

# Impact of Caregiver Arrest on Minor Children: Implications for Use of Family Impact Statements in U.S. Courts



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## Abstract

Sentencing decisions for caregivers rarely consider the potential damage imposed on their minor children due to lost income, child care, and instrumental and emotional support. Family impact statements can be an effective tool for informing such decision-making. The present study explored the needs created in children's lives by surveying 45 caregivers at arraignment in a U.S. state superior court regarding their 108 children. Caregivers, regardless of sex or living arrangement, reported providing monetary and non-monetary supports (e.g., direct care, help with homework, transportation) to children in the month prior to their arrest. These findings suggest that children experience significant loss of support following the sentencing of a caregiver, and underscore the potential benefits of utilizing family impact statements at sentencing.

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## Introduction

The arrest and potential incarceration of a caregiver is a serious issue affecting the well-being of children (e.g., Arditti & Savla, 2015; Burgess & Flynn, 2013). Broadly defined, caregivers include legal parents or guardians, and anyone else who provides significant support or care to a child. A caregiver's sudden absence from a child's life can mean loss of income and instrumental support such as transportation or help with homework, and anxiety about the caregiver's well-being. Caregiver incarceration has documented associations with negative outcomes including increased trauma symptoms (Arditti & Savla, 2015), physical health problems (Turney, 2014), antisocial behavior (Murray, Farrington & Sekol, 2012), and youth incarceration (Huebner & Gustafson, 2007). Turney's (2014) findings indicated that parental incarceration was more strongly associated with health outcomes than other reasons for separation (parental divorce or death). Gaston (2016) demonstrated that negative effects can be long term, finding that a parent's incarceration early in a child's life was associated with depressive symptoms in adulthood.

Children's well-being may therefore be affected by the length and type of sentence that a caregiver receives. Epstein (2013) argued for a balancing exercise in which the child's rights are weighed against the seriousness of the offense, and Bagaric and Alexander (2015) noted that judicial decisions should not "punish the innocent." Yet as we describe later, sentencing decisions for caregivers rarely consider the potential negative child outcomes.

We know of no estimate of the number of children with an arrested caregiver, but Glaze and Maruschak (2010) estimated that in the United States, 1.7 million children had a parent in a federal or state prison in the year 2007. The number with an arrested caregiver (in the U.S. and worldwide) is likely to be much higher. Because arrest may also result in caregiver absence, the scope of harm is far reaching with 1 in 14 U.S. children having had at least one parent who lived with them go to prison during the child's lifetime (Murphey & Cooper, 2015). Children therefore have a clear interest in the decisions made by courts about their caregivers.

In the United States, a very small number of local jurisdictions have begun including family impact statements in the criminal justice process to inform sentencing and supervision decisions (Cramer, Peterson, Kurs & Fontaine, 2015). Family and child impact is considered in at least some countries' court systems (e.g., Carnelley & Epstein, 2012). Despite the fledgling use of family

impact statements in the United States, there is little data on the types of impacts children are likely to feel. The purpose of the present study was to explore the extent to which arrested caregivers' absence creates needs in children's lives, and whether needs differ depending on caregiver's gender and living arrangement prior to arrest. This topic has received very little research attention, but data are critical in laying the foundation for effective practice regarding family impact statements.

### *Impact of Caregiver Arrest and Incarceration on Children*

Having a caregiver incarcerated has documented associations with negative outcomes as we noted earlier. Strain theory provides a framework for understanding these outcomes (Gaston, 2016; Murray & Murray, 2010). The arrest and incarceration of a caregiver can cause a number of stressors such as structural change (e.g., loss of income; move to a new residence; Gaston, 2016) and social problems (e.g. stigma and hostility from peers; Murray & Murray, 2010). These stressors can lead to psychological strains such as negative affect and depression (Gaston, 2016).

Several existing studies have supported strain theory by beginning to document the types of stressors caused by the absence of a caregiver (Glaze & Maruschak, 2010; Kramer & the Children of Incarcerated Parents Jail Survey Teams, 2016; deVuono-powell, Schweidler, Walters, & Zohrabi, 2015). These sources all investigated loss of income, and all found that a high percentage of families experienced lost income due to the incarceration.

