

# ***The Socio-Legal Impacts of Maternal Incarceration on Children: Emotional, Social, and Physical Considerations in Sentencing Decisions***

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**Abstract:** This paper explores the socio-legal impacts of maternal incarceration on children in the United States. The steep rise in incarceration rates, particularly among women, has highlighted challenges faced by children with incarcerated mothers. These challenges include emotional distress, social stigmatization, behavioral issues, psychological maladjustment, and more. Despite the existence of programs aimed at supporting these children, such initiatives often lack a cohesive national policy, resulting in inequality in access and implementation. This study advocates for a comprehensive analysis of the legal context, including trends, sentencing policies, and the rights of the child. It emphasizes the need for a more consistent application of the "best interests of the child" standard in sentencing decisions. At the same time, it analyzes international and national practices and programs situated in addressing said challenges. By evaluating current approaches and proposing reforms, this study aims to provide insights for improving support systems for children affected by maternal incarceration.

**Keywords:** Maternal incarceration, children, emotional distress, socio-legal, policy programs, sentencings

## **1. Introduction**

Incarceration rates have risen dramatically in the last decade. In the current U.S. criminal prison system, incarceration rates have increased more than 800% compared to 1980 [1]. Women, in particular, face unique challenges within this system, exacerbated by gender-specific needs such as access to healthcare for prenatal care and protection against gender-based violence. The situation becomes even more complex for women with children, as they navigate the additional burdens of parenting from behind bars. Alarming, it is estimated that one in 40 American children has a parent in prison, a reality that can severely impact their emotional well-being, psychological health, and legal custody [2]. This is especially true for children aged five to eight, a critical period for emotional and social development, during which parental communication and support are essential.

Statistically, 75% of incarcerated women had children who were under the age of 18 [3]. The absence of these factors from incarcerated mothers can tremendously hinder the growth and development of children. Despite the existence of programs aimed at supporting incarcerated mothers and their children—such as The Residential Parenting Program (RPP) in Washington, Mothers and

Infants Nurturing Together (MINT) in New York, Tamar's Children in Maryland—these initiatives often fall short [4,5]. Typically, these programs are confined to specific facilities or states, lacking a cohesive national policy to support affected families both within and outside of prison walls. Additionally, the variation in program availability and implementation points to a broader issue of inequality within the system.

The current field of suggests that maternal incarceration can have a wide range of negative efforts on children, including emotional distress, social stigmas, and behavioral problems [6]. Despite there being existing research on the impact of maternal incarceration on children, there needs to be more focused studies that analyze various situations case by case. This study will primarily focus on the socio-legal impacts of maternal incarceration on children, aiming to analyze the effects on emotional, social, and physical aspects of life. Understanding the backbone of the current sentencing guidelines are crucial as more insight can be provided to guide policymakers. Moreover, it can emphasize the responsibility of the legal system to weigh in the impact of incarceration on children when enforcing sentencings. More alternative sentencing options can be presented for the best interested of the child.

This paper will be broken into three main sections: the legal context of maternal incarceration, socio-legal impacts on children, and evaluation of current approaches and proposing additional reforms. The first section will establish context for the history of maternal incarceration in the United States, focusing on the rising trends. It will emphasize the broader understanding of the legal framework surrounding current sentencing practices and rights. The second portion of this study will address emotional and social consequences that children experience, as well as the access to healthcare and environmental concerns. The last section will further analyze the existing approaches surrounding this topic and propose potential reforms as suggestions to mitigate future consequences.

## **2. The Legal Context of Maternal Incarceration**

Maternal incarceration is a critical issue that has seen increasing prominence in discussions about criminal justice reform, particularly because of its wide-ranging effects on children and families.

### **2.1. Overview of Maternal Incarceration Trends**

United States currently hold the highest incarceration rate compared to any other countries in the world [7]. As of 2014, there were 215,332 women in prison, where 60% of those women in state prisons have children under 18 years of age [8]. With an average sentence of 4 years or more, there presents a large group of children lacking maternal care and figure in their life [9]. Given that more than half of these imprisoned women have children that are within the age that is most relevant to growth and care, millions of children are left with an absence of maternal figures.

