Sentencing Departures Based on Parental Status: You Can, You Should, and Here’s How

Julie A. Matonich
Matonich & Persson
Minneapolis

Peter N. Thompson
Mitchell Hamline School of Law
Saint Paul
Minnesota CLE’s Copyright Policy

Minnesota Continuing Legal Education wants practitioners to make the best use of these written materials but must also protect its copyright. If you wish to copy and use our CLE materials, you must first obtain permission from Minnesota CLE. Call us at 800-759-8840 or 651-227-8266 for more information. If you have any questions about our policy or want permission to make copies, do not hesitate to contact Minnesota CLE.

All authorized copies must reflect Minnesota CLE’s notice of copyright.

MINNESOTA CLE is Self-Supporting

A not for profit 501(c)3 corporation, Minnesota CLE is entirely self-supporting. It receives no subsidy from State Bar dues or from any other source. The only source of support is revenue from enrollment fees that registrants pay to attend Minnesota CLE programs and from amounts paid for Minnesota CLE books, supplements and digital products.

© Copyright 2016

MINNESOTA CONTINUING LEGAL EDUCATION, INC.

ALL RIGHTS RESERVED

Minnesota Continuing Legal Education's publications and programs are intended to provide current and accurate information about the subject matter covered and are designed to help attorneys maintain their professional competence. Publications are distributed and oral programs presented with the understanding that Minnesota CLE does not render any legal, accounting or other professional advice. Attorneys using Minnesota CLE publications or orally conveyed information in dealing with a specific client's or other legal matter should also research original and fully quoted sources of authority.
SENTENCING ALTERNATIVES FOR PARENTS

Prepared by the non-profit organization Children of Incarcerated Caregivers
childrenofincarceratedcaregivers.org
# Table of Contents

Introduction.............................................................................................................. pg. 3

Part I: Legal Basis for Departure Request
Proposed Amendment to Comment 2.D.303............................................................ pg. 4

Part II: Summary of CIC report
The Impact of Parental Incarceration on Children................................................ pg. 5
The Benefits of Alternative Sentences................................................................. pg. 7

Part III: Alternative Options
Sentencing Alternatives: Housing ................................................................................pg. 9
Sentencing Alternatives: Diversion Courts.................................................................pg. 13
Other Resources........................................................................................................ pg. 17

References.............................................................................................................. pg. 20
Introduction

Founded in 2015 Children of Incarcerated Caregivers (CIC) is a non-profit organization devoted to considering the best interests of children when their parents are sentenced to prison or otherwise involved in the criminal justice system. CIC works to support legal and policy changes based on research to advance the welfare of children. Additionally, CIC provides undergraduate, graduate, and law students with career-advancing internship opportunities while advocating for real legal and policy change in the lives of Minnesota children, and children throughout the world. The mission of CIC is:

To advance the wellbeing of children of incarcerated caregivers.

The materials that follow are designed to help Minnesota defense attorneys make arguments for mitigated dispositional departures when doing so will advance the best interest of the children of caregivers being sentenced. While the CIC is focused on the best interests of children, not caregivers, the best interests of both often overlap. The first section of this training package contains a legal argument that can be made on the basis of existing case law to request a departure. The second section gives up to date research on both the harms of parental incarceration on children as well as the benefits of alternative sentences (please note: This is a summary of a larger report; the full version is readily available upon request). Then, the third and final section contains a list of potential alternative sentencing options available including housing, diversion courts, and a few other resources that can be utilized. We believe that an argument of alternative sentencing will be more convincing and more likely when that alternative is clearly articulated.
Proposed Amendment to Comment 2.D.303

(amendments in bold text)

In considering a dispositional departure, “the trial court can focus more on the defendant as an individual and on whether the presumptive sentence would be best for him and for society.” State v. Heywood, 338 N.W.2d 243 (Minn. 1983). The requirement that a defendant be “particularly” amenable to probation ensures that the defendant’s amenability to probation distinguishes the defendant from most others and truly presents the substantial and compelling circumstances necessary to justify a departure. State v. Soto, 855 N.W.2d 303, 309 (Minn. 2014). While social and economic factors cannot justify a departure, such facts may be relevant to determining whether a defendant is particularly amenable to probation. Id. at 312. In determining whether a defendant is particularly suitable to individualized treatment in a probationary setting, for example, a court is permitted to consider the defendant’s age, prior record, remorse, cooperation, attitude before the court, and social support. State v. Trog, 323 N.W.2d 28, 31 (Minn. 1982). Additional social and economic factors may also bear on this determination, State v. King, 337 N.W.2d 674, 675-76 (Minn. 1983), including a defendant’s status as a parent. See State v. Sherwood, 341 N.W.2d 574, 577 (Minn. 1983) (considering but rejecting defendant’s argument that her status as a parent to multiple young children supported a probationary sentence where defendant had been convicted nine times within a 17-year period despite her parental obligations); Soto, 855 N.W.2d at 312 (indicating that a defendant’s status as a parent can be relevant in determining whether the defendant is particularly amenable to probation).
The Impact of Parental Incarceration on Children

Incarcerating parents is often not in the best interests of their children, and research has identified a multitude of negative consequences that befall children when their caregivers become incarcerated. Research in this area is well documented and broadly falls into three categories that will be discussed in turn: research that examines the impact of parental incarceration on children broadly, research examining the impact of maternal incarceration compared to paternal incarceration on children, and research specifically investigating the impact of maternal incarceration.

