

**COST-EFFECTIVE JUVENILE JUSTICE  
REFORM: LESSONS FROM THE JUST  
BEGINNING “BABY ELMO” TEEN PARENTING  
PROGRAM\***

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*This Article reviews the literature describing the rise of mass incarceration and its effects on individuals, families, and communities. The Article then describes the Just Beginning “Baby Elmo” Program, a cost-effective, sustainable parental instruction and child visitation intervention created for use with incarcerated teen parents. This intervention is designed to increase the quality of interaction between parent and child, increasing the likelihood that the teen father and child will form a positive relationship and maintain that relationship after release from detention—thereby increasing the child’s resilience and reducing the risk of recidivism for the teen father. The “Baby Elmo” Program is one of a number of intervention programs that attempt to address the significant and debilitating effects of mass incarceration by improving family relationships, school performance, and in-detention compliance, hopefully reducing recidivism and facilitating reentry of incarcerated youth into their families and communities.*

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## INTRODUCTION

The challenges faced by poor urban families of color have been well documented for decades; however, in some ways, the problems have gotten worse. Since the 1980s, the rates of incarceration for African American, Latino, and Native American men in the United States have soared.<sup>1</sup> The lack of employment and educational opportunities compounded by drastic cuts to social programs and education in poor urban areas have families and communities struggling to maintain viability.<sup>2</sup> Changes in legislation, the imposition of strict sentencing guidelines, and the rise of a profitable, private prison system have resulted in a criminal justice system characterized by racial inequality and mass incarceration.<sup>3</sup> Over time, the confluence of zero-tolerance policies in the education system, aggressive policing strategies, prosecutorial biases, and penalties for technical violations of parole resulted in the incarceration of large numbers of young men of color.<sup>4</sup> These incarcerations further

1. Christopher Wildeman & Bruce Western, *Incarceration in Fragile Families*, 20 FUTURE OF CHILD., no. 1, 2010, at 157, 157–58 [hereinafter *Fragile Families*]; see Bruce Western & Christopher Wildeman, *The Black Family and Mass Incarceration*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 221, 222, 224–25 (2009) [hereinafter *The Black Family and Mass Incarceration*].

2. *Fragile Families*, *supra* note 1, at 158–59 (describing the lack of educational opportunities, employment opportunities, and social programs); *The Black Family and Mass Incarceration*, *supra* note 1, at 224 (describing the effect of deunionization). See generally WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS AND PUBLIC POLICY* (1987) (analyzing the causes of and potential remedies for inner-city poverty).

3. See PHILIP MATTERA & MAFRUZA KHAN, *GOOD JOBS FIRST: THE INSTITUTION ON TAXATION & ECONOMIC POLICY, JAIL BREAKS: ECONOMIC DEVELOPMENT SUBSIDIES GIVEN TO PRIVATE PRISONS* 1–3 (2001) (describing the rise of the private prison system); Robert Sampson, *Criminal Justice Processing and the Social Matrix of Adversity*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 296, 298–99 (2014); *The Black Family and Mass Incarceration*, *supra* note 1, at 227 (describing racial disparities in incarceration); *Fragile Families*, *supra* note 1, at 159–62 (describing the causes of mass incarceration and racial disparities in incarceration).

4. See DOUGLAS W. NELSON, *KIDS COUNT, A ROAD MAP FOR JUVENILE JUSTICE REFORM* 11–12 (2008) (describing the increase in zero-tolerance policies and its effect on incarceration of juveniles); Kristin Henning, *Criminalizing Normal Adolescent Behavior in*

marginalize the socioeconomically disadvantaged and significantly limit opportunities—creating an intergenerational pattern of poverty and involvement in the criminal justice system.<sup>5</sup> A large body of research demonstrates children of incarcerated parents are subject to greater risk of poverty, violence, health, and behavior problems, as well as incarceration for criminal behavior, than their peers without an incarcerated parent.<sup>6</sup> African American males who do not finish high school have a two in three chance of being incarcerated.<sup>7</sup> A report published by the Annie E. Casey Foundation noted that each year in the United States, 2.2 million juveniles are arrested; 1.7 million juveniles have their cases referred to juvenile courts; 400,000 youngsters spend some period of time in juvenile detention centers; and almost 100,000 youth are kept in juvenile jails, prisons, boot camps, and other residential facilities on any given night.<sup>8</sup> The Office of Juvenile Justice and Delinquency Prevention reports that twenty percent of children in custody either have or are expecting children.<sup>9</sup>

These teens, the majority of whom are incarcerated for nonviolent offenses,<sup>10</sup> are locked up in harsh, overcrowded detention centers or adult prisons with more aggressive individuals at the very time during which their identity and their models of relating to partners, children, the community, and potential employers are being

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*Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 410, 420–26 (2013) (describing zero-tolerance policies, prosecutorial biases, and penalties for technical violations of parole); Aaron Kupchik & Torin Monahan, *The New American School: Preparation for Post-Industrial Discipline*, 27 BRIT. J. SOC. EDU. 617, 620–23 (2006) (describing increased police presence in schools); *Fragile Families*, *supra* note 1, at 170 (discussing technical parole violation penalties).

5. ANN M. NURSE, FATHERHOOD ARRESTED: PARENTING FROM WITHIN THE JUVENILE JUSTICE SYSTEM 1–3 (2002); *Fragile Families*, *supra* note 1, at 157, 168.

6. Amanda Geller et al., *Parental Incarceration and Child Well-Being: Implications for Urban Families*, 90 SOC. SCI. Q. 1186, 1187, 1190, 1196 (2009) (describing diminished financial resources); Joseph Murray & David P. Farrington, *Parental Imprisonment: Effects on Boys' Antisocial Behaviour and Delinquency Through the Life-Course*, 46 J. CHILD. PSYCHOL. & PSYCHIATRY 1269, 1269–77 (2005); *Fragile Families*, *supra* note 1, at 166 (describing diminished earning power of incarcerated parents).

7. *Fragile Families*, *supra* note 1, at 161.

8. NELSON, *supra* note 4, at 1, 3.

9. Andrea J. Sedlack & Carol Bruce, *Youth's Characteristics and Backgrounds: Findings from the Survey of Youth in Residential Placement*, JUV. JUST. BULL. (Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention), December 2010, at 6, available at <https://syrp.org/images/Youth%20Characteristics.pdf>. Similarly, in California, over 25% incarcerated youth are fathers and in Ohio, the number is 22.4%. NURSE, *supra* note 5, at 1.

10. THE ANNIE E. CASEY FOUND., YOUTH INCARCERATION IN THE UNITED STATES 1–2 (2013), available at <http://www.aecf.org/m/resourcedoc/aecf-Youth-IncarcerationInfographic-2013.pdf>.

formed.<sup>11</sup> This interferes with the social conditions that contribute to adolescents' healthy psychological development.<sup>12</sup> Research indicates that such incarceration often leads boys to exhibit hypermasculinized behavior that is not supportive of positive parenting roles.<sup>13</sup> Maintaining family ties during the incarceration period has been shown to have positive effects for fathers as well as for children.<sup>14</sup> In fact, the strongest predictor of a child's ability to adjust to the initial separation from a parent is the quality of the parent-child relationship.<sup>15</sup> In addition, maintaining contact with family increases the probability of post-incarceration success among males.<sup>16</sup> Despite these findings, significant barriers exist for children to engage in positive interactions with their incarcerated teen parents.<sup>17</sup>

This Article reviews the literature describing the rise of mass incarceration and its effects on individuals, families, and communities. The Article then describes the Just Beginning "Baby Elmo" Program, a cost-effective, sustainable parental instruction and child visitation intervention created for use with incarcerated teen parents.<sup>18</sup> The intervention is designed to increase the quality of interaction between parent and child, increasing the likelihood that the teen parent and child will form a positive relationship and maintain that relationship after release from detention. This positive relationship will hopefully increase the child's resilience and reduce the risk of recidivism for the teen parent.<sup>19</sup> The Just Beginning "Baby Elmo" Program is one of a number of intervention programs that, by improving the father-child

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11. Kate Shade et al., *Adolescent Fathers in the Justice System: Hoping for a Boy and Making Him a Man*, 23 QUALITATIVE HEALTH RES. 435, 435–36 (2012).

12. *See id.*

13. *Id.*

14. Rachel Barr et al., *Delivering Services to Incarcerated Teen Fathers: A Pilot Intervention to Increase the Quality of Father-Infant Interactions During Visitation*, 11 PSYCHOL. SERVICES 10, 10 (2014).

15. Rodd D. Parke & K. Alison Clarke-Stewart, *Effects of Parental Incarceration on Children: Perspectives, Promises, and Policies*, in PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES 189, 204 (Jeremy Travis & Michelle Waul eds., 2003).

16. Creasia Finney Hairston, *Family Ties During Imprisonment: Do They Influence Future Criminal Activity?* 52 FED. PROBATION 48, 49 (1988) [hereinafter Hairston, *Family Ties: Do They Influence Future Criminal Activity?*]; see Creasia Finney Hairston, *Family Ties During Imprisonment: Important to Whom and for What?* 18 J. SOC. & SOC. WELFARE 87, 97–98 (1991) [hereinafter Hairston, *Family Ties: Important to Whom and for What?*].

17. Rachel Barr et al., *The Baby Elmo Program: Improving Teen Father-Child Interactions Within Juvenile Justice Facilities*, 33 CHILD. & YOUTH SERVICES REV. 1555, 1556 (2011)

18. *See generally id.* (analyzing the program from a social science perspective).

19. *Id.* at 1560.

relationship, attempts to address the risk of significant and debilitating effects of mass incarceration on family relationships, school performance, and in-detention compliance, as well as reducing recidivism and facilitating reentry of incarcerated youth into their families and communities.<sup>20</sup>

## I. THE RISE OF MASS INCARCERATION

### A. *The Rise of Mass Incarceration of Adults*

The United States is the world's leader in incarceration, with approximately 2.2 million people currently incarcerated, but this has not always been the case.<sup>21</sup> Up to the mid-1970s, rates of incarceration in the United States were low and relatively stable.<sup>22</sup> However, by 2013, more than one percent of American adults were incarcerated.<sup>23</sup> This represents the highest documented incarceration rate in the world.<sup>24</sup> These soaring rates of incarceration reflect significant structural changes and the rise of a punitive criminal justice system that has impacted the economic and social life of undereducated urban men.<sup>25</sup> While the poverty of many African American families can be traced to a history of slavery and discrimination,<sup>26</sup> until the mid-1970s, many urban African American families were able to survive on wages from jobs requiring only a high school education.<sup>27</sup> After that time, widespread loss of manufacturing jobs and the destabilization of unions resulted in increasing unemployment and decreasing wages for unskilled workers.<sup>28</sup> The few social programs that provided temporary assistance lacked an effective strategy to address this structural unemployment and its negative effects for

20. Barr et al., *supra* note 14, at 10–12.

21. See *Incarceration*, SENTENCING PROJECT, <http://www.sentencingproject.org/template/page.cfm?id=107> (last visited Apr. 30, 2015).

22. See *id.*; *Incarceration Rate: 1925-2001*, PRISON POL'Y INITIATIVE, <http://www.prisonpolicy.org/graphs/incarcerationrate.html> (last visited Apr. 30, 2015).

23. Ezra Klein & Evan Soltas, *Wonkbook: 11 Facts About America's Prison Population*, WASH. POST (Aug. 13, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/08/13/wonkbook-11-facts-about-americas-prison-population/>.

24. ROY WALMSLEY, INT'L CTR. FOR PRISON STUDIES, WORLD PRISON POPULATION LIST 1 (2013), available at [http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wpp1\\_10.pdf](http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wpp1_10.pdf).

25. *The Black Family and Mass Incarceration*, *supra* note 1, at 221–23, 228; *Fragile Families*, *supra* note 1, at 159–60.

