# THE JUSTICE SYSTEM AND THE FAMILY

## Police, Courts, and Incarceration

**Edited by** Sheila Royo Maxwell
and Sampson Lee Blair

CONTEMPORARY PERSPECTIVES
IN FAMILY RESEARCH

**VOLUME 20**

# THE JUSTICE SYSTEM AND THE FAMILY

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# THE JUSTICE SYSTEM AND THE FAMILY: POLICE, COURTS, AND INCARCERATION

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# ABOUT THE CONTRIBUTORS

**Dr Britni L. Adams** received her PhD in Sociology from the University of California Irvine. She is currently an Assistant Professor at University of Nevada, Reno, in the Department of Criminal Justice. Her research focuses on family and youth experiences impacted by the criminal justice system and intimate person violence. Specifically, one branch of her research examines family networks that support young fathers while in jail. This work uses longitudinal data that include perspectives from multiple family members, including child perspectives – a contribution for understanding variation in consequences of jail incarceration to families (published in Sociological Studies of Children and Youth). Additionally, in partnerships with community organizations in Florida, she and her colleagues received a grant to facilitate a youth-led study exploring the support children of incarcerated parents receive and still need during parental incarceration. Moreover, the other main branch of her research highlights developmental outcomes and the evolution of relationships following family violence and child maltreatment for young adults. Most recently, her work has focused on qualitative methods, specifically in-depth interviews, to gain insight into retrospective perceptions of childhood family violence victimization and the evolution of family relationships with perpetrators of that trauma. She wishes to illuminate the relationship between youth homelessness and childhood family violence to reduce these experiences and youth contact with the juvenile and criminal justice systems. She also utilizes datasets to investigate widespread patterns of child protection services contact for youth, youth perspectives on having a caring adult in their lives, and the role of school as a space for support when home life is volatile. Recent mixed-method publications in Family Relations and One Health examines the evolving family unit to include animal companions as support mechanisms and barriers to health during the Covid-19 pandemic for families and children.

**Dr Moran Benisty** has dedicated her MA research, during the past decade, to investigating addiction and recovery processes of male prisoners through a positive criminology point of view (at Bar-Ilan University, Israel). Her PhD research, titled *An Offspring's Incarceration as a Family Crisis* (also conducted at Bar-Ilan University, Israel), was established and granted in 2019, during her stay as a Visiting scholar at the Prisons Research Centre in the Institute of Criminology, University of Cambridge (England). Her main research interests include families' experiences of an offspring or sibling's imprisonment and resettlement, family processes, positive criminology, psychological resilience, addiction, recovery, and desistance. In 2011, she began to focus on conducting criminological assessments and creating rehabilitation programs for people in various legal stages, from early legal proceedings to parole committees. In addition, she has been guiding and

supporting family members of detainees and prisoners throughout and after legal processes. Therefore, in her view, this volume is of particular importance in raising social and academic awareness to the unique experience of parents and siblings of detainees/prisoners. She is also a lecturer in several academic institutes in Israel and has been teaching a variety of courses in criminology, psychology, and sociology for over a decade. She is also a member of the appointed specialists list to conduct formal inspections of the Israeli Prison Service.

**Mandy D. Burton** is a Professor of Socio-Legal Studies at the University of Leicester, England, UK. Her research lies in the fields of criminal law, criminal justice, and family law. She is particularly interested in police and prosecution decision making, courts and victims' rights. Her main research interests include protections for vulnerable victims and witnesses in the legal process (both family and criminal) and legal responses to domestic abuse. She has carried out numerous empirical studies resulting in research reports for UK government departments and other public bodies. In 2019, she was appointed as an Expert by the Ministry of Justice in the UK to be a member of the "Harm Panel" looking at allegations of domestic abuse in child arrangement proceedings. She is coauthor of the 2020 Harm Panel report, which found structural barriers to safe processes and outcomes and made comprehensive recommendations for reform of the approach of the family courts to better support victims of domestic abuse. She remains committed to policy relevant research that has an impact beyond academia. She is an author and coauthor of numerous books and articles, including books on the English legal system, criminal justice, and research methods in law. Her book *Legal Responses to Domestic Violence* (Routledge, 2008) took a comprehensive view of how the legal system in England and Wales handles domestic abuse in the family, civil, and criminal justice spheres. It argued that there are flaws in each of legal spheres, and that a big obstacle to protecting victims is the "silo" approach of each sphere. Her new book *Domestic Abuse, Victims and the Law* (Routledge, 2022) examines legal developments over the past decade, situated in the context of the fuller recognition of domestic abuse as a violation of the human rights of victims, requiring an effective state response.

**Elizabeth Cauffman**, PhD, is a Professor in the Department of Psychological Science at the University of California, Irvine, and has published over 150 articles, chapters, and books on a range of topics in the study of adolescent brain development and juvenile justice. Findings from her research were incorporated into the American Psychological Association's amicus briefs submitted to the US Supreme Court in *Roper* v. *Simmons*, which abolished the juvenile death penalty, and in both *Graham* v. *Florida* and *Miller* v. *Alabama*, which placed limits on the use of life without parole as a sentence for juveniles. She currently directs the Center for Psychology & Law (http://psychlaw.soceco.uci.edu/) as well as the Masters in Legal & Forensic Psychology (https://mlfp.soceco.uci.edu/) at UCI.

**Caitlin Cavanagh**, PhD, is a Developmental Psychologist who specializes in adolescents at the intersection of law and social policy. She earned her PhD in

developmental psychology, with minors in psychology and law, and quantitative methods, from the University of California, Irvine, in 2016. She is currently an Associate Professor at Michigan State University in the School of Criminal Justice, with an affiliation in the Department of Psychology. She serves as the Associate Director for Undergraduate Education in the School of Criminal Justice. She is also a Core Faculty member of MSU's Thematic Area in Marginalized Youth, an interdisciplinary initiative for research on system-involved youth and families. Her research is guided by developmental science to address important legal and social issues for adolescents, particularly those from marginalized families. Her refereed articles appear in top journals in the fields of adolescent development, psychology and law, and criminology. In support of her research, she has earned 16 grants and fellowships from funders including the Office for Victims of Crime and the National Science Foundation. She increases the impact of her research through mutually beneficial community–research partnerships, which have resulted in research-driven policy change. She maintains community partnerships with school districts, county courts, police departments, probation departments, and social services across five states (CA, LA, PA, MI, and TX). The detailed information about research lab, including a complete CV, can be found at: www.TheADJustLab.com.

**Erica Dalzell**, MS, is a Doctoral student in the School of Criminal Justice at Michigan State University. She has helped lead the Juvenile Risk Assessment Team in partnership with the Ingham County 30th Circuit Court – Family Division since 2017. She has also worked with Public Policy Associates Inc., to study disproportionate minority contact in Michigan's juvenile justice system. Her primary research interests include juvenile justice, the law, and adolescent behavior.

**Deena DeVore** is a Doctoral student in the Criminal Justice Department at the University of Nevada, Las Vegas. She graduated from the University of Nevada, Reno, in 2019 with her Master of Arts degree in Criminal Justice. Her research interests include focused deterrence strategies, procedural and restorative justice, and community policing.

**J. Mark Eddy**, PhD, is a Licensed Psychologist, Prevention Scientist, and Professor in the Department of Educational Psychology and the Department of Kinesiology and Health Education at The University of Texas at Austin. His research focuses on the creation and testing of multimodal interventions designed to promote positive relationships and health and prevent the development of problem behaviors and mental illness for children and families. He works in a variety of service delivery settings including departments of corrections, the juvenile justice system, the child welfare system, school systems, and the military, and frequently collaborates with nonprofit human services organizations that work within and across these settings.

**Arriell Jackson**, MA, is a Doctoral candidate in Prevention Science at the University of Oregon. Her research focuses on issues related to equity and

racial justice before, during, and after incarceration. She is currently focused on alternatives to incarceration for Black individuals specifically and finding salient components of an intervention that focuses on barriers previously incarcerated people face as well as the added discrimination Black people face tied to racism.

**Shelley Keith** is an Associate Professor in the Department of Criminology and Criminal Justice at the University of Memphis. Her research centers on the social psychological causes of crime with an emphasis on the role of identity and emotions on crime. Her recent work has appeared in *Feminist Criminology*, *Deviant Behavior*, *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice*, and the *Journal of Interpersonal Violence*.

**Jean M. Kjellstrand**, PhD, is an Assistant Professor in the Department of Counseling Psychology and Human Services in the College of Education at the University of Oregon. As a researcher, she focuses on the impact of parental incarceration on children including the mechanisms that increase risk to these vulnerable populations. Additionally, she works with the community to develop and test comprehensive interventions to support individuals and their families during incarceration and after they return to their communities.

**Alyssa LaBerge**, MS, is a Doctoral student in the School of Criminal Justice at Michigan State University. She leads program evaluation as part of the Juvenile Risk Assessment Team in partnership with Ingham County 30th Circuit Court – Family Division. She partners with the Michigan Department of Health and Human Services to study outcomes of youth dually involved in the child welfare and juvenile justice systems. Her primary research interests include dually involved youth, adolescent offending, juvenile sentencing and corrections practices, and familial relationships.

**Bin Liang** (PhD/JD) is a Professor of Sociology at Oklahoma State University. His research interests include globalization and its impact on the Chinese legal system, crime and deviance in China, and comparative studies in criminology and criminal justice. He is the author of five books, including *The Changing Chinese Legal System, 1978 – Present: Centralization of Power and Rationalization of the Legal System* (2008) with Routledge, *China's Drug Practices and Policies: Regulating Controlled Substances in a Global Context* (2009, coauthored) with Ashgate, *Jurisprudence* (2012, co-edited, in Chinese) with Renmin University of China Press, *The Death Penalty in China: Policy, Practice and Reform* (2016, co-edited) with Columbia University Press, and *Chinese Netizens' Opinions on Death Sentences: An Empirical Examination* (2021, coauthored) with University of Michigan Press. In addition to books above, his works also appeared in many peer-reviewed journals in the United States and other nations, including *Journal of Criminal Justice*, *British Journal of Criminology*, *The China Quarterly*, *Modern China*, *European Journal on Criminal Policy and Research*, *Australian and New Zealand Journal of Criminology*, *International Journal of Offender Therapy and*

*Comparative Criminology*, *Crime, Law and Social Change*, and *Asian Journal of Criminology*.

**Hong Lu** is a Professor of the Criminal Justice Department at University of Nevada, Las Vegas. Her areas of interest include comparative criminology, court and sentencing, the death penalty, and sociology of law. She coauthored/edited several academic books (Cambridge University Press, Columbia University Press, and Routledge), edited special issues for journals, and published dozens of journal articles in some of the top-tiered journals (*Law and Society Review*, *British Journal of Criminology*, *China Quarterly*, and *Justice Quarterly*). She was a Visiting Senior Research Fellow at the Asia Research Institute of the National University of Singapore and a recipient of the Barrick Scholar Award for the Outstanding Faculty Researcher at UNLV.

**Dr Jacqueline McNett** joined the faculty in the Department of Criminal Justice at Auburn University at Montgomery in 2019. She received a Bachelor of Science degree in Psychology from The University of Alabama, a Master of Science in Criminal Justice from The University of Alabama, and her PhD from the Department of Sociology at Mississippi State University. She currently teaches graduate classes for the Master of Science program in Homeland Security and Emergency Management including Introduction to Homeland Security and Emergency Management; Human Trafficking; Protests, Riot, and Panic; Disaster Management and Emergency Preparedness; Psychology of Terrorism and Fear; and Violence in America. Her research and teaching interests include homeland security, emergency management, crime and deviance, jury studies, and fear of crime. Currently, she is serving as the Advisor for the Department's Criminal Justice Club Lambda Alpha Epsilon (LAE), Co-advisor for the Criminal Justice Honor Society Alpha Phi Sigma, and Treasurer for the Alabama-Mississippi Sociological Association. She is also working on several research projects including a study on pistol teams in academia, IOT cybersecurity, and media depictions of missing persons.

**Sharon Menezes** is a Faculty with the Centre for Criminology and Justice (CCJ), School of Social Work (SSW), TISS, Mumbai, and Joint Project Director of Prayas, a field action project of the CCJ, SSW, TISS that engages with persons accused of crime and those exploited for commercial sex. Her teaching, research, and field practice center around social work methods, women, and children in custody and institutions; human trafficking for commercial sexual exploitation; procedural justice; and rehabilitation and social reintegration of individuals, groups, and communities involved in or vulnerable to crime, commercial sexual exploitation, stigma, and destitution. She believes that a large number of young people reaching the criminal justice system – as offenders or victims – have had disturbing life trajectories. Their encounters with criminal elements occur in the process of negotiating with compromised life choices. Social workers in the criminal justice system can help persons break these trajectories and reenter communities while they distancing themselves from violence and exploitation.

Her writings reflect the voices of stigmatized people otherwise not visible to the public on account of their lost claim over their entitlements and agency.

**Robyn E. Metcalfe**, MS, is a PhD student in Counseling Psychology at the University of Oregon. Her research interests center around evidence-based parenting interventions to help support effective parenting behavior for families facing significant challenges as well as issues at the intersection of the criminal justice system and the family. Her clinical interests include parenting interventions (e.g., parent management training), interventions for suicidality (e.g., dialectical behavior therapy), and mental health crisis counseling for adolescents who are justice system involved.

**Etta Morgan**, PhD, is a Graduate of the University of Alabama in Tuscaloosa. She is currently an Associate Professor in the Department of Criminal Justice and Sociology at Jackson State University. Her research interests include female criminality, Race and Gender Issues, Gun Violence, Corrections, and Family Interventions.

**Linda Mussell** is a Postdoctoral Researcher based in Katarokwi/Kingston, Ontario, Canada. She completed her PhD in the Department of Political Studies at Queen's University in April 2021. During her doctoral studies, she was awarded the Pierre Elliot Trudeau Foundation Doctoral Scholarship and Joseph-Armand Bombardier Doctoral Scholarship. She is now undertaking a 2021–2023 Social Sciences and Humanities Research Council (SSHRC)-funded Postdoctoral Fellowship at the University of Ottawa, Ontario, Canada. Her research uses critical, intersectional, and comparative policy analysis to study the carceral state. During her PhD, she researched intergenerational legacies of carceral policy in Canada, Australia, and New Zealand which is now a book project with University of British Columbia Press. As part of her postdoctoral fellowship, she is researching decarceration efforts during the COVID-19 pandemic in Canada and the United States. Other research and community work interests include carceral retasking, youth under state guardianship, involuntary hospitalization, and neo-institutional relationships between voluntary, private, and public sectors pertaining to carceral sites.

**Claudia Reino**, BA, is a Graduate student in School Psychology at The University of Texas at Austin. Her research centers on developing curriculum for, launching, and testing randomized controlled trials of multimodal interventions in collaboration with school systems, the juvenile justice system, and the adult corrections system in the United States and internationally. Her research interests focus primarily on underserved and marginalized populations in the United States and Central America, particularly Latinx individuals and the incarcerated.

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**Manoj Sharma**, MBBS, PhD, MCHES®, is a Public Health Physician and Educator with a medical degree from the University of Delhi and a doctorate in Preventive Medicine (Public Health) from The Ohio State University. He is also a Master Certified Health Education Specialist certified from the National Commission on Health Education Credentialing. He is currently a tenured Full Professor and Chair of the Social and Behavioral Health Department at University of Nevada, Las Vegas, in the School of Public Health. In his career, spanning over 30 years, he has trained/taught over 6,000 health professionals that include physicians, health education specialists, dietitians, community health nurses, health-care administrators, epidemiologists, sanitarians, health and development workers, allied health professionals, and others. He has designed and taught a variety of undergraduate and graduate courses in health behavior, health education, and health promotion at 13 national and international universities working full time or part time. He has worked and provided leadership for local health departments, state health departments/agencies, federal government agencies, nonprofit agencies, professional organizations, and international agencies including governments of other nations. He has been invited as a Keynote Presenter at several universities. He is a Prolific Researcher and as of January 2022 had published 11 books, over 325 peer-reviewed research articles, and over 450 other publications (h-index 44, i-10 index over 175, and over 10,000 citations), and secured funding for over $8 million. He has been awarded several prestigious honors including American Public Health Association's Mentoring Award, ICTHP Impact Award, J. Mayhew Derryberry Award, William R. Gemma Distinguished Alumnus Award from College of Public Health Alumni Society at the Ohio State University, among others. His research interests are in developing and evaluating theory-based health behavior change interventions, obesity prevention, stress-coping, community-based participatory research/evaluation, and integrative mind–body–spirit interventions.

**Xiaoli Su**, PhD, is an Assistant Professor in the Department of Criminal Justice and Sociology at the Jackson State University. She received both her MA and PhD from the Department of Sociology at the University of Georgia. She has taught courses at both undergraduate and graduate levels. These courses include, but are not limited to, research methods, criminological theories, social statistics, and juvenile delinquency and justice. She has conducted three major lines of research. The first line of her research focuses on family and delinquency. In this line of research, she has primarily studied the relationships between various family problems and delinquency and has made research efforts to identify a systematic way to reduce familial risk factors for delinquency and improve family environment. Specifically, she has explored and tested the roles of Home Economics Education in improving family environment and in the prevention of delinquency. The second line of her research focuses on offender rehabilitation. She and her coauthors have proposed an "Authoritative Parenting" model

of offender rehabilitation wherein harsh punishment is administered in a context of reacceptance/love for offenders. She is interested in testing the roles of Home Economics Education in facilitating smooth reentry processes of ex-offenders. The third line of her research focuses on the study of fear of crime. She has tested whether or not single parenthood is a vulnerability factor for fear of crime. She has also tested how children's age affected the relationship between single parenthood and fear of crime. She has publications in peer-reviewed journals and paper presentations in professional meetings at both regional and national levels.

**Laima Vaige** currently works as a Senior Lecturer in law at Örebro University in Sweden. She defended her first doctoral thesis at Mykolas Romeris University (Lithuania), focusing on women's rights under international law, and her second doctoral thesis on Uppsala University (Sweden), on cross-border recognition of formalized same-sex relationships in Europe. She has undertaken applied research projects related to human rights and was involved in trainings of advocates and civil servants in Lithuania on human rights issues prior to moving to Sweden in 2016. She worked with and within civil society organizations in Lithuania and Sweden and continues to be affiliated with the Lithuanian Human Rights Centre, of which she is a Board Member. Her research interests are women's rights, LGBTQ rights, and the confluence of "public" and "private" international law. In research, she uses feminist and interdisciplinary methodologies.

**Cody Warner** is an Associate Professor of Sociology in the Department of Sociology and Anthropology at Montana State University (MSU). He joined MSU after receiving a PhD in Sociology from the Pennsylvania State University in 2013. His research and teaching interests are centered around corrections, and particularly the social consequences of contact with incarceration and other forms of criminal justice contact. Much of this work has examined housing-based outcomes such as residential mobility, residential independence, and boomeranging back to the parental home. Individual and collaborative studies have appeared in journals such as the *American Sociological Review*, *Social Science Research*, *Journal of Marriage and Family*, and *Sociology of Education*.

# FOREWORD

Millions of individuals across the globe are entangled in justice systems as offenders, as victims, or vicariously as family members of those directly involved. There is no question that across these justice systems, the family, as the central unit of society, is substantially impacted causing economic and social strains and relationship tensions. There are numerous studies on the role of the family (with family often represented as a singular measure in quantitative studies, such as single-parent households, marital status of the offender, degree of family violence, and many others) has on delinquency and crime, as well as on justice system processing and the reintegration of offenders back into the community post-sanction. Predominantly, the role of the family is invoked in studies that pertain to juvenile offending and juvenile processing, since indeed parental relationships exert a salient influence on youth behaviors. In addition, aspects of adult incarceration, rehabilitation, and reentry also often identify the family as an important dimension in the success or failure of institutional- and community-based programs. Fewer studies have focused on the impacts that policing and other enforcement strategies have on the family. While there are numerous studies on perceptions of the police, most have focused on individual perceptions or on variations across racial/ethnic groups, often precluding the family or family characteristics in these perceptions or how family dynamics play into coping strategies with negative police encounters.

This volume's focus on the *justice system and the family* is an attempt to bring more attention to the central role of the family in justice processes, the universality of this phenomenon across cultures, and the need for more research and interrogations into the interplay between justice system processes and family dynamics, and their overall impact on behaviors.

