO>); Raymond R. Swisher & Michael E. Roettger, *Father’s Incarceration and Youth Delinquency and Depression: Examining Differences by Race and Ethnicity*, 22 J. RES. ON ADOLESCENCE 597, 598 (2012).

<sup>17</sup> See Terry-Ann L. Craigie, *The Effect of Paternal Incarceration on Early Child Behavioral Problems: A Racial Comparison*, 9 J. ETHNICITY CRIM. JUST. 179, 192 (2011); see also WAKEFIELD & WILDEMAN, *supra* note 13, at 71–96. See generally Raymond R. Swisher & Unique R. Shaw-Smith, *Parental Incarceration and Adolescent Well-Being: Life Course Contingencies and Other Moderators*, 104 J. CRIM. L. & CRIMINOLOGY (forthcoming Oct. 2014) (discussing a positive association between parental incarceration and delinquency, and a positive but weaker association between parental incarceration and depression).

<sup>18</sup> See Rosalyn D. Lee et al., *The Impact of Parental Incarceration on the Physical and Mental Health of Young Adults*, 131 PEDIATRICS e1188, e1191 (2013).

<sup>19</sup> See Emily Bever Nichols & Ann Booker Loper, *Incarceration in the Household: Academic Outcomes of Adolescents with an Incarcerated Household Member*, 41 J. YOUTH & ADOLESCENCE 1455, 1462 tbl.1 (2012).

<sup>20</sup> See generally Holly Foster & John Hagan, *Incarceration and Intergenerational Social Exclusion*, 54 SOC. PROBS. 399 (2007); Holly Foster & John Hagan, Remarks at the White

and obtaining precise measurements of these effects is challenging statistically and methodologically, these findings are robust across a wide range of outcomes and do not appear to be artifacts of self-selection processes. And, as we show below, estimates of these effects are likely to be conservative because of the way we measure them.

**Mechanisms.** It is one thing to document the effects of parental incarceration but quite another to demonstrate the causal links in the chain connecting prison to childhood disadvantage. Our fourth finding is that researchers are now identifying plausible mechanisms to connect parental incarceration with poor outcomes for kids. We call them different things in different disciplines, but economists, sociologists, and developmental psychologists are all pointing to factors such as social isolation, family instability, economic loss, and material deprivation as key pieces of the puzzle. We know that these characteristics can be problematic and disruptive for all families, but they represent especially proximal links between the experience of incarceration and its effects on family functioning.<sup>21</sup>

**Opportunities.** The fifth, and most important, point is that there are some things we can do today to improve the situation. There are policy levers that we can pull, social choices that we can make, and new initiatives that we can try. Some of the ideas presented at the workshop would involve providing greater educational support for the children of those incarcerated, up to and including college retention and completion. As John Hagan pointed out, we can also better protect a child's basic right to be safe, heard, and cared for, in accordance with international conventions, such as the United Nations Conventions on the Rights of the Child.<sup>22</sup> For parents, we can build on promising projects that serve as intervention points for parents and children, including prison nurseries, community alternatives, and visitation support.<sup>23</sup>

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House Parental Incarceration Workshop (Aug. 20, 2013) (slides available at <http://goo.gl/MezHDJ>); see also Holly Foster & John Hagan, *Maternal and Parental Imprisonment and the Children's Social Exclusion in Young Adulthood*, 105 J. CRIM. L. & CRIMINOLOGY (forthcoming Feb. 2015) (finding that both maternal and parental incarceration significantly contribute to young adult social exclusion).

<sup>21</sup> On social isolation and family instability, see generally JOYCE A. ARDITTI, PARENTAL INCARCERATION AND THE FAMILY (2012); Foster & Hagan, *Incarceration and Intergenerational Social Exclusion*, *supra* note 20. On economic loss and deprivation, see generally WAKEFIELD & WILDEMAN, *supra* note 13.