Parental incarceration broadly has been shown to have a number of negative social consequences for children left behind, including economic instability, mental health and behavioral problems, infant mortality, childhood homelessness, childhood inequality--especially racial inequality, decreased quality of care, as well as an increased risk of socioeconomic deprivation including food insecurity. Parental incarceration experienced by children during adolescence also increases risk of receiving government assistance and decreases educational attainment. Furthermore, there are negative psychological consequences these children disproportionately face, such as increased antisocial behavior, learning disabilities, attention deficit disorder and attention hyperactivity disorder, as well as behavioral or conduct problems, developmental delays, and speech or language problems, depression, posttraumatic stress disorder and anxiety. A child’s physical health is also damaged by experiencing parental incarceration—with increased likelihood of high cholesterol, asthma, migraines, HIV/AIDS, and fair/poor health. Also, parental incarceration is associated with a higher BMI for female children.

Research exploring the differential impact of maternal incarceration versus paternal incarceration generally finds that maternal incarceration may be the most detrimental. For instance, while both paternal and maternal incarceration contribute to residential instability that leads to arrest and re-arrest of children, only maternal incarceration is directly related to re-arrest. Similarly, maternal incarceration is a much stronger predictor of foster care placement for children than paternal incarceration. Maternal incarceration increases the risk of intergenerational incarceration at a rate 2.5 times greater than paternal incarceration. Relatedly, maternal incarceration—more so than paternal incarceration—causes disruption for children, which may lead to a greater risk for psychopathology and insecure attachment for those children later in life.

Research focused solely on the consequences of maternal incarceration has found maternal incarceration impacts children’s subsequent criminal behavior,
significantly increasing the probability of future crime. Moreover, children who experience maternal incarceration score substantially lower on cognitive tests than the average child. On average, mothers have sentences five years shorter than those of fathers. Relatively short sentences make it more likely for parents to re-enter their children’s lives upon release—and also make alternatives to incarceration seem more plausible.

Beyond the negative consequences of caregiver incarceration on children, the price of incarceration is exorbitant. Estimates indicate that prisons cost taxpayers $5.4 billion annually, an average of $31,307 per prisoner per year. Similarly, the annual costs of keeping children in foster care are considerable, estimated at $40,000 per child. Incarcerating caretakers and sending their children to the child welfare system costs billions of dollars that could be saved with the implementation of community alternatives. The extortionate costs of incarceration have led to recent bipartisan support of sentencing reform.

In addition to the social and financial costs, the family unit itself is endangered by incarceration, with termination of parental rights as another potential collateral consequence of incarceration. Lack of non-custodial sentencing alternatives, particularly in conjunction with unavailability of prison nurseries or similar programs, can lead directly to termination of parents’ rights to raise their children. More than half of U.S. states consider incarceration as a factor in termination proceedings, independent from a showing that the criminal act for which the parent was sentenced was actually detrimental to the child.
The Benefits of Alternative Sentences

Among U.S. jurisdictions, only a handful of states consider family impacts at sentencing. Washington State has adopted “parenting sentencing alternative” laws.xxiii Similarly, California has an alternative sentencing program for mothers with an established history of chemical dependency.xxiv Internationally, children’s best interests are taken into account in sentencing in a variety of ways. Most notably, the Constitutional Court of South Africa has established that when a single primary caregiver is sentenced, South African courts must give consideration to the best interests of the child.xxv We are advocating similar steps be taken in the state of Minnesota through pre-existing legal channels. Two of the most utilized and best researched forms that consideration of the best interests of a child may take are community-based sentencing alternatives and visitation.

Community-Based Sentencing Alternatives

When it is determined that it is in the best interests of the child to remain with the caregiver, community-based sentencing alternatives may be the best option. Family-based treatment programs provide services including therapy, parenting classes, and substance-abuse treatment that benefit the child and caregiver, and allow the child and their caregiver to remain together.xxvi As a sentencing alternative, family-based treatment programs demonstrate successful outcomes for children’s health and stability, family reunification, reduced rates of recidivism, and sustained parental sobriety.xxvii An evaluation found that six months post-treatment 60% of mothers remained sober, criminal arrest declined by 43%, 44% percent of children returned from foster care, employment rose from 7% to 37% percent post-treatment, and enrollment in educational and vocational training increased from 2% to 19% post-treatment in one family-based treatment center.

