

# Core Principles: Preserving Family Unity While Building Safe Communities

*This document provides core principles that we believe underlie effective and expansive program development of a parent sentencing alternative.*

**Andrea James**, National Council for Incarcerated and Formerly Incarcerated Women and Girls

**Andy Ko**, Partnership for Safety and Justice

**Isabel Coronado**, Next100

**Judy Greene**, Justice Strategies

**Patricia Allard**, Justice Strategies

**Riley Hewko**, Justice Strategies

**Shannon Wight**, Partnership for Safety and Justice

**Susan Leavell**, Washington State Department of Corrections

The United States Government recognizes that mass incarceration has had a devastating effect on the children left behind. Experts and advocates from five organizations have come together to share their insights and advice with those who can provide authorization for parental alternatives to imprisonment, as well as to those responsible for providing effective services to help these children thrive.

Our white paper lays out the details that explain why the following principles are needed to shape policy and practice as we move forward:

- **Who is a caregiver?** When eligibility for an alternative program is narrowly restricted to a single “primary care-giver,” this can become a bar to the inclusion of many people — fathers, grandparents, aunts, uncles — upon whom a child depends for the essential love, nurturing and support that every child needs and deserves.
- **Judicial Discretion.** A sentencing determination that is focused — even in part — on avoiding debilitating trauma for the children of defendants requires impartial and unfettered consideration by an independent judge.
- **Targeting the “prison bound.”** Great care needs to be taken so that provision of supervision and services focused on fostering family unity and healthy child development is a true alternative, serving a “prison-bound” population, and not simply another probation option.
- **Community Supervision and Program Services.** Both Supervision and service programs must be designed and staffed so as to assure that the cultural context of each family and the complex web of experiences of each child will be understood and valued. With this ideal firmly grasped and set in motion, it might be possible to ameliorate cultural biases, judgments and assumptions that otherwise will devalue the services offered and decrease program success.

## Introduction

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. The separation of children from their parents is referred to as one of the many collateral consequences that affect children of incarcerated parents.<sup>1</sup> However, when we talk to children of incarcerated parents themselves, the separation and sometimes even the permanent legal loss of the connection to their parent is one that feels very primary and not “collateral” in any manner. Children of incarcerated parents feel the impacts are symbiotic and therefore should receive the same effort in consideration, resources, and reforms.”

An estimated six million children have experienced the incarceration of their parent<sup>2</sup>— a common practice that tears families apart, hurts children, and harms entire communities even though persuasive research findings indicate that increasing incarceration does not increase public safety. As a result, both practitioners and policymakers are looking for ways to mitigate these effects. One key avenue for consideration is the provision of alternatives to incarceration for parents and other caregivers of minor children.

The Washington State Family Offender Sentencing Alternative (FOSA) program is the longest established program of this type, with a track record of more than ten years of successful operations. In that state, community supervision for people convicted of a felony is provided by the state Department of Corrections, Community Corrections Division.

Recently efforts to create alternatives that promote and sustain family unity are growing. Five more states, Oregon, Massachusetts, Illinois, California and Tennessee have enacted legislation to encourage consideration of such alternatives at sentencing and some have provided resources for development of supervision and community programs that focus on the well being of the child.

## Philosophy and goals

A child-focused approach requires keeping the family together while holding the parent or

---

<sup>1</sup> Collateral consequence of a criminal conviction (and sometimes arrest) refers to the additional legal and regulated sanctions that are the indirect consequences that restrict people with criminal records, e.g. accessing employment, housing, voting, etc.

<sup>2</sup> <https://www.aecf.org/blog/a-growing-number-of-kids-are-impacted-by-parental-incarceration/>

other care-giver accountable, as opposed to imposing a sentence that results in family separation. The primary goal of providing such alternatives to those charged or convicted and facing prison time is to avoid the many harms that parental imprisonment inflicts upon dependent children.

This approach entails seeing the criminal law process through the lens of the child and working with parents and other caregivers in their communities to advance the social, emotional, and physical wellbeing of the children. The focus is to strengthen the capacities of parents, caregivers and programs to promote healthy development of young children as well as adolescents, while assuring accountability to the courts and to the community.

This model is a good fit for efforts now increasing across the nation to address mass incarceration with constructive alternative interventions that can address crime effectively, rather than defaulting to incarceration in every case.

Community supervision and program interventions, therefore, need to be keyed to strengthening and enhancing family capacities and improving care-giver skill sets within a “harm reduction” frame — not the “gotcha” mentality that sometimes prevails in community supervision agencies. Non-judgmental, non-coercive provision of services and resources to family members and the communities that they live in are needed in order to assist them to thrive.

### **Who is a “caregiver”?**

When a parent or caregiver is incapacitated by substance use disorder or other personal problems, care-giving responsibility for their children is often assumed by relatives — grandparents, siblings, aunts, uncles, cousins — but in many cases this is done informally, without transfer of legal custody. How family is defined in policy is critical to ensuring the best outcomes for children.

Families today are, as expressed by advocates at Forward Together, “...blended families, single parent families, LGBTQ families, chosen families, multi-generational families, mixed immigration status families, and multi-national families...” Yet all children deserve the love and nurturance of those who care for them.

Until very recently our public policies have defined “family” by the nuclear model of centuries past. But things are changing to meet new realities. In his Executive Order 13706 authorizing paid sick leave for employees of federal contractors, President Obama defined a family member for whom a worker could take such leave to provide needed care as those bearing a relationship through either “Blood or affinity.”

