



by Ross Jackson and
Nikki Pressley

Caregiver Mitigation and Diversion Programs: A Family-Centered Alternative to Incarceration

Key Points

- Incarceration has particularly devastating consequences for children of imprisoned parents, as it harms their mental health and affects their academic performance, employment opportunities, and overall quality of life.
- Many states, including Tennessee, Missouri, Illinois, Oregon, and Washington, have attempted to keep incarcerated individuals with children closer to their families by enacting caregiver diversion and mitigation laws.
- By enacting mitigation legislation, Texas can keep families together, reduce recidivism, and better steward taxpayer dollars.

Executive Summary

The impact of incarceration extends far beyond a convicted individual's life; it significantly affects their family too. Incarceration has particularly devastating consequences for children of imprisoned parents, as it harms their mental health and affects their academic performance, employment opportunities, and overall quality of life ([Bates, 2021](#)). Research has also shown that incarcerated individuals benefit from maintaining ties with their family during their sentence, and that community-supervision diversion programs are often less costly than traditional incarceration and heed better results ([Shanahan & Villalobos Agudelo, 2011](#); [Bates, 2021](#)).

Many states, including Tennessee, Missouri, Illinois, Oregon, and Washington, have attempted to keep incarcerated individuals with children closer to their families by enacting caregiver diversion and mitigation laws. States that have seen the greatest successes have comprehensive family alternative sentencing programs that allow parents (or other primary caregivers) to continue raising their children while serving their sentence and rehabilitating. These laws and programs produce better outcomes for offenders than state prison systems, prevent many children from entering the foster care system, and save the state money.

An estimated 90,000 incarcerated Texans are parents ([Linder, 2019](#); [Texas Department of Criminal Justice, 2023](#)). The State of Texas currently has several diversionary programs available but does not have mitigation laws in place that would require judges to consider an individual's primary caregiver status before sentencing. By enacting mitigation legislation, Texas can keep families together, reduce recidivism, and better steward taxpayer dollars.

Introduction

Across the United States, 800,000 parents are being held in federal, state, and local custody, leaving 1.5 million children with at least one absent parent ([Human Impact Partners & Operation Restoration, 2018](#); [Maruschak et al., 2021](#)). Incarceration not only has negative implications for convicted parents and other primary caregivers, but their imprisonment also affects their family members, especially minor children. An abundance of research points to poor outcomes for children with incarcerated parents including, but not limited to, poor health, academic performance, mental health, employment opportunities, and overall quality of life outcomes for their children ([Bates, 2021](#)). Additionally, imprisoned parents who do not maintain relationships with their family throughout their time served are at an increased risk of recidivism ([Shanahan & Villalobos Agudelo, 2011](#); [Bates, 2021](#)).

On a more optimistic note, convicted parents can benefit from maintaining family ties while serving their sentence. By keeping contact with family members, incarcerated persons have been shown to have a more optimistic outlook on the future and are less likely to return to prison ([Shanahan & Villalobos Agudelo, 2011](#)). Family mitigation and diversion laws help to maintain these bonds and improve the lives of both the convicted individuals and their family members ([Williams, 2023](#)). Mitigation laws require judges to consider a convicted person's primary caregiver status before sentencing ([Williams, 2023](#)). Community-sentencing diversion programs offer parents the opportunity to continue fulfilling their parental duties while serving their time in the community. This can look like parents serving their sentence at home with the use of electronic monitoring; entering substance treatment programs that offer home-based care; participating in parenting and vocational training classes; and improving family bonds through counseling ([Williams, 2023](#)).

Enacting evidence-based family mitigation and diversion laws can keep parents with their children, thus decreasing the likelihood that the person reoffends and is separated from their children in the future. These laws and accompanying rehabilitation programs are likely to produce better health, employment, and quality of life outcomes for parents and children in Texas, in addition to reducing recidivism among offending parents and saving taxpayer dollars.

The Impact of Parental Incarceration

Parental incarceration can—and often does—result in the loss of custody of minor children. According to a study conducted by the Marshall Project which analyzed 3 million child-welfare cases, parents who have children placed in foster care because they are incarcerated (not for crimes related to child abuse, neglect, endangerment, or substance abuse) are more likely to have their parental rights terminated than those who physically or sexually abuse their children ([Hager & Flagg, 2018](#)). According to the U.S. Department of Health and Human Services, between 2006 and 2016, in an estimated one out of every eight cases, the incarcerated parents lose custody of their children, regardless of the seriousness of their offenses ([Hager & Flagg, 2018](#)). Also of note, children of female inmates are five times more likely to end up in foster care than children of male inmates, and female prisoners with children also have their parental rights taken away most often ([Hager & Flagg, 2018](#)).