These treatment programs achieve better outcomes than maternal incarceration and a child’s placement in foster care and are less costly.xxviii A caregiver raising a child outside of prison under intensive supervision can cost tens of thousands of dollars less than incarcerating the caregiver and providing foster care for the child. One source reported that the former alternative would cost approximately $10,000 to $34,000 annually. On the other hand, the costs of incarceration plus foster care amount to $129,000.00 per year.xxix By avoiding foster care and lowering recidivism rates, there is a potential short-term and long-term budgetary benefit for governments.
Visitation

Visitation for children of incarcerated caregivers is another important component of family preservation. Harm to the child caused by separation may be mitigated through visitation and is most useful when it is in the best interest of the child to be separated from their parent—or when an alternative to incarceration is not possible for other reasons (such as the severity of the offense). For children, visiting and communicating with their parent can decrease the feelings of loss caused by separation, help dissolve fears or fantasies about prison by seeing it first hand, and encourage discussion of current circumstances, thereby addressing issues that may lead to shame or fear. The quality of the caregiver-child contact during visitation is very important. Research in this area points to an increase in children’s self-esteem following an intervention in which children could physically interact with their incarcerated fathers in a child-friendly environment.

Extended visitation is a form of visitation in which children are often able to remain with their incarcerated caregivers for lengthy visitation periods, including overnights. Research examining one such program indicates that mothers allowed this type of visitation reported more contact with their children not only through these visits, but also by phone and by mail as a result of their participation in the program. As a result of physical contact and face-to-face interaction, mothers and their children are afforded an opportunity for nurturing and emotionally satisfying contact.

Shakopee Women’s Prison in Minnesota currently has an extended visitation program. The visitation program at Shakopee allows for extended visitation hours, greater physical contact between mothers and their children, and child-appropriate activities that enhance mother-child bonding.

Studies have shown that prisoners who maintain close family relationships while serving their sentences have had more successful experiences after their release. For the incarcerated parent, in-prison parenting programs and other visitation interventions are shown to correlate with lower rates of recidivism, increased self-esteem, and more parental involvement with their children following release. By allowing the presence of children and maintaining and fostering the caregiver-child relationship, visitation programs permitting caregivers to parent behind bars promote the universal goal of rehabilitation.
Sentencing Alternatives: Housing

1. **RS EDEN outpatient women’s program provides transitional housing**

   RS EDEN provides transitional housing where children can live with their mothers while the mothers are involved in outpatient treatment. In addition to the housing option, parenting, child development, transportation, advocacy and family unification services are provided.

   The Women’s Residential Program is a 15-bed, 180-day program for high-risk clients—e.g., women involved with the criminal justice and child protection systems and those with children prenatally exposed to drugs. The Women’s Outpatient Program is a highly structured program for women. Some day treatment women live at The Lorraine, a sober supportive-living facility for women and children.

   **Address:** 1025 Portland Ave, Minneapolis, MN 55404  
   **Phone:** (612) 338-0723

2. **Wayside House, Inc. Family Treatment Center**

   Family Treatment Center is a comprehensive family treatment program where women can live with their children 11 and younger while receiving substance abuse treatment and family/children services.

   We believe that women heal through their connections with other women and are best served with gender-specific services.

   We understand the importance of assessing the stages of change for each individual and using motivational interviewing techniques to help them travel along the continuum of change. Our approach to working with women is a non-confrontational and non-judgmental style. We focus on the relationship that exists between the counselor and the client. Healing takes place when genuine connection occurs in the relationship.

   **Address:** 2120 Clinton Avenue South, Minneapolis, Minnesota 55404  
   **Phone:** 612-871-0099  
   **Fax:** 612-871-0929  
   **Email:** Info@WaysideHouse.orgv

3. **Welcome Manor Family Services**

   Welcome Manor Family Services is a residential chemical dependency treatment center for women. Although this is a chemical dependency service designed expressly for women, mothers seeking to access treatment services may bring their children to reside with them while they attend treatment.
Clients without children have their own unit and can avoid the family atmosphere of the women-with-children wing, providing a more adult-like environment.

**Address:** 114 Pleasant St W, Garden City, MN 56034  
**Phone:** 1-866-599-3295, 1-507-546-3295

4. **Journey Home**

Journey Home is a residential facility providing primary chemical dependency programming and housing for chemically dependent women and their children. It is a structured, recovery-focused setting for women ages 16 and older who are referred to us after the completion of primary chemical dependency treatment.

The staff at Journey Home provide individual and group counseling in addition to 24-hour supervision of clients. Clients are encouraged to work with each other to create a sober, supportive environment for themselves and their children.