26. See DANIEL PATRICK MOYNIHAN, U.S. DEP'T OF LABOR, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 16 (1965).

27. See *The Black Family and Mass Incarceration*, *supra* note 1, at 224; *Fragile Families*, *supra* note 1, at 159.

28. *Fragile Families*, *supra* note 1, at 159; see WILSON, *supra* note 2, at 12, 100–02, 135.

individuals, families, and communities.<sup>29</sup> Without the skills and opportunities to compete in the legal labor market, many urban poor turned to the illicit drug trade as a source of employment and income replacement.<sup>30</sup>

By the mid-1980s, changes in legislation led to stringent sentencing guidelines, particularly for drug-related crimes.<sup>31</sup> Increasing budget concerns and overcrowding in the prison system fueled the expansion of the private prison business.<sup>32</sup> Proponents of private prisons promised taxpayers a system that would reduce costs and address the overcrowding caused by harsher drug laws and sentencing rules.<sup>33</sup> The number of private prisons in the United States increased dramatically from the mid- to late-1980s in order to accommodate the newly incarcerated urban poor in what has been described as a “recession-proof” industry.<sup>34</sup> Revenues of the industry leader, Corrections Corporation of America, grew from about \$14 million in 1984 to more than \$120 million in 1994.<sup>35</sup> The total capacity of secure adult facilities under private management increased from about 3,000 beds in 1987 to more than 20,000 in 1992, and increased annually more than 50% from 1992 to 1994, and more than 25% during the next few years.<sup>36</sup>

While the rise of mass incarceration brought prosperity to shareholders in the private prison industry,<sup>37</sup> the effects were devastating for individuals and families in poor urban communities.<sup>38</sup>

29. *The Black Family and Mass Incarceration*, *supra* note 1, at 224.

30. *Id.* at 225; see PETER REUTER ET AL., *MONEY FROM CRIME: A STUDY OF THE ECONOMICS OF DRUG DEALING IN WASHINGTON, D.C.* 1–2 (1990) (describing the drug trade in Washington, D.C.); Jeffrey Fagan & Richard B. Freeman, *Crime and Work*, 25 *CRIME AND JUST.* 225, 226–27 (1999) (describing economic motivations for the urban poor’s participation in drug trade and other crime); Richard B. Freeman, *Why Do So Many Young Americans Commit Crimes and What Might We Do About It?*, 10 *J. ECON. PERSP.* 25, 31–32 (1996) (providing data on the increased participation in the drug trade); Sudhir Alladi Venkatesh & Steven D. Levitt, *Are We a Family or a Business? History and Disjuncture in the Urban American Street Gang*, 29 *THEORY AND SOC’Y* 427, 446–47 (2000).

31. *Fragile Families*, *supra* note 1, at 170.

32. MATTERA & KHAN, *supra* note 3, at 2.

33. *Id.*

34. Bruce Bursma, *Social Woes Fuel Prison Firm’s Growth*, *CHI. TRIB.* (Jan. 28, 1991), [http://articles.chicagotribune.com/1991-01-28/business/9101090044\\_1\\_corrections-corp-inmate-population-prison-system](http://articles.chicagotribune.com/1991-01-28/business/9101090044_1_corrections-corp-inmate-population-prison-system).

35. MATTERA & KHAN, *supra* note 3, at 1–2.

36. *Id.* at 3.

37. *Id.* at 2–3.

38. *The Black Family and Mass Incarceration*, *supra* note 1, at 233–41 (describing the devastating effects of incarceration on marriage and family life); *Fragile Families*, *supra* note 1, at 162–69.

By the late 1990s, despite a decrease in the crime rate, young disadvantaged males faced a higher risk of being sent to prison under stricter legislation and sentencing guidelines.<sup>39</sup> As a result, an increasing number of young men of color were removed from their communities and placed in prisons for nonviolent behavior.<sup>40</sup> Of those born between 1975 and 1979, over 20% experienced imprisonment.<sup>41</sup> For African Americans who had not completed high school who were reaching their mid-thirties in the 1990s, 60% to 70% percent went to prison.<sup>42</sup> By the first decade in this century, researchers noted these young men were more likely to end up behind bars than in the workforce.<sup>43</sup>

The incarceration rate for African Americans is about 3,074 per 100,000 residents,<sup>44</sup> which is more than seven times the rate of their white counterparts.<sup>45</sup> A young African American male has a one in three chance of being incarcerated in his lifetime, a rate that doubles if he was born into a family of low socioeconomic status.<sup>46</sup> Bruce Western and Becky Pettit, two leading scholars in the field of social inequality, note that the growth in imprisonment created a “new social group, a group of social outcasts who are joined by the shared experience of incarceration, crime, poverty, racial minority, and low education” that is transmitted from generation to generation.<sup>47</sup> Pettit and Western further note that the rate of incarceration for African American men with little education is so high that young black men without a high school diploma are “more likely to be locked up than employed.”<sup>48</sup> Rates of prison pay are marginal, further reducing an

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39. *The Black Family and Mass Incarceration*, *supra* note 1, at 232–33; see JENNI GAINSBOROUGH & MARC MAUER, *THE SENTENCING PROJECT, DIMINISHING RETURNS: CRIME AND INCARCERATION IN THE 1990S*, at 3 (2000); Alfred Blumstein & Allen J. Beck, *Population Growth in U.S. Prisons, 1980–1996*, 26 *CRIME & JUST.* 17, 22, 48, 50–52, 55 (1999).

40. *Fragile Families*, *supra* note 1, at 160–61.

41. *Id.* at 160.

42. *The Black Family and Mass Incarceration*, *supra* note 1, at 231.

43. John Tierney, *Prison and the Poverty Trap*, *N.Y. TIMES* (Feb. 19, 2013), [http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html?pagewanted=all&_r=0).

44. PAUL GUERINO, PAIGE M. HARRISON & WILLIAM J. SABOL, *BUREAU OF JUSTICE STATISTICS, NCJ 236096, PRISONERS IN 2010*, at 7 (2012), *available at* <http://www.bjs.gov/content/pub/pdf/p10.pdf>.

45. Bruce Western & Becky Pettit, *Incarceration and Social Inequality*, 3 *DAEDALUS* 8, 9 (2010).

46. Nancy E. Dowd, *Unfinished Equality: The Case of Black Boys*, 2 *IND. J.L. & SOC. EQUALITY* 36, 45 (2013).

47. Western & Pettit, *supra* note 45, at 8.

48. *Id.* at 12.

inmate's ability to provide support for the family and deepening the poverty that they, their families, and their communities must endure.<sup>49</sup>

*B. The Rise of Mass Incarceration of Youth*

Although juvenile justice systems were originally created in recognition that adolescents should be treated differently from adults,<sup>50</sup> by the 1990s entrenched negative stereotypes about youth of color and widespread false perceptions that hardened and untreatable teen “superpredators” were responsible for an increase in serious crime contributed to the “third wave” of juvenile justice reform in which a majority of states increased (1) the types of crimes for which adolescents could be or must be tried in adult court and (2) the severity and determinate nature of sentencing in juvenile court.<sup>51</sup> Encapsulated by the “do the crime, do the time” mentality, the assumptions about adolescents’ equivalence to adults underlying these changes spurred a robust research enterprise that evaluated and ultimately debunked many of these assumptions. Instead, research showed that: (1) youth are less psychologically mature decision makers than adults in ways that implicate culpability, including difficulties in conceptualizing future consequences and a heightened susceptibility to peer pressure;<sup>52</sup> (2) the majority of those who display

49. See Josh Kovensky, *It's Time to Pay Prisoners the Minimum Wage*, NEW REPUBLIC (Aug. 15, 2014), <http://www.newrepublic.com/article/119083/prison-labor-equal-rights-wages-incarcerated-help-economy> (advocating for raising wages for inmates and listing current wages paid as low as twenty-five cents per hour and the maximum wage in federal prison at one dollar fifteen cents per hour); see also Western & Pettit, *supra* note 45, at 13 (noting that “serving time in prison was associated with a 40 percent reduction in earnings and with reduced job tenure, reduced hourly wages, and higher unemployment”).

50. See Henning, *supra* note 4, at 388–91 (noting that juvenile courts were established “based on the assumption that children were less culpable than adults and more responsive to rehabilitation”).

51. See Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 149–50 (1997); David S. Tanenhaus & Steven A. Drizin, “Owing to the Extreme Youth of the Accused”: *The Changing Legal Response to Juvenile Homicide*, 92 J. CRIM. L. & CRIMINOLOGY 641, 642 (2002) (quoting John J. Dilulio Jr., *Moral Poverty*, CHI. TRIB. (Dec. 15, 1995), [http://articles.chicagotribune.com/1995-12-15/news/9512150046\\_1\\_crime-talking-bomb/3](http://articles.chicagotribune.com/1995-12-15/news/9512150046_1_crime-talking-bomb/3)) (noting concerns “that the juvenile court was ill-equipped to deal with . . . the so-called ‘juvenile superpredator’ ” and detailing legislative responses).

52. See ELIZABETH S. SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 37 (2008) (describing the influence of peer pressure among youth, their inability to recognize future consequences, and their propensity to underestimate the danger of activity); Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 555–56 (2000) (noting the contribution of inexperience and immaturity to bad choices); see also Dustin Albert & Laurence Steinberg, *Judgment and Decision Making in Adolescence*, 21 J. RES. ON ADOLESCENCE 211, 216–20 (2011) (describing cognitive development in adolescents); Margo Gardner & Laurence Steinberg, *Peer Influence on*

delinquent behavior as teens cease to do so as they mature;<sup>53</sup> and (3) evidence indicated that the incarceration of teens does not decrease recidivism.<sup>54</sup>

Moreover, the 1990s saw new zero-tolerance policies in schools create a pipeline of youth, especially those of color, into the juvenile justice system, with long lasting effects.<sup>55</sup> Since that time, the number of school-based law enforcement personnel has soared.<sup>56</sup> School districts in many states implemented their own police departments.<sup>57</sup> Georgetown Law Professor Kristin Henning notes that, as an example, Texas has 163 school districts with their own police departments.<sup>58</sup> Under zero-tolerance policies, many children, especially children of color, who engage in what was formerly considered typical adolescent behavior such as mischief, defiance, or ordinary schoolyard fights are no longer sent to the principal's office,

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*Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEVELOPMENTAL PSYCHOL. 625, 632 (2005) (finding that “[b]etween adolescence and adulthood there is a significant decline in both risk taking and risky decision making”); Elizabeth S. Scott, *Criminal Responsibility in Adolescence: Lessons from Developmental Psychology*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 291, 302–05 (Thomas Grisso & Robert G. Schwartz eds., 2000) (noting that “research does not demonstrate that youthful cognitive decision-making capacity is like that of adults”); Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Influence*, 43 DEVELOPMENTAL PSYCHOL. 1531, 1538–39 (2007) (finding “that resistance to peer influence increases linearly over the course of adolescence, especially between ages 14 and 18”).

53. Henning, *supra* note 4, at 401 (citing Brief for Am. Psychological Ass’n et al. as Amici Curiae Supporting Petitioners at 33, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647), 2012 WL 174239, at \*33); *see also* Terrie E. Moffitt, *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 PSYCHOL. REV. 674, 687 (1993) (finding a decline in membership in delinquent groups after age seventeen).

54. *See* NELSON, *supra* note 4, at 10 (noting that “recidivism studies routinely show that 50 to 80 percent of youth released from juvenile correctional facilities are rearrested within 2 to 3 years”); Henning, *supra* note 4, at 418 (citing Jeffrey Fagan & Tracey L. Meares, *Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities*, 6 OHIO ST. J. CRIM. L. 173, 176–77, 180 (2008) (discussing the failure of punitive legal sanctions like incarceration to reduce crime, especially in poor communities of color)).

55. Henning, *supra* note 4, at 410–11.

56. *Id.*; *see also* AMANDA PETERUTI, JUST. POL’Y INST., EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS 1 (2011), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest\\_fullreport.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf) (“[T]he past 20 years have seen an expansion in the presence of law enforcement, including school resource officers (SROs), in schools.”).