In 2023, Texas had 129,653 total inmates in custody (119,448 males and 10,205 females) ([Texas Department of Criminal Justice, 2023](#)). According to the Texas Criminal

Justice Coalition, approximately 81% of women and 68% of men in Texas prisons are parents ([Linder, 2019](#)). This equates to around 8,250 mothers and 81,200 fathers, given Texas' current prison population. Of the women incarcerated in Texas prisons, nearly two-thirds are incarcerated for nonviolent crimes ([Linder, 2019](#)). Many of these women may have been eligible for a diversionary program if a mitigation requirement was included in Texas law at the time of their sentencing.

The Effects of Parental Incarceration on Children

Parental incarceration creates a multitude of problems for children across the country. According to the U.S. Centers for Disease Control and Prevention, having an incarcerated parent qualifies as an “Adverse Childhood Experience” (ACE) or a potentially trauma-inducing event that occurs when an individual is younger than 18 ([CDC, n.d.](#)). Trauma from ACEs has lasting effects on children that carry on through adulthood, most notably causing mental health and other developmental problems. Additionally, ACEs can create physical health, safety, well-being, education, and employment opportunity concerns for affected individuals ([CDC, n.d.](#)).

The State of Texas has acknowledged the importance of maintaining the parent-child bond during incarceration through the development of the Baby and Mother Bonding Initiative (BAMBI). BAMBI allows eligible incarcerated mothers to bond with their infant at a residential facility for up to one calendar year ([Texas Department of Criminal Justice, n.d.-a](#)). The goals of the program include increasing the female inmate's self-development, enhancing parenting skills, developing empathy, and increasing the positive developments between mother and child ([Texas Department of Criminal Justice, n.d.-a](#)). BAMBI is not a diversionary program and still requires mothers to be held in state custody ([Texas Department of Criminal Justice, n.d.-a](#)). Additionally, the bonding can only occur with an infant child and is exclusive of older children who still need their mothers for positive adolescent growth and development ([Texas Department of Criminal Justice, n.d.-a](#)).

Children of incarcerated parents are more likely to be homeless or placed in the state foster care system, which significantly impacts the trajectory of children's lives ([Linder, 2019](#)). According to the U.S. Department of Health and Human Services, in 2022, nearly 12,000 children (around 6%) in state foster care systems were placed in a state system in part due to parental incarceration ([U.S. Department of Health and Human Services, 2023a](#)). In 2022, 766 Texas children (around 8% in the state) were placed in foster care in part due to parental incarceration

([U.S. Department of Health and Human Services, 2023b](#)). Research has shown that children who spend time in foster care often have poorer quality of life outcomes compared to their peers and are much more likely to become incarcerated ([Bates, 2021](#)). A study on Texas foster care alumni found that nearly 70% of children who spend time in foster care have mental health problems at some point in their lives ([White et al., 2012](#)). Additionally, the alumni were nearly 20% less likely to complete high school or a GED program, and almost 70% of male alumni had been arrested at least once after aging out of foster care ([White et al., 2012](#)). About 40% of female Texas foster care alumni had been arrested at some point after leaving foster care ([White et al., 2012](#)).

Children of incarcerated parents who do not get placed in the foster care system are also disadvantaged compared to their peers. One study found that 65% of households with an incarcerated family member struggle to afford basic necessities ([deVuono-Powell et al., 2015](#)). These children are more likely to have attachment disorders, suffer from substance abuse issues, and demonstrate poor academic performance ([Turney, 2014](#)). They are more likely to have depression and anxiety and are more likely to withdraw from social activities ([Shlafer et al., 2013](#)). According to a study at the Urban Institute, 70% of young children with incarcerated mothers experience psychological or emotional problems ([Parke & Clarke-Stewart, 2002](#)). Regarding health outcomes, children with parents in prison have a greater likelihood of being diagnosed with high cholesterol, asthma, migraines, HIV, and overall worsened health conditions ([Lee et al., 2013](#)). A study examining the academic performance of children with parents in prison found that 70% of young children with a mother in prison displayed poor academic performance ([Parke & Clarke-Stewart, 2002](#)). Children with a parent in prison are also six times more likely to become incarcerated themselves ([Martin, 2017](#)). Another study found that children of fathers who served time in prison are four times more likely to abuse illegal substances as adults ([Murray & Farrington, 2008](#); [Bates, 2021](#)). Children with a parent in prison are also three times more likely to exhibit delinquent or violent behavior ([Murray & Farrington, 2008](#); [Bates, 2021](#)).

The Incarcerated Parent and the Importance of Family Ties

The stronger the family connections that a formerly incarcerated person has, the less likely they are to return to prison ([Shanahan & Villalobos Agudelo, 2011](#); [Bates, 2021](#)). Formerly incarcerated people with strong family connections reported a more optimistic outlook on life and expressed strong opposition to violating the law again ([Berg & Huebner, 2011](#); [Bates, 2021](#)).