Women attend structured programs covering such topics as parenting skills, spirituality, relapse prevention, relationships, self-esteem and mental illness/chemical dependency education. Employment, money management and housing are also included in each client's assessment treatment plan. In addition to these programs, Journey Home is also sensitive to the multicultural needs of women and children who reside with us. Ethnic-specific parenting support and resources are currently available for Native Americans and African Americans and are added as the need arises.

**Address:** 1485 10th Avenue Northeast, Sauk Rapids, MN 56379  
**Phone:** 320-259-9149

5. **ShareHouse**

ShareHouse has gender specific residential facilities with a total of 116 bed; each facility offers 24 hour residential staffing. Clients will share a fully furnished apartment with up to 4 others. Clients in the women & children’s program will have their own apartment or studio apartment.

Residential treatment includes residential stay and an assigned number of hours per week of programming. Clients have a daily structured schedule that offers individualized treatment programming and involvement in Twelve Step recovery groups. Each client’s treatment program is developed to specifically meet their needs.

Clients will have a team of clinical professionals managing and providing their care. Each client is assigned a case manager as well as a licensed addiction counselor.

Each residential facility serves a specific population:

- **Sister's Path:** homeless, single-parent women with children
- **Sharehouse New York Mills:** women with children
6. **Mary’s Place**  
Mary’s Place offers transitional apartments for homeless families with children. This building was named after and dedicated to the Blessed Mother Mary. This beautiful complex was born out of love, compassion, and concern for women and children in poverty. Mary’s Place was built entirely with private donations and these 100 fully-furnished apartments give safety and hope to all who occupy them.

Each apartment has a bathroom and kitchen, phone with voicemail, and television. There are 68 large apartments which can accommodate 5-12 people and 32 smaller units which house 3-5 people. All together, we can house more than 500 people in need at any given time. Every effort has been made to ensure the security of the residents with the lobby staffed 24 hours a day and entry by ID card only. Strict rules help maintain a hopeful and peaceful atmosphere for all residents.

Mary’s Place has five, full-time Family Advocates who work directly with families on goal planning and ensuring progress at becoming self-sufficient and obtaining housing. They also work with the children offering tutoring, mentoring, and enrichment activities. The Immaculate Heart of Mary Mother of Christ sisters are a part of our staff and work with the families and children in many different areas.

7. **People Serving People**  
People Serving People is the region’s largest and most comprehensive family-focused homeless shelter.

People Serving People achieves its mission and goals by providing emergency housing and community services, which assist families experiencing homelessness to become self-sufficient and reconnected with the community. In a safe, secure, and sober environment, we provide services which cultivate independence and accountability.

What distinguishes us from other emergency shelters is the broad range of on-site programs and services designed to address common barriers faced by families experiencing homelessness. We help families find ways to overcome
these barriers to self-sufficiency through advocacy, employment, education, and parenting programs.

Address: 614 Third Street South, Minneapolis, Minnesota 55415  
Phone: 612.332.4500  
Fax: 612.252.4029

8. **Resource Inc**

**Chemical Dependency Treatment:**
Recovery Housing: Family housing is also available to women with children for up to 9 months. Recovery housing is only offered to participants in RESOURCE’s treatment and/or recovery maintenance programs and who are willing to comply to our transitional housing contract, guidelines and rules. Residents participate in two additional groups — house meeting and nutrition group — each week.

**For Women with Co-Occurring Disorders:**
**Intensive Residential Family Treatment:** is offered for mothers meeting criteria (level of risk) for intensive residential co-occurring treatment. Services are specific to mothers who are pregnant and parenting women who are entering treatment with their dependent children under the age of 18. Programming and supportive services are provided seven days per week and include individual counseling and group sessions. Services are provided by mental health professionals and treatment clinicians.

Address: 1900 Chicago Avenue, Minneapolis, MN 55404  
Phone: (612) 752-8000

9. **Jeremiah Program**

Jeremiah Program offers one of the nation’s most successful strategies for transforming families from poverty to prosperity two generations at a time. Jeremiah prepares determined single mothers to excel in the workforce, readies their children to succeed in school, and reduces generational dependence on public assistance.

Jeremiah’s proven, holistic approach begins with establishing a supportive community for determined single mothers to pursue a career-track college education. Through a combination of quality early childhood education, a safe and affordable place to live, and empowerment and life skills training, their families are stabilized and able to find a path out of poverty.

Address Mpls: 1510 Laurel Avenue, Minneapolis, MN 55403  
Address St Paul: 932 Concordia Avenue, St. Paul, MN 55104  
Phone Mpls: (612) 692-8711  
Phone St. Paul: (651) 332-5002
Sentencing Alternatives: Diversion Courts

1. Ramsey County Adult Substance Abuse Court
   15 W Kellogg Blvd, Suite 900
   St. Paul MN  55102
   Phone: (651) 266-9254
   Fax: (651) 266-8185

   Heidi Heinzel, Program Coordinator
   heidi.heinzel@courts.state.mn.us

   Ramsey County Substance Abuse Court (ASAC) started in October 2002. ASAC is designed to provide individuals the opportunity to improve their lives and break the cycle of substance abuse. The court uses assessment, treatment (chemical and mental health), strict supervision, random drug and breath testing, regular court hearings and immediate sanctions and incentives to help participants maintain a drug free lifestyle. The program represents a closer working relationship between criminal justice partners (judge, prosecutor, defense attorneys, case managers, and treatment providers) than is traditionally seen in criminal courts. ASAC serves approximately 55 participants in any given one day.