57. Henning, *supra* note 4, at 410.

58. *Id.*

but are arrested.<sup>59</sup> Similar to adults of color in the criminal justice system, these changes disproportionately affected the detention, prosecution, and incarceration of youth of color.<sup>60</sup>

Youth of color also disproportionately bear the brunt of pretrial detention in the juvenile justice system,<sup>61</sup> which is applied to a surprisingly large number of all youth, regardless of race, who are charged with nonviolent offenses.<sup>62</sup> In 2011, approximately 11,567 youths (84% male) were held in pretrial detention.<sup>63</sup> Of those, only 40% had a persons offense listed as their most serious charge; the remainder were held for property offenses (21%), technical violations (19.1%), drug (6.4%), public order (11.1%). or status offenses (1.9%).<sup>64</sup> African American teens are almost five times more likely to be detained than their white counterparts and their Latino and American Indian youth are between two and three times more likely than whites to be detained.<sup>65</sup>

Once adjudicated, youth of color are also more likely to be incarcerated, mostly for nonviolent offenses. Approximately 42,000 youth (88% males) were incarcerated in post-adjudication residential correction facilities in 2011; 74% for nonviolent offenses.<sup>66</sup> These numbers do not tell the complete story of racial disproportionality

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59. JUSTICE FOR FAMILIES, FAMILIES UNLOCKING FUTURES: SOLUTIONS TO THE CRISIS IN JUVENILE JUSTICE 17 (2012), *available at* [http://www.justice4families.org/media/Families\\_Unlocking\\_FuturesFULLNOEMBARGO.pdf](http://www.justice4families.org/media/Families_Unlocking_FuturesFULLNOEMBARGO.pdf).

60. *Id.*

61. JOAN PENNELL, CAROL SHAPIRO & CAROL SPIGNER, SAFETY, FAIRNESS, STABILITY: REPOSITIONING JUVENILE JUSTICE AND CHILD WELFARE TO ENGAGE FAMILIES AND COMMUNITIES 4 (2011) (noting that “detention [is] a more likely outcome for minority youths”).

62. JUSTICE FOR FAMILIES, *supra* note 59, at 20 (noting that just twelve percent of youths in pretrial detention centers were accused of serious violent crimes).

63. *Easy Access to the Census of Juveniles in Residential Placement*, NAT’L CENTER FOR JUV. JUST., <http://www.ojjdp.gov/ojstatbb/ezacjrp/> (last visited Apr. 30, 2015) (select “National Crosstabs” at the top; change “row variable” to “sex”; change “column variable” to “most serious offense general”; select “2011” under “Year of Census”; select “Detained” under “General Status”; select “Await juvenile court adjudication,” “Await transfer hearing,” and “Await criminal court hearing” under “Detailed Status”; click on “Show Table”).

64. *See id.*

65. *See id.* (select “US & State Profiles” at the top; select “Offense profile of detained residents by sex and race/ethnicity”; click “View Table”; select “rate” under “Display Options”) (showing that for every 100,000 juveniles, 31 White, 170 Black, 68 Hispanic, and 89 American Indian juveniles were detained in 2011).

66. *See id.* (select “National Crosstabs” at the top; change “row variable” to “sex”; change “column variable” to “most serious offense detail”; select “2011” under “Year of Census”; select “Committed” under “General Status”; click on “Show Table”) (classifying criminal homicide, sexual assault, aggravated assault, and simple assault as violent offenses).

that permeates the incarceration of youth of color. Of the approximately 42,000 youth incarcerated at that time, 27,762 were youth of color.<sup>67</sup> Black youth were 4.6 times more likely to be incarcerated than their white counterparts.<sup>68</sup> Native American youth were 3.2 times more likely to be incarcerated, and Latino youth were 1.8 times more likely.<sup>69</sup>

Henning describes some of the adolescent behavior for which juveniles of color were charged:

James: Fifteen-year-old James is wearing a hoodie sweatshirt in public, a violation of an obscure city ordinance prohibiting such attire. James mouths off at the police officer who tells him to take it off. The police officer arrests James. Prosecutors charge James with resisting a police officer for refusing to comply with the officer's instructions.

....

Rodney & Roland: Two African American boys, Rodney and Roland, throw pebbles across the train tracks at a young Hispanic boy, Jose, for no reason other than they are bored and Jose is different. Rodney and Roland, both aged fourteen, are charged in juvenile court with assault with a dangerous weapon.

Shannon: Sixteen-year-old Shannon is riding a public bus with five classmates from her special education school when she notices one of the teacher's aides from her school at the back of the bus. Shannon snatches the aide's hat and tosses it to one of her classmates. After playing a game of catch with the hat through peals of laughter, the children drop the hat and get off the bus. Police arrest Shannon at school the next day. Prosecutors charge her with robbery.

Jacob: For several weeks, two or three classmates verbally tease Jacob, a chubby thirteen-year-old. Jacob is visibly pained and distraught by the verbal abuse. About two months into the school year, a group of unknown youth approach Jacob as he is sitting alone at a lunch table. Unsure of their motives, but without any physical provocation to justify a claim of self-defense, Jacob throws a book, hitting one of the youth in the

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67. *Id.* (select "National Crosstabs" at the top; change "row variable" to "race"; change "column variable" to "most serious offense general"; select "2011" under "Year of Census"; select "Committed" under "General Status"; click on "Show Table").

68. Julia Beatty, *Mapping the Youth Incarceration Problem*, W. HAYWOOD BURNS INST. FOR JUV. JUST. FAIRNESS & EQUITY (Apr. 16, 2014), <http://www.burnsinstitute.org/blog/our-new-data-map-is-live/>.

69. *Id.*

face and breaking his glasses. Prosecutors charge Jacob with felony assault and destruction of property.<sup>70</sup>

Youth of color are significantly more likely than their white counterparts to be charged as adults. From 2002 to 2004, African American youth represented 16% of all youth in the United States but 35% of juveniles who were judicially waived to criminal court, and 58% who were sent to adult state prison.<sup>71</sup> These teens are subject to different treatment than youth remaining in the juvenile justice system.<sup>72</sup> In many states, youth who are transferred to adult court get no consideration of their age with respect to where they are housed both before and after sentencing.<sup>73</sup> While federal law requires that youth be housed separately from adults in correctional facilities, this law does not apply to youth who have been certified as adults.<sup>74</sup>

The rapid growth of the juvenile justice system, zero-tolerance policies, and aggressive policing combined with decreases in funding for social and educational programs create unique problems for low-income communities of color.<sup>75</sup> Few resources are available to these financially strapped families and communities to provide positive educational and recreational opportunities for children.<sup>76</sup> In some cases, school-based counselors have counseled parents to file a status offense petition for their child.<sup>77</sup> While, in theory, these new consolidated status offense categories are supposed to provide access to services for children and keep them out of the juvenile justice system, in reality, they often lead to children being sent into the system.<sup>78</sup> It is sadly ironic that they are being used to bring children

70. Henning, *supra* note 4, at 427 & n.264. Henning changed the names to protect confidentiality. *Id.* Each of these examples comes from Henning's own representation of youth in Washington, D.C. *Id.*

71. NAT'L COUNCIL ON CRIME & DELINQUENCY, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM 3 (2007), available at [http://www.nccdglobal.org/sites/default/files/publication\\_pdf/justice-for-some.pdf](http://www.nccdglobal.org/sites/default/files/publication_pdf/justice-for-some.pdf).

72. See JAMES AUSTIN, KELLY DEDEL JOHNSON & MARIA GREGORIOU, JUVENILES IN ADULT PRISONS AND JAILS: A NATIONAL ASSESSMENT 7-8 (2000).

73. MICHELE DEITCH ET AL., FROM TIME OUT TO HARD TIME: YOUNG CHILDREN IN THE ADULT CRIMINAL JUSTICE SYSTEM 7 (2009). It appears that lawmakers did not anticipate juveniles being tried as adults, and thus did not provide for this scenario in the federal statute, notwithstanding the fact that the same rationale would apply. *Id.*

74. *Id.*

75. See JUSTICE FOR FAMILIES, *supra* note 59, at 14-18.

76. See *id.* at 10, 14.

77. See *id.* at 22 (reporting that at least one counselor advised a parent to take out a Person in Need of Supervision ("PINS") file or case for her child).

78. See *id.* (noting that attempting to access these services may lead to increased involvement in the criminal justice system).

into the system who should not be in the system in the first place.<sup>79</sup> In these circumstances, adolescent mistakes that would receive a reprimand in some communities become “repeat offenses” that often lead to detention and further involvement with the juvenile justice system.<sup>80</sup>

## II. EFFECTS OF INCARCERATION

The intergenerational effects of incarceration are profound not only for the individual adult male inmate, but also for his community, family, and children.<sup>81</sup> For example, incarceration can: exacerbate substance abuse and other negative behavioral problems detrimental to the family;<sup>82</sup> increase susceptibility to infectious diseases and stress-related problems;<sup>83</sup> impair mental health with consequences for employment; weaken relationship stability and parenting quality;<sup>84</sup> undermine romantic and family relationships;<sup>85</sup> and harm a person’s reputation in the community and in the family.<sup>86</sup>

Moreover, incarceration undermines men’s capacity to reintegrate economically upon release. Prison pay, when available, does little to bolster an inmate’s ability to provide for his family while incarcerated.<sup>87</sup> By definition, inmates are removed from the work force for an extended time period, rendering them less productive due

79. See *id.* at 17 (“Additionally, parents shared that often accessing services, rather than being seen as a positive act, marked their child as ‘high risk,’ and was often used as evidence of youth delinquency and ironically, created a path into the juvenile justice system.”).

80. *Id.* at 10.

81. *Fragile Families*, *supra* note 1, at 157.

82. *Id.*; Amanda Geller et al., *supra* note 6, at 1197–98.

83. Michael Massoglia, *Incarceration as Exposure: The Prison, Infectious Disease, and Other Stress-Related Illnesses*, 49 J. HEALTH & SOC. BEHAV. 56, 56 (2008).

84. See NURSE, *supra* note 5, at 51–52 (discussing incarcerated fathers who do not maintain contact with their families); see also Barr et al., *supra* note 14, at 11 (“Increased rates of substance abuse, mental health problems, coupled with a history of neglect or harsh parenting, puts incarcerated teen fathers at increased risk for poor parenting themselves.”); Geller et al., *supra* note 6, at 1188, 1200 (stating that incarceration “may contribute to instability in parents’ marital, cohabiting, or dating relationships” and that family instability may cause “developmental and behavioral challenges for children”).

85. See DONALD BRAMAN, *DOING TIME ON THE OUTSIDE: INCARCERATION AND FAMILY LIFE IN URBAN AMERICA* 91, 94 (2004).

86. See *The Black Family and Mass Incarceration*, *supra* note 1, at 238 (discussing how incarceration strains relationships and causes family members to withdraw from family and friends).

87. Kovensky, *supra* note 49 (“[T]he families of offenders miss out on financial support. . . . [a]t \$2 a day, it’s difficult to imagine a family getting any kind of support.”).

to foregone experience and skill acquisition.<sup>88</sup> Beyond skill loss, prospective employers may view them as dishonest, dangerous, unreliable, or a legal liability.<sup>89</sup> A criminal record has been shown to diminish a man's earnings by up to thirty percent long after release.<sup>90</sup>

Knowledge of incarceration's impact on juvenile offenders and their families is more limited but consistent with the negative effects documented in research with adults.<sup>91</sup> Detention can have a profoundly negative impact on an adolescent's mental and physical health and well-being, as well as on education and employment opportunities. It also increases the probability of recidivism.<sup>92</sup> While incarcerated, teens are at increased risk for sexual violence.<sup>93</sup> Incarceration also breaks up family and social networks on which communities depend for stability.<sup>94</sup> That stability is also undermined by laws and policies that result in exclusion from publicly funded housing and schools, eligibility for student loans, and other aspects of employability that can lead to further economic instability and re-incarceration.<sup>95</sup> High rates of incarceration undermine both the economic and political infrastructure of already struggling neighborhoods.<sup>96</sup> Moreover, the concentration of incarceration within communities is increasing the crime rate rather than decreasing it, further destabilizing the community and decreasing public safety.<sup>97</sup>

The effect of juvenile incarceration on families is particularly profound and all-encompassing, variously described in terms of family

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88. See Harry J. Holzer, *Collateral Costs: Effects of Incarceration on Employment and Earnings Among Young Workers*, in *DO PRISONS MAKE US SAFER?* 239, 256 (Steve Raphael & Michael A. Stoll eds., 2009).

89. See Shawn D. Bushway, *Labor Market Effects of Permitting Employer Access to Criminal History Records*, 20 *J. CONTEMP. CRIM. JUST.* 276, 277 (2004); Holzer, *supra* note 88, at 243; Devah Pager, *The Mark of a Criminal Record*, 108 *AM. J. SOCIO.* 937, 968–69 (2003).