Research has shown that when incarcerated parents have contact or visitation with their family, they are less likely to reoffend or have their parole revoked ([Duwe & Clark, 2013](#); [Mears et al., 2011](#)). One study conducted in the early 2000s found that inmates who received visitors during incarceration were 13% less likely to be convicted of another felony and 25% less likely to have parole revoked for technical violations ([Duwe & Clark, 2011](#)). Not all parents, however, are able to contact or visit their family members. According to a 2008 report produced by the Bureau of Justice Statistics, 62% of parents in state prisons contact their children at least monthly ([Glaze and Maruschak, 2010](#)). The study found that only 19% of parents in state prison receive visits from their kids at least once a month and 59% of parents in state prison have never received a personal visit from their children ([Glaze and Maruschak, 2010](#)). Distance plays a significant role in whether incarcerated parents can see their children. The farther the parent is away from their children, the less likely they are to receive visitation ([Rabuy & Kopf, 2015](#); [Bates, 2021](#)). Sixty-two percent of state inmates are housed more than 100 miles from their place of residence at the time of arrest ([Schirmer et al., 2009](#)). Incarcerated moms are placed, on average, 160 miles farther from their children than incarcerated dads ([Hagan & Petty Coleman, 2001](#)). This is likely due to the smaller number of prisons for women, as there are 15 in Texas for women and more than 85 in Texas for men ([Hagan & Petty Coleman, 2001](#); [Bates, 2021](#); [Texas Department of Criminal Justice, n.d.-b](#)).

Existing Diversion Programs in Texas

Texas law allows judges to place eligible defendants on community supervision as an alternative to incarceration. Community supervision puts defendants into programming and gives strict guidelines on allowable activities during their sentence which may include electronic monitoring, drug treatment programs, and mandatory community service. The goals of community supervision programs include improving public safety and community well-being, and promoting positive change in individuals through supervision and counseling services ([Texas Community Supervision Alternatives, n.d.](#)).

Compared to jail or prison sentencing, community supervision options in Texas save taxpayer dollars. Williamson County estimated that it costs \$3 per person per day for community supervision, compared to \$80 to \$120 per person per day to keep a person in a county jail or prison ([Cook, 2019](#)).

To be eligible for community supervision, a defendant cannot be convicted of a crime listed in the Code of Criminal Procedure, [Art. 42A.054](#), which includes first-degree

felonies, murder, capital murder, aggravated kidnapping, trafficking of persons, continuous trafficking of persons, indecency with a child, sexual assault, aggravated sexual assault, injury to a child, elderly individual, or disabled individual, aggravated robbery, burglary, aggravated promotion of prostitution, compelling prostitution, sexual performance by a child, possession or promotion of pornography, use of a child in the commission of an offense, or use of a deadly weapon in the commission of the offense.

Texas has seven different types of specialty courts which help participants receive customized programs and services and avoid incarceration ([Office of Court Administration, n.d.](#)). The seven types include family treatment courts, adult (drug) treatment courts, veterans' treatment courts, mental health courts, commercially or sexually exploited persons courts, public safety employees treatment courts, and juvenile family treatment courts ([Office of Court Administration, n.d.](#)).

Rather than sentencing substance abuse offenders to incarceration, specialty drug courts in Texas help monitor, treat, and rehabilitate such individuals in the state. Drug courts attempt to solve problems underlying a substance abuser's criminal behavior and try to develop healthy alternatives to promote rehabilitation ([Texas Association of Specialty Courts, n.d.](#)).

In addition to community supervision and specialty courts, many counties throughout the state have pretrial diversion programs available. For example, Harris County has a program where offenders can opt to participate in community service (like cleaning streets and waterways) for low-level nonviolent offenses ([Harris County District Attorney's Office, n.d.](#)). Harris County also offers first-time DWI offenders the opportunity to participate in an individualized treatment program that helps them avoid incarceration ([Harris County District Attorney's Office, n.d.](#)). Harris County's Misdemeanor Marijuana Diversion Program permits low-level offenders (Class A or B misdemeanor) to participate in a course that allows them to avoid traditional probation or jail time and prevents the offense from permanently appearing on a criminal record ([Harris County District Attorney's Office, n.d.](#)).

Mitigation and Diversion Programs and Proposals in Other Jurisdictions

According to the Prison Policy Initiative, only a handful of states (California, Illinois, Missouri, Massachusetts, Oregon, Tennessee, and Washington) have enacted laws to create or expand diversion, mitigation, or other alternative sentencing programs specifically geared toward preserving relationships between incarcerated parents and their children

([Williams, 2023](#)). State elected officials in Louisiana, Texas, and Arizona have previously introduced legislation, but have not been successful in enacting it ([Williams, 2023](#)). Maine, Connecticut, and Rhode Island are currently considering alternative caregiver programs ([Williams, 2023](#)).