However, existing research has not investigated other structural and psychological losses children may experience, such as childcare, transportation, and disruption of an attachment relationship (Murray & Murray, 2010). These factors can cause difficulties for children and reduce the remaining caregiver's ability to support the child, and may constitute "toxic stress" (Shonkoff & Garner, 2012), overwhelming the child's and family's ability to cope. The resulting over-activation of the body's stress response system can affect the course of a child's development, with changes in the child's brain and behavior. This idea is consistent with the identification of family incarceration as an "Adverse Childhood Experience" (Felitti et al., 1998).

## *Child and Family Impact on Judicial Decision Making*

In this brief review we consider two intertwined factors: whether decision makers explicitly take children into consideration at sentencing, and how frequently consideration results in a change in sentence. As we noted earlier, the impact of a caregiver's incarceration is explicitly taken into account in some countries' judicial systems, specifically involving sentencing decisions. Consideration of dependent children in sentencing is grounded in foundational documents including South Africa's constitution (Carnelley & Epstein, 2012), the European Convention on Human Rights (Epstein, 2013), and the United Nations' Bangkok Rules (UNODC, 2011). The rationale is that the needs of minor children are so compelling that they must be considered whenever a decision is made that is potentially against a child's interest, such as the sentencing of a caregiver (Epstein, 2013). Further, Bagaric and Alexander (2015) argued that another compelling argument is avoidance of punishing the innocent. The idea that children are "punished" when a caregiver goes to prison is supported by evidence of increased trauma symptoms among children with incarcerated parents (Arditti, 2012; Arditti & Savla, 2015).

Epstein (2013), analyzing sentencing remarks from the United Kingdom, concluded that judges sometimes do not mention or seek information about children, sometimes express awareness of children, but only infrequently give explicit consideration to children when determining a caregiver's sentence. It was further noted that only in rare cases did a court use information about children to reduce or suspend a caregiver's sentence (Epstein, 2013). Consistent with Epstein's (2013) findings, Minson and Condry (2015) concluded that children were considered mitigating factors in some U.K. court cases but not others. Lack of consideration was grounds for successful appeal in some cases. Bagaric and Alexander (2015) noted that the South Australia Criminal (Sentencing) Act of 1988 states that courts must consider the effects of sentencing on dependent children, but in practice the effects on children must be exceptional to warrant consideration.

In the United States, according to Bagaric and Alexander (2015), federal sentencing guidelines explicitly advise against considering dependent children as a mitigating factor in sentencing - though the authors noted that some states (e.g. North Carolina) do allow consideration. As in Australia, Bagaric and Alexander (2015) did not consider effects on sentences in the United States. Freiburger (2010) explicitly focused on the extent to which caregiving influenced decisions among judges in U.S. state courts. The study

involved judges' responses to hypothetical vignettes, and findings showed that playing a caregiving role reduced the defendant's likelihood of incarceration.

The literature reviewed here indicates that effects on children of caregiver incarceration are substantial, and that the children are sometimes considered when caregivers are sentenced. However, it is unclear how systematically or how thoroughly this is done, even if there is a mandate to do so. It is important that there be a systematic process for collecting relevant information (Epstein, 2013) and taking into account effects on children. Further, there is a need for research to identify the types of effects children may experience, to guide information gathering.

One way to systematize the process is by implementing family impact statements (Cramer et al., 2015). Cramer et al. (2015) described the development and use of family impact statements in four U.S. jurisdictions, which can be used by probation professionals to inform their recommendations to the court. According to Cramer et al. (2015), San Francisco's pre-sentence investigation process includes questions regarding "if the defendant is the primary caregiver; what the relationship of the other caregiver(s) is to the children; if there is an active child support case; whether the incident for which the defendant was charged involved family violence; and if any children were at risk as a result of the circumstances of the current offense" (p. 7). These types of questions can be helpful to the court in determining how sentencing the caregiver will affect the children (taking into account the possibility that the caregiver may actually pose a risk). We note that consideration of family impact need not be limited to length of sentence (which was the focus of our review), but may also involve supervised parent-child visits or services to families (Cramer et al., 2015). The exact way in which the court takes children into account may depend on the family's situation, and specific impacts on children of losing the caregiver.