In this volume, 12 contributions by researchers spanning work across nine countries provide valuable insights into the centrality of the family across justice processes by shedding light on the diverse nature of familial influences and functions across cultural contexts. In Chapter 1, *A Family Affair: The Effect of Criminal Justice Processing on Family Relationships*, Heather Scheuerman and Shelley Keith used data from the Australian Reintegrative Shaming Experiments (RISE) to examine how the processing of offenders, that is either via courts or conferences, affected familial bonds. Sheuerman and Keith (this volume) used both reintegrative and disintegrative shaming as mediators in predicting the effects of court processing on familial bonds and found a positive effect of conferences on familial bonds that is partially mediated by reintegrative shaming. This finding provides an important link between the type of justice processing and family dynamics, highlighting that less confrontational, more reintegrative

processing sets the milieu for family reparation and bonding which are incredibly important factors toward positive behavioral outcomes.

In Chapter 2, *Do Parental Monitoring Habits Change in Response to Juvenile Recidivism*, Caitlin Cavanagh, Erica Dalzell, Alyssa LaBerge, and Elizabeth Cauffman investigate the extent to which mothers' monitoring habits (measured through parental monitoring knowledge and effort) change after their son's first rearrest (operationalized through self-reports and official rearrest records). Interviews of 317 mother–son dyads across three states over two time periods were used. Among other important findings, Cavanagh et al. (this volume) found that mothers who reported more monitoring behaviors (both knowledge and effort) at Time1 had sons who self-reported less recidivism and were less likely to be rearrested at Time2. Mothers' monitoring efforts also increased with their sons' recidivism records. These findings point to the importance of improving the capacity of parents to monitor their children, thus providing necessary supervision of the juveniles that can have lasting gains against offending.

Continuing with the theme of the family and juvenile delinquency, Xiaoli Su, Jacqueline McNett, Etta Morgan, and Manoj Sharma in *The Associations Between Home Economics Education and Familial Risk Factors for Delinquency: An Exploratory Study* demonstrates that an often-overlooked element in rehabilitative programs for youth offenders within family settings may be home economics education (HEE). Their study provides evidence of the positive effects of HEE, which often encompasses interventions that are already used to address youth problems, such as training programs that specifically target parenting skills. HEE potentially provides a broader umbrella of parenting and familial skills (household management, finance, culinary) that can have broad impacts on family functioning and behaviors of delinquent youth. Although criminologists and social scientists have not necessarily focused on HEE as a particular type of program for crime and delinquency, its all-encompassing structure is consistent with current models of wrap-around interventions that are often employed in reentry programs.

Stresses within family relationships during and after incarceration are another challenge well recognized by criminologists, family scholars, and practitioners within the justice system. There is no doubt that incarceration is a serious disruption to family functioning. The ability by all family members to negotiate and cope with such disruption needs serious attention. Three scholarly contributions in this volume specifically explore the dynamics of family functioning during and after incarceration. In *Parents and Siblings of Incarcerated Men: Questioning Intersectionality and Familial Invisibility*, Moran Benisty focuses on incarcerated men as "offspring" and explores interpretations and challenges that imprisonment imposes on the incarcerated's parents and siblings. This focus is unique since current literature mostly centers on the effects of imprisonment on romantic partners and/or the children, and very meagerly on parents and siblings (thus their "invisibility" according to Benisty). Semi-structured interviews were conducted of 27 parents and siblings of incarcerated men in Israel, providing a rare glimpse into the perceptions and difficulties of these family members in coping with familial incarceration, and providing helpful frameworks toward further

studies. Robyn E. Metcalfe, Claudia Reino, Arriell Jackson, Jean M. Kjellstrand and J. Mark Eddy's *Supporting Incarcerated Parents Prior to Reentry: A Gender and Racial Equity-Oriented Lens* focus on the necessity for reentry programs to address more intentionally the racial and gender inequities in post-incarceration hardships. Black men have particularly higher rates of recidivism and suffer from greater stigma as well as social and economic hardships post-incarceration. Similarly, women experience greater challenges in parenting and custody issues and are typically offered fewer prison programs than their male counterparts. Metcalfe et al. (this volume) fittingly assert and discuss the need to improve support systems for these groups before and after reentry. The authors provide valuable guidelines for programming based upon the unique needs of these groups. In *Maintaining Family Ties and Facilitating Father–Child Contact During Jail: The Role of Extended Kin*, Britni L. Adams examine an often neglected but essential aspect in maintaining parent–child/ren relationships when a parent is incarcerated – the extended kin. In her qualitative interviews of predominantly young, Latino fathers, Adams highlights the important role of kin members, particularly paternal kin, in facilitating and organizing father–child contact. This study provides information not only of the importance of kin members as conduit and support to both the incarcerated parent and the child but also a glimpse at potential differences in needs across ethnically diverse family structures.

The importance of considering someone's ethnic position in the justice processes is highlighted in Linda Mussel's *The Ripple-effects of Carceral Policy*. In this chapter, Linda Mussell particularly brings into focus the unintended and potentially negative consequences of colonial carceral policies on indigenous peoples in Canada, Australia, and New Zealand, countries that have had lasting colonial carceral legacies across generations. Mussell's work (this volume) is a welcome shift from the predominant focus in current literature on nuclear families and programs, to the broader family and community, kinships, institutions, and government–community power relations. This broad perspective allows comparisons of carceral policies on indigenous peoples across the three nations and challenges researchers to consider the larger picture, the colonial or political legacies toward better understanding justice and carceral equity.

In *Criminal Justice Contact and Coresidence in Young Adulthood: Exploring the Role of the Family Context*, Cody Warner used the National Longitudinal Survey of Youth to examine how criminal justice involvement by young adults precipitate coresidence with their parents subsequent to their justice involvement and examines the implications this has on support for justice involved individuals and their families. Warner's examination of variations in coresidence patterns by family types and contexts advances knowledge about transitions of criminally involved young adults and especially clarifies housing challenges within this population and its implications on policy.

Challenges in family adaptations present itself in varying ways across cultures and nations. Hong Lu, Bin Liang, and Deena DeVore, in *Restorative Justice and Crime Victim's Family in China* provides a fascinating glimpse into the complexity of cultural norms and the interplay between culture, family, and justice processes. Lu et al. examine the context of China's legal system, the roles and functions of

crime victims and their families in the justice system, and the potential role for restorative justice using case analysis of a noted double murder case in China, the Nian Bin case. Their qualitative analysis provides a unique and valuable framework for further study.

Three chapters in this volume focus on family violence and the justice system. Family violence remains one of the most difficult problems that a family can face. Although much had been published about family violence, there is still great need to better understand the justice system context and policies about family violence across nations and cultures. The three contributions in the volume provide needed insights into these processes across three nations. In *Falling Through the Fault Lines: Victims Experiencing Poor and Fragmented Legal Responses to Domestic Abuse in England and Wales*, Mandy D. Burton interrogates the utility of the integrated domestic abuse courts (IDACs) in England and Wales, in light of the critical inadequacies of traditional justice responses to domestic abuse. Burton (this volume) underscores the poor interface and poor information sharing between "silos" of the legal system – such as the criminal, civil, and family systems in England and Wales – and asserts that these "silos" have resulted in contradictory and conflicting orders for domestic abuse cases. A 2020 "harm panel" report found that these "silos" have indeed resulted in harm to families and children. Thus, legal responses to domestic abuse cases need to be revisited and reexamined. In *Domestic Violence Against LGBTQS: The Promise and the Challenges of the Istanbul Convention*, Laima Vaige presents key normative, conceptual, and substantive challenges to the Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011 (the Istanbul Convention), as it pertains to the LGBTQ community. The convention had 34 ratifications as of December 2021 and 11 signatures without ratifications. Vaige (this volume) identifies tensions between the national (state) understandings of domestic violence and the Convention and identifies that such tensions stem from cultural differences that will necessitate more serious discussions at the national and international levels. This broad analysis highlights substantive areas that can benefit from greater international discussions. In the volume's last chapter, Familial Violence and Human Trafficking: Stories From India, Sharon Menezes provides a fascinating glimpse on the family's role in promoting and sometimes perpetrating child trafficking in India's North Karnataka region. Menezes (this volume) makes a case for the insufficiency of carceral approaches to child trafficking and family violence problems, particularly the cultural complexity of the devadasi system, where young girls mostly from the lower castes are dedicated by their families to the service of a god/goddess, but which then also becomes pretext for commercial sex. Also making use of data sourced from urban India where traffickers are shown to be former victims, Menezes highlights the difficult cultural and economic context of the devadasi system, which is now illegal in India, and suggests initiatives beyond carceral policies that may be more constructive in addressing tensions between cultural norms, legislation, and economic necessities.

This volume's effort to bring together studies that focused on the centrality of the family across the range of justice processes brought 12 insightful

contributions. We believe that these 12 contributions demonstrate the significance of family units and dynamics across the justice process, including the importance of the family in constructive behavioral outcomes. The contributions varied in how the family and justice dynamics were operationalized and as such demonstrate that "family" or the influence of family on justice processes may be investigated and interpreted in innumerable ways. Importantly, the contributions in this volume also highlighted significant cultural nuances that undergird family and justice system dynamics.

Since the family is the primary unit of society and as such influences many social processes and interactions, it is important that researchers recognize the centrality of the family across the entire justice process. While aspects of a family may be peripherally examined in studies that focus on justice system processing (e.g., in quantitative representations of marital status, single-parent or two-parent households, etc.), the 12 contributions to this volume demonstrate the benefits of more fully recognizing the role of family units in all justice processing, how it impacts or is impacted by such processes, and how these can influence later behavioral outcomes. We hope that this volume builds an impetus for further studies, particularly in areas where such studies are almost nonexistent, such as in the interplay between family dynamics and police-citizen encounters.

*Sheila Royo Maxwell*
*Sampson Lee Blair*

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# CHAPTER 1

# A FAMILY AFFAIR: THE EFFECT OF CRIMINAL JUSTICE PROCESSING ON FAMILY RELATIONSHIPS

Heather L. Scheuerman and Shelley Keith

## ABSTRACT

*Although the family plays a key role in affecting offender behavior, little research examines how sanctioning contexts affect familial relationships. Using data from the Australian reintegrative shaming experiments (RISE), we investigate how the processing of offenders via court and conference affects their bonds with family members by examining the type of shaming – reintegrative or disintegrative – they experience. In contrast to disintegrative or stigmatizing shaming, which tends to be associated with court processing, reintegrative shaming shames the act and not the moral character of the offender, allowing for the reparation of social ties. We find that despite higher levels of stigmatization in conferences, this form of processing is also more reintegrative and strengthens family relationships to a greater extent than courts, with offenders feeling prouder of being a member of their family and indicating that familial closeness and respect increased. Moreover, reintegrative but not disintegrative shaming mediates the relationship between criminal justice processing and family relationships.*

**Keywords:** Family relationships; shaming; court; conference; stigmatization; emotional bonds

Although both traditional criminal justice and restorative justice approaches consider the family to aim to deter and prevent crime, these forms of offender processing manage these outcomes differently (Braithwaite, 1999; Presser &

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Van Voorhis, 2002). With a focus on changing the offender (Presser & Van Voorhis, 2002, p. 163), courts tend to consider family relations when determining sentencing outcomes (Freiburger, 2010). Strong family bonds are associated with a reduction in recidivism due to the greater informal social control to which defendants are subject, thereby lessening the extent to which formal social control is imposed (Daly, 1987). For instance, judges will perceive that offenders with close family relationships have a higher stake in conformity, due to their having better school and employment outcomes, and thus will be less likely to reoffend (Hirschi, 1969; Visher, Debus-Sherrill, & Yahner, 2011; Woolley & Grogan-Kaylor, 2006).

Contrary to court interventions, which consider existing familial bonds, restorative justice programs aim to actively strengthen these relationships (Presser & Van Voorhis, 2002). Restorative justice broadens its focus from the offender to others with its main goal being to heal the harm an offense has produced by rebuilding relationships that have been adversely affected by crime. This approach is not oriented toward the offender or punishment but to repairing said harm by having the parties affected by the offense, i.e., victims and community members, participate within it.[1] As family members may reflect these parties (McCold, 2004; Scheuerman & Keith, 2015), restorative justice plays a key role in strengthening family ties through inclusive and cooperative processes (Kuo, Longmire, & Cuvelier, 2010, p. 319; Sherman et al., 1998).

One such process that is assumed to allow for reintegration back into the normative social order through the reparation of familial relationships is reintegrative shaming (Braithwaite, 1989; Daly, 1987). According to Braithwaite's (1989) reintegrative shaming theory (RST), shaming that is reintegrative consists of the community shaming the actions of offenders but not their characters, thereby allowing the reparation of social ties and increasing offenders' stake in conformity (Tyler, Sherman, Strang, Barnes, & Woods, 2007). This contrasts with shaming that is stigmatizing or disintegrative, which rejects offenders, thus preventing them from rejoining the community, and increases the attractiveness of criminal subcultures (Braithwaite, 1989).

Despite the association of reintegrative shaming with restorative practices (e.g., Van Ness & Strong, 1997) and disintegrative shaming with courts (Sherman, 1993), it is unclear how these forms of processing affect familial relationships (see Sherman et al., 1998). Within the literature on restorative justice, most studies focus on the relationship between reintegrative shaming and reduced offending (Ahmed & Braithwaite, 2005; Hayes & Daly, 2003) and disintegrative shaming and increased offending (e.g., Ahmed & Braithwaite, 2005) but not with testing why these effects may exist. Here, we evaluate how these types of shaming may mediate the effect of criminal justice processing on family outcomes among offenders processed by court and the specific restorative practice of family group conferencing/conferences (FGC). This form of restorative practice is heavily influenced by RST and involves victims, offenders, and their supporters, which include offenders' family members and members of the community (Kurki, 1999; Presser & Van Voorhis, 2002).[2]

Below, we discuss literature on the association between type of justice processing and family relationships. We then detail how courts and conferences differ

regarding reintegrative and disintegrative shaming and the implications these differences have for familial ties. Using data from the Australian reintegrative shaming experiments (1995–1999) (RISE), we find that, in comparison to courts, family ties become stronger because of conferences due to the higher levels of reintegrative shaming present in this form of criminal justice processing; despite it also having higher levels of stigmatization.[3] We end with a discussion of the implications of our findings.

## CRIMINAL JUSTICE PROCESSING AND FAMILY RELATIONSHIPS

Courts and conferences, respectively, emphasize retributive and restorative justice (Daly, 2000), which are two main approaches to the administration of justice (Wenzel, Okimoto, Feather, & Platow, 2008). Retributive justice reestablishes justice through punishment that is ideally proportionate to the wrongdoing that occurred. Punishment is meted out unilaterally so that the wrongdoer receives his or her "just deserts." This notion of repairing justice typically underlies Western criminal justice and is reflected through traditional court processing, of which the majority of cases are resolved quickly and involve a judge, possibly a jury, and the imposition of punishment based on the seriousness of the offense (Armstrong, 2014; Marcus & Waye, 2004). According to this approach, offenders are considered deserving of their punishment for violating legal and moral rules and are not required to agree or be offered forgiveness for their acts (Wenzel et al., 2008).

When examining court processes, family ties are typically evaluated when making sentencing decisions in relation to whether the offender is familied or nonfamilied; provided that judicial discretion can operate (Daly, 1987; Freiburger, 2010). Familied defendants are considered to be subject to more social control due to their having greater responsibilities for others, thereby justifying less severe sanctioning. The imposition of traditional forms of punishment, such as incarceration, would also penalize these defendants by causing a potentially unnecessary hardship on society and innocents, i.e., their family members, by producing ideological and economic costs. These ideological costs relate to the court's desire to maintain the social order by preventing family disruption and pursuing justice by serving to only punish the guilty (the defendant). The court also considers the imposition of economic costs that would fall to others who are not the defendant if incarceration is levied. As such, although courts recognize the importance of the family, they mainly focus on preserving the status quo or existing relationships rather than seeking to enhance familial ties (Daly, 1987).

Restorative justice entails relationship building because, in contrast to traditional forms of punishment, it considers crime to be more than a violation of law and governmental authority; crime also reflects a harm that damages relationships and communities (Kuo et al., 2010; Kurki, 1999; Zehr, 1995). Focus is placed on victims and community members when attempting to correct for the offense that has occurred with these parties, rather than the state holding the offender directly responsible. In this approach, victims, offenders, and the community bilaterally

repair justice with the central goal being healing rather than the imposition of punishment (Kuo et al., 2010; Kurki, 1999; Wenzel et al., 2008). To achieve justice, three common processes are used: dialogue, relationship building, and the communication of moral values (Kuo et al., 2010; Presser & Van Voorhis, 2002); all of which more greatly engage offenders in comparison to traditional court processing (Kuo et al., 2010). Through these common processes, various outcomes may be achieved, which mainly consist of restoration, or how harm is repaired, and offender change (Kuo et al., 2010; Presser & Van Voorhis, 2002).

Importantly, these outcomes hinge upon relationships present within restorative practices. For instance, an important aspect of restoration is how relationships between the parties involved in restorative justice are transformed by fostering participant well-being and harmony. Identified by Presser and Van Voorhis (2002) as social well-being, this aspect of restorative justice can be measured by participant satisfaction and perceptions of fairness, change in victim and offender attitudes toward each other, and community well-being.

Relationships are also central to the other principal restorative justice outcome, offender change (Presser & Van Voorhis, 2002). Relationship-building processes can enhance direct (Cohen & Felson, 1979) and indirect controls by increasing an offender's stake in conformity (Hirschi, 1969) and strengthen social support thereby reducing crime (Agnew, 2006; Braithwaite, 1989). Yet, offender change is typically assessed by measures of recidivism (Presser & Van Voorhis, 2002). Here we consider the process of relationship building as an outcome of restorative practice related to social well-being and offender change that differentiates it from traditional court processing. As a product of the dialogue inherent in restorative practices, relationships that are built consist of those between the offender, victim, and community, as well as family members (Kuo et al., 2010; Presser & Van Voorhis, 2002).

FGC reflect one type of restorative practice that centers on relationships. Within these conferences, offenders come together with victims, family, and members of the community to discuss the offense, the harm it caused, and ways to repair this harm (Kurki, 1999; Presser & Van Voorhis, 2002). In the conference, relationships are built according to the degree to which the offender is offered support, love, and forgiveness, and reintegratively shamed (Kuo et al., 2010). According to RST, offenders can be shamed by important others, such as family members, and reintegrated into their communities so that they can engage in future prosocial behavior (Braithwaite, 1989; Presser & Van Voorhis, 2002).

## CRIMINAL JUSTICE PROCESSING AND SHAMING

Shaming reflects

> all societal processes of expressing social disapproval which have the intention or effect of invoking remorse in the person being shamed and/or condemnation by others who become aware of the shaming. (Braithwaite, 1989, p. 100)

Shaming that is reintegrative intends to invoke moral regret and is associated with respectful treatment. This type of shaming is predicted to lessen offending

because shaming offenders' acts, and not their person, decertifies them as deviant by allowing them to restore ties with noncriminal others. In fact, reintegrative shaming is in part thought to be an effective deterrent because it threatens valued relationships, especially when it comes from close others (Braithwaite, 1989; Harris, 2006). On the other hand, shaming that is disintegrative shames the individual and is marked by disrespect, thereby weakening familial, peer, and community bonds and freeing offenders to seek out criminal subcultures or deviant groups for acceptance (Braithwaite, 1989; Makkai & Braithwaite, 1994).

As indicated previously, restorative justice tends to be associated with shaming that is reintegrative, while courts are associated with stigmatic shaming (Sherman, 1993; Van Ness & Strong, 1997). It should not be presumed, however, that if a process is more reintegrative, it should automatically be less stigmatizing. Research that examines restorative justice conferences finds that despite their higher levels of reintegrative shaming, they are also more stigmatizing in relation to court processing (Barnes, Hyatt, Angel, Strang, & Sherman, 2015; Harris, 2006; Sherman et al., 1998). Rather than reflecting two ends of the same continuum (Makkai & Braithwaite, 1994), reintegrative and disintegrative shaming should be considered two distinct constructs that capture different processes (Braithwaite & Braithwaite, 2001). Therefore, criminal justice processing could be simultaneously reintegrative and stigmatic wherein others shame an offender's person (disintegrative shaming) but also indicate the individual can be forgiven (reintegrative shaming) (Ahmed, Harris, Braithwaite, & Braithwaite, 2001; Ttofi & Farrington, 2008). This would suggest that offenders could find both court and conference reintegrative, which could serve to strengthen family ties.