Illinois and Massachusetts mitigation laws require judges to consider a person's status as a caregiver when sentencing ([Williams, 2023](#)). While Massachusetts simply requires judges to consider a convicted individual's parental status, Illinois' law is more descriptive and outlines alternatives to incarceration for judges to consider. Illinois' law, the Children's Best Interest Act, outlines several programs that would ensure more compassionate treatment of children whose parents become incarcerated ([HB 2444, 2020](#)). One option is a community-based residential parenting program that allows parents to serve their sentence with their children in a facility that offers housing and social services to foster healthy parent-child relationships. Illinois also has family-based drug treatment programs that include parenting skills training and home-based case management which help improve parental-child relationships and reduce drug abuse among parents.

Missouri, Florida, New York, Hawaii, and New Jersey have tried to or have successfully implemented proximity laws which require that parents be detained at facilities within a certain distance of their children, thus making it easier for kids to maintain relationships with their incarcerated parents ([Williams, 2023](#)). For example, the enacted New York law requires the state's Department of Corrections and Community Supervision to place parents in the prison with the closest proximity to their children's primary residence ([S724A, 2019](#)). By contrast, the proposed Florida legislation would have set a 150-mile restriction for incarceration placement of primary caregivers ([Williams, 2023](#)).

In 2010, the State of Washington created two alternative sentencing programs: the Washington State Family and Offender Sentencing Alternative (FOSA) Judicial Sentencing Option and the Washington State Community Parenting Alternative (CPA) ([Washington State Department of Corrections, n.d.-a](#)). The FOSA program allows judges to waive a sentence and order a parent or guardian of a minor child to go through a 12-month community supervision program with treatment and programming to aid them ([Washington State Department of Corrections, n.d.-a](#)). Participants may also be subject to electronic monitoring. To be eligible, an individual must not have a current conviction for a violent felony, current or prior sex offenses or serious offense convictions, or have a felony offense with a firearm or deadly weapon present at the commission of

the offense ([Washington State Department of Corrections, n.d.-a](#)). In the CPA program, an inmate resides at his or her permanent address and is under electronic monitoring ([Washington State Department of Corrections, n.d.-b](#)). To be eligible for the CPA program, an individual must not have any convictions for a sex offense or serious violent offense. If the individual has a current conviction for a violent offense, he or she must not have been determined to be at high risk for re-offense. Additionally, an eligible individual must be an expectant parent, a parent with legal custody of a minor child, or a biological or adoptive stepparent of a minor child with an established, ongoing, and substantial relationship that existed at the time of the offense ([Washington State Department of Corrections, n.d.-b](#)).

In 2016, the State of Oregon created a Family Sentencing Alternative Pilot Program. To qualify for the program, an individual must either be pregnant or the parent or guardian of a minor child and the current offense must be a non-person or non-sex crime ([Oregon Department of Corrections, 2021](#)). If an individual meets those requirements, their case is reviewed by the county community corrections agency to make the determination if the program is an appropriate fit ([Oregon Department of Corrections, 2021](#)). If the person is determined to be fit for the program, they must agree to conditions such as geographic limitations as well as vocational training or courses in parenting, drug or alcohol treatment, mental health treatment, and life skills, or both ([Oregon Department of Corrections, 2021](#)).

In 2018, a Louisiana House member introduced HB 264, a “Community-based Alternatives for Primary Caretakers Act” ([Human Impact Partners, 2018a](#)). The bill would create a community-based alternative for eligible defendants who are primary caretakers of dependent children. The alternative to incarceration includes local programming and judicial monitoring to encourage rehabilitation of the defendant and better life outcomes for the defendant’s children ([Human Impact Partners, 2018a](#)). Before the bill was proposed, a study by Human Impact Partners found that one in twelve children in the State of Louisiana have an incarcerated parent and that 2,650 parents incarcerated in Louisiana would have been eligible for an alternative sentencing program, possibly allowing parents to stay with their kids during their rehabilitation ([Human Impact Partners, 2018a](#)). Ultimately, the act passed the Louisiana House in 2018 with overwhelming support, but failed in the Senate and did not become law ([Louisiana State Legislature, n.d.](#)).