90. BRUCE WESTERN, *PUNISHMENT AND INEQUALITY IN AMERICA* 120 (2006).

91. See SANDRA VILLALOBOS AGUDELO, *VERA INST. OF JUSTICE, THE IMPACT OF FAMILY VISITATION ON INCARCERATED YOUTH'S BEHAVIOR AND SCHOOL PERFORMANCE* 4 (2013) ("Consistent with research highlighting the importance of visitation in reentry out-comes for adults, the findings from the Families as Partners Project suggests a relationship between weekly visitation by family members and maintaining good behavior and improved school performance for incarcerated youth.").

92. See NELSON, *supra* note 4, at 10; JUSTICE FOR FAMILIES, *supra* note 59, at 25.

93. JUSTICE FOR FAMILIES, *supra* note 59, at 54 n.34.

94. TODD R. CLEAR, *IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE* 10 (2007).

95. See JUSTICE FOR FAMILIES, *supra* note 59, at 26.

96. See CLEAR, *supra* note 94, at 88–89.

97. *Id.* at 7.

crises,<sup>98</sup> loss, and demoralization.<sup>99</sup> Others underscore the victimization of children of incarcerated parents.<sup>100</sup> Siblings, spouses, parents, and children lose emotional and financial support.<sup>101</sup> Unsurprisingly, partners of incarcerated men often suffer depression for a number of related reasons, including social isolation and withdrawal when the incarceration is unacceptable to their social network.<sup>102</sup>

Additionally, for low socioeconomic families, incarceration further reduces financial resources during incarceration and decreases future earning capacity.<sup>103</sup> Families suffer a loss of the incarcerated parent's earnings and child support.<sup>104</sup> The fragile economic situation is compounded by attorneys' and court fees. Families must endure the high costs associated with maintaining communication with their incarcerated family member.<sup>105</sup> Collect calls at inflated rates, commissary expenses, including expensive fees for fresh fruits and vegetables, costs for visitation (including not only travel expenses, but costs to purchase food at expensive vending machines, as no food is allowed into the prison), and child and elder care costs while families visit their incarcerated partners place an additional strain on the meager finances of many families.<sup>106</sup>

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98. See generally LAURA T. FISHMAN, *WOMEN AT THE WALL: A STUDY OF PRISONERS' WIVES DOING TIME ON THE OUTSIDE* (1990) (examining how incarceration affects the wives and families of inmates).

99. J. CREASIE FINNEY HAIRSTON, *PRISONERS AND FAMILIES: PARENTING ISSUES DURING INCARCERATION* 42 (2001), available at [http://webarchive.urban.org/UploadedPDF/410628\\_PrisonersandFamilies.pdf](http://webarchive.urban.org/UploadedPDF/410628_PrisonersandFamilies.pdf).

100. B. BLOOM & D. STEINHART, *WHY PUNISH THE CHILDREN? A REAPPRAISAL OF THE CHILDREN OF INCARCERATED MOTHERS IN AMERICA* 11 (1993), available at [http://www.nccdglobal.org/sites/default/files/publication\\_pdf/why-punish-the-children.pdf](http://www.nccdglobal.org/sites/default/files/publication_pdf/why-punish-the-children.pdf).

101. *Fragile Families*, *supra* note 1, at 166–70.

102. BRAMAN, *supra* note 85, at 196.

103. See *id.* at 155.

104. See *id.* at 155–56.

105. See *id.* at 157.

106. See *JUSTICE FOR FAMILIES*, *supra* note 59, at 24; RANDALL G. SHELDON, *CTR. ON JUVENILE AND CRIMINAL JUSTICE, THE PRISON INDUSTRY* 7–8 (2011).

A. *Effects of Parental Incarceration on Children*

Nearly two and a half million children in the United States currently have a parent in prison.<sup>107</sup> The expansion of the U.S. prison system is not only unprecedented in its scope, but overwhelming in its impact on children.<sup>108</sup> Twenty-two percent of these minors are under the age of five.<sup>109</sup> Ninety-two percent of incarcerated parents are fathers.<sup>110</sup> Roughly half of all prisoners have children under the age of eighteen, and about 45% of those parents were living with their children at the time they were sent to prison.<sup>111</sup>

The racial demographics reviewed earlier underscore the tremendous differential impact on the families of men of color. During the height of the prison boom, 7% of white children whose fathers had not completed high school had a father go to prison, compared to 50% of similarly situated African American children.<sup>112</sup> For all children, regardless of their parents' education level, the numbers are 3.6% to 25.1%, respectively.<sup>113</sup> Similarly, in 2000, 3.5% of Latino children had an incarcerated parent, while the rate for African American children was 11%.<sup>114</sup>

Regardless of race or ethnicity, children of incarcerated parents face multiple risks to well-being. Table 1 shows how incarceration places risks at multiple points of the Bronfenbrenner ecological model.<sup>115</sup>

107. NELL BERNSTEIN, *ALL ALONE IN THE WORLD: CHILDREN OF THE INCARCERATED* 2 (2005).

108. *Id.*

109. SARAH SCHIRMER, ASHLEY NELLIS & MARC MAUER, *THE SENTENCING PROJECT, INCARCERATED PARENTS AND THEIR CHILDREN: TRENDS 1991–2007*, at 6 (2009).

110. *Id.* at 4.

111. *Id.* at 3–4.

112. *Fragile Families*, *supra* note 1, at 162.

113. *Id.*

114. *The Black Family and Mass Incarceration*, *supra* note 1, at 235.

115. Bronfenbrenner's model situates individuals in a set of nested contexts that may connect through or be independent of the individual child. Microsystems are those contexts in which a child has regular direct experience (e.g., family, school). Mesosystems link the various microsystems (e.g., parents interact with teachers). Exosystems are those situations that have a bearing on the child but no direct interaction with the child (e.g., school board, parents' workplace, correctional institutions). Finally, the macrosystem refers to societal and cultural patterns such as sexism, racism, and capitalism. *See generally* Uri Bronfenbrenner & P.A. Morris, *The Ecology of Developmental Processes*, in 1 *HANDBOOK OF CHILD PSYCHOLOGY: THEORETICAL MODELS OF HUMAN DEVELOPMENT* 993 (W. Damon & R. M. Lerner eds., 5th ed. 1998) (setting out Bronfenbrenner's model).

**Table 1: Bronfenbrenner Model of Risk Factors and Consequences to Children After Paternal Incarceration Regardless of Race or Ethnicity**

	<b>Risk</b>	<b>Consequences</b>
<b>Child-Father Relationship</b>	Changes in paternal involvement; <sup>116</sup> trauma related to parent's arrest or experiences leading up to it; <sup>117</sup> infrequent visits to institutions that are less than child friendly during incarceration; <sup>118</sup> and conflicting or nonexistent explanations of parental absence <sup>119</sup>	Relational loss of a parent <sup>120</sup>
<b>Child-Home Environment</b>	Exposure to increased stress and depression; <sup>121</sup> to drug and alcohol abuse; <sup>122</sup> and to violence in the household <sup>123</sup>	Emotion dysregulation and poorer cognitive outcomes; <sup>124</sup> higher risk of experiencing

116. NURSE, *supra* note 5, at 3–5.

117. NANCY G. LA VIGNE, ELIZABETH DAVIES & DIANA BRAZZELL, *BROKEN BONDS: UNDERSTANDING AND ADDRESSING THE NEEDS OF CHILDREN WITH INCARCERATED PARENTS* 4, 14 (2008).

118. Joyce A. Arditti, Sara A. Smock & Tiffaney S. Parkman, “*It’s Been Hard to Be a Father*”: *A Qualitative Exploration of Incarcerated Fatherhood*, 3 *FATHERING* 267, 268 (2005); see MEGAN COMFORT, *DOING TIME TOGETHER: LOVE AND FAMILY IN THE SHADOW OF THE PRISON* 100 (2007) (“Advocates of convenient and humane visitation conditions at prisons stress the documented correlation between family involvement and lower recidivism rates . . .”).

119. Parke & Clarke-Stewart, *supra* note 15, at 200–01.

120. See Joyce Ardetti & April Few, *Maternal Distress and Women’s Reentry into Family and Community Life*, 47 *FAMILY PROCESS* 303, 317 (2008) (stating that during incarceration “ties to children may become estranged”).

121. See BRAMAN, *supra* note 85, at 75 (relating an incarcerated father’s concerns about the effects of stress and depression on his wife and children).

122. See SUSAN D. PHILLIPS & JAMES P. GLEESON, *WHAT WE KNOW NOW THAT WE DIDN’T KNOW THEN ABOUT THE CRIMINAL JUSTICE SYSTEM’S INVOLVEMENT IN FAMILIES WITH WHOM CHILD WELFARE AGENCIES HAVE CONTACT* 3 (2007), available at <http://www.f2f.ca.gov/res/pdf/WhatWeKnowNow.pdf>.

123. NURSE, *supra* note 5, at 52–54; see also PHILLIPS & GLEESON, *supra* note 122, at 3 (noting that children with recently arrested parents were twice as likely as other children to live in households where there was domestic violence).

124. Elisa Romano et al., *Childhood Maltreatment and Educational Outcomes, TRAUMA, VIOLENCE & ABUSE*, June 11, 2014, at 2.

		the termination of parent's rights <sup>125</sup>
<b>Child-Home Environment</b>	Diminished financial and social resources during the parent's incarceration, <sup>126</sup> diminished employment prospects upon release <sup>127</sup>	More economic, family, and residential instability <sup>128</sup>
<b>Child-Home Environment</b>	Change in family structure: elevated risk of parental separation and divorce <sup>129</sup>	Frequent addition of new romantic partner when fathers are incarcerated <sup>130</sup>
<b>Child-School</b>	Being teased or ostracized; <sup>131</sup> being labeled deviant or criminal by teachers and other children's parents; <sup>132</sup> more schooling instability than their counterparts <sup>133</sup>	Heightened probability of suspension and dropout rates in adolescence <sup>134</sup>
<b>Child-Society</b>	Direct and indirect effects of social stigma <sup>135</sup>	Reduced social networks <sup>136</sup>

125. R. Anna Hayward & Diane DePanfilis, *Foster Children with an Incarcerated Parent: Predictors of Reunification*, 29 CHILD. & YOUTH SERVICES REV. 1320, 1321–22 (2007).

126. COMFORT, *supra* note 118, at 155–56; *Fragile Families*, *supra* note 1, at 26.

127. Pager, *supra* note 89, at 960.

128. See Hayward & DePanfilis, *supra* note 125, at 1330; Jean M. Kjellstrand & J. Mark Eddy, *Parental Incarceration During Childhood, Family Context, and Youth Problem Behavior Across Adolescence*, 50 J. OFFENDER REHABILITATION 18, 27 (2011).

129. Leonard M. Lopoo & Bruce Western, *Incarceration, Marriage, and Family Life*, in PUNISHMENT AND INEQUALITY IN AMERICA 131, 148, 155 (Bruce Western ed., 2006).

130. NURSE, *supra* note 5, at 59.

131. See generally Susan D. Phillips & Trevor Gates, *A Conceptual Framework for Understanding the Stigmatization of Children of Incarcerated Parents*, 20 J. CHILD FAM. STUD. 286 (2010) (applying the concept of stigmatization to children with incarcerated parents).

132. John Hagan & Alberto Palloni, *The Social Reproduction of a Criminal Class in Working-Class London, Circa 1950-1980*, 96 AM. J. SOC. 265, 292–93 (1990).

133. See Anna R. Haskins, *Unintended Consequences: Effects of Paternal Incarceration on Child School Readiness and Later Special Education Placement*, 1 SOC. SCI. 141, 152 (2014).

134. Ashton D. Trice & JoAnne Brewster, *The Effects of Maternal Incarceration on Adolescent Children*, 19 J. POLICE & CRIM. PSYCH. 27, 27 (2004).