For instance, the Australian RISE identify various ways shaming could operate in restorative justice. Preliminary findings revealed that conferences had greater levels of reintegrative and disintegrative shaming than courts (Sherman et al., 1998). Harris (2006) also finds that conferences were not perceived as less stigmatizing than court proceedings. Nevertheless, observations of conferences also revealed that they exceeded courts in terms of enhancing familial relationships. Additionally, Kuo et al. (2010) report that conferencing more positively influenced relationship building overall in comparison to court. These findings suggest that restorative justice proceedings should strengthen familial relationships to a greater extent than court proceedings (Kuo et al., 2010; Presser & Van Voorhis, 2002) despite the greater degree of disintegrative shaming that is also present. Based on this literature, we predict:

*H1*. Restorative justice conferencing will strengthen offenders' family relationships to a greater degree than court proceedings.

*H2*. Restorative justice conferencing will have higher levels of reintegrative and disintegrative shaming in comparison to court proceedings.

*H3*. The strength of family relationships will be positively related to reintegrative shaming and negatively related to disintegrative shaming.

*H4*. Reintegrative and disintegrative shaming will mediate the effect of criminal justice processing on family relationships.

## DATA AND METHODS

We use the RISE data to assess how the type of criminal justice processing affects the relationships offenders hold with their families. As identified by Presser and Van Voorhis (2002), these data provide excellent measures of relationship quality, which can be used to assess relationship building. Only those respondents with valid treatment information are included in our analyses, which results in a sample of 973 offenders whose cases were randomly assigned to court ($n = 475$) or conference ($n = 498$) for processing after an offense occurred. These cases involved youth violent crimes (under the age of 30) ($n = 52$), juvenile shoplifters detected by store personnel ($n = 84$), juvenile property offenders with a personal victim ($n = 106$), and drink drivers (those who drove with an alcohol content over 0.08 at any age) ($n = 731$). Completion rates for the interview data we utilize reflect: 72% for violent offenders, 73% for shoplifters, 76% for property offenders with a personal victim, and 85% for drink driving offenders. Most offenders were male and between 9 and 74 years of age (refer to Table 1 for all descriptive statistics). Court proceedings typically took about 10 minutes, in contrast to conferences that lasted approximately 90 minutes (Sherman, Braithwaite, Strang, & Barnes, 2001; Sherman et al., 1998).

Court cases rarely involved the attendance of victims and many involved adjournments, mainly so that defendants could obtain legal advice (Sherman et al., 1998). Additionally, court cases typically included the prosecutor or police

***Table 1.*** Descriptive Statistics.

| | Observation | Mean | SD | Minimum | Maximum |
|---|---|---|---|---|---|
| Dependent variable | | | | | |
| Strength of family relationships | 960 | 9.72 | 2.47 | 3 | 15 |
| Mediating variables | | | | | |
| Reintegrative shaming | 942 | 22.90 | 6.44 | 9 | 36 |
| Disintegrative shaming | 960 | 10.48 | 3.43 | 6 | 24 |
| Independent variable | | | | | |
| Criminal justice processing (1 = conference, 0 = court) | 973 | 0.51 | 0.50 | 0 | 1 |
| Control variables | | | | | |
| Age | 973 | 27.20 | 11.50 | 9.47 | 74.05 |
| Gender (1 = male, 0 = female) | 973 | 0.76 | 0.43 | 0 | 1 |
| Procedural justice | 952 | 40.19 | 7.53 | 11 | 55 |
| Negative emotionality | 957 | 26.63 | 3.91 | 14 | 41 |
| Constraint | 963 | 12.52 | 1.81 | 4 | 16 |
| Moral beliefs | 964 | 13.56 | 1.62 | 4 | 15 |
| Self-esteem | 956 | 30.60 | 4.07 | 14 | 40 |
| Family attachment | 965 | 13.49 | 2.00 | 3 | 15 |
| School accomplishment | 970 | 2.48 | 0.89 | 1 | 4 |
| School performance | 970 | 3.30 | 0.82 | 1 | 5 |
| Delinquent peers | 906 | 2.66 | 1.03 | 1 | 5 |
| Violent | 973 | 0.05 | 0.23 | 0 | 1 |
| Person security | 973 | 0.09 | 0.28 | 0 | 1 |
| Person property | 973 | 0.11 | 0.31 | 0 | 1 |
| Drink driving | 973 | 0.75 | 0.43 | 0 | 1 |

describing the facts of the offense, submissions by the offender's solicitor or the offender, and a sentence imposed by a magistrate (Harris, 2001). Contrary to courts, conferences involved a meeting of the offender with at least some family members or friends, victims (or in the case of drink driving offenders, a community representative), and police facilitator. These conferences addressed the offense, the harm it produced and worse harm it could have caused, how to repair the harm, and a written agreement detailing how the offender would go about repairing said harm. In comparison to court, conferences were more restorative and had greater levels of reintegrative and disintegrative shaming, emotional intensity, and were ultimately perceived as more stressful by offenders. In contrast, courts were more retributive than conferences, were less likely to involve forgiveness, and no court proceedings involved an apology, of which there were many in conferences (Sherman et al., 1998).

### *Independent Variable*

Our independent variable is the type of criminal justice processing (courts or conferences) to which cases were randomly assigned. This variable is dichotomous with courts serving as the reference category.

### *Mediating and Dependent Variables*

Our mediating variables reflect the type of shaming to which offenders were subject during court and conference. Reintegrative shaming is composed of nine items, ranging from (1) not at all to (4) a lot, that assess the extent to which others accepted offenders and allowed them to move past the offense ($\alpha = 0.82$). Disintegrative shaming reflects six items, ranging from (1) not at all to (4) a lot, that indicate the degree to which the offender was stigmatized during criminal justice processing ($\alpha = 0.71$) (refer to Scheuerman & Matthews, 2014, and see Appendix for a complete description of the items in these variables). Higher scores on these scales indicate higher levels of reintegrative and disintegrative shaming, respectively.

We operationalize our dependent variable of familial bonds as the strength of family relationships with three items. Respondents assessed the following measures on a scale ranging from (1) strongly disagree to (5) strongly agree: "As a result of the **conference**/***court case*** I feel more proud of being a member of my family"; "The **conference**/***court case*** has brought my family closer together"; and "The **conference**/***court case*** increased the respect we have for one another in my family." These measures were combined into one composite scale ($\alpha = 0.81$). A higher score on this scale indicates stronger family relationships as a result of criminal justice processing.

### *Control Variables*

Our controls reflect variables that affect the experience of shaming (Braithwaite, 1989; Scheuerman & Matthews, 2014). We control for age, gender, procedural justice, personality traits (negative emotionality and constraint), moral beliefs,

and self-esteem. Gender is a dichotomous variable with females serving as the reference category. Procedural justice is measured by a summative scale of 11 items that assess the extent to which offenders were treated with respect and had input in the decision-making process (1 = not at all; 4 = a lot) ($\alpha = 0.89$). Negative emotionality is an additive scale consisting of 11 items ranging from (1) strongly disagree to (4) strongly agree that indicate whether offenders feel they are mistreated by others and get upset easily ($\alpha = 0.70$). Constraint is composed of four items (1 = strongly disagree; 4 = strongly agree) that assess the extent to which offenders are not likely to give up easily on tasks ($\alpha = 0.73$). Moral beliefs are measured by a three-item summative scale asking respondents to assess how wrong it is to start a fight, shoplift, or drive if over the legal limit for alcohol ($\alpha = 0.59$). Self-esteem reflects Rosenberg's (1965) 10-item self-esteem scale ($\alpha = 0.84$). High values on the above measures indicate higher levels of the following constructs: procedural justice, negative emotionality, constraint, moral beliefs, and self-esteem.

We also control for those variables that account for past family relationships and an offender's stake in conformity, which consist of family attachment, school attachment, and delinquent peers. Family attachment is an additive scale composed of three items ranging from (1) strongly disagree to (5) strongly agree that measure the degree to which respondents are proud to be part of their family, love their family, and perceive they are loved by their family ($\alpha = 0.87$). Attachment to school is measured by two separate items: school accomplishment and school performance. School accomplishment asked respondents to assess whether school gives or gave them a sense of accomplishment (1 = never; 4 = always). School performance assesses the degree to which respondents evaluated their academic performance (1 = well below average; 5 = well above average). Peer delinquency is measured by one item that asked offenders to indicate how many peers they had who experienced trouble with the law (1 = none of them; 5 = all of them). In comparison to other types of offenders, drink drivers were asked only about peers who drink and drive. Higher scores on these measures indicate higher levels of family and school attachment and more delinquent peers. Last, we control for offense type as preliminary findings from these data reveal that type of offense influenced the association between criminal justice processing and family relationships. Through the creation of dummy variables reflecting offense categories, we account for youth violent offenders, juvenile shoplifting offenders, and juvenile property offenders with a personal victim, with drink driving offenders serving as the reference category (Sherman et al., 1998).

## ANALYTICAL STRATEGY

To test our hypotheses relating to the association between criminal justice processing, shaming, and family relationships, we conduct ordinary least squares (OLS) regressions. Restricting our analysis to those variables with full data, we first test whether criminal justice processing affects shaming and family relationships directly. Drawing from these models, we next test whether reintegrative and

disintegrative shaming mediate the association between criminal justice processing and family relationships by presenting regressions of: (1) criminal justice processing predicting shaming; (2) shaming predicting family relationships; and (3) criminal justice processing predicting family relationships while controlling for shaming (the mediators) (see Baron & Kenny, 1986). If the effect of criminal justice processing on family relationships is attenuated when including shaming, then mediation is assumed.

## RESULTS

In support of *H1* and *H2*, Table 2 indicates that the type of criminal justice processing, i.e., court or conference, affects family relationships and the experience of shaming. Specifically, conferences are positively associated with offenders indicating that their family relationships are stronger after their occurrence, in comparison to court proceedings ($\beta = 0.14$; $p \leq 0.001$) (*H1*). Additionally, offenders

***Table 2.*** OLS Regressions of Criminal Justice Processing Predicting Perceptions of Shaming and Strength of Family Relationships.

| | Reintegrative Shaming | | | Disintegrative Shaming | | | Strength of Family Relationships | | |
|---|---|---|---|---|---|---|---|---|---|
| Variable | *b* | $\beta$ | SE | *b* | $\beta$ | SE | *b* | $\beta$ | SE |
| Conference | 4.88*** | 0.38 | 0.39 | 0.72*** | 0.11 | 0.20 | 0.71*** | 0.14 | 0.16 |
| Age | 0.03 | 0.05 | 0.02 | −0.03** | −0.09 | 0.01 | 0.03*** | 0.13 | 0.01 |
| Male | −1.95*** | −0.13 | 0.43 | 0.02 | 0.00 | 0.23 | 0.22 | 0.04 | 0.18 |
| Procedural justice | 0.18*** | 0.21 | 0.03 | −0.22*** | −0.50 | 0.01 | 0.03** | 0.10 | 0.01 |
| Negative emotionality | −0.04 | −0.03 | 0.05 | 0.04 | 0.05 | 0.03 | −0.04+ | −0.06 | 0.02 |
| Constraint | 0.05 | 0.01 | 0.12 | 0.18** | 0.10 | 0.06 | −0.04 | −0.03 | 0.05 |
| Moral beliefs | 0.09 | 0.02 | 0.12 | 0.01 | 0.00 | 0.06 | −0.01 | −0.00 | 0.05 |
| Self-esteem | 0.11+ | 0.07 | 0.06 | −0.10*** | −0.12 | 0.03 | 0.01 | 0.02 | 0.02 |
| Family attachment | 0.39*** | 0.12 | 0.09 | 0.09+ | 0.06 | 0.05 | 0.42*** | 0.35 | 0.04 |
| School accomplishment | 0.36 | 0.05 | 0.23 | 0.02 | 0.01 | 0.12 | 0.37*** | 0.13 | 0.10 |
| School performance | 0.43+ | 0.05 | 0.25 | −0.04 | −0.01 | 0.13 | −0.24* | −0.08 | 0.10 |
| Delinquent peers | −0.06 | −0.01 | 0.19 | 0.24* | 0.07 | 0.10 | −0.03 | −0.01 | 0.08 |
| Violent[a] | 2.03* | 0.07 | 0.90 | 0.85+ | 0.05 | 0.47 | 1.10** | 0.09 | 0.37 |
| Shoplifting[a] | 0.98 | 0.04 | 0.71 | 0.54 | 0.05 | 0.38 | 0.67* | 0.08 | 0.29 |
| Person property[a] | 2.82*** | 0.14 | 0.68 | 0.77* | 0.07 | 0.36 | 0.52+ | 0.06 | 0.28 |
| Constant | 2.04 | | 3.39 | 17.47*** | | 1.79 | 2.41+ | | 1.40 |
| *N* | 846 | | | 858 | | | 846 | | |
| $R^2$ | 0.34 | | | 0.32 | | | 0.25 | | |
| Adjusted $R^2$ | 0.33 | | | 0.31 | | | 0.23 | | |

+$p \leq 0.10$, *$p \leq 0.05$, **$p \leq 0.01$, ***$p \leq 0.001$ (two-tailed).
[a]Reference category is drink driving.

who were processed by restorative justice conferences report greater levels of reintegrative ($\beta = 0.38$; $p \leq 0.001$) *and* disintegrative shaming ($\beta = 0.11$; $p \leq 0.001$) in comparison to traditional court processing (*H2*).

In testing our mediation analysis, we find partial support for *H3* and *H4*. Table 3 indicates that reintegrative and disintegrative shaming are, respectively, positively and negatively associated with the strength of family relationships (*H3*). However, the association between disintegrative shaming and family relationships is not significant ($\beta = -0.03$; $p = 0.391$). Distintegrative shaming does not serve as a mediator of the relationship between criminal justice processing and the strength of family ties, which is contrary to our prediction. Nevertheless, we do find that reintegrative shaming mediates this relationship (Table 4). That is, the strength of the influence of criminal justice processing on family relationships decreases and becomes marginally significant ($\beta = 0.06$; $p \leq 0.10$) when reintegrative shaming is included in the model.[4]

## DISCUSSION

This study advances the literature on the impact of the justice system on the family by investigating how the type of criminal justice processing offenders receive

***Table 3.*** OLS Regressions of Shaming Predicting Strength of Family Relationships.

| | Model 1 | | | Model 2 | | |
|---|---|---|---|---|---|---|
| Variable | *b* | $\beta$ | SE | *b* | $\beta$ | SE |
| Reintegrative shaming | 0.08*** | 0.21 | 0.01 | – | – | – |
| Disintegrative shaming | – | – | – | −0.02 | −0.03 | 0.03 |
| Conference | 0.31+ | 0.06 | 0.17 | 0.72*** | 0.15 | 0.16 |
| Age | 0.03*** | 0.12 | 0.01 | 0.03*** | 0.14 | 0.01 |
| Male | 0.38* | 0.07 | 0.18 | 0.25 | 0.04 | 0.18 |
| Procedural justice | 0.02+ | 0.06 | 0.01 | 0.03* | 0.09 | 0.01 |
| Negative emotionality | −0.04+ | −0.06 | 0.02 | −0.04+ | −0.06 | 0.02 |
| Constraint | −0.04 | −0.03 | 0.05 | −0.03 | −0.02 | 0.05 |
| Moral beliefs | −0.01 | −0.01 | 0.05 | −0.01 | −0.01 | 0.05 |
| Self-esteem | 0.00 | 0.00 | 0.02 | 0.01 | 0.01 | 0.02 |
| Family attachment | 0.39*** | 0.32 | 0.04 | 0.42*** | 0.35 | 0.04 |
| School accomplishment | 0.34*** | 0.12 | 0.09 | 0.37*** | 0.13 | 0.09 |
| School performance | −0.27** | −0.09 | 0.10 | −0.23* | −0.08 | 0.10 |
| Delinquent peers | −0.02 | −0.01 | 0.08 | −0.03 | −0.01 | 0.08 |
| Violent[a] | 0.94* | 0.08 | 0.37 | 1.13** | 0.10 | 0.36 |
| Shoplifting[a] | 0.59* | 0.07 | 0.29 | 0.70* | 0.08 | 0.29 |
| Person property[a] | 0.29 | 0.04 | 0.28 | 0.55* | 0.07 | 0.28 |
| Constant | 2.24 | | 1.37 | 2.74+ | | 1.46 |
| *N* | 846 | | | 858 | | |
| $R^2$ | 0.28 | | | 0.25 | | |
| Adjusted $R^2$ | 0.26 | | | 0.23 | | |

+$p \leq 0.10$, *$p \leq 0.05$, **$p \leq 0.01$, ***$p \leq 0.001$ (two-tailed).
[a]Reference category is drink driving.

***Table 4.*** OLS Regressions of Criminal Justice Processing Predicting Strength of Family Relationships Through Reintegrative Shaming.

| | Model 1 | | | Model 2 | | |
|---|---|---|---|---|---|---|
| Variable | *b* | *β* | SE | *b* | *β* | SE |
| Conference | 0.71*** | 0.14 | 0.16 | 0.31$^{+}$ | 0.06 | 0.17 |
| Reintegrative shaming | – | – | – | 0.08*** | 0.21 | 0.01 |
| Age | 0.03*** | 0.13 | 0.01 | 0.03*** | 0.12 | 0.01 |
| Male | 0.22 | 0.04 | 0.18 | 0.38* | 0.07 | 0.18 |
| Procedural justice | 0.03** | 0.10 | 0.01 | 0.02$^{+}$ | 0.06 | 0.01 |
| Negative emotionality | −0.04$^{+}$ | −0.06 | 0.02 | −0.04$^{+}$ | −0.06 | 0.02 |
| Constraint | −0.04 | −0.03 | 0.05 | −0.04 | −0.03 | 0.05 |
| Moral beliefs | −0.01 | −0.00 | 0.05 | −0.01 | −0.01 | 0.05 |
| Self-esteem | 0.01 | 0.02 | 0.02 | 0.00 | 0.00 | 0.02 |
| Family attachment | 0.42*** | 0.35 | 0.04 | 0.39*** | 0.32 | 0.04 |
| School accomplishment | 0.37*** | 0.13 | 0.10 | 0.34*** | 0.12 | 0.09 |
| School performance | −0.24* | −0.08 | 0.10 | −0.27** | −0.09 | 0.10 |
| Delinquent peers | −0.03 | −0.01 | 0.08 | −0.02 | −0.01 | 0.08 |
| Violent[a] | 1.10** | 0.09 | 0.37 | 0.94* | 0.08 | 0.37 |
| Shoplifting[a] | 0.67* | 0.08 | 0.29 | 0.59* | 0.07 | 0.29 |
| Person property[a] | 0.52$^{+}$ | 0.06 | 0.28 | 0.29 | 0.04 | 0.28 |
| Constant | 2.41$^{+}$ | | 1.40 | 2.24 | | 1.37 |
| *N* | 846 | | | 846 | | |
| $R^2$ | 0.25 | | | 0.28 | | |
| Adjusted $R^2$ | 0.23 | | | 0.26 | | |

$^{+}p \leq 0.10$, $*p \leq 0.05$, $**p \leq 0.01$, $***p \leq 0.001$ (two-tailed).
[a]Reference category is drink driving.

affects the strength of family relationships after they are processed. Drawing primarily from literature on restorative justice, we bring to the forefront the consideration that the strengthening of family relationships should reflect an outcome of criminal justice processing, in addition to representing a process related to the restoration of justice (Presser & Van Voorhis, 2002). This is especially important when considering the important role the family plays in affecting the likelihood of recidivism (Hirschi, 1969; Visher et al., 2011; Woolley & Grogan-Kaylor, 2006).

We find that in comparison to court proceedings, offenders who had their case assigned to restorative justice conferences perceived that this type of processing strengthened their relationships with their families. This is especially significant since we controlled for previous levels of family attachment prior to the completion of court or conference. This finding coincides with the relationship-building processes that are inherent in restorative justice (Harris, 2006; Kuo et al., 2010; Presser & Van Voorhis, 2002; Wenzel et al., 2008) and highlights the benefit of conferencing in comparison to court. Although courts appear biased in favor of those who already have strong family ties (Daly, 1987; Freiburger, 2010), unlike restorative conferences, they do not seek to develop these relations. At its core, restorative practices attempt to repair relationships harmed by an offense (Kurki, 1999) and tend to be perceived as more reintegrative (Van Ness & Strong, 1997).