   Eligibility:
   Adult Ramsey County resident
   Charged with a non-violent Felony offense
   Substance abuse/dependency diagnosis and a need for treatment
   Willingness to participate

2. Ramsey County DWI Court
   (651) 266-9277

   The Ramsey County DWI Court is for persons charged with their third or more gross misdemeanor DWI offense. The court provides intensive supervision for persons who are interested in changing their drinking and driving behavior and ending their cycle in the criminal justice system.

   Eligibility
   3 or more DWI's in a lifetime
   Ramsey County resident
   Gross Misdemeanor level charge
   Ramsey County arrest and charged
   Diagnosis of substance dependence
   Approval by the DWI Court team

3. Ramsey County Mental Health Court
   900 Ramsey County Courthouse 15 W. Kellogg Boulevard
   St. Paul, MN 55102
   Phone: (651) 266-9256
The Second Judicial District’s Mental Health Court has been operational since May 2005 and developed based on the national problem-solving court model. The Ramsey County Mental Health Court (RCMHC) was created when it became increasingly clear that persons with mental illness and co-occurring mental illness and substance abuse disorders were in need of more specialized and individualized jurisprudential approaches.

The RCMHC directs eligible defendants with mental health disorders from the criminal justice system to community-based mental health, substance abuse and support services. Between its inception in May of 2005 and December of 2014, the RCMHC has provided services to 472 individuals with serious mental illness who have been charged with criminal offenses in Ramsey County.

**Eligibility:**
- 18 years of age or older
- Ramsey County Resident
- Charged with a Crime
- Diagnosed with a significant mental illness
- Legally competent
- A person with no history of violent offense
- Willing to voluntarily participate and commit to the rigors of the court conditions and treatment plan

**4. Hennepin County Drug Court**

The Fourth Judicial District Court and Hennepin County implemented Drug Court in 1997, and revised the program in 2007, with the mission to increase public safety, improve chemical health, and reduce crime by targeting the population of adult, non-violent, chemically dependent, felony property and drug offenders, who are at high risk to reoffend. Drug Court is a voluntary, minimum 12-month, post-conviction program, involving the coordinated efforts of the judge, prosecutor, defense attorney, law enforcement, social services, probation, and treatment specialists to quickly identify and intervene in order to break the cycle of chemical dependency and crime.

The judge is the central figure in a team effort to keep participants engaged in treatment, to reward progress for meeting goals and to sanction noncompliant behavior. Drug Court participants receive ongoing judicial supervision from the court, are placed under intensive community supervision, undergo frequent drug testing and engage in long-term chemical dependency treatment. In addition, Drug Court assists participants in enhancing life-skills which may include such services as: job training, education, family counseling, etc. Drug Court encourages participants to take control of their own recovery, but it also has clear and definite requirements which if broken are swiftly dealt with by the judge.

**For more information, please contact:**
John Hultquist, Program Coordinator
5. **Hennepin County DWI Court**
The Fourth Judicial District Court and Hennepin County implemented DWI Court in 2007, with the mission to increase public safety and reduce the number of alcohol related traffic deaths and injuries by effectively partnering our justice system and community resources to focus on the specific issues of repeat DWI offenders. DWI Court is a voluntary, minimum 18-month, post-conviction program involving the coordinated efforts of the judge, prosecutor, defense attorney, law enforcement, social services, probation, treatment specialists, and victim advocates to quickly identify and intervene in order to break the cycle of chemical dependency and drunk driving.

**Eligibility Guidelines:**
Hennepin County resident
Must be 18 years of age or older
Second Degree Gross Misdemeanor or first-time Felony level charge
Hennepin County arrest and charged
Diagnosis of moderate or severe substance use disorder
Must complete an orientation and screening, voluntarily agree to participate in the program, and be approved by the DWI Court team

**For more information, please contact:**
Dennis Miller, Program Coordinator
(612) 348-3874
email: Dennis.Miller@courts.state.mn.us

6. **Hennepin County Veterans' Court**
Hennepin County Veterans Court is a court that serves veterans charged with a criminal offense who are struggling with addiction, serious mental illness, and/or co-occurring disorders. It is a 12-18 month coordinated program that promotes sobriety, recovery, and stability involving cooperation and collaboration with the traditional problem solving court partners, with the addition of the U.S. Department of Veterans Affairs Health Care, the Veterans Benefits Administration, County Veterans' Services, and volunteer veteran mentors. The program couples judicial reviews with intensive probation supervision including input from a multi-disciplinary team of professionals led by the judge. The Fourth Judicial District Court and Hennepin County implemented Veterans Court in July 2010 with the mission of promoting public safety by assisting and supporting veterans and their families through a coordinated response, through collaboration with the veterans’ service delivery system, community based services, and the criminal justice system.