<sup>22</sup> See Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>23</sup> On prison nurseries, see Lorie Smith Goshin & Mary Woods Byrne, *Converging Streams of Opportunity for Prison Nursery Programs in the United States*, 48 J. OFFENDER REHABILITATION 271, 288–89 (2009). For an overview of programming, see generally ROSS D. PARKE & K. ALISON CLARKE-STEWART, EFFECTS OF PARENTAL INCARCERATION ON YOUNG CHILDREN (2001), available at <http://goo.gl/fMGUir>. For an analysis of the effects of paternal incarceration on the relationship between the child and the caregiver left behind, see generally Sara Wakefield, *Accentuating the Positive or Eliminating the Negative? Father Incarceration*

For caregivers, we must work to better incorporate their needs and experiences in reentry planning and programs,<sup>24</sup> supporting them both materially and nonmaterially. In criminal justice, we can begin to consider family ties and geographical distance in sentencing as well as procedures such as “staggering” parental sentences so they are not served concurrently.<sup>25</sup> For researchers and policymakers, we can collect better basic data at the state and federal levels, as Becky Pettit suggested,<sup>26</sup> and we should study families longitudinally—before, during, and after periods of incarceration—as Raymond Swisher and Michael Roettger have argued.<sup>27</sup>

With regard to further research, we should also evaluate the creative projects and programs being undertaken throughout the United States and beyond our borders.<sup>28</sup> Where randomized experimentation is not feasible, we must also work to distinguish causation from correlation by identifying treatment effects on families. For example, in cases where program demand exceeds the seats available, we must be poised to take advantage of the comparison group that does not receive access to those programs so we can have a stronger sense of what is really working. As for juvenile justice, we

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*and Caregiver–Child Relationship Quality*, 104 J. CRIM. L. & CRIMINOLOGY (forthcoming Oct. 2014).

<sup>24</sup> See Jillian J. Turanovic et al., *The Collateral Consequences of Incarceration Revisited: A Qualitative Analysis of the Effects on Caregivers of Children of Incarcerated Parents*, 50 CRIMINOLOGY 913, 916–19 (2012).

<sup>25</sup> See Philip M. Genty, *Damage to Family Relationships as a Collateral Consequence of Parental Incarceration*, 30 FORDHAM URB. L.J. 1671, 1684 (2003) (proposing that the parental role should be an explicit factor in sentencing); Myrna S. Raeder, *Special Issue: Making a Better World for Children of Incarcerated Parents*, 50 FAM. CT. REV. 23, 32 n.33 (2012) (citing Mary Flood, *Lea Fastow Expresses ‘Regret’ at Sentencing*, HOUS. CHRON., May 7, 2004, at 1A (discussing staggered sentences of mother and father regarding their convictions in the Enron scandal)).

<sup>26</sup> See BECKY PETTIT, INVISIBLE MEN: MASS INCARCERATION AND THE MYTH OF BLACK PROGRESS (2012); see also Becky Pettit, Remarks at the White House Parental Incarceration Workshop (Aug. 20, 2013) (slides available at <http://goo.gl/NIQG0Z>).

<sup>27</sup> See, e.g., WAKEFIELD & WILDEMAN, *supra* note 13; Swisher & Roettger, *supra* note 16.

<sup>28</sup> For instance, a multi-agency collaboration in Denver, Colorado, offers an integrative approach to reentry services, offering assistance with employment, child support issues, and family reintegration. See generally JESSICA PEARSON & LANAE DAVIS, SERVING PARENTS WHO LEAVE PRISON: FINAL REPORT ON THE WORK AND FAMILY CENTER (2001). Internationally, several countries allow (or even require) longer-term codetention programs, which range from a few months to several years. See WOMEN’S PRISON ASS’N, MOTHERS, INFANTS, AND IMPRISONMENT: A NATIONAL LOOK AT PRISON NURSERIES AND COMMUNITY-BASED ALTERNATIVES 35 app. V (2009), available at <http://goo.gl/50SROU>; see also PARKE & CLARKE-STEWART, *supra* note 23, at 14. In the United States, programming for current and formerly incarcerated parents and their children is offered by private, nonprofit, and government entities (at federal, state, and county institutions). Unfortunately, few programming efforts have been rigorously evaluated. See PARKE & CLARKE-STEWART, *supra* note 23, at 9.

must begin to address deficits in programming. For instance, we need to add parenting programs within our *juvenile* institutions because, in many such facilities, the modal resident is an eighteen-year-old male parent. We must simultaneously address mental and physical health deficits while also preparing these residents to be better parents themselves—and design research that can evaluate and test these programs.