For instance, FGC, a type of practice heavily influenced by RST (Presser & Van Voorhis, 2002), have been found to be more reintegrative than court proceedings (Barnes et al., 2015; Harris, 2006; Tyler et al., 2007).

Despite higher levels of reintegrative shaming, we also find that higher levels of stigmatizing shaming characterize conferences, in comparison to court proceedings (see also Barnes et al., 2015; Harris, 2006). Offenders processed by FGC in RISE were observed to experience more stigmatizing names and labels, harassment, and shouting than offenders randomly assigned to court (Barnes et al., 2015, p. 119), which we find that offenders also perceived when indicating the type of shaming to which they were subject. This may in part be a consequence of the nature of these conferences, which are more highly emotional than courts and bring together various parties who have been harmed by the offender's act (Barnes et al., 2015; Sherman et al., 1998). Certainly, the participation of close others, like family members, in restorative practice could not only serve to reintegrate the offender but stigmatize them as well (Scheuerman & Keith, 2015).

Family members may not only denounce the offense (Presser & Van Voorhis, 2002) but also the offender (Scheuerman & Keith, 2015). For instance, parents who take part in restorative practices may serve as offender advocates or condemners (Presser & Van Voorhis, 2002; Zappavigna & Martin, 2014). Parents could engage in activities that range from helping the offender to recognize the harm that occurred, thereby assisting in reintegration and strengthening familial and relational ties with others (Karp, Sweet, Kirshenbaum, & Bazemore, 2004; Scheuerman & Keith, 2015), to disintegratively shaming the offender because they feel responsible for correcting the wrongdoings of their children (Hoyle & Noguera, 2008). Family members may also undermine reintegration by attending but not participating in the restorative process (Gerkin, 2012). As reported by Gerkin (2012), when this occurred family members

> often failed to explain the harm they experienced and offered little in the way of emotional or verbal support to the offenders and made no attempt to help their loved ones maintain a positive self-identity. (p. 287)

Even though this stigmatization could be problematic in undermining the reintegration of the offender and in fostering recidivism (Braithwaite, 1989), the disintegrative shaming present in criminal justice processing does not affect family relationships. That is, the strength of family ties does not depend on stigmatizing the offender, and disintegrative shaming thus does not mediate the association between criminal justice processing and family relations. Reintegrative shaming and disintegrative shaming are operating through distinct mechanisms and reflect two separate constructs (Braithwaite & Braithwaite, 2001). This suggests that what matters is not so much whether stigmatization is present but whether efforts at reintegration characterize criminal justice processing.

The very emphasis on reintegrative shaming within restorative justice practices is what may make this type of processing more effective at reducing recidivism than traditional court proceedings (Latimer, Dowden, & Muise, 2005; Luke & Lind, 2002; Tyler et al., 2007). Based on this logic, another implication of our study is that incorporating efforts to reintegrate offenders during court processing

may also lead to greater reductions in recidivism through the strengthening of family ties (Hirschi, 1969; Visher et al., 2011; Woolley & Grogan-Kaylor, 2006). Not only does reintegrative shaming make bonds with others more desirable to maintain (Braithwaite, 1989; Harris, 2006), it also can foster adaptive shame management, which would allow offenders to take responsibility for their actions and heal their ties with others. Specifically, reintegrative shaming is positively associated with shame acknowledgement (Ahmed & Braithwaite, 2005). This form of shame management provides for the expression of remorse, enhances empathy, and encourages the making of amends with those who are harmed by an offense (Ahmed & Braithwaite, 2005, 2012).

The importance of reintegration thus cannot be understated. This finding also has specific import when considering the involvement of marginalized offenders, e.g., racialized minority groups, and their families in criminal justice proceedings, and how these proceedings can further marginalize these parties (LaPrairie, 1995). Our research indicates that this marginalization in and of itself may not be problematic if criminal justice policies and practices reintegrate offenders. If no attempts at reintegration are made, or if offenders come from abusive home environments, thereby limiting their ability to reconnect with their kinship networks (Funston & Herring, 2016), then the beneficial effect of reintegrative shaming on strengthening family relationships may not be realized.

It should be stated, however, that mere restoration via reintegrative shaming may not be sufficient (Barrie, 2020; Kim, 2018). Rather, transformation may be necessary to ensure that offenders and their families are not reproducing relationships marked by status and power differentials that perpetuate structural violence often associated with traditional forms of crime control. As such, restorative practitioners may wish to embrace transformative justice solutions, especially when encountering offenders and families who hold marginalized positions in society or when offenders come from abusive home environments wherein traditional restoration would foster the perpetuation of harm. Transformative justice practices would serve to empower marginalized individuals and their communities to better reintegrate justice-involved individuals by changing the social conditions that affect familial relationships (Barrie, 2020; Kim, 2018). Research is needed to identify how the marginalized status of offenders and families, and the potential experience of marginalization during processing, can affect familial bonds.

Our findings also highlight numerous other avenues for future research as further investigation is warranted when examining the relationship between reintegrative and disintegrative shaming and family ties. For instance, qualitative scholarship is needed to identify how offenders and their families understand the shaming processes that can operate during offender processing. It is only by understanding how these parties view their experiences in their own words that researchers can clarify the relationship between reintegrative and disintegrative shaming to see how these processes interact. It may be that in the absence of shaming that is reintegrative, disintegrative shaming would damage family ties as expected. Without high levels of reintegrative shaming to buffer the negative effects of disintegrative shaming, courts may be more damaging to family relationships than conferences.

Future research is also needed to assess how strong family relationships may foster stigmatization by leading the offender to be overly concerned about how their actions could affect these relationships (Hirschi, 1969). For instance, in our study, constraint was positively associated with disintegrative shaming and not reintegrative shaming (see Scheuerman & Matthews, 2014). High constraint may lead to greater perceptions of disintegrative shaming, or the experience of stigmatization, because offenders who are high in constraint, and have a greater stake in conformity, are more attuned to the feelings of others (Hirschi, 1969). School performance was also negatively associated with the strength of family relationships. It is possible that such high expectations surrounding offenders in terms of their academic success could have led to more disappointment and shaming by family members (e.g., Pang, 1991).

Using this logic, higher constraint may also be associated with drink driving offenders, as they reported higher levels of shame and embarrassment when processed via conference rather than court (Sherman et al., 1998). Indeed, in comparison to drink drivers, other offense types were positively associated with reintegrative shaming (violent and person property offenders) and the strength of family relationships (violent and shoplifting offenders). Person property offenders also experienced more disintegrative shaming than drink driver offenders, indicating that perhaps these offenders were stigmatized more given perceptions of the seriousness of the crime. Research should therefore examine how stake in conformity and offense type may complicate the experience of shame (see Sherman et al., 1998; Scheuerman, Gilbert, Keith, & Hegtvedt, 2020) and how individuals respond to shame, whether it be to acknowledge or deny it.

Researchers may also wish to examine how family relationships enhanced in conferences affect future criminal behavior. Closer family relationships improve school and employment outcomes (Visher et al., 2011; Woolley & Grogan-Kaylor, 2006). And, oftentimes, traditional criminal justice processing increases recidivism through decreasing educational and occupational expectations (Restivo & Lanier, 2015). Therefore, a more complete understanding of how family relationships affect future offending should be assessed longitudinally.

In sum, this study adds to the literature by highlighting how the type of criminal justice processing matters for affecting family relationships. In comparison to courts, restorative justice conferences increase the quality of family relationships. Furthermore, family ties become stronger as a result of reintegrative shaming, which occurs at higher levels in conferences than court proceedings, while stigmatizing shaming remains unimportant. Future research should build upon this study to examine how the relationship building which occurs in conferences may lead to better school and job outcomes and reductions in recidivism.

## NOTES

1. It should be noted that although the labels of "offender" and "victim" are used when describing certain of the parties involved in restorative justice processing, these labels reflect false dichotomies that may foster stigmatization. Indeed, justice-involved individuals may often be victims themselves (Balfour, 2013; Barrie, 2020; Nelund, 2017).

2. Originating in New Zealand in the 1980s to address the overrepresentation of Māori youth in the criminal justice system (Kim, 2018), FGC has been viewed as an appropriate forum to empower diverse groups, including Indigenous people and communities. It should be noted, however, that the association of FGC with indigenous practices is suspect and that the implementation of FGC may undermine the empowerment of Indigenous peoples by reproducing Western notions of "best practice" (Moyle & Tauri, 2016, p. 91).
3. Even though data for RISE were collected between 1995 and 1999, the use of this database is appropriate when testing the underlying theoretical mechanisms of restorative justice, which should not substantially change over time. Moreover, the RISE database reflects one of the most rigorous tests of the effectiveness of restorative justice conferencing (McGarrell & Hipple, 2007) in comparison to court proceedings.
4. Supplemental analyses using the KHB method in Stata confirmed these findings (see Karlson, Holm, & Breen, 2012). Moreover, our controls performed as expected, while those that did not are elaborated upon in our discussion. Older offenders were less likely to experience disintegrative shaming and were more likely to report stronger family relationships. In addition, in comparison to female offenders, males were less likely to experience reintegrative shaming (Braithwaite, 1989), while procedural justice was positively associated with reintegrative shaming and the strength of family relationships and inversely associated with disintegrative shaming (Scheuerman & Matthews, 2014). According to RST, age and being female should be positively associated with social embeddedness, which would foster shaming that is reintegrative and the strengthening of family relationships (Braithwaite, 1989). This same logic would apply to the positive association between the strength of family relationships with family attachment and school accomplishment and the fact that family attachment is positively correlated with reintegrative shaming. The use of fair procedures should also facilitate reintegrative shaming and reinforce family ties because procedural justice signifies those individuals are valued by the groups to which they belong (Tyler & Lind, 1992). Last, self-esteem and delinquent peers, respectively, were negatively and positively associated with disintegrative shaming, thereby indicating how self-esteem can serve as a protective factor against stigmatizing shaming and how having delinquent peers may foster further labeling and stigmatization (Braithwaite, 1989).

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# APPENDIX

| | |
|---|---|
| Reintegrative shaming | (1) Did people in the conference/*court* say that it was not like you to do something that was wrong? |
| | (2) At the end of the conference/*court case*, or since then, have people made it clear to you that you can put the whole thing behind you? |
| | (3) During the conference/*court case*, did people indicate that they accepted you as basically law abiding? |
| | (4) Did you learn from the conference/*court* that there are people who care about you? |
| | (5) At the end of the conference/*court case*, did people indicate that you were forgiven? |
| | (6) During the conference/*court case*, did people suggest that they loved you regardless of what you did? |
| | (7) During the conference/*court case*, did people talk about aspects of yourself which they like? |
| | (8) Did others at the conference/*court case* say that you had learnt your lesson and now deserved a second chance? |
| | (9) Were you treated as a trustworthy person in the conference/*court*? |
| Disintegrative shaming | (1) Were you treated in the conference/*court* as though you were likely to commit another offense? |
| | (2) Did people during the conference/*court case* make negative judgments about what kind of person you are? |
| | (3) During the conference/*court case*, were you treated as though you were a criminal? |
| | (4) During the conference/*court case*, did any of the people who are important to you reject you because of the offense? |
| | (5) During the conference/*court case*, were you treated as though you were a bad person? |
| | (6) Even though the conference/*court case* is over, do you still feel that others will not let you forget what you have done? |

# CHAPTER 2

# DO PARENTAL MONITORING HABITS CHANGE IN RESPONSE TO JUVENILE RECIDIVISM?

Caitlin Cavanagh, Erica Dalzell, Alyssa LaBerge and Elizabeth Cauffman

## ABSTRACT

*Greater parental monitoring is commonly associated with reduced delinquent behavior in adolescents, yet less is known about the extent to which parental monitoring behavior changes after a child is arrested for the first time. The present study examines the extent to which mothers' monitoring behaviors (i.e., parental monitoring knowledge and effort) change in association with juvenile recidivism after their sons' first arrest, operationalized through both youth-reported recidivism and official re-arrest records. Mother–son dyads (total* N *= 634) across three states were interviewed in two waves over 30 months following the youth's first arrest. Mothers who reported both more monitoring knowledge and effort at Wave 1 had sons who self-reported less recidivism and were less likely to be re-arrested at Wave 2. Repeated sons' re-arrests were associated with a change in mothers' monitoring behavior, as both parental knowledge and parental effort significantly increased from Wave 1 to Wave 2 when youth have been re-arrested more than once, relative to youth who had never been re-arrested. No change in monitoring behaviors were observed in association with youth-reported recidivism, and mothers who stated an intention to change their monitoring habits at Wave 1 did not necessarily do so by Wave 2. The findings point to the ability of parents to modulate their monitoring behavior to respond to chronic juvenile offending. This provide an*

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*opportunity for practitioners to work with parents to improve their monitoring skills, to ensure rehabilitative gains that result from justice system intervention are maintained in the home via parental monitoring.*

**Keywords:** Parental monitoring; juvenile recidivism; delinquency; juvenile arrest; parenting; rehabilitation

It is well established that greater parental monitoring is associated with reduced delinquent behavior in adolescents (see reviews by Keijsers, 2016; Racz & McMahon, 2011). However, less is known about the extent to which parental monitoring habits change after a youth is arrested, and calls have been made to investigate this relation empirically (see Tapia, Alarid, & Hutcherson, 2015). Although the classic theoretical conception of parental monitoring solely focuses on parents' surveillance habits, other research argues there are conceptual differences between active parental monitoring strategies, parental knowledge, and parental efforts to gain knowledge of their children's activities and whereabouts (Kerr & Stattin, 2000; Stattin & Kerr, 2000). In fact, much research suggests that parents' knowledge of their children's activities (i.e., what they *actually* know) better predicts antisocial and delinquent behavior than parental monitoring habits alone, such as parental monitoring efforts or parental control (Flanagan, Auty, & Farrington, 2019; Fletcher, Steinberg, & Williams-Wheeler, 2004; Kerr, Stattin, & Burk, 2010; Stattin & Kerr, 2000). We conceptualize both parental monitoring effort and parental monitoring knowledge as critical aspects of the protective nature of parenting against juvenile delinquency. But following a child's arrest, do parents alter their monitoring behaviors? The current study seeks to answer this question by assessing the change in mothers' reports of parental monitoring effort and knowledge between her son's first arrest and 30 months later and by testing the association of this change in parental monitoring with two measures of reoffending: youth-reported recidivism and official re-arrests over 30 months after the first arrest.

## PARENTAL MONITORING

The link between parenting and juvenile delinquency has been a cornerstone of delinquency research for decades (Fosco, Stormshak, Dishion, & Winter, 2012; Glueck & Glueck, 1950; Hoeve et al., 2009; Snyder & Patterson, 1987). Traditional conceptualizations describe parental monitoring as the degree to which parents track their children's activities and locations (Dishion & McMahon, 1998) through active tracking or surveillance of their children (Stattin & Kerr, 2000). Specifically, attending youths' activities, tracking their whereabouts and behavior, and providing a structured environment are parental monitoring practices that may reduce antisocial behaviors (Barrera, Biglan, Ary, & Li, 2001; Dishion, Patterson, Stoolmiller, & Skinner, 1991; Hoeve et al., 2009). When compared to other parenting practices, such as discipline strategies, poor parental monitoring habits are among the greatest predictors of adolescent antisocial behaviors

(Loeber & Dishion, 1983). In sum, parents play a pivotal role in adolescent development and youth potential for delinquent or non-delinquent behaviors through their monitoring efforts.

In Stattin and Kerr's seminal work (Kerr & Stattin, 2000; Stattin & Kerr, 2000), the traditional conceptualization of parental monitoring was challenged. The authors argued that the traditional uses of the measure "parental monitoring" were more akin to "parental knowledge," as such conceptualizations did not attempt to determine the active efforts through which parents gained their knowledge but only the extent of that knowledge (Stattin & Kerr, 2000). In the present study, we focus on two key aspects of parental monitoring in the same tradition as Stattin and Kerr: (1) parental monitoring knowledge, or the extent of parents' actual knowledge about their children's activities; and (2) parental monitoring effort, or the extent to which parents actively try to know about their children's activities. We collectively refer to parental knowledge and parental effort as "parental monitoring" throughout the current study and distinguish between them in our research questions.

### *Parental Monitoring Knowledge*

Parental knowledge is distinct from parental monitoring: while parental monitoring describes efforts of surveillance, parental knowledge is concerned with facts about a child's behavior that a parent concretely and accurately knows to be true (Stattin & Kerr, 2000). As adolescents gain independence from their parents, parents' abilities to monitor their children reduce, therefore naturally reducing parental knowledge. Evidence exists indicating that parental monitoring and parental knowledge decrease normatively across adolescence as youth gain autonomy and responsibilities outside the home (Abar, Jackson, & Wood, 2014; Laird, Criss, Pettit, Bates, & Dodge, 2009; Lionetti et al., 2019). However, the strength of the association between youth antisocial behavior and parental knowledge may actually *increase* as youth age (Jacobson & Crockett, 2000; Pardini, Fite, & Burke, 2008; Willoughby & Hamza, 2011), suggesting that parental knowledge remains a critical mitigation strategy against delinquency during the adolescent years.

There is substantial cross-sectional evidence of the inverse relationship between parental knowledge and juvenile delinquency and antisocial behavior (Fletcher et al., 2004; Kerr et al., 2010; Stattin & Kerr, 2000). Yet, questions have arisen as to whether the relationship between parental knowledge and delinquency can be attributed to non-delinquent juveniles having less to hide, therefore being more willing to disclose information to their parents about their whereabouts and activities. In their longitudinal study of a diverse sample of adolescents, Lahey, Van Hulle, D'Onofrio, Rodgers, and Waldman (2008) concluded that the relationship between parental knowledge and delinquency is robust and not solely spurious, but that parental knowledge is a true predictor of juvenile delinquency. After all, there is extensive longitudinal evidence supporting this relationship (Bendezu, Pinderhughes, Hurley, McMahon, & Racz, 2018; Fosco et al., 2012; Laird, Pettit, Bates, & Dodge, 2003; Li, Stanton, & Feigelman, 2000; Yoo, 2017b). Even so, additional longitudinal research on the relations between parental knowledge and delinquency is necessary to provide further support that the relation is not spurious.

Extensive evidence also exists that parental knowledge reduces youth antisocial behavior both directly (Cutrin, Gomez-Franguela, & Sobral, 2017; Pettit & Laird, 2002) and indirectly, mediated through, for example, affiliation with deviant peers (Cutrin et al., 2017, Cutrin, Maneiro, Sobral, & Gomez-Fraguela, 2019), the amount of unsupervised time youth spend with peers (Walters, 2018), and the quality of the parent–child relationship (Walters, 2019). Furthermore, there is evidence that the relationship is moderated by, for example, gender (Yoo, 2017a) and adolescent temperament (Kapetanovic, Skoog, Bohlin, & Gerdner, 2019). In fact, the effects of parental knowledge on delinquency outweigh those of parental monitoring or parental control in much research (see review by Flanagan et al., 2019).

Researchers have found that the relationship between parental knowledge and substance abuse, nonviolent, and violent behaviors is stronger among male community youth than male institutionalized youth (Cutrin et al., 2017). Additionally, the researchers found that parental knowledge is significantly lower among institutionalized male juveniles than community youth (Cutrin et al., 2017). This finding appears to hold true regardless of the type of incarcerated youth; research indicates that both incarcerated male juvenile sexual offenders and incarcerated male non-sexual juveniles report less parental knowledge than community male youth (Stewart, Sitney, Kaufman, DeStefano, & Bui, 2019). The findings from the current research suggest a key inverse relationship between not only parental knowledge and juvenile delinquency but also the protective nature of parental knowledge against juvenile arrest and incarceration. However, to our knowledge, no research has specifically examined the effect of parental knowledge on *official* juvenile arrests. The present study addresses this gap in the literature by examining the relationship between parental monitoring and both youth-reported recidivism and official re-arrests among a sample of low-level, first time juvenile offenders.

