

A copy of this letter has been mailed to 32 members of congress who support the sentencing reform in January /February 2018, no action followed.

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Dear Senator,

I want to call your attention to the rarely discussed issue of the collateral damage to the families and young children of the non-violent first-time offenders, who are currently serving time in federal prisons and prison camps.

This damage is a direct result of the existing law, 28 U.S.C.S. 994(e), which states "general inappropriateness of considering... family ties and responsibilities" of the defendant during sentencing. The corresponding U.S.S.G. guideline 5H1.6 also states that "family ties and responsibilities are not ordinarily relevant" in sentencing. As a result, over 60,000 defendants are sentenced by the federal justice system each year /1/, without consideration of the damage and life-altering changes, which are imposed on the minor children of the mostly non-violent incarcerated parents.

While it is well-known that 92% of men and 96% of women in federal prisons and camps serve time for non-violent offenses, it is incorrect to equate them all with drug-related crimes. In fact, 43% of men and 37% of women in federal prisons and camps are there for non-violent, non-drug related crimes /2/. This also includes inmates who go through the appeal process, which takes years to complete. Many of them are punished for "white-collar" violations, which do not necessarily have "mens rea" requirement. And 63% of these federal inmates are the parents of minor children /3/.

Judging by the lack of recent studies, the destiny of these children is not important to the government. The most recent report from the Bureau of Justice Statistics uses the data collected in 2004 and 2007, and it states that in 2007 there were 1.7 million children with one or both parents in prison /3/. However, according to the Pew Center report from 2010, one in 28 children in the USA had an incarcerated parent, a total of 2.7 million /4/. The right to family integrity of these children is not protected by the 14th Amendment, and it is not violated as long as detention of a parent is "lawful" /5/. And while it is clear that public safety requirement justifies certain rate of incarceration of violent criminals, it is not clear whether it is so important to punish a non-violent first-time offender by decades in prison, along with punishing his or hers young children, 40% of whom reach adulthood while their parents are still incarcerated, by years of separation /3/.

Little attention is paid to the length of the federal prison sentences for non-violent crimes. Meanwhile, according to the Bureau of Prisons statistics, over 70% of federal inmates serve sentences longer than 5 years, and 48% of inmates have sentences longer than 10 years /6/. This includes the minimum security inmates who pose no danger to the public and thus are kept in federal prison camps without fences. Men with sentences over 10 years are not eligible for camp "out-custody" status regardless of the nature of their offense. However, Bureau of Prisons places no such limitations on women, and they can spend as long as 30 years in a prison camp. The question is, is it more important to keep these "out-custody" inmates in camps for many years while spending estimated \$ 31,000 per inmate per year /7/ just for the purpose of punishment, or would it be better to place them under home confinement, which will allow them to parent their young children, maintain a job and pay not only the price of their home confinement but also their restitution, which they cannot pay while incarcerated? The price of federal prison camps exceeds half a million dollars per year for 21,000 inmates, out of whom 4,600 are women /8/.

I would like you to pay specific attention to the situation with incarcerated women. Since 1980s the number of incarcerated women increased by more than 700% /9/. Currently there are 219,000 incarcerated women, out of them 14,000 in federal prisons and camps /10/. Women are more likely to be sentenced for white-collar crime - thus over 15% of all federal female inmates are sentenced for fraud, compared to 4% of men in federal prisons /2/. Most of these women end up with high sentences in prison camps, and there is no rehabilitation for white-collar offenders. They are typically well educated and are good parents.

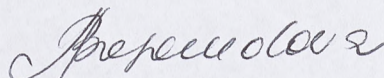
Studies have shown that incarceration of mothers is especially detrimental for young children, as mothers provided most of daily care for their children prior to their incarceration. Incarceration of a mother is at least 4 times more likely to send a child to a foster home, and 19% of the children of incarcerated mothers end up living with friends or in foster care, compared to 5% of the children of incarcerated fathers /3/. These children often require therapy and medication, with parental incarceration being recognized as an "adverse childhood experience" /11/. However, U.S.S.G. 5H1.6, Application note 1(B)(ii) states that "the fact that the defendant's family might... suffer to some extent from the absence of a parent through incarceration is not in itself sufficient as a basis for departure because such... suffering is of a sort ordinarily incident to incarceration". The question is whether it is reasonable to impose such suffering, which is by no account minor, on the 3% of the young children in USA /4/, or is the number of the suffering children high enough to reconsider the sentencing law and choose an alternative to prolonged incarceration for the non-violent, non-drug related offenders, who are typically good parents?

The opinion of the justice system is that "... so long as the detention (of a parent) is lawful, that so-called deprivation of the right to family integrity does not violate the constitution... Were a substantial number of young children knowingly placed in harm's way, it is easy to imagine how valuable claims might lie" /5/. But the number of young children harmed by parental incarceration is indeed substantial, even if one counts the children of non-violent offenders, who pose no threat to the community. Even in case when mother's incarceration was erroneous, the child's deprivation of the parent-child relationship was considered "collateral injury" and "not personal to the injured party" /12/. So by law, the child who grew up without a mother due to her erroneous incarceration is not considered personally injured.

The problem with parental incarceration is not new, however no solution has been found. Already 20 years ago some judges expressed opinion that "in light of the significant detriment experienced by young children as a result of a parent's incarceration, the Commission's initial presumption against considering family ties is unwarranted, short-sighted, and unwise" /13/. Since then, millions of children grew up without one or both parents - estimated 10 million children have experienced parental incarceration between 1991 and 2007 /14/. However, the justice system cannot change the law without the Congress. As it was stated in US v. Dyce in 1996, "this case does not present the general question whether convicted parents should be sent to prison. This is a question for Congress" /13/.

As an incarcerated mother of a minor child, I urge you to take a fresh look at the existing law and weigh the benefits of punishment of non-violent, non-drug related, first-time offenders, who pose the lowest risk of recidivism /15/ by long prison sentences, and punish their young children by separation. I encourage you to consider an alternative punishment by home confinement with obligated restitution payment, which will allow mothers like myself to fulfil their parental duties. Even considering the parents among federal camp inmates can return about 13,000 parents to over 30,000 children without any damage to public safety and with considerable financial gain to the government.

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