**Eligibility Criteria**
Eligibility is evaluated by the Veterans Court Team on a case-by-case basis. General requirements include:
Service in the U.S. Armed Forces
Charged in Hennepin County with a non-violent felony, gross misdemeanor, or
misdemeanor offense Residence in Hennepin County, or in close proximity to the Court (metro area)
Diagnosed with a treatable behavioral, mental health, or chemical health issue

7. **Hennepin County Criminal Mental Health Court**

Criminal Mental Health Court of the Fourth Judicial District is an innovative program that capitalizes on the criminal court involvement for the identification of individuals with mental illness with unmet health care needs, for setting into motion a rapid response to these needs, and for using the court involvement as means for maximizing compliance. This program has been nationally recognized as a leader in innovation.

The operation of Criminal Mental Health Court has stimulated a change in the manner that defendants with mental illness are responded to by both the mental health system and the correctional system. The Criminal Mental Health Court has established a more fluid referral process with the county case management system and has developed partnerships with other vendors of mental health services in Hennepin County. Criminal Mental Health Court promotes access, improves the quality of and removes barriers to mental health care services to a historically underserved population.
Other Resources

1. **Hennepin County Human Services And Public Health Department Project CHILD**

   **Program Description:** Project Chemical Health Intervention, Linkage and Development (CHILD) provides outreach, assessment, referral and case management support to pregnant women who are reported to Hennepin County Child Protection because of drug or alcohol abuse including marijuana and/or prescription drugs not prescribed.

   Project CHILD collaborates with many county and community based resources for services.

   **Address:** 1800 Chicago Ave, Minneapolis, MN, 55404-1901
   **Phone:** (612) 348-4111

2. **AGAPE High School**

   The AGAPE High School of the St. Paul Public Schools offers young women who are pregnant or parenting an educational option. We offer all core classes required for graduation, as well as PSCO options.

   **Address:** 1037 University Ave W, St. Paul MN, 55104
   **Phone:** 651-744-7970
   **Fax:** 651-293-5360

3. **The Goodwill-Easter Seals FATHER Project**

   The FATHER Project’s mission is to assist fathers in overcoming the barriers that prevent them from supporting their children economically and emotionally.

   Founded in 1999, the FATHER (Fostering Actions To Help Earnings and Responsibility) Project was originally administered by the City of Minneapolis and became a program of Goodwill-Easter Seals Minnesota in 2004. Since then, the FATHER Project has served hundreds of fathers in the community through our extensive network of collaborative partners. The FATHER Project has received national recognition as an effective and innovative program and, in 2012, received federal grant funding to expand to other Minnesota communities.

   **Address (Minneapolis):** 2700 E Lake St., Minneapolis, MN 55406
   **Address (St. Paul):** 2700 E Lake St., Minneapolis, MN 55406
   **Phone:** 651-379-5800

4. **St. David's Center for Child & Family Development**

   St. David's Center is an exceptional preschool, children's mental health clinic and pediatric therapy clinic—all under one roof. We also provide day treatment
programs for children with autism and mental health diagnoses on our Minnetonka campus. In addition, we offer a variety of programs throughout the Twin Cities metro area in community settings and in family homes. These include school-linked mental health therapy in the Hopkins and Osseo School Districts, an autism day treatment program for Somali children in NE Minneapolis, early childhood home visiting, in-home mental health, personal care and autism services, therapeutic recreation programs for teens and young adults and supportive living services, among others. At St. David's Center, relationships are more than a benefit—they are the foundation for our work.

St. David's Center for Child & Family Development serves more than 2,500 children, adults and families throughout the Twin Cities metro area each year.

**Address**: 3395 Plymouth Road Minnetonka, MN 55305  
**Phone**: 952.548.8700

5. **Perspectives**

In 1976, a small group of committed women came together to address a deadly disease. Their goal was to increase community awareness around chemical dependency and its systemic consequences. With committed hearts and a defined vision, Perspectives was born. Now almost 4 decades later Perspectives, located in St. Louis Park, Minnesota, has grown into an award winning, multi-program, human service agency for woman and their children suffering from addictions, mental illness, and poverty. Our Mission statement reads, “Breaking the Cycle for At Risk Families and Children for Total Family Recovery”.