### *Parental Monitoring Effort*

Previously, it was assumed that the efforts of parents to monitor their child's behavior and whereabouts (parental monitoring effort) were equivalent to what the parent actually knows the child is doing (parental monitoring knowledge) in its effect on delinquency. The work of Kerr and Stattin (2000) challenged this assumption by distinguishing between parental knowledge and parental monitoring efforts (e.g., parental solicitation; Kerr & Stattin, 2000; Stattin & Kerr, 2000) and by suggesting that the former is a better predictor of delinquency than the latter (Kerr et al., 2010). However, a 2009 meta-analysis of 161 parenting and delinquency manuscripts showed similar effect sizes for both parental knowledge and parental monitoring efforts (Hoeve et al., 2009), suggesting that both constructs are important when considering parental monitoring. Like parental knowledge, there is some evidence that parental monitoring effort decreases through adolescence. A 2019 meta-analysis found a small decrease in parental effort over time, but the authors determined that there were too few published articles to make this conclusion at the time of publication (Lionetti et al., 2019).

A great deal of empirical evidence supports the notion that inadequate parental monitoring effort contributes to antisocial behavior among youth (Eaton, Krueger,

Johnson, McGue, & Iacono, 2009; Lippold et al., 2014; Patterson & Stouthamer-Loeber, 1984; Racz & McMahon, 2011) for a variety of behaviors (e.g., drug use, risky sex, violence; DiClemente et al., 2001; Kandel, 1996). However, some research has failed to find statistically significant direct relationships between parental monitoring efforts and juvenile delinquency (e.g., Bendezu et al., 2018; Crocetti et al., 2016; Kerr et al., 2010), while others have found a positive relationship between parental monitoring effort and substance use (Kapetanovic et al., 2019) and delinquency (Willoughby & Hamza, 2011). However, the construct is generally less researched than parental knowledge. The existence of these mixed results and the lack of parental monitoring effort research calls for further research examining the parental monitoring effort–delinquency relationship, particularly longitudinally.

Like parental knowledge, Stewart and colleagues (2019) found that both incarcerated male juvenile sexual offenders and non-sexual juvenile offenders report lesser parental monitoring efforts than community male youth. This finding was particularly strong among variables indicating the following parental monitoring efforts: asking youth what they are doing, with whom, and when they will be home (Stewart et al., 2019). As with parental knowledge, the findings from this study suggest an important inverse relationship between parental monitoring effort juvenile arrest and incarceration.

## THE IMPACT OF DELINQUENCY

Numerous empirical studies have examined the reciprocal relationship between parental knowledge with adolescent antisocial and delinquent behavior, although much fewer studies have examined the bidirectional relations of parental monitoring effort and delinquency. Overall, results of studies examining reciprocal relationships have been mixed. Some research has found only unidirectional relationships between parental knowledge and delinquency (Bendezu et al., 2018; Wertz et al., 2016). On the other hand, Kerr and colleagues (2010) found evidence of a bidirectional relationship between parental knowledge and delinquency. In a two-cohort study of Korean children and preadolescents (ages 9–12) and adolescents (ages 13–16) youth, Yoo (2017a) concluded that the bidirectional effects of parental knowledge and juvenile delinquency vary depending on the developmental stage of the youth. The author found that the effect of delinquency on parental knowledge is more pronounced during childhood and preadolescence, whereas the effect of parental knowledge on delinquency is more pronounced during preadolescence and adolescence (Yoo, 2017a).

Regarding parental monitoring effort, some researchers have found no evidence of either unidirectional or bidirectional relationships between effort and delinquency (Bendezu et al., 2018; Keijsers, Branje, VanderValk, & Meeus, 2010). However, to our knowledge, no previous studies have examined the association between official arrest on parental monitoring habits. The present study extends the prior research on the bidirectional effects of parental monitoring on delinquency by not only assessing how parental monitoring knowledge and effort change in association with adolescent-reported delinquency but also in

association with official arrest. Furthermore, by using a sample of youth who have previously been arrested, we examine this issue in a key sample for intervention: to the extent that parental monitoring behaviors are associated with youth recidivism, practitioners have an opportunity to leverage those changes into better rehabilitative outcomes for justice-involved youth.

## THE PRESENT STUDY

Despite decades of research refining the construct and utility of parental monitoring as it relates to delinquency, the present literature remains incomplete. To date, the focus of the literature has been almost entirely unidirectional: how monitoring impacts delinquency. Parental monitoring is dynamic, yet little is known about how parental monitoring behavior may change in association with delinquent behavior, including a child's arrest. The present study extends previous research by examining the extent to which mothers' parental monitoring behaviors change in association with juvenile delinquency.

Single instances of delinquent behavior during adolescence are common, while continued delinquency into the transition to adulthood is problematic (Moffitt, 1993). Previous research is limited by examining single instances of youth delinquency (e.g., did the youth break the law during the study period?). The present study leverages a study of first-time, low-level offending youth – who may or may not continue to engage in delinquency – to examine how chronic delinquency is associated with change in parental monitoring behavior over the course of 2.5 years. Furthermore, we distinguish between parental monitoring knowledge and effort, to better understand which component of parental monitoring are associated with continued delinquency.

### *Central Research Aim*

In the current study, our central research aim is to investigate the extent to which parents alter their monitoring behaviors (operationalized as parental knowledge and effort, respectively) in association with youth reoffending (operationalized both through official re-arrest and through youth-reported recidivism). We expect that youth reoffending will be associated with an increase in parental monitoring behaviors.

## METHODS

Data for this study were drawn from Crossroads, a prospective longitudinal study of youth who were arrested for the first time and their mothers in three geographically distinct sites (Orange County, CA, New Orleans, LA, and Philadelphia, PA). The present study uses interviews with 317 Crossroads mothers–son dyads (total $N = 634$) over the course of 30 months in two waves.

### *Sampling Procedure*

Eligible youths were males who had committed a low- to moderate-level offense (e.g., vandalism, petty theft, simple assault) for the first time, an inclusion criterion

designed to restrict variability in past offending. All youths were between 13 and 17 years of age at the time of recruitment, spoke fluent English, and had at least one eligible charge. Youth were approached for study enrollment following their disposition, at which point informed parental consent and youth assent were obtained from the youth and his parent/guardian. Of eligible adolescents, approximately 20% refused to participate in the study or had their participation withheld by parents/guardians. Mothers were eligible to participate if they were an English- or Spanish-speaking primary female guardians[1] of enrolled Crossroads youth participants. Ninety-one percentage of eligible women consented to participate in the study.

### *Procedures*

The present study was designed to test the extent to which mothers' parental monitoring behavior changes in association with youths' delinquent behavior over two and a half years. Youths completed a semi-structured interview in person for 2–3 hours semiannually. To incentivize study participation, youth received $50 for the first interview and an additional $15 with each successive interview (up to $140). Study retention was between 91% and 96% at each time point.

Mothers were interviewed in two waves: Wave 1 was 5–7 months after the youth's arrest (a time period selected so that questions regarding the justice system process could be answered with greater certainty, having had time to unfold) and Wave 2 was 35–37 months after the youth's first arrest (a time period selected to follow youth to the point at which many will have reached the age of majority, at which point some youths may live outside the family home). Of the 397 women interviewed at Wave 1, 2.3% declined to be re-interviewed, 0.5% were ineligible because their sons had left the study, and 17.3% could not be located for Wave 2. Using computer-assisted software, mothers were interviewed in English or in Spanish by a native speaker for approximately one hour over the telephone. All measures were iteratively translated and back-translated in English and Spanish by a team of native speakers to maximize conceptual equivalence and cultural sensitivity (Douglas & Craig, 2007; Harkness, Van de Vijver, & Mohler, 2003; McKay et al., 1996). Mothers were compensated $15 for the first interview and $25 for the second interview.

Each participant was informed of the nature of the study, told that participation was voluntary, and that there was no penalty for declining to participate. Mothers' participation did not affect their sons' ability to participate. A Privacy Certificate issued by the Department of Justice protects participants by exempting their responses and identity from subpoenas, court orders, or other types of involuntary disclosures. All study procedures were approved by the Institutional Review Board (IRB) at each of the three study sites.

### *Measures*

#### *Demographic Information*

Youth participants reported general demographic information, including their age and race/ethnicity. Because of the well-documented link between age, race/ethnicity, and parental monitoring in the literature (see Pardini et al., 2008), these demographics were used as statistical controls and tested as moderators. Table 1 displays the demographic information and study variable correlates.

***Table 1.*** Sample Demographics and Bivariate Correlations.

| | *M* | SD | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|---|---|
| 1. Youth age | 15.35 | 1.24 | | | | | | | |
| 2. Parental monitoring knowledge – Wave 1 | 2.87 | 0.63 | −0.16** | | | | | | |
| 3. Parental monitoring effort – Wave 1 | 3.33 | 0.53 | 0.01 | 0.32** | | | | | |
| 4. Change in parental monitoring knowledge | −0.22 | 0.68 | 0.05 | −0.46** | −0.11 | | | | |
| 5. Change in parental monitoring effort | −0.37 | 0.70 | −0.15* | −0.02 | −0.42** | 0.34** | | | |
| 6. Self-reported offending | 0.05 | 0.07 | 0.01 | −0.14* | −0.01 | −0.04 | −02 | | |
| | % | *n* | | | | | | | |
| 7. Official re-arrests | | | −0.05 | −0.33** | −0.18** | 0.12* | 0.14* | 0.25** | |
| No re-arrests | 65.70 | 203 | | | | | | | |
| 1 Re-arrests | 15.21 | 47 | | | | | | | |
| 2+ Re-arrests | 19.09 | 59 | | | | | | | |
| 8. Youth race/ethnicity | | | −0.11* | −0.08 | −0.02 | −0.06 | 0.12* | 0.001 | 0.12* |
| White | 19.24 | 61 | | | | | | | |
| Black | 21.45 | 68 | | | | | | | |
| Hispanic/Latinx | 56.47 | 179 | | | | | | | |
| Other | 2.84 | 9 | | | | | | | |

*Note*: SD: standard deviation.
$\sim p < 0.1$, $*p < 0.05$, $**p < 0.01$.

*Official Re-arrests*

Official records of youths' re-arrests were obtained through cooperation with the courts in Orange County, New Orleans, and Philadelphia. For each youth, we recorded how many official arrests he experienced within the 30 months between Wave 1 and Wave 2. More than one third (35.65%) were arrested at least once within the 30-month study period. Official re-arrests were coded trichotomously, such that 0 = no re-arrests in 30 months, 1 = re-arrested once in 30 months, and 2 = re-arrested 2 or more times in 30 months.

*Youth-reported Recidivism*

Because not all criminal behavior is detected or processed by law enforcement, youth reported on their engagement in criminal activity every six months between Wave 1 and Wave 2 using the Self-Report of Offending scale (SRO; Huizinga, Esbensen, & Weiher, 1991). Sons self-reported their involvement in a list of 24 criminal acts ranging in severity from petty theft to homicide. At each time point, responses were summed to create variety scores, signifying the number of different types of criminal acts in which youth engaged. The resulting variety scores for each six-month interval between Wave 1 and Wave 2 were averaged to create a total SRO score for the study period. Higher scores indicate more severe criminal behavior. Given their high correlation with measures of severity of antisocial

behavior, and reduced recall bias relative to self-reports of frequency of antisocial behavior, variety scores are common in criminological research (see Hindelang, Hirschi, & Weis, 1979; Osgood, McMorris, & Potenza, 2002).

*Parental Monitoring Knowledge and Effort (Adapted From Steinberg et al., 1992)* The Parental Monitoring inventory assesses parenting practices related to supervision of the adolescent. Mothers reported on this scale at both waves. First, five items assessed parental monitoring knowledge (e.g. "How much do you *really* know about how your son spends his free time?") and are answered on a 4-point Likert scale ranging from (1) "I don't know at all" to (4) "I know everything." Next, five items assessed parental monitoring effort (e.g. "How much do you *try* to know about how your son spends his free time?"), again answered on a 4-point Likert scale ranging from (1) "I don't try at all" to (4) "I try extremely hard." In the present sample, both the Parental Monitoring Knowledge ($\alpha_{\text{Wave 1}} = 0.85$; $\alpha_{\text{Wave 2}} = 0.88$) and Parental Monitoring Effort ($\alpha_{\text{Wave 1}} = 0.95$; $\alpha_{\text{Wave 2}} = 0.85$) scales were reliable at both waves.

### *Analytic Plan*

First, descriptive and bivariate analyses were conducted to better understand the associations between all study variables (see Table 1 for descriptive statistics). Then, to confirm that parental monitoring effort and knowledge are associated with delinquency in this sample, a series of four regressions were conducted. Parental monitoring knowledge and effort, respectively, were tested as independent variables across two measures of recidivism (official re-arrests and youth-reported recidivism) as dependent variables, respectively, where youth age and race/ethnicity were held constant. Because official re-arrests is a trichotomous variable in the present study, multinomial logistic regression was used in place of ordinary least squares (OLS) regression when considering official re-arrests.

Next, to address the central research aim (*to investigate the extent to which parents alter their monitoring behaviors in association with youth reoffending*), a change score was created for both parental knowledge and parental effort, respectively, by subtracting mothers' total reported score at Wave 1 from the corresponding reported score at Wave 2. Thus, a change score value of 0 indicates no change parental monitoring from the Wave 1 to the Wave 2 interview, while a change score value less than 0 indicates a decrease in parental monitoring over time, and a change score value greater than 0 indicates an increase in parental monitoring over time. On average, mothers reported less monitoring knowledge ($M = -0.22$) and effort ($M = -0.37$) between the Wave 1 and Wave 2 interviews. However, there was substantial variability in mothers' change in parental monitoring knowledge and effort, such that many women reported monitoring more, and others reported monitoring less ($\text{Range}_{\text{knowledge}} = -2.2, 1.4$; $\text{Range}_{\text{effort}} = -2.4, 1.6$; see Table 1 for descriptives and bivariate correlations).

The change score was then used as a continuous outcome variable in a series of four OLS regression models. The two measures of recidivism, respectively, were

tested as independent variables, where changes in parental monitoring knowledge and effort, respectively, were the dependent variables, holding constant youth age and race/ethnicity. In these models, one of the independent variables (official re-arrests) was coded as a three-level variable. First, "no re-arrests" was assigned as the reference category to compare the change in monitoring knowledge and effort of mothers whose sons were never re-arrested to those with one re-arrest and multiple re-arrests, respectively. Then, "one re-arrest" was assigned as the reference category to compare the change in monitoring knowledge and effort of mothers whose sons were re-arrested once to those with multiple re-arrests. Thus, the regression models displayed a total of three contrasts: (1) youth who have had no re-arrests and youth who have had one re-arrest; (2) youth who have had no re-arrests and youth who have had multiple re-arrests; and (3) youth who have had one re-arrest and youth who have had multiple re-arrests.

## RESULTS

### *Is Parental Monitoring Associated With Reoffending?*

First, to confirm that parental monitoring is associated with reoffending behavior in line with a litany of previous research, a series of regressions were conducted. The first two models considered the association between Wave 1 parental knowledge and parental effort, respectively, and youths' official re-arrests over 30 months, controlling for youths' age and race, using multinomial logistic regression. We found that parental knowledge was associated with official re-arrests, such that women whose son was never re-arrested reported more knowledge than both women whose sons were re-arrested once (relative risk ratio (RRR) = 0.51, $p = 0.02$) and women whose sons were re-arrested more than once (RRR = 0.17, $p < 0.001$). Women whose sons were re-arrested once also reported more knowledge than mothers whose sons were re-arrested more than once (RRR = 0.34, $p < 0.001$). This model explained a significant, but small, proportion of variance in re-arrests ($R^2 = 0.10$, $p < 0.001$). A similar pattern was evident when considering parental effort, such that women whose son was never re-arrested reported more effort than women whose sons were re-arrested more than once (RRR = 0.45, $p = 0.01$), but there were no significant differences between women whose sons were re-arrested once and those never arrested ($p = 0.09$) nor those arrested more than once ($p = 0.50$). This model explained a significant, but small, proportion of variance in re-arrests ($R^2 = 0.08$, $p < 0.001$; see Table 2).

The same models were analyzed as OLS regressions using youth-reported recidivism instead of official re-arrests, to capture delinquent behavior that does not reach the attention of law enforcement. The same pattern of results was evident: greater parental knowledge was associated with less youth-reported recidivism ($b = -0.02$, $t(403) = -2.54$, $p = 0.01$), explaining a significant, but very small, proportion of variance in youth-reported recidivism ($R^2 = 0.04$, $F(5, 286) = 2.62$, $p = 0.02$). Parental effort was not significantly associated with youth-reported recidivism ($p = 0.71$; see Table 3).

***Table 2.*** Youth Re-Arrests Regressed on Parental Monitoring Behaviors, Youth Age, and Race/Ethnicity.

| | 0 Versus 1 Re-arrest | | | 0 Versus 2 Re-arrests | | | 1 Versus 2 Re-arrests | | |
|---|---|---|---|---|---|---|---|---|---|
| | Coefficient (SE) | 95% CI | RRR | Coefficient (SE) | 95% CI | RRR | Coefficient (SE) | 95% CI | RRR |
| Parental knowledge | −0.67 (0.30)* | −1.24, −0.09 | 0.51 | −1.75 (0.30)** | −2.34, −1.16 | 0.17 | −1.09 (0.36)** | −1.79, −0.38 | 0.34 |
| Youth age | −0.22 (0.14) | −0.49, 0.06 | 0.81 | −0.17 (0.14) | −0.44, 0.09 | 0.84 | 0.04 (0.17) | −0.29, 0.37 | 1.04 |
| Race/ethnicity [a] | | | | | | | | | |
| Black/African American | 0.66 (0.61) | −0.54, 1.85 | 1.93 | 0.64 (0.57) | −0.47, 1.76 | 1.90 | −0.01 (0.76) | −1.50, 1.47 | 0.99 |
| Hispanic/Latinx | 0.88 (0.53)∼ | | 2.42 | 1.15 (0.49)* | 0.19, 2.12 | 3.18 | 0.27 (0.66) | −1.02, 1.57 | 1.31 |
| Other | 1.33 (0.98) | −0.59, 3.25 | 3.78 | 0.62 (1.09) | −1.52, 2.75 | 1.85 | −0.72 (1.23) | −3.13, 1.70 | 0.49 |
| McFadden's pseudo-$R^2$ | 0.10 | | | | | | | | |
| | 0 Versus 1 Re-arrest | | | 0 Versus 2 Re-arrests | | | 1 Versus 2 Re-arrests | | |
| | Coefficient (SE) | 95% CI | RRR | Coefficient (SE) | 95% CI | RRR | Coefficient (SE) | 95% CI | RRR |
| Parental effort | −0.55 (0.32)∼ | −1.18, 0.08 | 0.58 | −0.80 (0.28)** | −1.36, −0.25 | 0.45 | −0.25 (0.37) | −0.97, 0.47 | 0.78 |
| Youth age | −0.16 (0.14) | −0.43, 0.11 | 0.85 | −0.05 (0.12) | −0.29, 0.20 | 0.95 | 0.11 (0.16) | −0.21, 0.43 | 1.12 |
| Race/ethnicity [a] | | | | | | | | | |
| Black/African American | 0.56 (0.61) | −0.63, 1.75 | 1.76 | 0.46 (0.54) | −0.60, 1.52 | 1.58 | −0.10 (0.75) | −1.56, 1.36 | 0.90 |
| Hispanic/Latinx | 0.73 (0.53) | −0.30, 1.76 | 2.07 | 0.79 (0.46)∼ | −0.11, 1.69 | 2.21 | 0.06 (0.64) | −1.20, 1.32 | 1.06 |
| Other | 1.27 (0.97) | −0.62, 3.17 | 3.57 | 0.92 (0.94) | −0.91, 2.75 | 2.50 | −0.36 (1.16) | −2.63, 1.92 | 0.70 |
| McFadden's pseudo-$R^2$ | 0.03 | | | | | | | | |

*Note*: SE, standard error; CI, confidence interval.
[a]White is the reference group.
$\sim p < 0.1$, $*p < 0.05$, $**p < 0.01$.