135. BRAMAN, *supra* note 85, at 171–72; FISHMAN, *supra* note 98, at 120.

136. See BRAMAN, *supra* note 85, at 171–72.

For example, one study showed that one-fifth of children with incarcerated parents displayed internalizing problems (anxiousness and depression) and one-third exhibited signs of significant externalizing behaviors including attention deficit hyperactivity disorder and aggression.<sup>137</sup> Moreover, parental release may bring new challenges as family situations have changed during the incarceration,<sup>138</sup> including frequent housing and school changes, as parents attempt to evade law enforcement even for minor infractions such as technical violations of parole.<sup>139</sup>

Not unexpectedly, these effects can vary by child age and the timing of incarceration. For example, older children of incarcerated parents are more likely to exhibit delinquent behavior, engage in drug use, quit school, and exhibit emotional problems than their peers with parents who are not incarcerated.<sup>140</sup> In terms of timing, studies have shown that children whose parents had been incarcerated during the first ten years of their life had the most risk factors across several individual, parenting, and family-related outcomes.<sup>141</sup> However, the extent of incarceration's effect and the level of diminished support depend on the connection that the father had with his family before incarceration.<sup>142</sup>

137. NAT'L RES. CTR. ON CHILDREN & FAMILIES OF THE INCARCERATED, CHILDREN AND FAMILIES OF THE INCARCERATED FACT SHEET 2 (2007), available at <http://www.f2f.ca.gov/res/pdf/Children-FamiliesOfIncarcerated.pdf>; see also Murray & Farrington, *supra* note 6, at 1276 (“[A]ntisocial behaviors at ages 14, 18, and 32 were strongly predicted by the experience of parental imprisonment during childhood after controlling for other risk factors.”).

138. Christopher Wildeman, *Paternal Incarceration and Children's Physically Aggressive Behaviors: Evidence from the Fragile Families and Child Wellbeing Study*, 89 SOC. FORCES 285, 286 (2010).

139. See Alice Goffman, *On the Run: Wanted Men in a Philadelphia Ghetto*, 74 AM. SOC. REV. 339, 339 (2009).

140. See Joseph Murray, *The Effects of Imprisonment on Families and Children of Prisoners*, in THE EFFECTS OF IMPRISONMENT 442, 446 (Alison Liebling & Shadd Maruna eds., 2005) (showing that children can suffer a range of problems including eating problems, truancy, running away and poor grades in school); see also Murray & Farrington, *supra* note 6, at 1269 (“[C]hildren experience a range of psychosocial problems . . . including: . . . sleep problems, eating problems, running away, truancy, poor school grades and delinquency.”); Barbara J. Myers et al., *Children of Incarcerated Mothers*, 8 J. CHILD & FAM. STUD. 11, 11 (1999) (“These children typically experience a great many risk factors . . . including, poverty, drug and alcohol problems in their families, community violence, and multiple changes in caregivers.”); Trice & Brewster, *supra* note 134, at 27 (highlighting how adolescent children with mothers in prison were more likely to be out of school, disciplined at school, and failing classes than a sample of their friends).

141. See Barr et al., *supra* note 17, at 1555.

142. *The Black Family and Mass Incarceration*, *supra* note 1, at 240.

An inmate's post-release success and his child's well-being during the period of parental incarceration are enhanced by contact during the period of incarceration,<sup>143</sup> indicating that visitation is a promising way to promote child resiliency.<sup>144</sup> Many studies show that not only is post-release success higher among incarcerated adults who maintained ties with family members during their incarceration but also that the maintenance of this contact over time modifies the nature of the parent-child relationship, which in turn affects the child's adjustment.<sup>145</sup> Research also indicates several beneficial effects of maintaining parental contact during incarceration.<sup>146</sup> For example, Professor Creasie Finney Hairston has found that incarcerated males who maintain strong family ties during incarceration have higher rates of success after their release than those who do not, and that men who assume responsible husband and parenting roles after their

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143. Barr et al., *supra* note 17, at 1555–56.

144. See Marty Beyer, Randi Blumenthal-Guigui & Tanya Krupat, *Strengthening Parent-Child Relationships: Visit Coaching with Children and Their Incarcerated Parents*, in CHILDREN OF INCARCERATED PARENTS: THEORETICAL, DEVELOPMENTAL, AND CLINICAL ISSUES 187, 187–89 (Yvette R. Harris, James A. Graham & Gloria J. Oliver Carpenter eds., 2010); see also Heath C. Hoffmann, Amy L. Byrd & Alex M. Kightlinger, *Prison Programs and Services for Incarcerated Parents and Their Underage Children: Results from a National Survey of Correctional Facilities*, 90 PRISON J. 397, 408–09 (2010) (“Parenting-related prison programming offers some promise in lessening the negative consequences of parental incarceration, both for children and the incarcerated.”); Julie Poehlmann et al., *Children’s Contact with Their Incarcerated Parents: Research Findings and Recommendations*, 65 AM. PSYCHOL. 575, 591 (2010) (showing that studies have generally found benefits of child contact for incarcerated parents).

145. See Creasie Finney Hairston, *Fathers in Prison: Responsible Fatherhood and Responsible Public Policies*, 32 MARRIAGE & FAM. REV. 111, 132 (2001) (describing the relationship between inmates’ maintaining family contact and their post-release success); ROBERT J. SAMPSON & JOHN H. LAUB, *CRIME IN THE MAKING: PATHWAYS AND TURNING POINTS THROUGH LIFE* 76–77 (1993) (showing that child delinquency is less likely to occur when parental supervision and discipline are stable over long periods of time); Ann Booker Loper & Elena Hontoria Tuerk, *Parenting Programs for Incarcerated Parents: Current Research and Future Directions*, 17 CRIM. JUST. POL’Y REV. 407, 408 (2007) (showing how prisons have implemented education programs to teach inmates parenting skills and how to interact with their children); Charlotte H. Rudel & Margaret L. Hayes, *Behind No Bars*, 19 CHILD. TODAY 20, 20–22 (1990) (highlighting the positive effects participation in parental programs); Christopher Uggen, Jeff Manza & Angela Behrens, *Less Than the Average Citizen: Stigma, Role Transition and the Civic Reintegration of Convicted Felons*, in AFTER CRIME AND PUNISHMENT: PATHWAYS TO OFFENDER REINTEGRATION 261, 266–73 (Shadd Maruna & Russ Immarigeon eds., 2004) (highlighting how convicted felons are less likely to return to crime if they are active citizens in the community); Ginger L. Wilczak & Carol A. Markstrom, *The Effects of Parent Education on Parental Locus of Control and Satisfaction of Incarcerated Fathers*, 43 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 90, 101 (1999) (showing that inmates who participated in parent-education programs improved their knowledge and parenting skills).

146. Barr et al., *supra* note 17, at 1555–56.

release have higher rates of success than those who do not.<sup>147</sup> Studies have shown that self-identified incarcerated adult fathers often express a desire to be involved in their children's lives.<sup>148</sup> As a result, one might expect that policymakers and prison personnel would focus on facilitating visitation among policymakers within the prison and juvenile justice system.

*B. Impediments to Maintaining Parent-Child Contact During Incarceration*

Despite the beneficial effects of visitation for both incarcerated parents and their at-risk children, studies indicate that more than half of incarcerated parents with minor children had not seen their children since their incarceration.<sup>149</sup> Fifty-seven percent of fathers in state prison reported never receiving a visit from their children.<sup>150</sup> Forty-two percent of fathers had not talked with any of their children by phone.<sup>151</sup>

Several institutional and individual factors impede a child maintaining contact with an incarcerated parent. Institutions control the quantity and the quality of visits between incarcerated parents and their children.<sup>152</sup> One punishment for infractions committed by the inmate or complaints made by the family can be loss of visitation privileges.<sup>153</sup> Detention facilities control telephone communication

147. Hairston, *Family Ties: Do They Influence Future Criminal Activity?*, *supra* note 16, at 48–52; *see also* Hairston, *Family Ties: Important to Whom and for What?*, *supra* note 16, at 87–91 (showcasing that benefits of maintaining family ties during incarceration include decreased rates of recidivism, improved mental health, and increased probability of reunification of the family following imprisonment).

148. *See generally* Shade et al., *supra* note 11 (recounting interviews with incarcerated men who identify as fathers describing how they want to raise their children).

149. CHRISTOPHER J. MUMOLA, BUREAU OF JUSTICE STATISTICS, NCJ 182335, INCARCERATED PARENTS AND THEIR CHILDREN 1 (2000), *available at* <http://www.bjs.gov/content/pub/pdf/iptc.pdf>.

150. *Id.*

151. *Id.*

152. JUSTICE FOR FAMILIES, *supra* note 59, at 24 (“[P]arents and other family members face severe restrictions over when, who, how often, and for how long they may visit their loved ones.”); *see also* Joyce A. Arditti, Jennifer Lambert-Shute & Karen Joest, *Saturday Morning at the Jail: Implications of Incarceration for Families and Children*, 52 FAM. REL. 195, 200 (2003) (summarizing that participants interviewed reported spending more time with their children before their family member was incarcerated); Ann Booker Loper et al., *Parenting Stress, Alliance, Child Contact and Adjustment of Imprisoned Mothers and Fathers*, 48 J. OFFENDER REHABILITATION 483, 499 (2009) (highlighting the limited availability of correctional programming for parenting).

153. JUSTICE FOR FAMILIES, *supra* note 59, at 24.

between families and an incarcerated parent.<sup>154</sup> Access to phones is restricted and phone schedules often ignore the child's needs.<sup>155</sup> Most calls must be placed collect from the prison and are often billed with significant service charges.<sup>156</sup> It is not uncommon for these charges to be so high that families are unable to pay their phone bill and have their service disconnected as a result ending the possibility of continued phone contact.<sup>157</sup>

Visitation policies vary widely in adult incarceration facilities. For example, facilities may determine who is permitted to visit the incarcerated by controlling the definition of "family" members.<sup>158</sup> In doing so, facilities fail to recognize nonmarried partners and the close ties that exist in extended families.<sup>159</sup> This may also enable facilities to refuse to recognize gay, lesbian, and transgender families.<sup>160</sup> Facilities may impose onerous visitation restrictions that impede visits by younger siblings, thereby requiring families to incur childcare expenses during visitation.<sup>161</sup> They may permit visitation only with biological children, even requiring proof of paternity.<sup>162</sup> Facilities set visitation days and hours that may conflict with family members' work schedules.<sup>163</sup> They may provide little information on their websites and change policies without notice.<sup>164</sup> For example, they may fail to disclose or arbitrarily change clothing restrictions, turning unknowing families away upon arrival, even if they have traveled long distances and incurred expensive bus fare. The hours of visitation may be very short relative to the travel time required for a visit.<sup>165</sup>

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154. *See id.* at 29 (showing that prisons force inmates to use collect calls at high costs to their families).

155. *See id.* at 24 (highlighting that family members reported that prisons had insufficient visiting hours, making it difficult to visit loved ones).

156. *Id.* at 29.

157. *See* Aaron Smith, *FCC Votes to Reduce Rates for Prison Phone Calls*, CNN MONEY (Aug. 9, 2013), <http://money.cnn.com/2013/08/09/technology/prison-phone-calls/> (noting that most states have prison phone call systems that are unaffordable).

158. JUSTICE FOR FAMILIES, *supra* note 59, at 24.

159. *Id.*

160. *See id.*

161. MARY E. DE MASI & CATE TEUTEN BOHN, COUNCIL ON CHILDREN & FAMILIES, CHILDREN WITH INCARCERATED PARENTS: A JOURNEY OF CHILDREN, CAREGIVERS AND PARENTS IN NEW YORK STATE 15 (2010), available at <http://ccf.ny.gov/files/2413/7968/3887/ChildIncarceratedParents.pdf>.

162. *See* NURSE, *supra* note 5, at 39.

163. *See* JUSTICE FOR FAMILIES, *supra* note 59, at 24.

164. *Id.* at 30.

165. *Id.* at 24.