#### **2.1.1. Statistics and Demographic Information**

As previously mentioned, the rate at which women are being incarcerated has risen dramatically in recent decades. They are being recognized as the fastest growing group within our prison system, exceeding the speed that men are being incarcerated [10]. Within the subgroup of incarcerated women, black women are 1.6 times more likely to be imprisoned by white women [11]. Similarly, Latinx women face the same circumstances, with a much higher rate of incarceration compared to white populations. This categorizes a significant issue of ethnic and racial minorities facing incarceration problems, especially when they are inherently viewed as lacking resources and opportunities in society. At the same time, statistics show that 75% of incarcerated women within the U.S. criminal justice system are of reproductive age [6].

### **2.1.2. Factors Leading to Incarceration**

The causes for many cases leading to incarceration of females lies in substance abuse, inflicted traumas, mental health issues, and more [12]. A highly recognized factor that contributes to this is poverty, especially being the only caregiver for their children. The exposure to poverty puts women at a higher risk for vulnerability relating to abuse and violence [13]. Furthermore, it introduces toxic and unstable relationships to those already physically and emotionally vulnerable groups, especially when they come from communities that have high rates of poverty and unemployment. In United States, incarcerated women are being put in the prison system for minor crimes like shoplifting or theft, which are mostly nonviolent in nature [6]. Issues in the criminal justice process itself, such as inadequate legal representation and systemic biases in sentencing, also contribute to high incarceration rates among mothers. Women, especially those of color, often receive harsher sentences for similar offenses compared to their male counterparts.

## **2.2. Sentencing Policies and Practices**

As sentencing policies vary state to state within U.S., there presents a natural disadvantage for many incarcerated mothers when it comes to how each state court may view certain cases. The application of unique circumstances revolving around each case is also different, which provides a further look into specific details surrounding how some mothers may receive lenient or harsher sentencings on the location of where they are tried. This further highlights the complexity in how a sentencing may impact a mother's ability to establish relationships with her children. Furthermore, the lack of consistency in these sentencing practices needs to be addressed and examined to ensure justice and equity.

### **2.2.1. Current Sentencing Guidelines for Mothers**

There are no specific sentencing guidelines in the United States that uniquely address mothers or primary caregivers. Sentencing is generally determined by the nature of the offense, the defendant's criminal history, and statutory guidelines that apply uniformly to all offenders, regardless of their parental status. However, some judges may consider "family circumstances" as a mitigating factor during sentencing. Under the 14th amendment, incarcerated women have a right to parent their children, which is provided within the Constitution. The 14th amendment states that "no state shall deprive any person of life, liberty, or property, without the due process of law" [14]. Both state and federal courts in U.S. must evaluate that factor within the sentencing so the incarcerated mothers can remain that fundamental right, even in prison. In the case presented in *Troxel V. Granville*, the Supreme court acknowledged the fundamental right to parent due to the Due Process Clause. This case serves as underlying argument that incarcerated mothers should be presented with the ability to still parent even in jail, as long as they are fit to do so, which according to precedent supreme court cases, they have never denied the ability for incarcerated parents to parent.

### **2.2.2. Disparities and Challenges in Sentencing**

As previously mentioned, several disparities come to play when evaluating the sentencings involving what crime the mother was involved in and the circumstances surrounding the case. With an analysis of multiple cases surrounding sentencing of mothers, there were variations in how the court considered caring for the children, welfare of children, or did not consider children within the sentencing at all. In one case, a mother, who is referenced as CD, was charged with 2 weeks in prison due to a tax default. However, no mention of her being the only caregiver of her child was mentioned and therefore, there was an inadequate consideration of how that could affect the child in turn. On

the other hand, in another case referenced as *R v McClue*, the Court reduced a sentencing from 18 months to just 8 months [15]. They considered the circumstances that the convicted mother's daughter was emotionally vulnerable due to abandonment issues and other factors. Therefore, these two cases offer an insight into the unequal decisions for these cases, especially weighing in children.