Goals Include:

• Maintain sobriety  
• Improve mental health  
• Enhance a child’s academic and social skills  
• Improve employability  
• Reunite parents with their children  
• Decrease child abuse  
• Increase parenting skills  
• Augment healthy life styles of children with daily nutrition  
• Build community  
• Advance citizenship

**Address**: 3381 Gorham Ave., St Louis Park, MN 55426  
**Phone**: 952-926-2600
6. **EMERGE**

Based in North Minneapolis and Cedar Riverside, EMERGE helps people facing significant obstacles redefine themselves. Every year, we help thousands of adults and youth access jobs, financial coaching, supportive housing, and other key services, along pathways to brighter futures. We are committed to creating better jobs, better lives, and better community.

**Address:** 1101 West Broadway Avenue, Suite 200, Minneapolis, MN 55451  
**Phone:** 612-529-9267
References


See J. D. v. Superior Court, 2008 Cal. App. Unpub. LEXIS 2669 (Cal. App. 6th Dist. 2008)(upholding juvenile court’s termination of rights where incarcerated mother was unable to gain access to nursery program and the child was thus deemed to have been left without provision for support); but see J.B. v. Superior Court, 2009 Cal. App. Unpub. LEXIS 6695 (Cal. App. 2d Dist. 2009)(holding that because mother was enrolled and participating in FFP, protective services should
not have removed her child); see also Eitenmiller, K. Bending the Bars for Mothers: How Prison Alternatives Can Build A Stronger Oregon, 92 Or. L. Rev. 755, 763-768 (2014).

xiii Id. note XX, supra, at 98. Kennedy breaks statutory parental termination schemes into two conceptual categories, what she calls “clearly bad parent” and “impliedly bad parent” termination statutes. Those statutes allowing the court to take the fact of incarnation itself into account during termination proceedings fall into the latter category and exist in most states.


xvi Id at 91.

xvii Id at 91.

xviii Id at 91.


xxi Id.

xxii Id at 92.

xxiv Id at 88.

xxv Id at 91.
The Impact of Incarceration on Children

Incarcerating parents is often not in the best interests of their children, and research has identified a multitude of negative consequences that befall children when their caregivers become incarcerated. Research in this area is well documented and broadly falls into three categories that will be discussed in turn: research that examines the impact of parental incarceration on children broadly, research examining the impact of maternal incarceration compared to paternal incarceration on children, and research specifically investigating the impact of maternal incarceration.

Parental incarceration broadly has been shown to have a number of negative social consequences for children left behind, including economic instability, mental health and behavioral problems, infant mortality, childhood homelessness, childhood inequality, and especially racial inequality. Furthermore, there are negative psychological consequences these children disproportionately face, such as increased antisocial behavior, learning disabilities, attention deficit disorder and attention hyperactivity disorder, as well as behavioral or conduct problems, developmental delays, and speech or language problems, depression, posttraumatic stress disorder and anxiety. A child’s physical health is also damaged by experiencing parental incarceration—with increased likelihood of high cholesterol, asthma, migraines, HIV/AIDS, and fair/poor health. Also, parental incarceration is associated with a higher BMI for female children.

Research exploring the differential impact of maternal incarceration verses paternal incarceration generally finds that maternal incarceration may be the most detrimental. For instance, while both paternal and maternal incarceration contribute to residential instability that leads to arrest and re-arrest of children, only maternal incarceration is directly related to re-arrest. Similarly, maternal incarceration is a much stronger predictor of foster care placement for children than paternal incarceration. Maternal incarceration increases the risk of intergenerational incarceration at a rate 2.5 times greater than paternal incarceration. Related, maternal incarceration—more so than paternal incarceration—causes disruption for children, which may lead to a greater risk for psychopathology and insecure attachment for those children later in life.

Research focused solely on the consequences of maternal incarceration has found maternal incarceration impacts children’s subsequent criminal behavior, significantly increasing the probability of future crime. Moreover, children who experience maternal incarceration score substantially lower on cognitive tests than the average child. On average, mothers have sentences five years shorter than those of fathers. Relatively short sentences make it more likely for parents to re-enter their children’s lives upon release—and also make alternatives to incarceration seem more plausible.

Beyond the negative consequences of caregiver incarceration on children, the price of incarceration is exorbitant. Estimates indicate that prisons cost taxpayers $5.4 billion annually, an average of $31,307 per prisoner per year. Similarly, the annual costs of keeping children in foster care are considerable, estimated at $40,000 per child. Incarcerating caretakers and sending their children to the child welfare system costs billions of dollars that could be saved with the implementation of community alternatives. The extortionate costs of incarceration have led to recent bipartisan support of sentencing reform.

In addition to the social and financial costs, the family unit itself is endangered by incarceration, with termination of parental rights as another potential collateral consequence of incarceration. Lack of non-custodial sentencing alternatives, particularly in conjunction with unavailability of prison nurseries or similar programs, can lead directly to termination of parents’ rights to raise their children. More than half of U.S. states consider incarceration as a factor in termination proceedings, independent from a showing that the criminal act for which the parent was sentenced was actually detrimental to the child.