The lack of data and evaluation on family impact statements was noted by Cramer et al. (2015). One type of data that is needed regards the types of impacts on children of caregiver incarceration. Recent work by Glaze and Maruschak (2010), Kramer et al. (2016), and deVuono-powell et al. (2015) has clearly documented the loss of income and other economic costs when a caregiver is incarcerated. But caregivers play other important roles in children's lives, providing direct care, instrumental support (e.g., transportation, help with homework), and emotional support. Given the negative effects of caregiver incarceration we reviewed earlier, courts should

be informed about the full range of potential effects on children and consider these effects at sentencing. To our knowledge no research has documented how commonly incarcerated caregivers had been providing different types of supports prior to arrest.

The present study provides data documenting the direct effects that incarceration of a caregiver (male or female; resident or non-resident; legal parent/guardian or not) could have on children's lives. This study also examines whether the likelihood of providing support differs depending on whether the caregiver is male or female, and whether the caregiver resides with the child or not. This information can be useful for informing policy makers and criminal justice professionals regarding how frequently there are substantial impacts on children's lives, and for guiding the development of interview procedures for collecting information to develop family impact statements.

## **Method**

### *Sample*

The two related populations we wished to study were arrested caregivers of minor children in Connecticut, USA, and their minor children. Our sampling frame consisted of caregivers arraigned at the New Britain, Connecticut Superior Court who were represented by Connecticut Public Defender Services and held in lock-up. This court serves the city of New Britain and four surrounding towns. Our sample included those caregivers willing and able to participate in our survey when at the New Britain courthouse for arraignment.

We surveyed 45 caregivers about the 108 children they provided care for in the month prior to their arrest. A majority of caregivers (n = 34, or 75.6%) were male, and almost half were Latin American or Hispanic (n = 22, or 48.9%). Children averaged 6.7 years of age and 54.6% (n = 59) were girls. For most children (71.4% or n = 80), the caregiver was male. Just over half (50.9%) of the children lived with the caregiver prior to the arrest. Additional demographic information on the sample of children and caregivers is provided in Tables 1 and 2.

It is important to note that our sampling frame excluded portions of the arrested population, including: public defender clients whose condition at the pre-arraignment meeting precluded the survey being explained to them

(e.g., very upset over the arrest, behaving violently, or under the influence of drugs or alcohol), public defender clients who were not held in lock-up, and arraignees with private representation.<sup>1</sup> We also note that while Spanish translation was available, no survey respondents were non-English speakers, suggesting that clients needing translators did not become participants.

## Survey

We developed a survey to capture the potential impact of a caregiver's arrest on their children, by assessing what supports the caregiver had been providing in the month prior to arrest. Caregivers were asked how many minor children they helped care for, and for each child, to report (a) the child's age, (b) the child's sex, (c) whether the caregiver was the child's legal parent or guardian, and (d) whether the child lived with the caregiver in the month prior to the arrest.

**Table 1** Demographic Profile of Children in the Sample (N = 108)

		n	Percent
Children's Age			
5 years old or below		49	45.4
6 to 10 years old		37	34.3
11 to 17 years		22	20.4
Children's Gender			
Female child		59	54.6
Male child		49	45.4
Gender of Child's Caregiver			
Female caregiver		28	25.9
Male caregiver		80	74.1
Caregiver is Child's Legal Parent/Guardian			
Yes	All Caregivers	79	73.1
	Female Caregivers	24	85.7
	Male Caregivers	55	68.8
No	All Caregivers	29	26.9
	Female Caregivers	4	14.3
	Male Caregivers	25	31.3
Child Lived with Caregiver Prior to Arrest			
Yes	All Caregivers	55	50.9
	Female Caregivers	21	75.0
	Male Caregivers	34	42.5
No	All Caregivers	53	49.1
	Female Caregivers	7	25.0
	Male Caregivers	46	57.5



Caregivers were then asked, separately for each child, about supports they had been providing regularly in the month prior to the arrest. The list included monetary, direct care, instrumental (e.g., transportation, help with homework), and emotional support. Table 3 provides a list of the supports.