### **2.3. Legal Principles and the Rights of the Child**

In the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for women, Bangkok rules state that "decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children". Although United Nation guidelines are not binding to any specific country, this policy serves as an example of how some organizations have established the fundamental right of the child, especially when the mother is facing time in prison.

#### **2.3.1. The Best Interests of the Child Standard**

In the United States, the concept of the "best interests of the child" is a fundamental principle that guides family courts and child welfare agencies. While this standard is primarily applied in family law cases, such as custody disputes and child welfare interventions, its relevance extends into the realm of criminal sentencing, especially when considering the fate of children whose mothers are facing incarceration. This legal standard requires that all decisions affecting a child must prioritize the health, safety, and well-being of the child above all else. Judges are encouraged to consider the potential impacts of maternal incarceration on children, including the risks of emotional trauma, social stigmatization, and the disruption of developmental needs. However, the application of this principle in criminal courts is not mandatory and can vary widely depending on the judge's discretion and the specifics of the case. Advocates argue for a more consistent application of this principle in sentencing decisions to mitigate the adverse effects on children.

In an evaluation study, the author examined preschool children that were separated from their mothers due to incarceration and those that remained with them during the first 18 months in a prison nursery. The results demonstrated that the separation caused increase of anxiety and depression from the mother, while the children that remained in co-residence showed some level of resilience. This example provides an alternative examination of what fits the best interest of the child when it comes to the problem of maternal incarceration.

#### **2.3.2. International Conventions and National Laws**

Internationally, several conventions address the rights of children and provide frameworks that could influence U.S. policies. The most significant of these is the United Nations Convention on the Rights of the Child (UNCRC), which has been ratified by almost every country except the United States. The UNCRC articulates a comprehensive set of rights for children and stipulates that the best interests of the child should be a primary consideration in all actions concerning children.

While the U.S. has not ratified the UNCRC, its principles align with many aspects of American law through other international treaties and federal and state laws. For example, the International Covenant on Civil and Political Rights, to which the U.S. is a signatory, includes provisions for the protection of family life that can be interpreted to support maintaining family unity when sentencing mothers. At the national level, laws such as the Adoption and Safe Families Act (ASFA) emphasize the importance of children's health and safety in making decisions about foster care and adoption. There are also legislative initiatives aimed at reducing the incarceration rates of primary caregivers and promoting alternative sentencing options that consider the impact on children.

The best interest principle of the child has been adopted by many other countries, particularly in terms of legislation and policy initiatives. For example, Australia's Standard Guidelines for

Corrections focus on maintaining parent-child bonds through flexible visiting arrangements and family units in prisons. Similarly, the European Prison Rules advocate for conditions that support healthy familial interactions during visits. Scandinavian countries like Sweden and Norway prioritize rehabilitative programs that include parenting classes and allow young children to stay with their mothers under certain conditions. Canada also supports this approach with its Mother-Child Program, which enables children under six to live with their incarcerated mothers. These documents emphasize the importance of keeping the child's best interests at the forefront, asserting that children have the right to maintain a relationship with their incarcerated mothers whenever it is beneficial. The decision to allow children to reside with their incarcerated mothers in prison should always prioritize what best serves the child's overall well-being and development.

### **3. The Socio-Legal Impacts on Children**

The separation of a child from their mother due to incarceration brings about profound emotional and psychological effects that are often not sufficiently considered in sentencing decisions. Recognizing and addressing these impacts is crucial not only for the child's current well-being but also for their long-term development and social integration.

#### **3.1. Emotional Impacts**

Studies on maternal incarceration reveal significant challenges in emotional regulation among affected children, who often exhibit heightened levels of anger, frustration, and irritability. These emotional disturbances can lead to behavioral issues and, over time, may evolve into antisocial behaviors, increasing the likelihood of juvenile convictions and continued patterns of incarceration into adulthood. A meta-analysis led by researchers including Murray highlighted that children with incarcerated parents are twice as likely to develop poor mental health and exhibit antisocial behavior compared to their peers with non-incarcerated parents [16]. This demonstrates how the absence of skills to combat negative emotions and expressions can create problems in the future regarding social competence.