## II. NEW RESEARCH

Researchers have learned a great deal about the problems children of incarcerated parents face and what we might do to address them, but we should also think more broadly. Apart from parental incarceration, we know very little about the impact of parental criminal records on child outcomes. Roughly twenty million U.S. adults have a felony level criminal record,<sup>29</sup> and a great many of them have never been to prison. Yet, their records clearly affect their children. Consider a situation in which a mother pleads guilty to a felony to avoid prison, in part so that she can be a better parent. Once she pleads guilty to that felony, however, many consequences are set in motion.<sup>30</sup> She will be locked out of many types of employment; for example, she cannot work in a nursing home in many states. She might be deported, she might lose access to public housing, and depending on the type of crime and the state in which she resides, she might lose access to public assistance such as Temporary Assistance for Needy Families (TANF) and food-assistance programs. Indeed, if we think incarceration affects children through stigmatization and economic marginalization as well as separation, then all of these results are likely consequential.

Felony-level records are an important matter, but let us take you further, to the very edge of stigma. In an experiment of the effects on employment of the lowest level of criminal records—a three-year-old disorderly conduct arrest that never resulted in conviction and was never formally charged—the mere presence of a minor arrest record drove down the rate of positive responses from employers by about 11% for white applicants and about 15% for African-American applicants. More than just incarceration or convictions, even a single arrest can produce future hardships that impact families.<sup>31</sup>

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<sup>29</sup> See SARAH SHANNON ET AL., GROWTH IN THE U.S. EX-FELON AND EX-PRISONER POPULATION, 1948 TO 2010, at 12 (2011).

<sup>30</sup> See generally Alec Ewald & Christopher Uggen, *The Collateral Effects of Imprisonment on Prisoners, Their Families, and Communities*, in THE OXFORD HANDBOOK OF SENTENCING AND CORRECTIONS 83 (Joan Petersilia & Kevin R. Reitz eds., 2012).

<sup>31</sup> See Christopher Uggen et al., *The Edge of Stigma: An Experimental Audit of the Effects of Low-Level Criminal Records on Employment* (2010) (unpublished manuscript) (on file with the *Journal of Criminal Law and Criminology*).

Moreover, because incarceration represents only the very end of a very leaky criminal justice funnel, the scope of arrest effects on parents may be far broader than that of incarceration. In our home state of Minnesota, the African-American arrest rate in 2007 was 227 per thousand per year, relative to an African-American imprisonment rate of less than 14 per thousand.<sup>32</sup> Though many people are arrested more than once each year, these numbers provide a sense of scale. Moreover, the research discussed at the workshop compares parents who have been incarcerated to “everybody else”—the effects would likely be significantly stronger if they compared children of incarcerated parents to children of parents who had never been arrested.

While many collateral sanctions serve useful purposes, including protecting our children and our communities, not all of them do so. We will call out just two. First, in researching felon disenfranchisement, the first author remains haunted by a father in Minneapolis who told him he had tried to cast a ballot while on probation. He took his daughter with him to vote on Election Day at the polling place in their neighbourhood, the daughter’s elementary school. When he was turned away, it was a publicly humiliating experience for both of them. Describing the experience through her eyes, the father vowed he would never attempt to vote again. Second, the felony drug exclusion for TANF benefits might harm family functioning with no corresponding public safety benefit. We will benefit children by reducing unnecessary collateral sanctions and by redirecting some low-level offenses away from the criminal justice system.

#### CONCLUSION

It is by now trite to tell researchers that they are doing important work and to implore them to engage broader public audiences. Each of the experts participating in this series of articles is already doing so on behalf of the children of incarcerated parents. As scholars who write on incarceration and social stratification, we tend to study how prisons and criminal justice processes exacerbate inequalities. In truth, to dramatically reduce the number of children affected by incarcerated parents, serious sentencing reform will be required. Nevertheless, we have the capacity to use our institutions to *redress* some of these inequalities—if we make the right policy choices and take advantage of the right opportunities. Much like watching *Sesame Street* episodes on parental incarceration, we watch the unfolding of policy developments with sadness and frustration, but also with great hope. In our view, there are no sociolegal research and policy issues as important as the struggle to humanize and destigmatize the children of incarcerated parents.

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<sup>32</sup> *Id.* at 12 fig.2 (comparing Minnesota arrest and incarceration rates by race in 2007).