In truth, neither government nor social service agencies should be the final arbiters. Looking at the issue through the lens of the child, maintaining critical economic, material or emotional support from whomever they turn to for stability and well-being will result in the best outcomes for a child as they develop into maturity, and failure to do so may leave indelible

scars that hinder their life chances throughout adulthood.

Eligibility for an alternative program should be broadly defined to include many people upon whom a child depends for the essential love, nurturing and support that every child needs and deserves.

### **Judicial discretion**

Consideration of whether to choose an alternative to incarceration program to preserve family unity should be left to the unfettered discretion of a judge. In some instances, selection of an alternative to incarceration requires prosecutorial approval; in others, selection has been left to prison agencies after sentencing. But a sentencing determination that is focused — even in part — on avoidance of debilitating trauma for the children of defendants requires impartial and unfettered consideration from an independent judge.

In cases where a defendant is facing a prison term, a judge will always take into consideration arguments made by prosecutors and defenders along with basic concerns about punishment and public safety. But particularly where children will be harmed by the absence of their parent or caregiver, a judge should retain the legal prerogative to waive an otherwise presumptive or mandatory sentencing requirement.

Family Impact Statements are an essential element for providing judges with accurate, objective assessments of defendants' family responsibilities, assisting them in weighing the impact of either imprisonment or community supervision on the children involved. Detailed information about the role and responsibility a defendant actually bears in regard to their family and dependent children should be included within every presentence investigation report.

### **Targeting the “prison bound.”**

Great care needs to be taken so that provision of supervision and services focused on fostering family unity and healthy child development is a true alternative, serving a “prison-bound” population, and not simply another probation option. This is no easy enterprise.

One avenue, established in some alternative to incarceration (ATI) programs, is to use research to identify specific felony offense charges for which at least a significant majority of people end up with a prison sentence. In New York City, some ATI staff work as “Court Representatives,” screening defendants for suitability and likelihood of a prison sentence and assisting defenders by advocating for the alternative.

Lacking those program resources, there is a simpler “rule of thumb” that may be useful in this regard. Given the well-documented disproportional representation of all people of color — but especially Black people — at every step of criminal legal process that has been connected to

implicit and explicit racial bias in the system, these same realities are likely to result in parents of color being less likely to receive the alternative. Any alternative program serving a predominantly White population, especially in an urban court jurisdiction, is likely far off the mark in terms of reaching into the pool of “prison-bound” defendants. Therefore, measures must be put into place to ensure that parents of color receive the same opportunities as white parents.

Further, Native families, which are much less discussed, are also disproportionately represented in the criminal justice system. Native American men are incarcerated at four times the rate of white men; Native American women are incarcerated at six times the rate of white women, according to a report compiled by the Lakota People’s Law Project. In addition to indigenous and families of color, queer and disabled families are often overlooked and underserved in the criminal legal process.

For these reasons it is essential that alternative programs initiate systematic data collection including demographic profiles of their clients in order to assess this important issue. Such data are indispensable so that we can see who is receiving the benefits of the program to ensure equitable impact, and — when necessary — take corrective action to refocus the services toward parents and other caregivers who would otherwise receive a prison sentence.

### **Supervision and Program Services**

To assure judges that they can rely on alternatives to incarceration for parents and other caregivers facing prison time, it is likely that direct supervision by a community corrections agency will be required. But those responsible for supervision must understand that it is not a traditional probation program. Supervision agents need specialized training that includes basic knowledge about healthy child development and positive family dynamics.

While responsible for assuring compliance with requirements set by the court, the supervision agent should understand that interventions and policies designed for preserving family unity must reflect specific individual and community needs. The goal is to place people in effective and constructive community-based alternatives that mitigate negative behaviors and promote healthy families, not to put them in prison.

Program services requiring skilled and culturally competent professionals — substance use disorder treatment; family service interventions; early childhood education support, anger management; education and employment services; etc. — can best be provided by community based, service agencies, ideally located within the areas most affected by mass incarceration.

Such services are the most essential element for successful alternative programs. Funding streams targeted toward preventing family separation should, primarily, be provided to non governmental social service, public health and community organizations that have experience working with people and families living in the communities hardest hit by mass incarceration, as well as tribal nations and communities of non-English speaking people.

Programs must be designed and staffed so as to assure that the cultural context of each family and the complex web of experiences of each child can be understood and valued. With this ideal firmly grasped and set in motion, it might be possible to ameliorate cultural biases,

judgments and assumptions that otherwise will devalue the services offered and decrease program success.

In this regard, there can be a unique role for well-established community organizations deeply rooted within high-incarceration neighborhoods whose specific mission is to serve people enmeshed in the criminal legal system. Such programs are best positioned to provide the culturally specific services needed to build safe neighborhoods while strengthening families.

## **Conclusion**

As we move into the second decade of the 21<sup>st</sup> Century, policy makers in a majority of the 50 states are rethinking their correctional philosophies and reassessing their sentencing priorities in order to address the problem of mass incarceration. In this context, a long-overlooked issue has surfaced that comprises one of the most severe collateral consequences of incarceration: the critical impact of prison sentences on the “children of the prison boom.”

Constructive and humane approaches to ameliorate the harms suffered by children require ambitious and thoughtful approaches toward provision of community-based alternative to imprisonment that preserves family unity without increasing crime rates. A handful of states are showing the way forward. The considerations outlined above are drawn from this experience in the hope that they will prove useful in expanding and enriching future policies, practices and programs for these children.