***Table 3.*** Youth-Reported Recidivism Regressed on Parental Monitoring Behaviors, Youth Age, and Race/Ethnicity.

| | *B* | SE | *β* | 95% CI | *p* |
|---|---|---|---|---|---|
| Constant | 0.13* | | | | |
| Parental knowledge | −0.02** | 0.01 | −0.15 | [−0.03, −0.004] | 0.01 |
| Youth age | −0.001 | 0.004 | 0.71 | [−0.01, −0.01] | 0.71 |
| Youth race/ethnicity[a] | | | | | |
| Black/African American | −0.03* | 0.01 | 0.04 | [−0.06, −0.001] | 0.04 |
| Hispanic/Latinx | −0.002 | 0.01 | 0.88 | [−0.02, 0.02] | 0.88 |
| Other | −0.03 | 0.03 | 0.27 | [−0.08, 0.02] | 0.27 |
| $R^2$ | 0.04 | | | | |
| | *B* | SE | *β* | 95% CI | *p* |
| Constant | 0.07 | | | | |
| Parental Effort | −0.003 | 0.01 | −0.02 | [−0.02, 0.01] | 0.71 |
| Youth age | 0.001 | 0.003 | 0.001 | [−0.01, 0.01] | 0.99 |
| Youth race/ethnicity[a] | | | | | |
| Black/African American | −0.93* | 0.01 | −0.16 | [−0.06, 0.002] | 0.03 |
| Hispanic/Latinx | −0.004 | 0.01 | −0.03 | [−0.03, 0.02] | 0.67 |
| Other | −0.03 | 0.03 | −0.06 | [−0.08, 0.03] | 0.31 |
| $R^2$ | 0.02 | | | | |

*Note*: SE: standard error; CI: confidence interval.
[a]White is the reference group.
$\sim p < 0.1$, $*p < 0.05$, $**p < 0.01$.

### *Is Reoffending Associated With a Change in Parental Monitoring?*

The central research aim of the present study was to investigate the extent to which parents alter their monitoring behaviors in association with youth reoffending. Controlling for youth age and race/ethnicity, results suggest that both parental knowledge ($b = 0.23$, $t(296) = 0.10$, $p = 0.02$) and parental effort ($b = 0.22$, $t(297) = 0.22$, $p = 0.03$) significantly increased (i.e., displayed a positive change value) among mothers whose child had been re-arrested more than once, relative to those whose child had never been re-arrested. Interestingly, there were no differences in change in parental knowledge ($p = 0.41$) or effort ($p = 0.45$) between youth with 0 re-arrests and 1 re-arrest, or 1 re-arrests and multiple re-arrests. This suggests that a single re-arrest may not be enough to instigate change in parental monitoring.

These two models were repeated with youth-reported recidivism as the operationalization of reoffending in place of official re-arrests. No change in parental knowledge ($p = 0.49$) nor in parental effort ($p = 0.92$) was observed in association with youth-reported recidivism. Table 4 displays all four models.

To better contextualize the findings, post hoc analyses were conducted using a variable created to reflect mothers' stated intention to increase their monitoring after their sons' first arrest. Specifically, at Wave 1, mothers were asked an open-ended question asking them how they imagine their life will change as a result of their child's arrest. Responses were sorted by theme. One response theme emerged that was relevant to the present study: 22.15% of mothers explicitly

***Table 4.*** Change in Parental Monitoring Knowledge and Effort Between Wave 1 and Wave 2, Regressed on Youth Reoffending, Age, and Race/Ethnicity.

| | Model 1 | | | | | Model 2 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Change in Parental Monitoring Knowledge | | | | | Change in Parental Monitoring Effort | | | | |
| Variables | *B* | SE | $\beta$ | 95% CI | *p* | *B* | SE | $\beta$ | 95% CI | *p* |
| Constant | −0.60 | | | | | 0.31 | | | | |
| Re-arrests[a] | | | | | | | | | | |
| One | 0.10 | 0.11 | 0.05 | [−0.13, 0.32] | 0.41 | 0.09 | 0.11 | 0.04 | [−0.14, 0.31] | 0.45 |
| Multiple | 0.23* | 0.10 | 0.14 | [0.03, 0.44] | 0.02 | 0.22* | 0.10 | 0.12 | [0.02, 0.42] | 0.03 |
| Youth age | 0.03 | 0.03 | 0.06 | [−0.03, 0.09] | 0.35 | −0.06∼ | 0.03 | −0.11 | [−0.12, 0.002] | 0.06 |
| Youth race/ethnicity[b] | | | | | | | | | | |
| Black/African American | −0.15 | 0.13 | −0.09 | [−0.40, 0.10] | 0.25 | 0.35** | 0.13 | 0.20 | [0.10, 0.60] | 0.006 |
| Hispanic/Latinx | −0.18∼ | 0.11 | −0.13 | [−0.40, 0.10] | 0.09 | 0.21* | 0.11 | 0.15 | [0.004, 0.42] | 0.046 |
| Other | −0.22 | 0.24 | −0.06 | [−0.70, 0.26] | 0.37 | 0.14 | 0.24 | 0.04 | [−0.34, 0.62] | 0.56 |
| $R^2$ | 0.03 | | | | | 0.06 | | | | |
| | Model 3 | | | | | Model 4 | | | | |
| | Change in Parental Monitoring Knowledge | | | | | Change in Parental Monitoring Effort | | | | |
| Variables | *B* | SE | $\beta$ | 95% CI | *p* | *B* | SE | $\beta$ | 95% CI | *p* |
| Constant | −0.51 | | | | | 0.41 | | | | |
| Youth-reported recidivism | −0.37 | 0.54 | −0.04 | [1.44, 0.69] | 0.49 | −0.05 | 0.54 | −0.01 | [−1.11, 1.00] | 0.92 |
| Youth age | 0.03 | 0.03 | 0.05 | [−0.04, 0.09] | 0.39 | −0.06* | 0.03 | −0.12 | [−0.13, −0.001] | 0.047 |
| Youth race/ethnicity[b] | | | | | | | | | | |
| Black/African American | −0.17 | 0.13 | −0.10 | [−0.42, 0.09] | 0.20 | 0.34** | 0.13 | 0.19 | [0.09, 0.59] | 0.009 |
| Hispanic/Latinx | −0.15 | 0.11 | −0.11 | [−0.36, 0.06] | 0.16 | 0.25* | 0.10 | 0.18 | [0.04, 0.45] | 0.02 |
| Other | −0.20 | 0.25 | −0.05 | [−0.68, 0.29] | 0.42 | 0.18 | 0.24 | 0.05 | [−0.30, 0.66] | 0.46 |
| $R^2$ | 0.01 | | | | | 0.05 | | | | |

*Note*: SE: standard error; CI: confidence interval.
[a]No re-arrests is the reference group.
[b]White is the reference group.
$\sim p < 0.1$, $*p < 0.05$, $**p < 0.01$.

stated that they intended to increase their monitoring, strictness, or attention to their sons as a result of his first arrest. A dummy variable was created for women who said they intended to change their monitoring habits, which was then used as a predictor variable. A multinomial logistic regression revealed no association between mothers' stated intention to change her monitoring habits and official re-arrests, accounting for youth age and race/ethnicity ($ps > 0.05$). Likewise, an OLS regression revealed no association between mother's stated intention to change her monitoring habits and youth-reported recidivism, although this finding was trending significant ($p = 0.08$). Finally, there was no association between stated intention to change parental monitoring and actual change in parental knowledge ($p = 0.85$) or parental effort ($p = 0.14$) (corresponding tables for post hoc analyses are available on request). Taken with the earlier findings, these results suggest that actual change in parental monitoring, not stated intention to change parental monitoring, is associated with youth reoffending.

## DISCUSSION

Parental monitoring research has centered on the unidirectional pathway from parent to child – that is, how parents' supervision effect youth behavior– however parental monitoring is dynamic and may change in response to the child's behavior. The present study tested if parents' monitoring habits changed in association with a child's continued delinquent behavior, measured using official records of youth re-arrest and youth-reported recidivism. We found evidence that repeated sons' re-arrests were associated with a change in mothers' monitoring behavior.

### *Parental Monitoring and Youth Recidivism*

Parental monitoring behaviors (i.e., effort and knowledge, respectively) were associated with youth recidivism (i.e., youth-reported recidivism and official re-arrests) in the present sample, mirroring a well-documented association in extant literature (Eaton et al., 2009; Flanagan et al., 2019; Fletcher et al., 2004; Fosco et al., 2012; Lippold et al., 2014). When mothers reported greater *knowledge* of their sons' whereabouts and activities at Wave 1, sons were less likely to be re-arrested (once or multiple times, relative to no re-arrests) or self-report engaging in delinquent behavior during the following 30 months. Regarding monitoring *effort*, mothers who reported greater effort had sons who were more like to never have been re-arrested than to have been re-arrested multiple times – but no more likely to have been re-arrested only once. Parental monitoring effort was not associated with youth-reported recidivism. The mixed findings regarding monitoring effort reflect recent literature which has found evidence both that parental monitoring effort reduces delinquency (Kapetanovic et al., 2019; Willoughby & Hamza, 2011) and that it does not (Bendezu et al., 2018; Crocetti et al., 2016), suggesting that the operationalization of "delinquency" is key. However, on the whole, our findings reinforce that greater parental monitoring behaviors – and especially parental knowledge – are associated with reduced recidivism.

*Is Youth Recidivism Associated With a Change in Parental Monitoring Behaviors?*

In the present study, we found evidence that repeated re-arrests were associated with a change in parental monitoring behavior. Specifically, both mothers' knowledge and effort increased from Wave 1 to Wave 2 when youth had been re-arrested more than once during the intervening 30 months, relative to youth who had never been re-arrested. Because there was no significant difference in change in monitoring behaviors between mothers whose sons were re-arrested once, and those whose sons were not re-arrested at all, a single re-arrest may not be enough to instigate change in parental monitoring behaviors. Instead, continued youth re-arrests may serve as a wake-up call to mothers that they need to adjust their monitoring strategy. Indeed, research suggests that parents find the arrest of their child to be an upsetting experience (DiFonzo, 2001; Pennington, 2015), such that repeatedly experiencing this trauma may serve as a call to action for parents to change their behavior.

Unlike official re-arrests and counter to our expectations, parental monitoring behavior was not associated with youth-reported recidivism. This is likely because parents are not privy to all of their child's activities and whereabouts. Previous research on justice-involved youth and their parents has also found that parents' perceptions of their child's offending, not the child's self-reported offending, impact parenting practices (Cavanagh & Cauffman, 2017); perhaps without an official arrest, mothers in the present study did not perceive their child to be recidivating. Although the correlation between official records of delinquency and self-reported delinquency is moderate and stable (Piquero, Schubert, & Brame, 2014), concordance between youth report and parent report on a litany of constructs (see Poulain et al., 2020), including delinquency (De Los Reyes, Goodman, Kliewer, & Reid-Quinones, 2010), range widely, from very low to very high. Thus, if the child does not explicitly share his or her recidivating behavior with the parent, and the behavior does not result in an arrest (thereby coming to the parent's attention), the parent may not learn of the behavior and thus not adjust their monitoring accordingly.

Interestingly, about a quarter of mothers (22.15%) explicitly stated an intent to increase monitoring behavior, strictness, or attention as a result of the son's arrest at Wave 1. However, this expressed intent at Wave 1 was not necessarily realized as actual changed monitoring behavior at Wave 2, nor was it significantly associated with youth delinquency between waves. Taken with earlier findings, the results suggest actual change in parental monitoring, not intention to change parental monitoring, is associated with youth reoffending. Furthermore, these results highlight the importance of parent or family-based interventions as a part of youth disposition: parents may not have strategies to change monitoring behavior, despite having an interest in doing so. Such family-level interventions should touch on skill building surrounding developmentally appropriate parental monitoring. Indeed, research suggests that family-based therapies are more likely to be successful when they take into account the youth's existing social sphere – including parental monitoring (Robinson et al., 2015), and that parental risk-needs assessments after a youth is arrested may be just as important as

youth risk-needs assessments (Glaser, Calhoun, & Puder, 2005). In the absence of rehabilitative interventions as part of juvenile justice dispositions, parents who express a desire to improve their monitoring may lack the skills.

### *Strengths, Limitations, and Future Directions*

The present study was strengthened by using multi-source data (i.e., mother report, youth report, and official records) which allowed researchers to disentangle antisocial behavior resulting in arrest from adolescent antisocial behavior that goes undetected by law enforcement, as well as for a parent's perspective on monitoring behavior. The study utilized longitudinal data to measure the extent to which continued, chronic delinquency (i.e., multiple re-arrests over 30 months) was associated with monitoring habits, and how these monitoring habits did (or did not) change. In line with most work following Stattin and Kerr (2000), the study measured and tested parental monitoring effort and knowledge as separate constructs. Separating parental effort from knowledge provided more-refined insight into the relation between delinquent behavior and parental monitoring habits. Finally, the study examined a key population: youth who were arrested for the first time. Targeted interventions aimed at reducing continued or serious delinquent behavior are critical for youth after their first arrest to prevent them from becoming more serious, chronic offenders during adulthood. To the extent that parental monitoring is associated with youth recidivism, the first arrest is a critical juncture for rehabilitation.

These strengths are attenuated by several limitations. First, parental self-report of monitoring was used, rather than more objective measures of parental monitoring behavior. Although our change in monitoring behavior measure was calculated by subtracting two contemporaneous reports (rather than the less reliable method of retroactive reporting), mothers may not have been accurate in their assessment of their monitoring behaviors. Importantly, additional waves of data would have allowed for cross-lag modeling. Future research should consider the interplay between parental monitoring and youth recidivism over multiple timepoints. As with any study, we were not able to measure and statistically control for all of the potential confounding factors that may have been associated with parental monitoring behaviors, such as family structure, relationship quality, and presence of other monitoring adults in the home. Finally, for a more nuanced understanding of the association between parental monitoring and delinquency over time, future research should expand their samples to include female youth and male guardians, as previous research has found that levels of parental knowledge vary by parent gender (Abar et al., 2014; Keijsers et al., 2010), and the relation between parental monitoring and delinquency varies by youth gender (Yoo, 2017b).

## CONCLUSION

Parents are expected to partner with juvenile courts following a child's first arrest in order to rehabilitate youth at a critical developmental juncture before adulthood. Yet, many parents may not monitor their children appropriately until the

child has already experienced several re-arrests – despite an intention to improve their monitoring. We found that following a child's initial arrest, some parents expressed interest in improving their monitoring behaviors, and indeed, monitoring effort and knowledge increased over 30 months in association with multiple youth re-arrests. Although the link between low parental monitoring an initial juvenile offending is well-documented, perhaps more important is what happens after the first arrest. A family-centered rehabilitative approach may be particularly necessary for youth who have been arrested for the first time, to ensure that parents have the skills and ability to monitor their children appropriately once they are no longer under court supervision.

## NOTE

1. In total, 90.88% of women interviewed were biological mothers of Crossroads youth; all women participants are henceforth referred to as "mothers" for simplicity. Results do not significantly differ when non-biological mothers are excluded.

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# CHAPTER 3

# THE ASSOCIATIONS BETWEEN HOME ECONOMICS EDUCATION AND FAMILIAL RISK FACTORS FOR DELINQUENCY: AN EXPLORATORY STUDY

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## ABSTRACT

*Various family problems have been identified as risk factors for juvenile delinquency. While providing training on skills (e.g., interpersonal relationship skills) to tackle these family problems, delinquency-prevention programs often overlook the fact that these training components fall under the umbrella of home economics education (HEE). Moreover, they often fail to see the relevance of the entire range of HEE (ranging from cooking, handyman work skills, financial management, to child development and interpersonal relationship skills) in reducing family problems. There is also a scarcity of research examining the relationship between HEE and these family problems.*

*To fill this void, this study explores the relationships between HEE and three key familial problems – conflict in marital/romantic relationships, ineffective parenting behavior, and family financial conditions. This study utilized data collected from a sample of adults (N = 280) with college or graduate education. Data were analyzed using ordinary least squares (OLS) regression models available in SPSS 26. F tests were used to evaluate the fitness of models.*

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*The results show that HEE is significantly and positively associated with respondents' use of negotiation in solving conflict in marital/romantic relationships. It also has a marginally significant and positive association with family financial conditions. Specifically, HEE on financial management is significantly and positively associated with family financial conditions. The author concludes that the role of HEE in reducing family problems deserves more research attention.*

**Keywords:** Delinquency prevention; familial risk factors; home economics education; intimate partner violence; parenting, poverty

Family is a key social institution for youth socialization. Family problems such as poor parenting behavior, overt hostile conflict between parents, and persistent poverty have been identified as key family problems that increase youth's risks for delinquency (Davies et al., 2016; Evans, Simons, & Simons, 2016; Hay, 2001; Hinnant, Erath, & El-Sheikh, 2015; Jarjoura, Triplett, & Brinker, 2002; Najman et al., 2010; Simons, Simons, & Su, 2013; Su, Simons, & Simons, 2011). These family problems tend to come in clusters. The poverty experienced by the family strains interparental/marital relationships (Dew, 2008; Galloway & Skardhhamar, 2010; Lucero, Lim, & Santiago, 2016; Paat, 2011) and deteriorates parents' parenting behavior (Conger, Ge, Elder, Lorenz, & Simons, 1994; Fergusson, Swain-Campbell, & Horwood, 2004; Galloway & Skardhamar, 2010). Interparental/marital conflict is related to parents' marital disruption (Dew, 2011) which, in turn, may further exacerbate the financial conditions of the family. Parenting behavior has often been identified as the mediator in the relationships between family poverty (Fergusson et al., 2004) and overt hostile interparental/marital conflict (Su et al., 2011) and youth's delinquency. Overt hostile conflict of parents (Kitzmann, 2000; Su et al., 2011) tends to affect parenting behavior. Poverty, though not deterministic, does negatively affect parenting behavior (Berger, 2005; Ponnet, 2014).

Programs aiming to prevent juvenile delinquency often mitigate these family problems through unknowingly using some elements of home economics education (HEE), e.g., teaching parenting skills to improve parenting behavior (Conduct Problems Prevention Research Group, 2010; Dodge et al., 2014) or teaching interpersonal relationship techniques/skills to solve conflict constructively (Faircloth & Cummings, 2008). These programs are limited in that they fail to see that these family problems are interconnected and occur among the daily challenges of family life. As a result, they fail to embrace the entire range of HEE in reducing familial risk factors for delinquency. Given this limitation, the current research sought to test how HEE is related to conflict in marital/romantic relationships, parenting behavior, and family financial conditions.

## HEE AND FAMILIAL RISK FACTORS FOR DELINQUENCY

Family problems do not exist in a vacuum. They exist in the daily hassles of family life where family responsibilities must be fulfilled on a daily basis.

These responsibilities include, but are not limited to, cooking meals, maintaining personal hygiene, cleaning, organizing, and decorating rooms, managing family finances, doing house maintenance and repairs, taking care of a child/children, and getting along with spouse and other family members. Most of these family responsibilities need to be repeatedly handled on a daily basis. For those who are married and those who have children, these seemingly mundane family responsibilities take on some special significance.

Interparental/marital conflict may occur over house chores, childcare, and other family responsibilities. Research shows that interparental/marital conflict often goes hand in hand with an unbalanced division of household labor (Kamp Dush & Taylor, 2012). Perry-Jenkins and Folk (1994) found that perception of the equity in the division of household labor was a significant predictor of marital conflict reported by spouses. Researchers also found that individuals' marital satisfaction or quality of the marital relationship was associated with the division of household labor (Frisco & Williams, 2003; Greenstein, 2009; Oshio, Nozaki, & Kobayashi, 2013; Wilcox & Nock, 2006). Using a nationally representative sample of dual-earner couples, Frisco and Williams (2003) found that men's and women's perception of unfair division of household labor undermined their marital quality and marital happiness and could even contribute to divorce (for women). Using an Asian sample, Oshio et al. (2013) reported similar findings that women's marital satisfaction was negatively affected by their unfair share of household labor.

Husbands and wives may be more likely to have conflict when they have a new addition to their family because of the increase in housework. Using data collected from 1,091 men and women in Negotiating the Life Course, Baxter, Hewitt, and Haynes (2008) found that housework time changes were different for men and women during key transitions in life course including transitions to parenthood. They found that the amount of men's housework time was rather stable throughout these different transitions. However, women's housework time changed dramatically during these transitions, especially during the transition to parenthood. These differences in changes in men's and women's housework time contributed to an unequal division of household labor between husbands and wives. Further, Cheung (2014) found that hiring a helper for house chores did not significantly decrease marital conflict and improve marital quality. To improve marital quality and decrease marital conflict, it seems that couples need to comprise and share the division of household labor. If both parents are efficient in handling household chores, their conflict may be minimized. If marital conflict cannot be avoided, some interpersonal skills may help them resolve conflict constructively.