**Table 2** Demographic Profile of Caregivers in the Sample (N = 45)

	n	Percent
Caregiver Gender		
Female	11	24.4
Male	34	75.6
Caregiver Race/Ethnicity <sup>a</sup>		
Latin American or Hispanic	22	48.9
White or Caucasian (not Hispanic)	18	40.0
African American or Black	9	20.0
Native American or Indian	3	6.7
Asian	0	0.0

<sup>a</sup>Percentages sum to greater than 100 because caregivers were asked to indicate all applicable races or ethnicities.

## Procedure

### *Recruitment*

Public defender attorneys informed clients about the survey during a pre-arraignment meeting. These meetings took place in the morning, with arraignments occurring in the late morning or afternoon. Attorneys asked whether the client was the parent or caregiver of any minor children, and if so, whether the client would be willing to participate in the survey. The specific language used to explain who is a caregiver, from a script provided to attorneys, was “parents or people who help support children under age 18.” Respondents were asked, “Do you have any children under age 18 that you help to support or care for?” The definition of caregiver was therefore fairly broad. This is important because children may be substantially affected by the loss of caregivers even if they are not legal parents or guardians. The attorneys’ script also made it clear that participation was voluntary, and that the choice of whether to participate would not affect the client’s case, and that no information from the survey would be shared with any agency or the client’s family.



### *Survey administration*

Surveys were administered in the courthouse's lock-up facility, either before or after the caregiver's arraignment. Surveys were conducted during lunch time, when no arraignments were taking place, in a non-contact interview room with glass in between the surveyor and the caregiver. The informed consent statement was taped to the glass so the caregiver could read it, and was read aloud to the caregiver by the researcher. The only printed material in addition to the consent form was the list of possible supports the client may have been providing to children, which was taped to the glass.

## **Results**

The purpose of the present study was to explore the extent to which arrested caregivers' absence creates needs in children's lives. We addressed this issue by examining the percentages of children for whom caregivers reported providing, in the month prior to the arrest, each type of support listed in Table 3. Some supports are very unlikely to be needed by young children (e.g., not yet school-age), including help with homework or projects, talking with teachers, coaches, etc., and listening to personal problems. For those three supports we therefore only included data for children age 6 and above.

### *Supports for the Total Sample*

Results in Table 3 indicate that caregivers generally reported being quite involved in children's lives. For most children, 88.9%, the arrested caregiver provided at least three of the various types of support (for 92.6% of children the caregiver provided at least one support; not reported in the table). Each type of support was provided for well over 50% of the children except for medical or special needs at 25%. It therefore appears that arrested caregivers had been providing a range of supports including monetary, direct care, instrumental, and emotional support.

### *Supports by caregiver characteristics*

We examined supports children had been receiving from male versus female caregivers, caregivers who did versus did not live with the child(ren) prior to the arrest, and caregivers who were versus were not the legal parent or

guardian. Significance tests comparing groups were done using the  $\chi^2$  test of independence with an alpha level of .05.

Results showed that large majorities of children of both male and female caregivers received at least three types of support (86.3% for children of male caregivers and 96.4% for children of female caregivers; this difference was not statistically significant). Table 3 shows results for each individual type of support, and although children were significantly more likely to receive most supports from a female caregiver than from a male caregiver, results show that caregivers of both genders were heavily involved.

Comparisons showed that children who lived with the caregiver prior to the arrest were more likely to receive support than those who did not – there were significant differences on four of the eight types of support, as well as for providing three or more types of support (see Table 3). However, children not living with the caregiver were still quite likely to receive at least three types of support (77.4%; the value was 100% for those living with the child).