Alternatives to the Status Quo: Consideration of the Best Interests of the Child at Sentencing

Among U.S. jurisdictions, only a handful of states consider family impacts at sentencing. Washington State has adopted “parenting sentencing alternative” laws. Similarly, California has an alternative sentencing program for mothers with an established history of chemical dependency. Internationally, children’s best interests are taken into account in sentencing in a variety of ways. Most notably, the Constitutional Court of South Africa has established that when a single primary caregiver is sentenced, South African courts must give consideration to the best interests of the child. We are advocating similar steps be taken in the state of Minnesota through pre-existing legal channels. Two of the most utilized and best researched forms that consideration of the best interests of a child may take are community-based sentencing alternatives and visitation.
**Community-Based Sentencing Alternatives**

When it is determined that it is in the best interests of the child to remain with the caregiver, community-based sentencing alternatives may be the best option. Family-based treatment programs provide services including therapy, parenting classes, and substance-abuse treatment that benefit the child and caregiver, and allow the child and their caregiver to remain together. As a sentencing alternative, family-based treatment programs demonstrate successful outcomes for children’s health and stability, family reunification, reduced rates of recidivism, and sustained parental sobriety. An evaluation found that six months post-treatment 60% of mothers remained sober, criminal arrest declined by 43%, 44% percent of children returned from foster care, employment rose from 7% to 37% percent post-treatment, and enrollment in educational and vocational training increased from 2% to 19% post-treatment in one family-based treatment center.

These treatment programs achieve better outcomes than maternal incarceration and a child’s placement in foster care and are less costly. A caregiver raising a child outside of prison under intensive supervision can cost tens of thousands of dollars less than incarcerating the caregiver and providing foster care for the child. One source reported that the former alternative would cost approximately $10,000 to $34,000 annually. On the other hand, the costs of incarceration plus foster care amount to $129,000.00 per year. By avoiding foster care and lowering recidivism rates, there is a potential short-term and long-term budgetary benefit for governments.

**Visitation**

Visitation for children of incarcerated caregivers is another important component of family preservation. Harm to the child caused by separation may be mitigated through visitation and is most useful when it is in the best interest of the child to be separated from their parent—or when an alternative to incarceration is not possible for other reasons (such as the severity of the offense). For children, visiting and communicating with their parent can decrease the feelings of loss caused by separation, help dissolve fears or fantasies about prison by seeing it first hand, and encourage discussion of current circumstances, thereby addressing issues that may lead to shame or fear. The quality of the caregiver-child contact during visitation is very important. Research in this area points to an increase in children’s self-esteem following an intervention in which children could physically interact with their incarcerated fathers in a child-friendly environment.

Extended visitation is a form of visitation in which children are often able to remain with their incarcerated caregivers for lengthy visitation periods, including overnights. Research examining one such program indicates that mothers allowed this type of visitation reported more contact with their children not only through these visits, but also by phone and by mail as a result of their participation in the program. As a result of physical contact and face-to-face interaction, mothers and their children are afforded an opportunity for nurturing and emotionally satisfying contact.

Shakopee Women’s Prison in Minnesota currently has an extended visitation program. The visitation program at Shakopee allows for extended visitation hours, greater physical contact between mothers and their children, and child-appropriate activities that enhance mother-child bonding.

Studies have shown that prisoners who maintain close family relationships while serving their sentences have had more successful experiences after their release. For the incarcerated parent, in-prison parenting programs and other visitation interventions are shown to correlate with lower rates of recidivism, increased self-esteem, and more parental involvement with their children following release. By allowing the presence of children and maintaining and fostering the caregiver-child relationship, visitation programs permitting caregivers to parent behind bars promote the universal goal of rehabilitation.


18 See *J. D. v. Superior Court*, 2008 Cal. App. Unpub. LEXIS 2669 (Cal. App. 6th Dist. 2008)(upholding juvenile court’s termination of rights where incarcerated mother was unable to gain access to nursery program and the child was thus deemed to have been left without provision for support); but see *J.B. v. Superior Court*, 2009 Cal. App. Unpub. LEXIS 6695 (Cal. App. 2d Dist. 2009)(holding that because mother was enrolled and participating in FFP, protective services should not have removed her child); see also Eitenmiller, K. *Bending the Bars for Mothers: How Prison Alternatives Can Build A Stronger Oregon*, 92 Or. L. Rev. 755, 763-768 (2014).

19 Id. note XVII, supra, at 98. Kennedy breaks statutory parental termination schemes into two conceptual categories, what she calls “clearly bad parent” and “impliedly bad parent” termination statutes. Those statutes allowing the court to take the fact of incarceration itself into account during termination proceedings fall into the latter category and exist in most states.


23 Id at 91.

24 Id at 91.

25 Id at 91.

26 Id at 91.


30 Id.

31 Id at 92.

32 Id at 88.

33 Id at 91.