##### **3.1.1. Psychological Distress and Developmental Issues**

Adults with unsupportive reactions and lacking understanding in the child's emotions can result in negative psychological reactions such as depression. Due to the unstable relationship that many children have with their incarcerated mothers, it forms an insecure attachment for them to express their emotional needs. Thus, unnoticed emotions could increase the risk for psychological problems. The accumulation of unregulated emotional expression will create internal conflicts. For instance, it may increase feelings of guiltiness regarding wrongdoings and powerlessness. In turn, it will direct the child to the path of self-blame and condemnation, which may be difficult to change. Many research studies reported that children with incarcerated mothers also face long-term traumas and detachment from their new caregivers. Other psychological issues include post-traumatic stress disorder and disrupting memories of mother's incarceration.

##### **3.1.2. Attachment and Separation Anxiety**

The separation from the mother figure in a child's life can be detrimental, especially when the child is old enough to realize and process major events in his or her life. Unstable living environments and lack of contact from mothers can result in anxiety, depression and aggressive behaviors. Since the mother is the main caregiver for children, children are much more likely to face excessive amounts of disruption in their lives, even after being placed in foster care. Attachment plays a crucial role in



children's adjustment to maternal incarceration, with stronger attachments reducing the risk of delinquency. Interruptions in emotional bonding due to maternal incarceration can have detrimental effects on children's emotional and cognitive development, increasing the likelihood of delinquency even after the mother's release from prison.

### **3.2. Social Impacts**

Looking from a social perspective, children of incarcerated mothers are severely limited in socialization and support, especially from the mother. It also removes the potential resources for positive parenting practices to occur and therefore, prohibits proper social control. This disruption can increase the likelihood of delinquency and association with delinquent peers.

#### **3.2.1. Stigmatization and Social Exclusion**

Studies have shown that children of incarcerated mothers often face severe social stigmatization, which can manifest in disruptive behaviors such as initiating fights, causing violence, or withdrawing from social activities. These behaviors reflect the children's struggles with peer relationships and self-regulation, as they are more likely to associate with peers who are similarly disenfranchised or viewed negatively within the school environment. The stigma attached to having an incarcerated parent can profoundly affect their social identity, leading to isolation and exclusion from mainstream social and educational opportunities.

#### **3.2.2. Educational Challenges and Social Development**

The educational trajectory of children with incarcerated mothers is frequently marred by significant challenges. These children often struggle with concentration, adapting to new schools, and completing assignments, resulting in lower academic achievement. Research indicates that young children with incarcerated mothers tend to develop lower IQ scores and higher dropout rates. Teenagers face increased risks of suspension, failing classes, and higher absenteeism compared to their peers without incarcerated parents. These educational setbacks are often exacerbated by a combination of factors, including instability in home life, emotional distress, and societal stigma associated with having an incarcerated parent. The cumulative impact of these challenges places these children at a significant disadvantage, stymieing their educational progress and social development.

### **3.3. Physical and Health Impacts**

The physical and health impacts on children of incarcerated mothers are multifaceted and significant, often compounded by the mother's prior challenges such as substance and drug abuse. The absence of a primary caregiving figure like the mother can lead children to adopt similar unhealthy behaviors, lacking the necessary guidance and support to resist these influences. Moreover, the absence of positive role models can hinder their ability to maintain healthy lifestyles, which is crucial for their physical and mental well-being.

#### **3.3.1. Access to Healthcare and Nutritional Needs**

The exposure to maternal incarceration could leave the child without adequate healthcare and nutrition. It could leave children with an absence of a usual source of medical care and aid. For example, a recent study found that there are 123,703 children with no regular place of source of care including dental care and mental health needs. Although there have been some improvements on children's health care access, there still remains inconsistencies in making it more accessible for children exposed to maternal incarceration, especially regarding lack of insurance policies. Rates of

“delayed” and “foregone” mental health start increasing during childhood when they undergo the process of having parental figures in jail.