Children of both legal guardians (89.9%) and non-guardians (86.2%) were likely to receive at least three types of support from the arrested caregiver; the difference was not statistically significant. For individual types of support there was one statistically significant difference: non-guardians were more likely to help with homework or other projects. We are not sure why this might be, but the more important finding may be the relative lack of differences, and the high rates of support provided by both legal guardians and non-guardians

**Table 3** Percent of Children Receiving Support in the Month Prior to Caregiver’s Arrest (N = 108 Children)

Type of Support	All (N = 108)	By Caregiver Gender		By Caregiver Guardianship		By Caregiver Living Arrangement	
		Male Caregiver (n = 80)	Female Caregiver (n = 28)	Legal Guardian (n = 79)	Non-Guardian (n = 29)	Living with Child (n = 55)	Not Living with Child (n = 53)
Financial support	87.0	82.5*	100*	89.9	79.3	90.9	83.0
Helping at least once a week with homework/projects <sup>a</sup>	86.4	81.0*	100*	81.0*	100*	92.9	80.6
Listening or helping with personal problems <sup>a</sup>	86.4	81.0*	100*	83.3	94.1	89.3	83.9
Talking with teachers, coaches, etc. <sup>a</sup>	81.4	73.8*	100*	76.2	94.1	92.9	71.0*
Transportation at least once a week	79.6	76.3	89.3	81.0	75.9	94.5	64.2*
Watching the child at least once a week	74.1	68.8*	89.3*	74.7	72.4	87.3	60.4*
Government assistance	59.3	52.5*	78.6*	62.0	51.7	76.4	41.5*
Care at least once a week for medical or special needs	25.0	22.5	32.1	29.1	13.8	32.7	17.0
At least 3 types of support	88.9	86.3	96.4	89.9	86.2	100.00	77.4*

<sup>a</sup> Percentages only include school-age children, age 6 and above (n = 59 children).

\* Indicates a statistically significant  $\chi^2$  test of independence comparing by caregiver gender, guardianship, or living arrangement

## Discussion

The key overall finding of our survey is the high degree of involvement in children's lives by arrested caregivers. We have no way of knowing how many of the caregivers would ultimately be sentenced to incarceration, but our results indicate significant potential for the loss of important supports. These supports include but go well beyond the financial and material, to include instrumental support (e.g., help with homework) and emotional support, as well as direct care. In a caregiver's absence due to incarceration, the family may be able to replace some of those supports (e.g., direct care) but doing so may put more stress on the family. Other supports may not be easily replaceable (e.g., emotional support). According to strain theory, stressors like these can lead to substantial negative outcomes. Given the documented relationships between parental incarceration and children's health and behavior problems (e.g., Turney, 2014), it is important to consider children at the moment of sentencing.

Our findings are consistent with a small number of other studies documenting effects on children of caregiver incarceration (Glaze & Maruschak, 2010; Kramer et al., 2016; deVuono-powell et al., 2015). Our survey is unique in two ways. First, our research is the first (to our knowledge) to examine a broad range of supports for children (others have concentrated mainly on economic effects). Second, to our knowledge, ours is the only study to seek data from caregivers shortly following arrest. Other studies of lost supports have asked for retrospective reports over a fairly long period of time, and these reports may be subject to memory distortions. Our respondents, on the other hand, were surveyed about what they had been doing in the previous 30 days so it is likely that they had very clear memories relating to survey items.

One implication of our findings is that a process be implemented in court systems to develop and consider family impact statements when a caregiver is being sentenced (Cramer et al., 2015). Our study aims to inform the development and use of family impact statements, and is particularly timely given that some jurisdictions are considering children as a mitigating factor in sentencing but do not employ a systematic process for such consideration (Cramer et al., 2015; Freiburger, 2010). We recognize it is not widely agreed that children should be considered in decision making about an arrested parent. In fact, as noted by Bagaric and Alexander (2015), U.S. federal sentencing guidelines explicitly advise against consideration of family ties in sentencing. However, the potential harm imposed on the well-being of children as a result of court decisions is a compelling reason to take children's interests into account. This consideration is consistent

with foundational documents cited earlier (Carnelley & Epstein, 2012; Epstein, 2013; UNODC, 2011).