Facilities may create other bureaucratic impediments such as long wait times upon arrival for identification checks and approvals.<sup>166</sup> Such delays create problems for small, impatient children or families with medical conditions. Families also face economic challenges in visitation.<sup>167</sup> Facilities built in remote areas to reduce construction and maintenance costs may require expensive and cumbersome public transportation arrangements not necessary in more populated areas, creating severe challenges for those with small children and those with disabilities.<sup>168</sup> Policies that prohibit visitation by younger siblings create child-care issues, and families may need to find substitute eldercare while they travel long distances.<sup>169</sup> Moreover, some families report concerns that if they visit the facility they will be arrested and deported by immigration officials.<sup>170</sup>

During the visit children are often subject to unfriendly visiting rooms, personal searches, and brusque guard scrutiny, becoming what has been occasionally described as the “unseen victims” of the incarceration of a parent.<sup>171</sup> Most visitation areas lack privacy and are often overcrowded.<sup>172</sup> Visitation often occurs in lunchrooms that are not child-friendly or in rooms where family members are separated by partitions.<sup>173</sup> Many prohibit touching and activities conducive to interacting with children.<sup>174</sup> Policies often prohibit visitors from bringing their snacks requiring them to purchase food from expensive vending machines that infrequently have child-friendly food available.<sup>175</sup> Citing security risks, families are not permitted to bring

166. JUSTICE FOR FAMILIES, *supra* note 59, at 24.

167. *Id.* at 29.

168. *Id.* at 24, 29.

169. See DE MASI & BOHN, *supra* note 161, at 15.

170. CREASIE FINNEY HAIRSTON, KINSHIP CARE WHEN PARENTS ARE INCARCERATED 2 (2009), available at <http://www.f2f.ca.gov/res/pdf/KinshipCareWhenParentsAreIncarcerated.pdf>.

171. See Judith Clark, *The Impact of the Prison Environment on Mothers*, 75 PRISON J. 306, 307 (1995).

172. See, e.g., OR. DEP'T OF HUMAN SERVS., DHS CHILD WELFARE PROCEDURE MANUAL app. 4.16, at 1, 3 (2007), available at [http://www.dhs.state.or.us/caf/safety\\_model/procedure\\_manual/appendices/ch4-app/4-16.pdf](http://www.dhs.state.or.us/caf/safety_model/procedure_manual/appendices/ch4-app/4-16.pdf); WASH. STATE PENITENTIARY, VISITOR'S GUIDELINES 1, 6 (2013), available at <http://www.doc.wa.gov/facilities/prison/wsp/docs/VisitorGuidelines.pdf>.

173. BLOOM & STEINHART, *supra* note 100, at 27; Barr et al., *supra* note 17, at 1556.

174. BLOOM & STEINHART, *supra* note 100, at 49.

175. DE MASI & BOHN, *supra* note 161, at 15; see also ANNIE E. CASEY FOUND., WHEN A PARENT IS INCARCERATED 17 (2011), available at <http://www.aecf.org/m/resourcedoc/aecf-WhenAParentIsIncarceratedPrimer-2011.pdf> (“Because many prisons are located far away, visits may require an overnight stay. There are sometimes nonprofit or community resources that can help defray the costs of the visit for the family. The trip to the facility will be long, so it is important to bring food, toys, books, and entertainment

the child's toys and books, and facilities rarely provide substitutes.<sup>176</sup> A recent study of 999 institutions revealed that classroom parenting instruction was available in roughly half and supervised play activities were only available in seventeen percent of adult male prisons.<sup>177</sup>

*C. Family and Child Visitation Among Incarcerated Teens*

A body of evidence demonstrates that family visitation is related to a number of positive outcomes for incarcerated youth, including good behavior during visitation, improved school performance, and increased in-detention compliance.<sup>178</sup> However, visitation opportunities and experiences vary widely between facilities within and across states.<sup>179</sup>

In addition to the same types of challenges to visitation that families experience in adult facilities,<sup>180</sup> organizations representing families report family and community involvement is lacking in the juvenile justice system more broadly.<sup>181</sup> Police fail to report the arrest and incarceration of children for unreasonable lengths of time, and families experience difficulty in obtaining information pertaining to

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for the trip. Be sure to feed children before entering the facility since most facilities do not allow outside food (with some possible exceptions for baby formulas and infant food). Once inside the facility, visitors are dependent on the food available in the institution's vending machines. Arrive early and prepare for long and uncomfortable check-in procedures."); OR. DEP'T OF HUMAN SERVS., *supra* note 172, at 1, 3 ("Trips for visitations are often long and there may be long waits to see the parent, so bring food and activities to help keep the child busy. Food, however, may not be allowed past the waiting area and there may not be storage lockers to store items that are not allowed in the visiting area, so be sure to be familiar with allowable items. Ask teachers for homework in advance, bring along games so children can be occupied while waiting. Many visiting areas have vending machines so bring change to purchase this food."); WASH. STATE PENITENTIARY, *supra* note 172, at 1, 4 ("Money is not allowed inside the visiting areas at the Washington State Penitentiary. Each visitor will be allowed a vending machine debit card. Debit card limits are established by the facility based on vendor resources. For Washington State Penitentiary, the debit card limit is \$40.00. A \$5.00 bill is required for initial purchase of the vending machine debit card. This purchase will result in a \$3.00 credit on the card. The card is only good at WSP. Once the card is purchased, it becomes the property of the visitor. Neither the state nor Swire Classic Vending will give a refund should the card be lost, stolen, or the offender is transferred [sic]. It is recommended that the purchaser write his/her name on the card immediately after purchase. In the event a machine does not vend the selected product, proper refunds will be made by contacting the vendor.").

176. THE ANNIE E. CASEY FOUND., *supra* note 175, at 19.

177. Heath C. Hoffmann et al., *Prison Programs and Services for Incarcerated Parents and Their Underage Children: Results from a National Survey of Correctional Facilities*, 90 PRISON J. 397, 407–09 (2010).

178. *Id.* at 409; AGUDELO, *supra* note 91, at 3–4; NURSE, *supra* note 5, at 139–40.

179. Heath Hoffmann et al., *State Facilities for Women and Men: A Comparison of Communication and Visitation Policies*, 32 CORRECTIONS COMPENDIUM 1, 2 (2007).

180. JUSTICE FOR FAMILIES, *supra* note 59, at 24.

181. *Id.* at 34–40.

the incarceration of their children.<sup>182</sup> Youth are removed from their homes, communities, and their networks of social support during important formative years.<sup>183</sup> Removing youth to detention facilities has the effect of placing less aggressive and violent youth among more aggressive and hypermasculinized youth during the very period when youth are forming their identity and developing psychosocial and relationship skills which they will use to interact with their partners, children, community, and potential employers.<sup>184</sup> Incarcerating youth in harsh detention centers can lead to minimizing emotions, displaying hypervigilance, expressing flat affect, a willingness to use violence if provoked,<sup>185</sup> and the use of traditional hypermasculine male behavior.<sup>186</sup> The model of the hypermasculine man as well as the features of prisonization are incompatible with showing warmth, sensitivity, and attentiveness—the characteristics of a caring father.<sup>187</sup>

The challenges of visitation are only exacerbated for the teens who are themselves parents, many of whom have limited parenting skills and few models of positive parenting from which they can draw.<sup>188</sup> Studies have suggested that between twenty and thirty percent of incarcerated teen males have their own children.<sup>189</sup> Teen parents are at higher risk of poverty, inadequate social support, limited educational opportunities, and poor health than are their nonparent counterparts.<sup>190</sup> Their children are at substantial risk for behavioral, social, and emotional problems.<sup>191</sup> The sons of teen fathers are almost 2.7 times more likely to be incarcerated than sons of older parents.<sup>192</sup> Teen fathers are also 1.8 times more likely to have

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182. *Id.* at 19–20.

183. Shade et al., *supra* note 11, at 435–36.

184. *Id.*; Laura S. Abrams et al., *Constructing Masculinities in Juvenile Corrections*, 11 *MEN & MASCULINITIES* 22, 25–26 (2008).

185. Shade et al., *supra* note 11, at 435–36; DONALD CLEMMER, *THE PRISON COMMUNITY* 301 (1956).

186. Shade et al., *supra* note 11, at 435–36.

187. *Id.* at 436.

188. Barr et al., *supra* note 17, at 1556.

189. NURSE, *supra* note 5, at 1.

190. J. Brooks-Gunn & Frank F. Furstenberg, Jr., *The Children of Adolescent Mothers: Physical, Academic, and Psychological Outcomes*, 6 *DEV. REV.* 224, 224–25 (1986); Barr et al., *supra* note 17, at 1561; Patricia Flanagan, *Caring for the Children of Teen Parents*, *ZERO TO THREE*, Mar. 2005, at 31, 32–34.

191. Victor J. Bernstein et al., *Advocating for the Young Child in Need Through Strengthening the Parent–Child Relationship*, 20 *J. CLINICAL CHILD & ADOLESCENT PSYCHOL.* 28, 29 (1991).

192. Jeffrey Grogger, *Consequences of Teen Childbearing for Incarceration of Adult Children*, in *KIDS HAVING KIDS: ECONOMIC COSTS AND SOCIAL CONSEQUENCES OF TEEN PREGNANCY* 289, 294 (Saul D. Hoffman & Rebecca A. Maynard eds., 2d ed. 2012).

a son who has a child in adolescence.<sup>193</sup> As early child behavior is a predictor of later child competence, it is important to provide interventions for incarcerated teen fathers in order to improve quality of father-child interactions and improve secure attachment in the child.<sup>194</sup>

Research shows that maintaining contact with an incarcerated parent can improve child resiliency and that the implementation of relationship-centered interventions, teaching communication and interaction skills, interest and pride in child development, and age-appropriate expectations for their child may help to buffer some of the risks faced by these children and strengthen father-child interactions.<sup>195</sup> Increasing positive interactions between parent and child during incarceration encourages the parent to form and maintain a relationship with his child and is a crucial part of rehabilitation for the incarcerated parent.<sup>196</sup> Moreover, preventing a young teen from continued criminal behavior is estimated to save between \$2.6 and \$5.5 million over his lifetime.<sup>197</sup>

Despite these findings, juvenile detention centers offer few opportunities for positive interactive visitation and fewer opportunities for interactive parental education and play programs.<sup>198</sup> Visitation experience can be challenging for both parent and child.<sup>199</sup> Detention facility policies control the amount of time, format, and location of a visit. Rules often prohibit behavior conducive to contact and play with young children, such as sitting or lying on the floor, or cuddling.<sup>200</sup> Concerns regarding security prevent the child from bringing familiar food and toys to the facility and most facilities do not provide toys to facilitate the child's comfort or ability to play with their parent.<sup>201</sup> Many teen parents have few positive parenting models

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193. Heather Sipsma et al., *Like Father, Like Son: The Intergenerational Cycle of Adolescent Fatherhood*, 100 AM. J. OF PUB. HEALTH 517, 517 (2010).

194. Bernstein et al., *supra* note 191, at 31–32.

195. Marty Beyer et al., *Strengthening Parent-Child Relationships: Visit Coaching with Children and their Incarcerated Parents*, in CHILDREN OF INCARCERATED PARENTS: THEORETICAL DEVELOPMENT AND CLINICAL ISSUES 187, 187–88 (Yvette R. Harris et al. eds., 2010); Hoffmann et al., *supra* note 177, at 399–400; Julie Poehlmann et al., *Children's Contact with Their Incarcerated Parents: Research Findings and Recommendations*, 65 AM. PSYCHOLOGIST 575, 595 (2010).

196. *Id.* at 587.

197. Mark A. Cohen & Alex R. Piquero, *New Evidence on the Monetary Value of Saving a High Risk Youth*, 25 J. QUANTITATIVE CRIMINOLOGY 25, 25 (2009).