In 2019, the Governor of Tennessee signed SB 0985 into law ([2019](#)). The legislation requires a court, before sentencing a convicted person, to determine if the person is a primary

caretaker of a minor and whether their offense was nonviolent. If they meet those criteria, the court can sentence them to community rehabilitation, which keeps them at home with their children. The court has the option to require the convicted person to attend substance abuse treatment, physical or sexual abuse counseling, vocational or educational services, anger management, job training, parenting classes, family counseling, any combination of these programs, or other services that the court feels may be appropriate for the defendant’s rehabilitation and recovery. Before passage, the bill was estimated to decrease state expenditures by more than \$250,000 annually. Before the bill was passed, Human Impact Partners conducted an impact study for similar legislation in the state. They found that one in ten children had an incarcerated parent in Tennessee ([Human Impact Partners, 2018b](#)). Their study estimated that approximately 3,733 parents incarcerated in the State of Tennessee would have been eligible for the alternative sentencing program, possibly allowing parents to stay with their kids while completing family-centered rehabilitation programming ([Human Impact Partners, 2018b](#)).

In 2021, the Governor of Missouri signed SB 53 into law ([2021](#)). SB 53 made several modifications to criminal justice administration statutes. One of the provisions of the bill requires the Missouri Department of Corrections to oversee a community corrections program that would help to establish local sentencing alternatives for offenders who are primary caregivers of dependent children who have committed nonviolent offenses ([SB 53, 2021](#)).

In 2023, a United States senator from Oregon introduced the Finding Alternatives to Mass Incarceration: Lives Improved by Ending Separation, or “FAMILIES” Act ([S.3272, 2023](#)). A Washington congresswoman introduced an identical House bill ([H.R. 6341, 2023](#)). The FAMILIES Act would amend Title 18, United States Code to direct courts to determine whether caregivers, minor children of those caregivers, and society would be better served if the convicted individual was ordered to complete a comprehensive community supervision program in lieu of incarceration ([S.3272, 2023](#)). The diversion program would provide resources, services, and training to convicted individuals and their affected families ([S.3272, 2023](#)). Both bills were referred to committees but have not received any committee or floor action ([S.3272, 2023](#); [H.R. 6341, 2023](#)).

The Effectiveness of Mitigation and Diversion Programs

Washington and Oregon were among the first states to implement mitigation and diversion programs. Both have dedicated the most resources to these programs and have

Table 1 - Gender Breakdown of Participants in Washington State’s CPA and FOSA Programs (2013)

Program	Male	Female
CPA	38	116
FOSA	30	122
Total	68	238
Percentage	22%	78%

Source: [Washington State Department of Corrections, 2013](#)

Table 2 - Participant Completion in Washington State’s CPA and FOSA Programs (2013)

Program	Completed	Program Participation Terminated/Revoked	Active	Total
CPA	110	21	23	154
FOSA	62	32	58	152
Total	172	53	81	306

Source: [Washington State Department of Corrections, 2013](#)

Table 3 - Foster Care Avoidance Among Participants in Washington State’s CPA and FOSA Programs (2013)

Program	Number of Offenders	Number of Children Coming from Foster Care	Prevented from going to Foster Care
FOSA	22	12	24
CPA	19	2	24
Total	41	14	48

Source: [Washington State Department of Corrections, 2013](#)

the most publicly available data on the effectiveness of their programs. These two states demonstrate that mitigation and diversion programs have the potential to keep parents with their children, avoid placing many children in foster care, and save taxpayer dollars.

The results are promising, showing that when implemented successfully, offenders do not commit new crimes and taxpayer dollars are invested more wisely. In 2013, three years after the establishment of the Community Parenting Alternative (CPA) and Family and Offender Sentencing Alternative (FOSA) programs, the State of Washington released an outcome report for program participants ([Washington State Department of Corrections, 2013](#)). **Table 1** above shows a breakdown of program participants by gender. The results showed that most participants completed the program, as seen in **Table 2**. Additionally, none of the offenders who completed the FOSA program returned to prison on a new felony within three years. The program also showed cost savings for the state which resulted from having participants stay at home during their sentence. This means the state and local governments did not have to spend taxpayer dollars on housing and living accommodations for the offenders. The cost per offender was reduced

by approximately \$12 per day per male offender and \$15 per day per female offender ([Washington State Department of Corrections, 2013](#)). There was an additional savings on supervision that typically accompanies a convicted person who stays in a facility for about 15 months before release, saving about \$19 per offender per day ([Washington State Department of Corrections, 2013](#)). As shown in **Table 3**, this program also prevented 48 children from entering the state’s foster care program, saving the state approximately \$1,012 per month per child ([Washington State Department of Corrections, 2013](#)).