We recognize that taking caregiver status into account in sentencing could be perceived to benefit those with children and to disadvantage those without children. This is a valid concern. We recognize the importance of equity but we argue for a view of sentencing which takes into account the common good in addition to the parties' individual rights. It is essential that those convicted of crimes be held responsible for their actions, but it is also important to society and to children that they fulfill their responsibilities as parents or caregivers. The resulting balancing process (Epstein, 2013) may sometimes result in a reduced or alternative sentence such as home confinement (Cramer et al., 2015). But family impact statements could be taken into account in a number of ways posing no equity issue. Cramer et al. (2015) mentioned possibilities such as taking children into account in court-ordered treatment plans (e.g., supervised visits or other services). Another possibility, which may be outside the control of probation professionals or judges, is incarceration in a facility reasonably close to the children, to make visitation easier. (See, for example, New York State Assembly bill A6540, 2016.) Probation professionals might take family relationships into account when developing case plans, focusing on building or maintaining relationships as a potential strategy for building support and avoiding recidivism (e.g., Taylor, 2015).

A second implication of our findings is that assessment of family impact should be fairly broad, capturing information in a variety of areas. It is not clear, when courts do consider child and family information, exactly what information may be gathered. We suspect it is fairly narrow. For example, Epstein's (2013, p. 136) description of U.K. courts was as follows:

'A pre-sentence report would normally tell the court whether dependent children were living with the defendant, how old they were, if any had disabilities or special needs, and who would care for them in the event of the mother going to prison.'

Cramer et al. (2015) suggested family impact statement questions focusing on material support and direct care. These are critical types of support but we argue that instrumental supports (e.g., transportation and help with schoolwork) and emotional support should also be considered. Both of these types of supports are important for child and family well-being. Jeynes' (2015) meta-analysis showed father involvement in children's lives is associated with better educational outcomes. There is also evidence that emotional attachment is important for child mental health (Murray and Murray, 2010). We therefore argue that the courts should consider how to maintain existing connections.

A third implication of our survey results is that family impact should be considered regardless of whether the caregiver is male or female, or resident or non-resident. The existing literature sometimes emphasizes mothers or female caregivers (e.g., Epstein, 2013), but our findings show that male caregivers are also likely to be very involved in supporting their children. The same is true for non-resident caregivers. While our survey did show somewhat higher involvement for female than for male caregivers and for resident than for non-resident caregivers, we argue that each caregiver's involvement with his or her children should be examined individually, and that consideration be based on the relationships rather than on characteristics of the caregiver.

We believe the present study provides valuable information given the near-absence of data on the potential effect of caregiver arrest on children's daily lives. But we acknowledge that there are important limitations. One limitation, discussed earlier, concerns portions of the population not sampled in the current study. We cannot say how the results may have been different had all segments of our population been represented. Likewise, our findings do not capture the actual effect of caregiver arrest on children, which can be best gathered directly from children. A second limitation is that we only inferred effects on daily lives using information gathered shortly after the arrest – we did not study actual changes in children's lives afterward. Indeed, caregiver accounts of their involvement could be inflated. However, this is necessarily the type of information that would be considered by probation professionals and other court staff, so it is appropriate for the present study. Third, our results are limited in their ability to capture whether children are able to access supports from caregivers other than those interviewed. We would require additional information about the children's caregiving situations to comment on whether the absence of these caregivers would significantly harm children. Finally, we also note that implementation of family impact statements in U.S. courts could be challenging, and must be approached carefully. Cramer et al. (2015) noted the importance of ensuring a collaborative process taking into account stakeholders' needs and interests, and providing adequate training for those tasked with creating family impact statements. We hope that the findings of the present study stimulate discussion about the appropriateness of, and process for, taking family impact into account when courts make decisions about caregivers.

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United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), GA Res 65/229, United Nations Office on Drugs and Crime, 65<sup>th</sup> session (16 March, 2011).

## Footnote

<sup>1</sup> Estimates from a courthouse social worker and the state marshal in charge of lock-up indicated that at least several times per week, if not once a day, arraignees were unable to participate in the survey due to their physical, mental, or behavioral status. The head public defender at the courthouse estimated that 40% of their clients were “walk-ins” and not held in lock-up, and that less than 10% of arraignments at the courthouse had private representation.

## About the Authors

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