Ineffective parenting behavior is nested in the daily routines of family life (e.g., getting children dressed, cooking, feeding children, having regular study time and bedtime routines, and teaching moral lessons, etc.). If parents have some knowledge on child development and learn parenting skills, they will be better prepared for their parenting responsibilities. Besides parenting skills, other home economics skills and knowledge can help individuals be better parents in that parents with these skills or knowledge can free up more time to take care of their

children. If parents are still struggling with their own self-care including personal hygiene, cooking meals, cleaning the house, and managing family finances, it is unlikely that they will be able to take care of their children efficiently.

Though one of the major sources of poverty is unemployment, individuals' purchasing habits and managing of households also play a significant role in explaining poverty. A literature review (Hastings, Madrian, & Skimmyhorn, 2013) on financial literacy and economic outcomes showed that poor budgeting and/or bad spending habits could contribute to family financial problems. It also showed that financial knowledge contributed to healthy financial practices such as budgeting, setting goals, and paying bills on time. If parents are equipped with financial management skills, they will be in better shape in terms of maintaining financial stability even when their income is low. With financial management skills, it is easier for a family to optimize the use of resources they have and dig themselves out of poverty. Thus, families may have a better chance to cope with the financial adversity and to fight against the odds to provide a better family environment for their children.

## ELEMENTS OF HEE IN REDUCING FAMILIAL RISK FACTORS FOR DELINQUENCY

Programs aiming to prevent delinquency often do so through alleviating family problems or through disrupting the mechanisms whereby family problems contribute to juvenile delinquency. All these delinquency prevention programs have incorporated some elements of HEE.

Some programs incorporate training on parenting skills. Targeting at-risk children at elementary schools and during adolescence, the well-known Fast Track project focuses on reducing risk factors in youth's families and schools (Conduct Problems Prevention Research Group, 2010). For at-risk children at elementary schools, it provides programs to teach their parents regarding how to manage their behavior, life management skills, and competency in general. Staff members of the Fast Track project also make home visits to help parents improve these skills. Several evaluation studies showed that Fast Track was effective in terms of changing parenting behavior and youth outcomes including chronic violence (Bierman et al., 2013; Conduct Problems Prevention Research Group, 2010, 2013). These intervention efforts even reach early childhood. The Family Connects program uses nursing home visits to improve postnatal care of children and reduces the risk factor for children's behavior problems (Dodge et al., 2014). Positive results were reported on similar nurse–family partnerships in the United States (Izzo et al., 2005). Positive effects were also reported on the Triple P – Positive Parenting Program (Abrahamse, Junger, Van Wouwe, Boer, & Lindauer, 2016; Prinz, Sanders, Shapiro, Whitaker, & Lutzker, 2009) and similar programs (Enebrink et al., 2015).

Some other programs focus on both interparental relationships and parenting behavior. Using a sample of 150 couples, Zemp, Milek, Cummings, Cina, and Bodenmann (2016) found that Couples Coping Enhancement Training (CCET)

was effective in terms of reducing children's behavioral problems. Using mothers' perception measures, they found that CCET improved the quality of the marital relationship, which decreased children's behavioral problems. Further, the parenting training program improved parenting skills, which, in turn, decreased children's behavioral problems. Using fathers' perception measures, they found that CCET improved parents' parenting behavior, which in turn decreased children's behavioral problems. Cummings, Faircloth, Mitchell, Cummings, & Schemerhorn (2008) implemented an intervention program to teach parents positive marital communication techniques and to decrease marital conflict. The results showed that couples taking the training program resolved their conflict more constructively and demonstrated improvement in other family processes. Using a sample of 55 couples, Faircloth and Cummings (2008) found that the educational programs were effective in helping parents reduce their level of hostility in front of children and improve their parenting behavior and tactics of resolving conflict.

Some programs focused on improving the interparental relationship by improving family finances (Smith, Shelton, & Richards, 2016). Marital conflict may result from disagreements about family finance. Through teaching couples to identify their wants, needs, and to develop a financial management plan together, the educational program on family finance (Smith et al., 2016) helped couples decrease marital conflict. To decrease marital conflict and the deleterious effect of marital conflict, separation, and divorce on youth's outcomes, some researchers proposed mandatory parent education (Pollet & Lombreglia, 2008).

All the interventions used to prevent juvenile delinquency such as improving parenting skills, interpersonal skills, and skills in financial management are taught in HEE. Even though these programs are effective in terms of preventing juvenile delinquency, they fail to see the relevance of HEE as a whole in improving family environment. They are also limited in that they are reactive in nature. They primarily target the high-risk population/families where family problems already exist, rather than preventing these family problems from occurring in the first place. Researchers (Zubrick et al., 2005) realized that it was necessary to have a systematic, proactive family intervention, rather than a reactive patchwork intervention. With the contents that it covers and with the width of the population that it can reach, HEE is a good candidate for such a systematic proactive intervention. Surprisingly no criminologists or professionals in HEE have explicitly linked HEE to the improvement of the family environment or the reduction of familial risk factors for delinquency.

To fill this void, the current study sought to examine the relationships between HEE and familial risk factors for delinquency including conflict in marital/romantic relationships, parenting behavior, and financial well-being of the family. Specifically, the current study explored if HEE respondents received was significantly associated with the way in which they handled conflict in their marital/romantic relationships, their parenting styles, and their financial conditions.

We expect that, controlling for other factors, respondents who received more HEE, relative to those with less HEE, are more likely to report the use of negotiation and are less likely to report the use of physical assault in resolving conflict in marital/romantic relationships.

We also expect that, controlling for other factors, respondents who have received more HEE, relative to those with less HEE, are less likely to have ineffective parenting styles (i.e., authoritarian or permissive parenting style).

In addition, we expect that, controlling for other factors, respondents who have received more HEE, relative to those with less HEE, are more likely to report better family financial conditions.

## METHODS

### *Data*

The current study utilized cross-sectional survey data collected in 2018 from 280 adults who were married or had romantic partners at the time of research. The Institutional Review Board (IRB) approval was obtained for this research project. An anonymous survey was built and administered through Qualtrics. The survey link was advertised both on the website of a southern regional university of the United States and through the first and second authors' Facebook accounts. Due to the ways in which the research project was advertised, this convenience sample primarily consisted of college students and respondents with graduate degree(s). Twenty $20 gift cards were given to randomly selected respondents as incentives.

### *Measures*

*Demographics*

Age was measured using respondents' reports on their actual age. Although in the informed consent, the respondents were required to be 19 years old or above, there were still five respondents who were 18 years old. Their data were excluded from the data analysis. Gender was coded 0 as male and 1 as female. Family income was measured using an ordinal measure ranging from less than $5,000 (coded as 1) to $75,000 and more (coded as 11). Marital status was measured as 1 single, 2 married, 3 married but separated, 4 divorced, 5 widowed, and 6 other. Categories 1 single, 4 divorced, and 5 widowed were coded as one category single; while 2 married and 3 married but separated were coded as married. This variable was then coded into three dummy variables – married, single, and other.

*HEE*

HEE received by the respondents on the following five aspects were measured: 1) on cooking, cleaning, organizing, and decorating for the basic house chores; 2) on financial management; 3) on how to fix things that are broken in the house; 4) on childcare; and 5) on interpersonal relationship. The respondents were asked to indicate whether or not they had ever taken any class teaching these skills/knowledge (e.g., on how to handle house chores such as cooking a meal, cleaning a room, organizing a house, or decorating/painting the interior of a house; on how to deal with finances including making a budget, balancing checkbooks, filing taxes, keeping financial records, or making frugal purchasing choices; on how to

fix things that are broken in the house; on how to take care of a baby, a toddler, or a young child; and on how to interact with family members such as parents, spouse, and children). The respondents were also asked to indicate if there was anyone in their life from whom they learned these above-mentioned skills. The response format is 1 yes and 2 no. The responses were recoded as 0 no and 1 yes. The nine items were combined into HEE. The Cronbach's alpha of this index is 0.607.

*Aspects of Family Environment*

Conflict in marital/romantic relationships was measured using Revised Conflict Tactics Scales (RCTS) developed by Straus, Hamby, and Warren (2003). Two subscales were used in this study – the use of negotiation and physical assault.

*Use of Negotiation*

Respondents' use of negotiation was measured using a six-item scale. Respondents were asked to indicate how often the following happened in the past year – explained their side of disagreement to their partners, showed their partners they cared, showed respect for their partners' feelings about an issue, etc. The response format is 1 once, 2 twice, 3 3–5 times, 4 6–10 times, 5 11–20 times, 6 more than 20 times, 7 not in the past year, but it happened before, and 8 "Never." The responses "Never" and "Not the past year, but it happened before" were coded as 0, once as 1, twice as 2, 3–5 times as 3, 6–10 times as 4, 11–20 times as 5, and more than 20 times as 6. Six similar questions were used to measure respondents' partners' use of negotiation. The 12 items were used to calculate the couples' use of negotiation in resolving conflict in their marital/romantic relationships. The Cronbach's alpha is 0.927 for this scale.

*Physical Assault*

Respondents' physical assault was measured using 10 items. Respondents were asked to indicate how often the following things have happened in their past year such as throwing something at their partners, twisting their partners' arms, punching or hitting their partners, etc. The responses were coded in a manner that is the same as that of the use of negotiation. Similar items were used to measure respondents' partners' physical assault. The respondents' responses on both their own use and their spouses/romantic partners' use of physical assault in resolving conflict were combined into a 20-item scale of physical assault. The Cronbach's alpha of the scale is 0.979.

*Ineffective Parenting Styles*

Parenting styles were measured using a 32-item scale developed by Robinson, Mandleco, Olsen, and Hart (2001). This scale is developed based on the conceptualization of parenting styles proposed by Baumrind (1971). Seven dimensions of

parenting were measured including warmth and support, regulation, autonomy granting, physical coercion, verbal hostility, non-reasoning/punitive, and indulgent. Subscales for two ineffective parenting styles (i.e., authoritarian parenting and permissive parenting) were utilized.

*Authoritarian Parenting*

Authoritarian parenting has three dimensions (12 items) including physical coercion (4 items), verbal hostility (4 items), and non-reasoning/punitive (4 items). Respondents were asked to indicate how often they exhibit the following behavior with their children such as grabbing their children when being disobedient, using physical punishment as a way of disciplining their children, slapping their children when they misbehave, etc. The response format is 1 never, 2 once in a while, 3 about half of the time, 4 very often and 5 always. Respondents' scores on these items were summed up as the score on authoritarian parenting. The Cronbach's alpha of this 12-item scale is 0.921.

*Permissive Parenting*

Permissive parenting has one dimension of indulgent (five items). Respondents were asked to indicate how often they exhibit the following behavior with their children such as stating punishments to their children without actually doing them, threatening their children with punishment more often than actually giving it, giving in to their children when they cause a commotion about something, etc. The response format is 1 never, 2 once in a while, 3 about half of the time, 4 very often, and 5 always. Respondents' scores on these items were summed up as the score on permissive parenting. The Cronbach's alpha of this five-item scale is 0.784.

*Financial Conditions*

Financial conditions were measured using three items. Respondents were asked to indicate how true the following statements were in terms of describing (the respondents') financial situations in the past 12 months: "My family income is not enough to make ends meet," "my family budget often exceeds my family income," and "my family manages to save some money each month." The response format is 1 very untrue, 2 untrue, 3 somewhat untrue, 4 neutral, 5 somewhat true, 6 true, and 7 very true. The responses were reversed coded with a higher score implying better financial conditions. The scores on the three items were summed up as the scores on financial conditions. The Cronbach's alpha of this three-item scale is 0.82.

## *Data Analysis Strategy*

Ordinary Least Squares (OLS) regression models available in SPSS, version 26.0, were used to examine the relationships between HEE received by respondents and

their family environment including the conflict in marital/romantic relationships (i.e., the use of negotiation and physical assault), ineffective parenting (i.e., authoritarian parenting and permissive parenting), and family financial conditions. The use of the OLS regression model in the current study is justified for the following reasons. First, this current study does not seek to make a precise prediction as to how many units of changes in the dependent variables will result from a one-unit change in HEE. Rather, this study is only interested in finding out whether HEE is significantly associated with the above-mentioned aspects of family environment. Second, all dependent variables in the current study were measured using indexes. Although each item of the indexes is ordinal in nature, these dependent variables can be treated as continuous variables in that each item of the indexes has at least five or seven categories, and each index has multiple items.

## RESULTS

The descriptive statistics (Table 1) show that respondents' ages range from 19 to 64 years old with a mean age of 31. 69% of the respondents are female. In total, 48% of the respondents are married, 48% of them are single, and 4% of them identified their marital status as other. The family incomes of the respondents ranged from the lowest (less than $5,000) to the highest ($75,000 and more) with a mean yearly income of around $35,000–$39,999. The HEE ranged from 0 to 9 with a mean of 4.24. The use of negotiation ranged from 0 to 72 with a mean of 40.78. Only a small number of respondents reported resorting to physical assault in resolving conflict in their marital/romantic relationships. Physical assault ranged from 0 to 120 with a very low mean of 5.19. Financial conditions ranged from 3 to 21 with a mean of 14.71. Due to non-applicability, only about 120 respondents reported their parenting behavior. Authoritarian parenting ranged from 4 to 50 with a mean of 21.67, and permissive parenting ranged from 5 to 22 with a mean of 10.54.

The correlations statistics (Table 2) show that females have less HEE relative to males. Females had a significantly lower level of use of the authoritarian parenting style. Married respondents, relative to those who were single or classified as other, reported higher family income, and had higher levels of use of negotiation in their marital/romantic relationships. Since sex and marital status (i.e., three dummy variables including married, single, and other) are dichotomized and can be treated as continuous variables (Frankfort-Nachmias, Leon-Guerrero, & Davis, 2021), correlation coefficients for them are reported. The correlations statistics also show that older respondents report significantly higher family incomes. Age was positively and significantly correlated with the use of negotiation in marital/romantic relationships, but negatively and significantly correlated with physical assault and the two types of ineffective parenting styles. Family income was positively and significantly correlated with the use of negotiation. It was negatively and significantly correlated with physical assault, authoritarian parenting, and permissive parenting. HEE was positively and significantly correlated with the use of negotiation and physical

***Table 1.*** Descriptive Statistics of the Study Sample.

| | Age | Sex | Single | Other | Family Income | HEE | Family Relationship Class |
|---|---|---|---|---|---|---|---|
| Minimum | 19 | 0 | 0 | 0 | 1 | 0 | 0 |
| Maximum | 64 | 1 | 1 | 1 | 11 | 9 | 1 |
| Mean | 31.38 | 0.69 | 0.48 | 0.04 | 7.77 | 4.24 | 0.20 |
| Standard deviation | 10.06 | 0.46 | 0.50 | 0.20 | 3.48 | 2.01 | 0.40 |
| *N* | 239 | 244 | 244 | 244 | 239 | 271 | 266 |

| | Negotiation | Physical Assault | Authoritarian Parenting | Permissive Parenting | Financial Conditions |
|---|---|---|---|---|---|
| Minimum | 0 | 0 | 4 | 5 | 3 |
| Maximum | 72 | 120 | 50 | 22 | 21 |
| Mean | 40.78 | 5.19 | 21.67 | 10.54 | 14.71 |
| Standard deviation | 21.86 | 17.14 | 8.63 | 3.86 | 4.74 |
| *N* | 214 | 212 | 121 | 120 | 227 |

assault. Its correlation with financial conditions was only marginally significant ($p = 0.079$).

Using OLS regression, aspects of family life including two different ways to handle conflict, two ineffective parenting styles, and family financial conditions were regressed on various independent variables. In Table 3, the use of negotiation was regressed on gender, age, marital status, family income, and HEE. The independent variables were entered into the model stepwise. In model 5 ($n = 204$), all independent variables were entered. After controlling other variables, respondents' age, gender, and family income were not significantly associated with the use of negotiation. However, married respondents and respondents classified their marital status as "other," relative to single respondents (the reference group), reported significantly higher levels of the use of negotiation. Respondents who received more HEE had significantly higher levels of negotiation with their spouse/partner. Model 5 explained 13% of the variation in the use of negotiation, which was statistically significant ($F = 6.17$; $df_1 = 6$; $df_2 = 198$; $p < 0.01$).

In Table 4, physical assault was regressed on gender, age, marital status, family income, and HEE. The independent variables were entered one by one. In model 5 ($n = 202$), the results show that family income is significantly and negatively associated with physical assault. This model accounts for 6% of the variation in physical assault, which was statistically significant ($F = 3.08$; $df_1 = 6$; $df_2 = 196$; $p < 0.01$). Respondents with higher family income, relative to their lower-income counterparts, had lower levels of physical assault in their marital/romantic relationships. The results also show that HEE is positively and significantly associated with physical assault.

Two ineffective parenting styles were regressed on respondents' gender, age, marital status, family income, and HEE. The results show that this set of

***Table 2.*** Correlations Between Variables in the Study.

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Sex | 1 | | | | | | | | | | | | |
| | *244* | | | | | | | | | | | | |
| 2. Age | 0.06 | 1 | | | | | | | | | | | |
| | *239* | *239* | | | | | | | | | | | |
| 3. Married | 0.03 | 0.60** | 1 | | | | | | | | | | |
| | *244* | *239* | *244* | | | | | | | | | | |
| 4. Single | 0.04 | −0.57** | −0.92** | 1 | | | | | | | | | |
| | *244* | *239* | *244* | *244* | | | | | | | | | |
| 5. Other | −0.18** | −0.08 | −1.97** | −0.20** | 1 | | | | | | | | |
| | *244* | *239* | *244* | *244* | *244* | | | | | | | | |
| 6. Family income | 0.01 | 0.50** | 0.55** | −0.56** | 0.02 | 1 | | | | | | | |
| | *239* | *234* | *239* | *239* | *239* | *239* | | | | | | | |
| 7. HEE | −0.14* | 0.04 | 0.06 | −0.07 | 0.01 | 0.04 | 1 | | | | | | |
| | *244* | *239* | *244* | *244* | *244* | *239* | *271* | | | | | | |
| 8. Relationship class | −0.09 | 0.08 | 0.11 | −0.09 | −0.05 | 0.05 | 0.49** | 1 | | | | | |
| | *242* | *237* | *242* | *242* | *242* | *238* | *266* | *266* | | | | | |
| 9. Negotiation | −0.02 | 0.16* | 0.32** | −0.36** | 0.11 | 0.21** | 0.18** | 0.11 | 1 | | | | |
| | *214* | *210* | *214* | *214* | *214* | *209* | *214* | *212* | *214* | | | | |
| 10. Physical assault | 0.02 | −0.16* | −0.11 | 0.11 | −0.01 | −0.20** | 0.14* | 0.16* | 0.15* | 1 | | | |
| | *212* | *208* | *212* | *212* | *212* | *207* | *212* | *210* | *212* | *212* | | | |
| 11. Authoritarian | −0.23* | −0.21* | −0.04 | 0.03 | 0.03 | −0.23* | 0.18* | 0.19* | 0.20* | 0.54** | 1 | | |
| | *121* | *121* | *121* | *121* | *121* | *120* | *121* | *121* | *108* | *106* | *121* | | |
| 12. Permissive | −0.10 | −0.21* | −0.15 | 0.14 | 0.03 | −0.22* | −0.001 | 0.10 | −0.03 | 0.41** | 0.53** | 1 | |
| | *120* | *120* | *120* | *120* | *120* | *119* | *120* | *120* | *107* | *105* | *120* | *120* | |
| 13. Financial conditions | −0.03 | 0.04 | 0.12 | −0.09 | −0.08 | 0.26** | 0.12† | −0.06 | −0.004 | −0.14* | −0.24** | −0.09 | 1 |
| | *227* | *223* | *227* | *227* | *227* | *223* | *227* | *225* | *207* | *206* | *119* | *119* | *227* |

*$p < 0.05$ (two-tailed); **$p < 0.01$ (two-tailed); †$p < 0.10$ (two-tailed).