198. NURSE, *supra* note 5, at 142; Barr et al., *supra* note 17, at 1556–57.

199. Barr et al., *supra* note 17, at 1556.

200. NURSE, *supra* note 5, at 46.

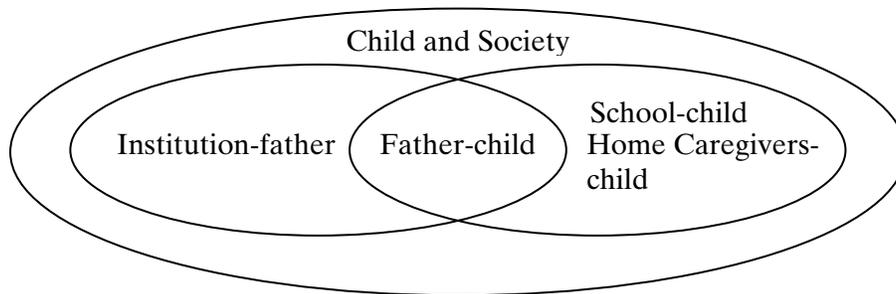
201. *Id.*

from which to draw, and are unlikely to have received positive parenting instruction through contact with the education system.<sup>202</sup> As a result, a teen father that has been away from a young child may lack the skills to manage a child in an unfamiliar and unfriendly visitation environment, let alone facilitate positive play experiences.<sup>203</sup>

### III. THE JUST BEGINNING “BABY ELMO” PROGRAM

In response to research showing the need for interventions aimed at strengthening the parent-child relationship through increased positive interaction during the incarceration period, researchers designed an intervention derived from Bronfenbrenner’s ecological model of development,<sup>204</sup> which states that child development must be considered within the multiple relationships and systems that surround the child.<sup>205</sup> When this model is applied to children who have incarcerated parents, the environment of the detention facility and the personnel in those facilities also form a system that affects the incarcerated youth and the infant’s development. Therefore, an effective intervention should target not only the teen parent, the teen parent-child dyad, and the caregiver, but also focus on the juvenile detention environment and personnel and take into consideration greater societal factors that influence the child—including public policy (see Figure 1). The characteristics of these systems all pose interrelated potential risks and opportunities for resilience.

**Figure 1: Bronfenbrenner Model of Father-Child Relationship After Paternal Incarceration**



202. Barr et al., *supra* note 17, at 1556.

203. *Id.*

204. *Id.* (referencing Uri Bronfenbrenner & P.A. Morris, *The Ecology of Developmental Processes*, in 1 HANDBOOK OF CHILD PSYCHOLOGY: THEORETICAL MODELS OF HUMAN DEVELOPMENT 993 (W. Damon & R. M. Lerner eds., 5th ed. 1998)).

205. Bronfenbrenner & Morris, *supra* note 204, at 993.

The Just Beginning Program was created in partnership by Carole Shauffer of the Youth Law Center and Rachel Barr of Georgetown University and was dubbed the “Baby Elmo” Program<sup>206</sup> by the first participants of the study because of the use of the Sesame Street content in the instructional videos. Six years later, the program has expanded to ten county juvenile halls and commitment facilities in California, one commitment facility in Connecticut, and one correctional facility in Ohio.<sup>207</sup> Over the past six years, the program has served over 300 fathers and their families. The standardized curriculum uses structured visitation along with instructional sessions to teach incarcerated teen fathers the tools to develop a positive relationship with their children. The program provides a cost-effective, sustainable program of parental instruction and structured child visitation that is accessible to the incarcerated teen parents, many of whose reading proficiency is at the fourth grade level.<sup>208</sup> The primary goal of the Baby Elmo Program is to improve the parent-child relationship by improving the quality of interactions, facilitating secure attachments, and maintaining strong bonds during incarceration in order to improve developmental outcomes for the parent and the child.<sup>209</sup> More specifically, the goals are to: (1) increase the chances of rehabilitation of incarcerated parents by maintaining and enhancing family ties, (2) permanently impact the environment of participating juvenile detention facilities, and (3) facilitate the opportunity for teen parents to improve their parenting skills and strengthen bonds with their children during incarceration—thereby improving child outcomes.<sup>210</sup>

The Baby Elmo Program was designed to enable juvenile justice facilities to inexpensively provide the program modules to incarcerated teens with marginal outside staffing and financial support.<sup>211</sup> The program utilizes a systematized intervention manual paired with segments of the Sesame Street Beginnings videos to

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206. For more detailed information from the Youth Law Center in San Francisco, CA regarding the Baby Elmo Program, see *Just Beginning (Incarcerated Teen Parenting Program)*, YOUTH L. CENTER, <http://www.ylc.org/our-work/action-litigation/juvenile-institutional-conditions-example/incarcerated-teen-parenting-program/> (last visited Apr. 20, 2015).

207. Sharon Driscoll, *Kind Healthy Snacks Gives Grant to Youth Law Center for Innovative Incarcerated Youth Parenting Program*, STANFORD LAWYER (Feb. 5, 2014), <https://stanfordlawyer.law.stanford.edu/2014/02/baby-elmo-program-wins-stanford-lawyerkind-healthy-snacks-do-the-kind-thing-competition/>.

208. Barr et al., *supra* note 17, at 1556.

209. *Id.* at 1557.

210. *Id.* at 1560.

211. *Id.* at 1556.

provide models of positive parent-child interactions.<sup>212</sup> The videos were developed by the Sesame workshop and a team of developmental psychologists to depict parent-child interactions, such as playing peek-a-boo, making music, or exploring via the senses. A 2011 study found that, for a sample of middle class parents, parent-infant interaction quality increased as a function of indirect exposure to the high quality interactions modeled on these infant-directed videos.<sup>213</sup> Volunteers and parole officers (“Program Personnel”) are first provided with basic training on the implementation of the program.<sup>214</sup> Each facility first designates and converts a visit space so that it is child friendly. There are soft tiles on the floor, posters, books, and toys that are appropriate for young children. In some facilities there is space for a permanent Baby Elmo room and murals have been painted on the walls. In other facilities, the room is a multipurpose room and is easily converted for each visit. Creating a safe and child-friendly space is necessary to facilitate positive father-child interactions, including imaginative games, book reading, puzzle play, rough and tumble play, affectionate displays, and caregiving routines.

The program combines visit preparation training sessions with program personnel interweaved with weekly visits with the child in a child-friendly environment. Each training session covers topics that facilitate forming a relationship with a child, communication with the child, and positive play with the child. After extensive pilot testing, there are now five unique sessions, each centered on how to improve upon a different aspect of the father-child relationship. The curriculum covers the basics of attachment theory and stranger anxiety, following the baby’s lead to help encourage synchrony, and enhancing communication with the baby by labeling and describing the child’s actions and by showing affection, encouragement, and praise.<sup>215</sup> The content of the program is designed for those with marginal reading proficiency.<sup>216</sup> The Program Personnel present the lesson plan and segments from the Sesame Street Beginnings videos.<sup>217</sup> The sessions incorporate both socioemotional and communication-parenting skills, both of which promote healthy

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212. *Id.* at 1557.

213. Tiffany A. Pempek et al., *The Impact of Infant-Directed Videos on Parent Child Interaction*, 32 J. APPLIED DEVELOPMENTAL PSYCHOL. 10, 11 (2011).

214. Barr et al., *supra* note 17, at 1556.

215. *Id.* at 1557.

216. *See id.* at 1556.

217. *Id.* at 1557.

relationships and child cognitive development.<sup>218</sup> During the training sessions, the teens discuss how they felt during the prior visit and plan activities for the upcoming visit with their child.<sup>219</sup>

After each training session, Program Personnel create a child-friendly room in the facility.<sup>220</sup> The incarcerated teen is given an opportunity to practice the skills he learned in the training session with his child in a forty-five minute, semi-structured visitation session.<sup>221</sup> After each session, learning is reinforced by having the teens talk and write about their experience, their observation of their child's positive experiences, and their plan for interaction in the subsequent visit.<sup>222</sup>

The cost-effectiveness of the Baby Elmo Program is due, in large part, to it being implemented by volunteers and detention center staff.<sup>223</sup> The media-based component, the standardized manual, and the online training after a one-day in-person training all make the program more affordable as well.<sup>224</sup> Program Personnel are trained in a workshop, followed by tests on the standardized program content and feedback on program implementation. The use of segments of videos of positive parent-child interactions are important for three reasons. First, the media serves as a useful training tool for program personnel. Second, program fidelity is increased because all participants are exposed to the same media content that conveys the key parenting skills in an easily comprehensible format. Third, the media content maximizes youth's familiarity with media while minimizing difficulties with literacy. As an internally administered program, it yields greater support from the facility staff than many externally administered programs.<sup>225</sup> The program supports security and given that visitation is so highly valued, it also encourages youth to comply with institutional rules and to engage more fully in rehabilitative programming.<sup>226</sup> The program is premised on the fact that visits should not be withheld because this is likely to disrupt the formation of the relationship between the father and child, as well as disrupt the visit schedule for the caregivers who bring the child to the

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218. *Id.*

219. *Id.* at 1556-57.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *See id.*

225. *See id.*

226. *Id.*

facility.<sup>227</sup> Still, behavioral infractions decreased as a function of participation in the program, and the program—in particular the visits—were highly reinforcing and motivating for the fathers. The program also promotes positive community contact between the youth and people from the community, which has been found in some settings to increase positive outcomes post-release, and fosters a better relationship between the incarcerated minor and juvenile detention staff.<sup>228</sup>

Preliminary evaluations have demonstrated that the Baby Elmo Program successfully improves the quality of interactions between the parent and child and measures indicate the program may successfully foster secure attachments, promote the maintenance of strong bonds during the period of incarceration, and potentially improve developmental outcomes for both the child and the teen parent.<sup>229</sup> Measures also indicate that the program fosters increasingly positive perceptions of parenthood by teens that relate to stronger ongoing relationships and subsequent cognitive gain in children.<sup>230</sup> Researchers have found that increasing self-identification and commitment to parenting enhances adult prisoners' prosocial identities.<sup>231</sup> Researchers have also found that stronger family relationships at the time of release are associated with more successful reentry into the community and lower rates of recidivism.<sup>232</sup> Finally, behavior within the facility by teen fathers has been shown to improve over the course of the intervention in three facilities with rates of infractions decreasing by fifty to sixty percent during the

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227. See *Just Beginning (Incarcerated Teen Parenting Program)*, *supra* note 206.

228. See Barr et al., *supra* note 17, at 1560.

229. *Id.*

230. *Id.* See generally Jacinta Bronte-Tinkew et al., *Involvement Among Resident Fathers and Links to Infant Cognitive Outcomes*, 29 J. FAM. ISSUES 1211 (2008) (finding that positive father-child interactions early in life reduce cognitive delay); Mary Dozier & Oliver Lindhiem, *This Is My Child: Differences Among Foster Parents in Commitment to Their Young Children*, 11 CHILD MALTREATMENT 338 (2006) (examining factors involved in commitment levels among foster parents).

231. Barr et al., *supra* note 17, at 1560; see Parke & Clarke-Stewart, *supra* note 15, at 208–09; Uggen, Manza & Behrens, *supra* note 145, at 263–65; Hairston, *Family Ties: Important to Whom and for What?*, *supra* note 16, at 122 (noting the importance of family relationships to successful corrections programs); Shirley R. Klein et al., *Inmate Family Functioning*, 46 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 95, 99 (2002).

232. See Parke & Clarke-Stewart, *supra* note 15, at 208–09; Hairston, *Family Ties: Do They Influence Future Criminal Activity?*, *supra* note 16, at 48; Klein et al., *supra* note 231, at 99–100; Denise D. Abbott, *Incarcerated Mothers and Recidivism Rates: Effect of Contact with Children* 51–52 (April 2006) (unpublished Masters thesis, Central Connecticut State University) (on file online with Central Connecticut State University library system).

Baby Elmo intervention. Post-intervention visits continue for as long as fathers remain incarcerated and rates of infractions by fathers within facilities remain low.

#### IV. AFTER “BABY ELMO”: POST-RELEASE CONDITIONS

Research indicates that incarcerated parents who maintain family ties during their incarceration have greater success after release.<sup>233</sup> However, few programs are available to support the needs of recently released youth and their families who require housing, mental health services, medical insurance, sobriety support, assistance reentering the education system, job training, employment opportunities, and parenting education.<sup>234</sup> Many would also benefit from relationship counseling that addresses sexual relations, parenting, and the hypermasculinized identities often developed in detention that may negatively affect relationships with their partners and children.<sup>235</sup> Without assistance, teen parents are at further risk of poverty, inadequate social support, limited educational opportunities, poor health, and reentry into the criminal justice system. Their children are at risk for homelessness, hunger, poverty, a myriad of negative psychosocial behaviors, and entry into the criminal justice system.<sup>236</sup> There is also a need for programs within detention facilities to be synchronized with community-based programs to maximize rehabilitative gains made within the detention facility during the challenging time of reentry into the community. The availability of such coordinated services programs that bridge the gap between detention facilities and the community are needed to maximize outcomes and the cost effectiveness of program delivery within the juvenile justice system.