### **3.3.2. Environmental and Safety Concerns**

The environment in which the child is left to after the incarceration of a parent can be detrimental as well. The stability of home that was once experienced by the child will be lost, which can lead to a feeling of homelessness. Without proper resources to help remove that stress, it can lead to mental health issues well into the adult years. Furthermore, the quality of the family environment is decreased, especially when the child is placed in the foster care system, leading to unstable home environments. Thus, it may produce a lack of belonging for kids. The safety of the environment is also seen to be unlikely when sociodemographic risks come into play through caregivers as well.

## **4. Evaluating Current Approaches and Proposing Reforms**

In many countries, there have been policies, initiatives, and programs aimed at improving the lives of children with incarcerated mothers as well as the mothers themselves. However, not every program can address the problems that were mentioned above including emotional and psychological adjustments.

### **4.1. Analysis of Current Legal and Social Support Systems**

Currently, there are several Mother-Child programs that allow pregnant or mothers with children in a certain age group to be housed in a supervised facility. While can be an effective approach at times, many of these programs have variability in program characteristics and eligibility criteria. It found wide variations in eligibility criteria among MCPs, with some programs not clearly defining their criteria and others having conflicting requirements. For example, some programs require pregnancy for participation, while others allow mothers with up to three children. In Canada, the federal MCP requires applicants to have a child four years or younger, be classified as medium or minimum security, and have no convictions endangering a child. One example of social support program is the Big Brothers Big Sisters Amachi mentorship program, which matches children and teens with incarcerated parents with adults within the same community. They focus on recreational and cultural activities for unity. Similarly, the MCP program also advocates for mentors and mentees to engage in various educational and cultural activities to improve happiness, self-confidence and active social expressions.

#### **4.1.1. Limitations of Existing Support Mechanisms**

Despite the potential benefits, there are significant limitations to these programs. For mother-child programs, some may feel guilty to bring their children into the prison environment. Although it would benefit the child to a certain extent to be with their primary caregiver, which is most likely the mother, the child may be easily influenced by the environment and thus, not have a full experience of integrating into mainstream society. Additionally, some studies found the social support systems are beneficial, but still demonstrates no significant improvements regarding mental health.

#### **4.1.2. Role of Child Welfare Agencies**

In the U.S., some child welfare agencies include the Children of Incarcerated Parents Support Group and the Annie E. Casey Foundation provide vital support to children with incarcerated parents, although their focus is not exclusively on mothers. These organizations manage a variety of situations needing further assistance through local chapters that offer support groups and educational resources.

They also advocate for policies that ensure children have regular opportunities to visit their incarcerated parents. The Annie E. Casey Foundation, in addition to offering direct support similar to the CIPS, provides grants to schools to aid children with incarcerated parents and continues to research the broader impacts of parental incarceration on children. To better address the needs of these children, it is essential to refine these programs and expand their scope, ensuring that they not only meet immediate needs but also contribute to the long-term well-being and social integration of children affected by maternal incarceration.

## **4.2. Case Studies: Innovative Practices and Policies**

It's necessary to analyze current strategies adopted in certain states to provide effective practices. The Family Preservation Project, or FPP, is an organization focused in California where they present opportunities for educational and counseling classes for incarcerated mothers and their children while bridging connections for them, despite being in different environments. There has been positive feedback regarding the effectiveness of this program and at aiding mothers for reentry into society. Additionally, the Women and Infants' Service Enhancement program located in New York targets pregnant mothers in the prison system with services like support groups and interventions, which has demonstrated improvements in this field as well.

### **4.2.1. Alternative Sentencing Programs Focusing on Family Unity**

With the goal of focusing on family unity, one program fulfills such tasks that helps keep families affected by incarceration in check. The Family Alternative Sentencing Program (FASP) allows mothers to fulfill their sentencing while living with their children under supervision within a specific facility. Along with that, their larger mission is to address gaps within the mother to child relationship and strengthen it to prevent children from entering into foster care and even juvenile prisons. This is a progressing resource and while it is not implemented in all states in United States, it still redirects a pathway that relieves conflicting relationships and prevents excessive separation.