In 2021, the Oregon Department of Corrections released a report on Oregon’s Family Sentencing Alternative Pilot Program, which was enacted in 2016 ([Oregon Department of Corrections, 2021](#)). From 2016 to 2020, 212 people (with 391 minor children) participated ([Oregon Department of Corrections, 2021](#)). Of those 212 people, 74 are still in the program, 45 have had the program revoked and have been sent to prison, 16 participants have a warrant due to absconding from supervision, and 93 participants have successfully completed the program ([Oregon Department of Corrections, 2021](#)). Positive developments reported by program participants include increased engagement and

motivation to be successful, more patience with children, and more enthusiasm about the future ([Oregon Department of Corrections, 2021](#)). The program is producing improvements in recidivism reduction, which is helping to prevent future victimization in the state by reducing new convictions ([Oregon Department of Corrections, 2021](#)). Another positive result is that children of parents in this program are having shorter average stays in foster care (if any stay), than children with incarcerated parents ([Oregon Department of Corrections, 2021](#)).

Recent Legislative Reform Efforts in Texas

In 2019, a bipartisan coalition of Texas House representatives introduced HB 1389, which would have required judges to consider a defendant's status as a primary caretaker of a minor child and their eligibility for deferred adjudication community supervision when sentencing a parent accused of a nonviolent offense ([HB 1389, 2019](#)). The bill passed the House with nearly unanimous support, garnering only two votes in opposition. Unfortunately, once the bill arrived at the Senate, it never progressed out of committee.

During the 88th regular legislative session in Texas in 2023, a Texas House member introduced HB 361 ([2023](#)). HB 361 would amend the Art. 42A, Code of Criminal Procedure, to require a court, upon receipt of a written motion by the defendant, to consider a defendant's status as a primary caretaker of a child before imposing a sentence that may lead to incarceration. The "primary caretaker of a child" is a person who has responsibility for a dependent child (younger than 18) by providing basic needs to that child, including housing, health care, financial support, education, safety, and familial support. If the defendant presents sufficient evidence in the motion that they are the primary caretaker of a child, the court must consider alternatives to incarceration. The court may then place the defendant on deferred adjudication community supervision, which can be revoked if the defendant violates a condition of community supervision. Additionally, the defendant must have committed and have been convicted of an offense that is already eligible for a community supervision sentence. The defendant can then be required by the court to attend alcohol or substance abuse counseling, anger management, domestic violence prevention, family counseling, vocational training, or other training or programming. HB 361 passed the House with bipartisan support and a final vote of 98-38 ([2023](#)). No action was taken in the Senate.

Conclusion

The incarceration of parents has devastating effects on the family unit, especially on health, education, employment, and quality of life outcomes for children. Most people incarcerated in the State of Texas are parents, including 81% of incarcerated women.

Maintaining close relationships with children and other family members has been shown to have positive impacts on the incarcerated parent, including reducing recidivism, increasing economic stability for women, and increasing optimism and hope for the future. As for children, having a parent removed from the household due to incarceration—especially a mother—is detrimental to their health, education, employment opportunities, and quality of life. Children of incarcerated parents are also more at risk for substance abuse and incarceration. An additional benefit to the state and taxpayers is cost savings. Family diversion and mitigation programs in other states have shown the potential to reduce state expenditures in the areas of incarceration and child services (like foster care).

Supporting family diversion and mitigation programs would mean more Texas parents would be kept with their children while serving their sentences, thus preserving families, resulting in cost savings for all Texans, and improving health, education, and quality of life outcomes for Texas parents and children.

Recommendation

Texas should enact mitigation legislation, which requires courts to consider a defendant's status as a primary caretaker of a child before sentencing. If evidence of the defendant's primary caretaker status is substantiated, the court may place eligible defendants on deferred adjudication community supervision. The conditions of community supervision can include family-centered community programming that promotes parent-child unity and rehabilitation. ★

