

Question: What are the effects of parental incarceration on children, and what can be done as remedy?

Context: Incarceration remains more common in the United States than in any other NATO country on the national and state level. Racial inequities in incarceration rates have also continued, with black Americans making up 14% of the US population but 41% of prison populations, and Native Americans being incarcerated in state and federal prisons at four times the rate of white people and twice the national average. Of the prisoners in the criminal justice system, the majority are parents.



<https://www.prisonpolicy.org/global/2024.html>



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Parental Incarceration, Family Punishment

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Methodology:

- scholarly review of literature
- drafted possible policy solutions
- legal analysis of:
 - human rights law
 - supreme court case law

Children of incarcerated parents are more likely to:

- face suspension
- be moved to special education classes
- have lower academic achievement across the board

Children with incarcerated fathers are at a higher risk of

- asthma
- obesity
- depression
- antisocial behavior
- delinquency/truancy

The Convention on the Rights of the Child:

Article 2 clause 2: "States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment based on the status, activities ... of the child's parents, legal guardians, or family members."

By allowing the former activities of a child's parents to result in de facto punishment, the US is out of alignment with international human rights norms.

Further, Article 18, clause 2 of the CRC reads: "To guarantee ... rights ... States Parties shall render appropriate assistance to parents and legal guardians in performing their child-rearing responsibilities... "

This article clarifies that the government is responsible for assisting with fixing the

problems that arise in raising children, especially when those problems stem from state action.

Constitutional Law and the Right to Family Unity

Courts have recognized some family rights individually - In *re Gault*, the court ruled that "proceedings affecting the relationship between parents and children needed more due process protections; and in *Hodgson v. Minn.*, it ruled that the integrity of family units earns protections from several constitutional rights.

These rights are fertile ground for further litigation, especially because recent precedents, particularly *Dobbs v. Jackson Women's Health Organization*, have found special protections for rights deeply rooted in the nation's history and could be grounds for expanding the right to family unity, and justification for implementing some of the following reforms

What can we do?

- **Alternative Sentencing**
 - Allow non-incarceration alternative punishments for crimes to keep families together
 - Substance Abuse counselling
 - Education Programs
 - House Arrest
 - Longer Probation Term
- **Strengthen Welfare**
 - In particular, an increase in programs like the Earned Income Tax Credit has resulted in significant gains in academic achievement for children in disadvantaged communities
- **Ratify the CRC**
 - Ratification would bring the US into line with the rest of the world and shift the current conversation away from international "norms" and towards substantive legislative debate

Limitations:

- **Outdated Research:** Some of the data on parental incarceration is over a decade old. However, because the underlying structures of incarceration have remained largely the same, the conclusions still offer relevant insight
- **Selective Case Law:** The legal analysis focuses on key Supreme Court decisions. It does not account for how lower courts might interpret family rights differently or for the current shifts in judicial philosophy.