### **4.2.2. International Models of Dealing with Parental Incarceration**

International examples of aiding incarceration effects on children are also valuable to evaluate. In Germany, the Mutter -Kind-Haus provides similar initiative like the FASP program in the United States. By allowing children and the mothers to live together, it offers a inclusive environment where bonding between parents and children still occurs. Furthermore, the Parents Inside Out in Australia focuses more on the connection of the incarcerated parents and children while still in separate environments. Similar to previous programs, it also provides counseling, housing, employment opportunities, and support groups.

## **4.3. Recommendations for Policy and Practice**

### **4.3.1. Incremental Improvements in Family Support Initiatives**

To enhance the effectiveness of policies and programs for children of incarcerated mothers, it is crucial to implement changes incrementally. With numerous existing policies aimed at supporting these families, starting with specific, targeted improvements can smooth the process and prevent the complications associated with family reintegration and maladjustment. Prioritizing regular visits, using technology for virtual interactions, can make maintaining contact more feasible than in-person visits, particularly when physical visits present challenges. Such regular contact has been shown to mitigate the socio-demographic and caregiving risks faced by children of incarcerated mothers.



Moreover, expanding mental health programs to include specialist-guided discussions about the mother's incarceration can help children understand and process their circumstances at an appropriate age, reducing feelings of self-blame that hinder development. Beyond supporting children, enhancing focus on the mothers—who are often primary caregivers—is also vital. Ensuring that mothers understand the impact of their incarceration on their children and supporting them in maintaining positive relationships through parenting classes and counseling is essential. Additionally, facilitating mothers' reentry into society with housing, employment, and educational support can significantly improve outcomes for both mothers and their children.

#### **4.3.2. Integrating Child Welfare Considerations into Sentencing Decisions**

Like previously mentioned, judges and courts should be weighing in the factors of how sentencings for mothers may impact the children. If the crime itself is minor such as shoplifting or has a one year or less possible sentence, alternative options should be considered. For example, community service and drug rehabilitation programs can be explored so that the mother figure is not miscounted for during critical years of growth physically, psychologically, and emotionally for the children. Furthermore, cases should also consider the developmental stage which the child is in, to better suit the best interests of the child.

#### **4.3.3. Enhancing Support Systems for Children Affected by Maternal Incarceration**

Although current social support systems are targeting various aspects of the child's life affected by maternal incarceration, several other routines can be implemented to enhance how it is administered. One example would be providing more peer support rather than adults. This could facilitate a sense of belonging as the children may bond over similar situations and allow themselves to open up. Moreover, there are other alternative methods of therapy for mental well-being. Options like dance, music, or art therapy can be a refreshing take for these children to express themselves through actions instead of words. In all, these unique approaches may improve the current support systems in place.

### **5. Conclusion**

As maternal incarceration rates increase, more children are being separated from their primary caregivers, which then leads to negative outcomes emotionally, psychologically, socially, and more. Although there are already significant accomplishments in terms of effective policies and standards adopted in certain states and countries, it still leaves more room for improvement. These disparities often leave families without the support they critically need, as not all programs are available universally, leading to uneven impacts on affected children and their mothers.

In connection with the legal perspective on maternal incarceration, there also needs to be a consistency in applying the best interests of the child standard. On a social level, various factors have been identified by studies such as increased behavioral problems and developmental issues in children with incarcerated mothers. The consequences can often lead to association of violence and an influence from the incarcerated mothers of similar crimes, providing increased risk of juvenile delinquency. Current programs focusing on family unity provides a refreshing approach and may offer a blueprint for more countries to adopt such policies and improve support systems to help families adapt socially to the environment. Lastly, there needs to be a more comprehensive and standard approach to these problems in issuing a universal “standard of practice”.

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