References

- Bates, C. (2021). *A family centered approach to criminal justice reform*. Orrin G. Hatch Foundation. <https://static1.squarespace.com/static/5e2072f645f53f254017e846/t/61b8e2dcdd54c03409a4b217/1639506654849/2021+Hatch+Policy+Review.CJR.web+only.pdf>
- Berg, M. T., & Huebner, B. M. (2011). Reentry and the ties that bind: An examination of social ties, employment, and recidivism. *Justice Quarterly*, 28(2), 382–410. <https://doi.org/10.1080/07418825.2010.498383>
- Centers for Disease Control and Prevention. (2023). *Fast facts: Preventing adverse childhood experiences*. https://www.cdc.gov/aces/about/?CDC_AAref_Val=https://www.cdc.gov/violenceprevention/aces/fastfact.html
- Cook, T. (2019, January 10). *Community supervision vs. incarceration*. Statesman. <https://www.statesman.com/story/news/local/round-rock/2019/01/10/terry-cook-community-supervision-vs-incarceration/6334317007/>
- deVuono-powell, S., Schweidler, C., Walters, A., & Zohrabi, A. (2015). *Who pays? The true cost of incarceration on families*. Ella Baker Center. <https://ellabakercenter.org/wp-content/uploads/2022/09/Who-Pays-exec-summary.pdf>
- Duwe, G., & Clark, V. (2011, December 6). Blessed be the social tie that binds. *Criminal Justice Policy Review*, 24(3), 271–296. <https://doi.org/10.1177/0887403411429724>
- Hagan, J., & Petty Coleman, J. (2001). Returning captives of the American War on Drugs: Issues of community and family reentry. *Crime & Delinquency*, 47(3), 352–367. <https://doi.org/10.1177/0011128701047003004>
- Hager, E., & Flagg, A. (2018, December 2). *How incarcerated parents are losing their children forever*. The Marshall Project. <https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-children-forever>
- Harris County District Attorney's Office. (n.d.). *Programs & diversion*. Retrieved May 7, 2024, from https://www.harriscountyda.com/programs_diversion
- HB 2444. 101st Illinois General Assembly. (2019). <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=101-0471&GA=101>
- HB 264. 2018 Louisiana Legislative Session. Regular. (2018). <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1069647>
- H.R. 6341. FAMILIES Act. 118th Congress. (2023). <https://www.congress.gov/bill/118th-congress/house-bill/6341?q=%7B%22search%22%3A%22hr6341%22%7D&s=1&r=1>
- Human Impact Partners. (2018a). *Keeping kids and parents together: A healthier approach to sentencing in Louisiana*. https://humanimpact.org/wp-content/uploads/2018/02/HIP_LAcaretakers_2018.pdf
- Human Impact Partners. (2018b). *Keeping kids and parents together: A healthier approach to sentencing in Tennessee*. https://humanimpact.org/wp-content/uploads/2018/02/HIP_PrimaryCare-TN-Report.pdf
- Lee, R. D., Fang, X., & Luo, F. (2013). The impact of parental incarceration on the physical and mental health of young adults. *Pediatrics*, 131(4), e1188–e1195. <https://doi.org/10.1542/peds.2012-0627>
- Linder, L. (2019). *Consider minor children when sentencing a person who is their primary caretaker*. Texas Criminal Justice Coalition. <https://www.texasjc.org/system/files/publications/HB%201389%20Fact%20Sheet%20%28Primary%20Caretaker%20Consideration%29.pdf>
- Martin, E. (2017, March 1). *Hidden consequences: The impact of incarceration on dependent children*. National Institute of Justice. <https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children>
- Maruschak, L., Bronson, J., & Alper, M. (2021). *Parents in prison and their minor children*. Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/pptmcspi16st.pdf>

- Maruschak, L., & Glaze, L. (2010, March 30). *Parents in prison and their minor children*. Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/pptmc.pdf>
- Mears, D. P., Cochran, J. C., Siennick, S. E., & Bales, W. D. (2011, June 16). Prison visitation and recidivism. *Justice Quarterly*, 29(6), 888–918. <https://doi.org/10.1080/07418825.2011.583932>
- Murray, J., & Farrington, D. P. (2008). The effects of parental imprisonment on children. *Crime and Justice*, 37(1), 133–206. <https://doi.org/10.1086/520070>
- Oregon Department of Human Services. (2021). *Family Sentencing Alternative Pilot Program Report to the Senate and House Committees on Judiciary*. Oregon Legislature. https://www.oregonlegislature.gov/citizen_engagement/Reports/Joint%20Family%20Sentencing%20Alternative%20Pilot%20Project%20Report%201_1_2021.pdf
- Parke, R., & Clarke-Stewart, K. A. (2002). *Effects of parental incarceration on young children*. Urban Institute. <https://www.urban.org/sites/default/files/publication/60691/410627-Effects-of-Parental-Incarceration-on-Young-Children.PDF>
- Rabuy, B., & Kopf, D. (2015, October 20). *Separation by bars and miles: Visitation in state prisons*. Prison Policy Initiative. <https://www.prisonpolicy.org/reports/prisonvisits.html#:~:text=Using%20the%20same%20dataset%2C%20we,visit%20in%20a%20given%20month.>
- S724A. 2019 New York Legislative Session. Regular. (2019). <https://legislation.nysenate.gov/pdf/bills/2019/S724A>
- S. 3272. FAMILIES Act. 118th Congress. (2023). <https://www.congress.gov/bill/118th-congress/senate-bill/3272?s=1&r=30>
- SB 985. 2019 Tennessee Legislative Session. Regular. (2019). <https://www.capitol.tn.gov/Bills/111/Bill/SB0985.pdf>
- SB 53. 2021 Missouri Legislative Session. Regular. (2021). https://www.senate.mo.gov/21info/BTS_Web/Bill.aspx?SessionType=R&BillID=54105455#:~:text=SB53%20%2D%20Modifies%20provisions%20relating%20to%20the%20administration%20of%20justice&text=CCS%2FHCS%2FSS%2FSCS,provisions%20relating%20to%20public%20safety.&text=This%20act%20repeals%20the%20requirement, reside%20in%20Jefferson%20City%2C%20Missouri
- Schirmer, S., Nellis, A., & Mauer, M. (2009, February 1). *Incarcerated parents and their children: Trends 1991-2007* [Report]. Candid. <https://search.issuelab.org/resource/incarcerated-parents-and-their-children-trends-1991-2007.html>
- Shanahan, R., & Villalobos Agudelo, S. (2011). *Close to home: Building on family support for people leaving jail*. Vera Institute of Justice. https://www.prisonpolicy.org/scans/vera/Close_to_home_report.pdf
- Shlafer, R., Gerrity, E., Ruhland, E., Wheeler, M., & Michaels, C. (2013). *Children with incarcerated parents - considering children's outcomes in the context of family experiences*. University of Minnesota Twin Cities. <https://conservancy.umn.edu/handle/11299/151818>
- Texas Association of Specialty Courts. (n.d.). *Justice through treatment*. Retrieved May 7, 2024, from <http://www.tasctx.org/>
- Texas Community Supervision Alternatives. (n.d.). *Welcome to Texas community supervision alternatives*. Retrieved May 7, 2024, from <https://txsupervision.org/>
- Texas Department of Criminal Justice. (2023). *Statistical report- Fiscal Year 2023*. https://www.tdcj.texas.gov/documents/Statistical_Report_FY2023.pdf
- Texas Department of Criminal Justice. (n.d.-a). *Rehabilitation Programs Division. Rehabilitation Programs Division - Baby and Mother Bonding Initiative (BAMBI)*. Retrieved July 19, 2024, from <https://www.tdcj.texas.gov/divisions/rpd/bambi.html>
- Texas Department of Criminal Justice. (n.d.-b). *Unit directory*. Retrieved May 7, 2024, from https://www.tdcj.texas.gov/unit_directory/