Along these lines, the Youth Law Center, via the Baby Elmo Program, is partnering with the Reentry Reconnection Grassroots Coalition (“RRGC”), a program of the Healthy Fathering Collaborative, to help ensure that young fathers stay involved with their children and out of the cycle of re-incarceration.<sup>237</sup> The RRGC

233. Hairston, *Family Ties: Important to Whom and for What?*, *supra* note 16, at 98.

234. Abbott, *supra* note 232, at 51–52; Klein et al., *supra* note 232, at 96; Parke & Clarke-Stewart, *supra* note 15, at 208.

235. Shade et al., *supra* note 11, at 447.

236. *See id.* at 435 (“The sons of teen fathers are incarcerated in greater numbers, about 2.7 times more often than are the boys of older parents.”). *See generally* Grogger, *supra* note 192, at 289 (detailing several of the negative consequences associated with incarcerated teen parents).

237. *The Reconnection Center*, HEALTHY FATHERING COLLABORATIVE, [http://www.neofathering.net/reconnection\\_center.asp](http://www.neofathering.net/reconnection_center.asp) (last visited Apr. 30, 2015).

was created in 2010 through one-time funding from the Cuyahoga County Office of Reentry and has been providing an array of services to adult fathers at the Judge Nancy R. McDonnell Community Based Correctional Facility in Cuyahoga County since January 2011.<sup>238</sup> The Youth Law Center and the creators of the Baby Elmo Program have developed a pilot program, entitled “Beyond Baby Elmo,” to introduce youth to reentry family programming while they are incarcerated to develop relationships with organizations that will support them while they are in and when they leave the facility.

As a general matter, incarcerated fathers are much more receptive to rehabilitative programming after graduating from the Baby Elmo Program and establishing a strong relationship with their child. This partnership will capitalize on this momentum to start to prepare them for reentry while they are still incarcerated.

The program will consist of a series of fatherhood, relationship skills, and courthouse navigation classes that address: fatherhood development; relationships skills and coparenting; navigating the legal system to maintain a presence in your child’s life; managing a child-support order; healthy sexuality; how to manage money; job readiness training; and assistance seeking employment. Toward the end of a ten-week program cycle, repeated every four months, youth and their parenting partner will have an opportunity to develop an Individualized Shared Parenting Plan (“ISPP”) to take with them to help keep them both actively and cooperatively involved with their child. Mediation services will also be provided. This program will connect the youth with case managers that will help support the young father by working with all of the programs in Beyond Baby Elmo as partners in his parenting journey.

#### CONCLUSION—ADDRESSING THE NEED

Mass incarceration is a significant psycho-social-economic issue that requires broad systemic attention.<sup>239</sup> High rates of incarceration come at a significant expense to the health and psychosocial development of incarcerated youth and their families.<sup>240</sup> Incarceration is the leading indicator for a repeat offense by young offenders, exceeding that of weapon possession, gang membership, and bad

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238. For information about the community partner Healthy Fathering Collaborative of Greater Cleveland, see generally HEALTHY FATHERING COLLABORATIVE, <http://www.neofathering.net/> (last visited Apr. 30, 2015).

239. *Fragile Families*, *supra* note 1, at 158.

240. *See id.*

relationships with parents.<sup>241</sup> High rates of incarceration impose an enormous economic and social cost on communities and the country.<sup>242</sup> Finally, mass incarceration comes at a significant cost to American taxpayers. Approximately seventy billion dollars are expended each year on U.S. law enforcement and corrections.<sup>243</sup>

Despite these costs, the criminal and juvenile justice systems have not effectively addressed the issue of crime in the United States. Studies reveal the rise in detention is unrelated to crime rates.<sup>244</sup> The discriminatory policies and practices of the criminal and juvenile justice systems are similarly ineffective.<sup>245</sup> Reallocating the seventy billion dollars currently spent on corrections toward alternative measures with demonstrated success in increasing employment, education, housing, and human capital, and reducing reliance on ineffective punitive measures would increase a sustainable and socially integrative public safety.<sup>246</sup>

Studies show alternative programs such as early childhood education and post-release job programs show more promising rates of reducing crime and recidivism.<sup>247</sup> Studies also show the best predictor of whether an incarcerated individual will return to a life of

241. BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., *THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES* 4 (2006), available at [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf).

242. CLEAR, *supra* note 94, at 90; *The Black Family and Mass Incarceration*, *supra* note 1, at 222; *Fragile Families*, *supra* note 1, at 158.

243. NAACP, *MISPLACED PRIORITIES: OVER INCARCERATE, UNDER EDUCATE* 12 (2011), available at <http://action.naacp.org/page/-/Criminal%20Justice/MisplacedPriorities/FINALV2.pdf>; JUSTICE FOR FAMILIES, *supra* note 59, at 44.

244. See MARC MAUER & NAZGOL GHANDNOOSH, SENTENCING PROJECT, *FEWER PRISONERS, LESS CRIME: A TALE OF THREE STATES* 1 (2014), available at [http://sentencingproject.org/doc/publications/inc\\_Fewer\\_Prisoners\\_Less\\_Crime.pdf](http://sentencingproject.org/doc/publications/inc_Fewer_Prisoners_Less_Crime.pdf) (indicating that states that have reduced their prisoner populations have also reduced their crime rates) (“The experiences of these states reinforce that criminal justice policies, and not crime rates, are the prime drivers of changes in prison populations.”).

245. See NAACP, *supra* note 243, at 10; Henning, *supra* note 4, at 420–21.

246. MAUER & GHANDNOOSH, *supra* note 244, at 1 (indicating that states that have reduced their prison populations have also reduced their crime rates).

247. CINDY REDCROSS ET AL., MDRC, *TRANSITIONAL JOBS FOR EX-PRISONERS: IMPLEMENTATION, TWO-YEAR IMPACTS, AND COSTS OF THE CENTER FOR EMPLOYMENT OPPORTUNITIES (CEO) PRISONER REENTRY PROGRAM* ES 1, 5, 6 (2009), available at [http://www.mdrc.org/sites/default/files/full\\_592.pdf](http://www.mdrc.org/sites/default/files/full_592.pdf) (identifying the benefit of jobs programs in reducing recidivism and increasing post-incarceration earnings); Pedro Carneiro & James J. Heckman, *Human Capital Policy*, in *INEQUALITY IN AMERICA: WHAT ROLE FOR HUMAN CAPITAL POLICIES?* 77, 164–65 (James J. Heckman & Alan B. Krueger eds., 2003) (identifying the benefits of early childhood education); Amanda Geller, Irwin Garfinkel & Bruce Western, *Paternal Incarceration and Support for Children in Fragile Families*, 48 *DEMOGRAPHY* 25, 44 (2011).

crime after reentering the community is whether he has a stable, supportive, and sober living environment upon his release from custody, including temporary housing, mental health services, medical insurance, sobriety support, job training, and employment opportunities.<sup>248</sup> An inmate with a comprehensive, professional reentry plan is far less of a risk to public safety than one without such a plan.<sup>249</sup>

Much of what is currently considered juvenile crime and delinquency was previously considered normal adolescent development.<sup>250</sup> Negative stereotypes of youth of color cause those in the criminal justice system to ignore developmental explanations of youth behavior and contribute to racially biased arrest, prosecution, and disposition rates of youth of color.<sup>251</sup> School districts, police, prosecutors, and others within the juvenile justice system require education regarding the developmental stages through which youth pass.<sup>252</sup> Zero-tolerance policies should be reevaluated given the effects the current discriminatory practices impose on youth, families, and communities.<sup>253</sup> It is also essential to end discriminatory and intrusive police stop-and-frisk tactics in low-income communities of color and to reassess penalties for low-level misconduct to facilitate the development of greater trust in the juvenile justice system.<sup>254</sup>

Studies demonstrate that positive outcomes may be gained by reallocating resources spent on confinement to alternative community-based sentencing programs such as house arrest, halfway houses where parents and children reside, and day programs in which parents attend programs in a correctional institution during the day but are permitted to return home at night.<sup>255</sup> Such programs yield

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248. STANFORD LAW SCHOOL THREE STRIKES PROJECT & NAACP LEGAL DEFENSE AND EDUCATION FUND, PROGRESS REPORT: THREE STRIKES REFORM (PROPOSITION 36), at 8 (2014), available at <https://www.law.stanford.edu/sites/default/files/child-page/595365/doc/slspublic/ThreeStrikesReport.pdf>.

249. *See id.*

250. JUSTICE FOR FAMILIES, *supra* note 59, at 17.

251. Henning, *supra* note 4, at 242 (“[W]hile courts may forgive or excuse white youth for engaging in reckless adolescent behavior, courts often perceive youth of color as wild, uncontrollable, and morally corrupt and hold them fully culpable for their conduct.”).

252. JUSTICE FOR FAMILIES, *supra* note 59, at 17.

253. *Id.*

254. *See id.* at 40; GOVERNOR DAVID PATERSON’S TASK FORCE ON TRANSFORMING JUVENILE JUSTICE, CHARTING A NEW COURSE: A BLUEPRINT FOR TRANSFORMING JUVENILE JUSTICE IN NEW YORK STATE 8–9 (2009), available at <http://www.nysenate.gov/files/pdfs/Taskforce%20on%20Transforming%20Juvenile%20Justice%20Report.pdf>.

255. GOVERNOR DAVID PATERSON’S TASK FORCE ON TRANSFORMING JUVENILE JUSTICE, *supra* note 254, at 12–26.

reduced recidivism and increased family preservation and positive implications for children's adjustment.<sup>256</sup> These programs allow youth to maintain contact with their families (and for many, their young children) and their communities, to continue their education, and work with their family and their communities to address their conduct, make reparations and develop the skills they need to succeed as positive members of their families and communities.<sup>257</sup> Successful cost-saving alternatives that incentivize community-based alternatives to confinement have been successfully implemented in Ohio and Illinois.<sup>258</sup> Incarceration should be restricted only to youth who pose a demonstrable risk to public safety.<sup>259</sup> Facilities in which such youth are incarcerated should provide a humane and developmentally appropriate setting in which youth behavior can be treated effectively.<sup>260</sup> Improvements should be made to diversion practices, probation supervision, and detention reforms.<sup>261</sup>

Bruce Western and fellow sociologist Christopher Wildeman argue that "criminal justice reform alone will not solve the problems of school failure, joblessness, untreated addiction, and mental illness that pave the way to prison." Instead, we need a greater social commitment to education, public health, and employment opportunities. Wildeman and Western further argue that

the primary sources of order and stability—public safety in its wide sense—are the informal social controls of family and work. Thus, broad social policies hold the promise not only of improving the well-being of fragile families, but also, by strengthening families and providing jobs, of contributing to public safety.<sup>262</sup>

Significant progress requires that policymakers, courts, prisons, community and social service agencies, schools involved in providing services to incarcerated individuals, and their families must ensure their services are coordinated to provide a continuum of care through the incarceration and release experience.<sup>263</sup> Policymakers should reevaluate the agenda of the private prison system and focus investment on youth, family, and community-centered solutions that

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256. *Id.* at 15.

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *Fragile Families*, *supra* note 1, at 157.

263. *Id.*; JUSTICE FOR FAMILIES, *supra* note 59, at 32–46.

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increase input in an effort to build genuine community.<sup>264</sup> Coordination of programs and services should include input from schools and communities to ensure support for families and children.<sup>265</sup> Public attitudes towards racism, incarceration, and the incarcerated must be addressed.<sup>266</sup>

Recommendations for systemic changes and community-based solutions face opposition from various political and industry lobbying groups with devastating results for individuals, families, and communities. Until such time as widespread systematic improvements occur addressing the process and effects of mass incarceration, more humane and culturally sensitive visitation policies that acknowledge not only the benefits of visitation, but also the cultural diversity and hardships of the prison population and their families must be implemented. Through increasing the resilience and psychosocial development of children of incarcerated parents, maintaining family ties during the period of incarceration, and facilitating the successful return of previously incarcerated youth into their communities, the Baby Elmo Program provides promise to the incarcerated teen parent struggling to establish his identity and make his way in the world for himself and his family. The Baby Elmo Program serves as one of several programs necessary to address the significant and debilitating effects of mass incarceration.

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264. JUSTICE FOR FAMILIES, *supra* note 59, at 32–46.

265. *Id.* at 75.

266. *Id.* at 14.