- Texas Judicial Branch. (n.d.). *About Texas courts*. Retrieved May 7, 2024, from <https://www.txcourts.gov/about-texas-courts/specialty-courts/>
- Turney, K. (2014). Stress proliferation across generations? Examining the relationship between parental incarceration and childhood health. *Journal of Health and Social Behavior*, 55(3), 302–319. <https://doi.org/10.1177/0022146514544173>
- U.S. Department of Health and Human Services. (2023a). *The AFCARS report*. <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-30.pdf>
- U.S. Department of Health and Human Services. (2023b). *The AFCARS report: Texas*. <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-tar-tx-2022.pdf>
- Washington State Department of Corrections. (2013, December 1). *Community Parenting Alternative: 2013 report to the Legislature*. https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=Community%20Parenting%20Alternative%20-%202013%20report_8304d371-fb19-45eb-8c10-28f814aec02c.pdf
- Washington State Department of Corrections. (n.d.-a). *Community parenting alternative (CPA)*. Retrieved May 7, 2024, from <https://www.doc.wa.gov/corrections/justice/sentencing/community-parenting.htm>
- Washington State Department of Corrections. (n.d.-b). *Parenting Sentencing Alternative (PSA)*. Retrieved May 7, 2024, from <https://www.doc.wa.gov/corrections/justice/sentencing/parenting-alternative.htm>
- White, C. R., O'Brien, K., Pecora, P., Kessler, R., Sampson, N., & Hwang, I. (2012). *Texas foster care alumni study technical report*. Casey Family Programs. https://www.casey.org/media/StateFosterCare_TX_fr.pdf
- Williams, E. (2023, February 27). *How 12 states are addressing family separation by incarceration - and why they can and should do more*. Prison Policy Initiative. <https://www.prisonpolicy.org/blog/2023/02/27/caregivers/>

About the Authors



Nikki Pressley is the Texas state director and chief of staff for Right On Crime. Her work focuses on criminal justice and juvenile justice policy.

While pursuing her graduate degree, she started as an intern for the Foundation, working on child and family policy. She earned a role as a policy analyst, focusing on various policy issues including child welfare, human trafficking, and juvenile justice.

Pressley graduated from the University of North Texas with an MS in educational psychology with a concentration in family policy and program administration and a BS in human development and family science with a concentration in family and community.



Ross Jackson is a policy analyst for Right on Crime at the Texas Public Policy Foundation. He started at the Foundation as an intern and worked as a research assistant while he completed graduate school. His previous work for the Foundation has focused on criminal justice issues including human trafficking and diversion and mitigation programs. Jackson has a Master of Public Administration with a concentration in nonprofit policy advocacy and a Bachelor of Science in political science from The Bush School of Government and Public Service at Texas A&M University.

About Right On Crime

Right On Crime is a national initiative of the Texas Public Policy Foundation supporting conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs.

About Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute. The Foundation promotes and defends liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by thousands of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