***Table 3.*** Use of Negotiation Regressed on HEE.

| | Model 1 | Model 2 | Model 3 | Model 4 | Model 5 |
|---|---|---|---|---|---|
| Gender | −0.02 | −0.03 | 0.01 | −0.01 | 0.01 |
| | (3.23) | (3.2) | (3.08) | (3.12) | (3.11) |
| Age | | 0.16* | −0.075 | −0.07 | −0.06 |
| | | (0.14) | (0.17) | (0.18) | (0.18) |
| Married | | | 0.4** | 0.36** | 0.35** |
| | | | (3.59) | (3.92) | (3.89) |
| Other | | | 0.17* | 0.16* | 0.15* |
| | | | (8.67) | (8.67) | (8.6) |
| Family income | | | | 0.05 | 0.52 |
| | | | | (0.52) | (0.52) |
| HEE | | | | | 0.15* |
| | | | | | (0.73) |
| *N* | 213 | 209 | 209 | 204 | 204 |
| Adjusted $R^2$ | 0.00 | 0.02† | 0.12** | 0.11** | 0.13** |

*Note*: Standard errors are in parenthesis.
*$p < 0.05$ (two-tailed); **$p < 0.01$ (two-tailed); †$p < 0.10$ (two-tailed).

variables explains a significant percentage of the variation in authoritarian parenting (Table 5). After controlling for other independent variables, gender was significantly associated with the authoritarian parenting style. Females, relative to males, had significantly less frequent use of the authoritarian parenting style. Also, the family income was marginally and negatively associated with the authoritarian parenting style. Respondents with higher family income, relative to

***Table 4.*** Physical Assault Regressed on HEE.

| | Model 1 | Model 2 | Model 3 | Model 4 | Model 5 | Model 6 |
|---|---|---|---|---|---|---|
| Gender | 0.02 | 0.02 | 0.01 | 0.01 | 0.03 | 0.04 |
| | (2.54) | (2.57) | (2.63) | (2.68) | (2.67) | (2.67) |
| Age | | −0.16* | −0.15† | −0.10 | −0.10 | −0.11 |
| | | (0.12) | (0.15) | (0.16) | (0.16) | (0.16) |
| Married | | | −0.02 | 0.07 | 0.05 | 0.04 |
| | | | (3.11) | (3.42) | (3.40) | (3.4) |
| Other | | | −0.03 | −0.02 | −0.03 | −0.02 |
| | | | (7.39) | (7.45) | (7.40) | (7.38) |
| Family income | | | | −0.19* | −0.19* | −0.19* |
| | | | | (0.45) | (0.45) | (0.45) |
| HEE | | | | | 0.15* | |
| | | | | | (0.63) | |
| HEE (without family relationship) | | | | | | 0.08 |
| | | | | | | (0.72) |
| Family relationship | | | | | | 0.15* |
| | | | | | | (3.21) |
| *N* | 211 | 207 | 207 | 202 | 202 | 201 |
| Adjusted $R^2$ | 0 | .02† | 0.01 | 0.03† | 0.04* | 0.06* |

*Note*: Standard errors are in parenthesis.
*$p < 0.05$ (two-tailed); †$p < 0.10$ (two-tailed);

***Table 5.*** Authoritarian Parenting Regressed on HEE.

| | Model 1 | Model 2 | Model 3 | Model 4 | Model 5 |
|---|---|---|---|---|---|
| Gender | −0.23* | −0.25** | −0.26** | −0.22* | −0.20* |
| | (1.72) | (1.69) | (1.74) | (1.79) | (1.82) |
| Age | | −0.22* | −0.24* | −0.19† | −0.17 |
| | | (0.09) | (0.10) | (0.10) | (0.10) |
| Married | | | 0.003 | 0.11 | 0.11 |
| | | | (1.97) | (2.35) | (2.34) |
| Other | | | −0.07 | −0.05 | −0.03 |
| | | | (4.62) | (4.65) | (4.68) |
| Family income | | | | −0.19† | −0.19† |
| | | | | (0.41) | (0.41) |
| HEE | | | | | 0.12 |
| | | | | | (0.35) |
| *N* | 120 | 120 | 120 | 119 | 119 |
| Adjusted $R^2$ | 0.05* | 0.09** | 0.08* | 0.09* | 0.10** |

*Note*: Standard errors are in parenthesis.
**$p < 0.01$ (two-tailed); *$p < 0.05$ (two-tailed); †$p < 0.10$ (two-tailed).

***Table 6.*** Family Financial Conditions Regressed on HEE.

| | Model 1 | Model 2 | Model 3 | Model 4 | Model 5 | Model 6 |
|---|---|---|---|---|---|---|
| Gender | −0.03 | −0.05 | −0.06 | −0.07 | −0.05 | −0.03 |
| | (0.68) | (0.69) | (0.7) | (0.68) | (0.69) | (0.72) |
| Age | | 0.04 | −0.05 | −0.14 | −0.14 | −0.08 |
| | | (0.03) | (0.04) | (0.04) | (0.04) | (0.04) |
| Married | | | 0.14 | −0.01 | −0.02 | −0.04 |
| | | | (0.83) | (0.86) | (0.86) | (0.88) |
| Other | | | −0.07 | −0.1 | −0.11 | −0.12† |
| | | | (1.68) | (1.63) | (1.63) | (1.62) |
| Family income | | | | .34** | 0.34** | 0.33** |
| | | | | (0.11) | (0.11) | (0.11) |
| HEE | | | | | 0.12† | |
| | | | | | (0.16) | |
| Cooking | | | | | | −0.08 |
| | | | | | | (0.60) |
| Financial management | | | | | | 0.16* |
| | | | | | | (0.49) |
| Childcare | | | | | | 0.07 |
| | | | | | | (0.49) |
| Handyman work | | | | | | 0.11 |
| | | | | | | (0.56) |
| Family relationship | | | | | | −0.12† |
| | | | | | | (0.8) |
| *N* | 226 | 222 | 222 | 218 | 218 | 217 |
| Adjusted $R^2$ | 0.00 | 0.00 | 0.00 | 0.08** | 0.09** | 0.10** |

*Note*: Standard errors are in parenthesis.
*$p < 0.05$ (two-tailed); **$p < 0.01$ (two-tailed); †$p < 0.10$ (two-tailed).

their lower-income counterparts, had reported less frequent use of authoritarian parenting style. The full model (model 5; $n = 119$) explained 10% of the total variation in the authoritarian parenting style, which was significant at 0.01 level ($F = 3.12$; $df_1 = 6$; $df_2 = 113$; $p < 0.01$). However, HEE was not significantly associated with any of the parenting styles. This set of variables does not explain a significant percentage of the total variation in the permissive parenting style (the results are available upon request).

Table 6 presents the results of regressing family financial conditions on HEE as well as other independent variables. The independent variables were entered into the model stepwise. In model 5, all the independent variables were entered. The results show that family income was significantly associated with family financial conditions. Also, HEE had a marginally significant and positive association with family financial conditions ($p < 0.08$). Respondents who received more HEE, relative to their less HEE counterparts, had better financial conditions. In model 6, five separate measures of HEE on the five aspects including house chores, handyman skills, financial management, childcare, and family relationship were entered separately into the model. The results show that respondents' financial management education is significantly and positively associated with respondents' financial conditions, even after controlling for respondents' family income. Respondents who received more HEE in financial management, relative to their counterparts with less HEE in financial management, have reported significantly better financial conditions. Model 6 explained 10% of the total variation in family financial conditions, which was significant at 0.01 level ($F = 3.53$; $df_1 = 10$; $df_2 = 207$; $p < 0.01$).

## DISCUSSION AND CONCLUSIONS

The purpose of this study was to examine the relationships between HEE and family environment including the conflict in marital/romantic relationships, parenting behavior, and financial well-being of the family. We expected that HEE was significantly and positively associated with the use of negotiation in marital/romantic relationships. The underlying rationale is that conflict in marital/romantic relationships exists in the daily life where mundane family/life responsibilities have to be fulfilled. Respondents who have more HEE, relative to those with less HEE, may be better equipped to fulfill these family/life responsibilities. They may have fewer stressors in their life and may have more time and patience to resolve conflict with their spouses or romantic partners. In addition, HEE covers interpersonal relationship skills, and respondents receiving HEE may have more knowledge and skills on how to handle conflict with their spouses or romantic partners. The results showed support for our hypothesis. Respondents who had more HEE, relative to those with less HEE, were more likely to use negotiation in resolving conflict with their spouses or romantic partner.

Based on the same rationale, we expected that respondents with more HEE, relative to those with less HEE, were less likely to resort to physical assault in resolving conflict in marital/romantic relationships. Contrary to our expectation,

the results showed that HEE was significantly and positively related to respondents' use of physical assault in resolving conflict in marital/romantic relationships. The respondents in the current study reported an extremely low level of physical assault. Since the current study used a cross-sectional design, the positive association between HEE and physical assault is more of a reflection of the fact that couples who resort to physical assault in resolving their conflict may actively seek to take family relationship classes for help than vice versa. This was confirmed by the results in Table 4 (model 6). Once taking family relationship classes was entered into the model separately, the associations of other HEE and physical assault were no longer statistically significant.

Consistent with prior research (Lucero et al., 2016), family income was negatively and significantly related to physical assault in resolving conflict in marital/romantic relationships. Respondents with higher family income, relative to those with lower family income, were less likely to resort to physical assault. With a lower family income, it is more difficult to fulfill family responsibilities such as feeding the family, providing other necessities for the family, and maintaining the dwelling place of the family. These difficulties may contribute to a more stressful family environment for couples and, thus, make it more difficult for them to resolve conflict in a loving manner.

Contrary to our expectation, the results failed to show a significant association between HEE and ineffective parenting (i.e., authoritarian or permissive parenting). About half of the respondents in the sample did not have children. As a result, there was no valid data on those respondents' parenting behavior. The dramatically reduced sample size for the analysis on parenting behavior and HEE may partially explain why we failed to find a significant relationship between HEE and parenting behavior. However, consistent with prior research (Fergusson et al., 2004), the results showed that family income was negatively related to authoritarian parenting, which was marginally significant at 0.10 level.

Consistent with our expectation, we found a positive association between HEE and respondents' financial conditions, which was marginally significant at 0.10 level, even after controlling for respondents' family income and other independent variables. After further analysis, we found that, among different types of HEE, financial management education had a positive and significant association ($p < 0.05$) with respondents' financial conditions. Respondents who received more financial management education, relative to their counterparts with less financial management education, reported better financial conditions.

Though not all of the hypotheses were supported, the results from the current study did show that HEE was significantly associated with some of the familial risk factors for delinquency. HEE was associated with respondents' use of negotiation in resolving conflict with their spouses/romantic partners and better family financial conditions.

The current research has its limitations. First, it used a convenience sample, which is not as representative as a probability sample is. Thus, the research findings may not be generalizable to the general population. Given the exploratory nature of the current study and its aim to see whether HEE is a concept worthy of further research to improve the family environment and youth's behavior, the

use of a convenience sample is appropriate. Second, this research study used a cross-sectional design, which is difficult to establish the temporal order between dependent and independent variables. To acknowledge this limitation, we used the term "associations" instead of "effects" in this research. Third, due to tainted measures, educational level was not included in the models. Educational level was measured using the actual year of education the respondents had. Some respondents responded with three or four years, which were unlikely small. After reading through the data, it appeared that these small numbers such as three or four years simply meant that the respondents were in the third or fourth year of college. Therefore, when the response was 10, it was hard to tell if 10 meant 10 years beyond high school education or simply 10 years of education. Due to this lack of clarity, the measure of education was not used in the final data analysis. Lastly, we are aware of the criticism that HEE reinforces the idea of a gendered division of labor. We by no means mean to promote a gendered division of labor. Rather, we consider HEE as a way to equip both men and women with the essential skills to meet their real-life responsibilities in the family.

## IMPLICATIONS

Family problems such as overt hostile interparental/marital conflict, ineffective parenting, and poverty are key familial risk factors for delinquency that often co-occur. Programs aiming to prevent delinquency often tackle these family problems. While using contents covered in HEE (e.g., trainings on interpersonal relationship skills or parenting skills), these programs fail to give credit to HEE. In addition, these programs fail to envision the family problems in a larger family environment where family responsibilities such as feeding the family, balancing family budgets, and fixing or maintaining dwelling places of the family have to be fulfilled on a daily basis. Without addressing the needs in the family environment, any effort to reduce the above-mentioned family problems would be futile. When couples struggling to fulfill basic daily family responsibilities have conflict, it is unreasonable to assume that simply teaching them interpersonal relationship skills can enable them to resolve conflict in a loving manner. It logically follows that equipping individuals with the knowledge and skills necessary for the fulfillment of family responsibilities can improve family environment which, in turn, removes the hotbed of family problems.

HEE has a lot of potential to be a systematic intervention to improve family environment and solve/reduce family problems. HEE teaches a wide range of knowledge and skills necessary for the fulfillment of family responsibilities such as food preparation and cooking, financial management, child development, and interpersonal relationship skills. In addition, HEE has versatile delivery avenues to reach the general population. It can be delivered through the public educational systems; it can be taught by parents, relatives, significant others, friends, or even community members; it can also be delivered through social media or mass media. Moreover, HEE can start at a young age. Children, even in their preschool years, can learn home economics skills.

Given the potential of HEE as a systematic intervention to solve/reduce these family problems, there is surprisingly a scarcity of research examining the associations between HEE and these family problems. This exploratory study serves as the first step to test if HEE can be used as a systematic intervention to improve family environment and solve/reduce family problems. It shows that HEE is at least associated with some of the key aspects of family environment, which are risk factors for delinquency, and is worthy of further research. More research attention should be directed to the role of HEE in solving family problems and improving family environment, both of which are essential in preventing juvenile delinquency. Future research on HEE should optimize the operationalization of this concept and use probability samples with larger sample sizes. In addition, future research should focus on its relationships with youth's health and behavior in addition to traditional aspects of the family environment. This current study will hopefully pave the way for the use of HEE as a systematic intervention to improve family environment, solve/reduce family problems, and prevent delinquency.

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# CHAPTER 4

# PARENTS AND SIBLINGS OF INCARCERATED MEN: QUESTIONING INTERSECTIONALITY AND FAMILIAL INVISIBILITY

Moran Benisty

**ABSTRACT**

*The definition of the term "family" around the Western world is more heterogeneous than ever before and so are its roles and the social expectations of it. However, prisoners' families (specifically parents and siblings) are expected to support their incarcerated son/brother as they are perceived responsible for his choices and as having the closest relationship with him. Based on a study of parents and siblings of incarcerated men in Israel, this chapter's goal is to shed light on families' choice to support their incarcerated son or brother and the struggles this choice entails. A thematic analysis of semi-structured interviews with 17 parents and 10 siblings of incarcerated men in Israel showed that nuclear family members may experience various struggles throughout the legal proceedings, including family hardships, negative social experiences, and negative experiences with formal institutions – all leading to social self-exclusion. Looking through the intersectionality lens, the findings show that when accumulating hardships that prisoners' families experience encounter perceived*

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*harsh institutional systems of oppression, preordained marginalization can be deepened as families operate in opposition.*

**Keywords:** Incarcerated men; Israel; family relationships; intersectionality; marginalization; social exclusion

## INVISIBILITY OF PRISONERS' RELATIVES

Since Morris' pioneering work in 1965, the various implications and influences of imprisonment on one's life have been widely investigated, inspiring many psycho-social theories (Braman, 2007; Cowan & Cowan, 2006; Crewe, 2011). Through the years, an abundance of data has been collected regarding the meaningful roles of an inmate's familial unit concerning rehabilitation and reentry processes, as well as recidivism rates (Comfort, 2016; Klein, Bartholomew, & Hibbert, 2002; Machel, 2014). Most of the studies have focused on parental and spousal incarceration and its effects on the familial unit and the community (Condry & Smith, 2019; Murray, 2013), assigning a variety of superlatives attempting to describe the "collateral damage" of imprisonment. For example, Young (1999) emphasized the social and economic gaps and the deepened objective (and subjective) loss of control that are enhanced by incarceration; hence, he coined the term "secondary punishment," referring to family members as mere spectators and not real participants in the general society. Based on Clemmer's (1958) "prisonization" process, Comfort (2007) referred to the process that close circles experience as "secondary imprisonment," emphasizing the importance and difficulties of maintaining relationships with the prisoner. Codd (2008) explained that society perceives family members of felons as responsible for their own fate and sometimes even as felons themselves and compared the prison experience to a shadow, casting its physical (e.g., darkness, coldness, dynamic size) and psychological (e.g., uncertainty, vagueness, lack of control) features on the prisoner's close circles. Granja (2016) interviewed Portuguese family members and noted that their sense of the present time became "suspended" during the incarceration of their family member, thus describing the process they go through as a "parallel sentence." Brew, Goldman, and Wilderman (2017) described the phenomenon as "the collateral consequences of mass incarceration on the families." However, Kirk and Wakefield (2018) emphasized that the problems of estimating these "collateral consequences of mass incarceration" that "result from a lack of appropriate and detailed data on criminal justice processing, the incarceration experience, and later life outcomes" (p. 177). They claim that the initial wave of research on collateral consequences offered a series of baseline effects that highlight the association between incarceration and detrimental health outcomes, reduced employment opportunities and earnings, rising debt, housing insecurity, declining civic engagement, and adverse consequences for family stability and well-being. Still, many issues remain unclear regarding the specific consequences that flow from arrest, conviction, incarceration, etc. (Kirk & Wakefield, 2018).

Following May's (2000) report on murderers' relatives and their experience of trauma, bereavement, and stigmatization due to the murder conviction, Deegan (2021) exposed how murderers' relatives experience stigma, financial ruin, mental collapse, violence, familial turmoil, loss of significant relationships and more:

> Relatives disappear into an eternal vortex of guilt, shame, and anger with little (if any) formal or informal support as a means to manage or recover from the debilitating stigma and strain. (p. 1)

Deegan also highlighted how particular experiences with the criminal justice system serve to compound relatives' trauma.

Recently, Condry and Minson (2020) explained the term "collateral consequences" as the secondary punishment family members experience because of the offender. In their view, describing the processes that family members undergo in a theoretical manner must consider the various aspects of their experience and not further contribute to their social and scholarly exclusion. They opine that the language that assisted punishment theorists to describe the secondary effects of punishment on the offender implies the familial harmful experience is not as important or worthy. Moreover, it wrongfully converges two separate groups and their different experiences (prisoners and their families), thus underestimating each group's unique experience. Based on the literature (see, for example, Braman, 2007; Turanovic, Rodriguez, & Pratt, 2012), Condry and Minson (2020) also argue that considering the collateral consequences as "parallel" to the offender's punishment is wrong since the familial harms are causal consequences of the punishment and are interwoven into the entire familial life. In that sense, they raise the question of marginalization of family members of prisoners and highlight the perception of their lives as having less worth than people whose family members never offended. As a result, they claim that the term "collateral consequences" is insufficient and suggest the term "symbiotic harms" as a more precise concept which "encompasses their relational, mutual, non-linear, agentic, and heterogenic properties, without naming them as incidental, collateral or neutral" (p. 2).

This chapter brings the relevant findings of a study that was conducted in Israel and included interviews with parents and siblings of prisoners. The findings highlight the unique, subjective experience that family members in Israel go through upon having a son/brother entering the justice system. Findings may be applicable for many families in Western countries, as this is one of the first studies to view the prisoner as an offspring, needing familial assistance and support, financially, socially, and mentally effecting the lives of other nuclear family members both as individuals and as a unit.

Looking through an intersectional lens, this chapter strives to show the importance of public awareness, as it has the power to prevent further marginalization of these groups as well as courtesy stigma and encourage consolidation of social support and policy changes.

## THE PRISONER AS AN OFFSPRING

Most of the academic literature has investigated the effects of arrest and imprisonment on prisoners' romantic partners (e.g., Codd, 2002; Condry, 2013; Peelo,

Stewart, Stewart, & Prior, 1991; Turney, Schnittker, & Wildeman, 2012) and children (e.g., Arditti, Smock, & Parkman, 2005; Mazza, 2002; Parke & Clarke-Stewart, 2003; Turanovic et al., 2012). Despite the growing interest in the family unit and its unique hardships, there is an acknowledgment in the academic void regarding parents' and siblings' unique experience and their choice to stay in touch with the prisoner (Codd, 2013; Gueta, 2018). Specifically, there is a lack of information about parental perspectives of the incarceration experience, changes, role-related responsibilities, and coping skills throughout an imprisonment-related crisis (Benisty, Bensimon, & Ronel, 2021). Similarly, only little attention has been paid to incarceration effects on prisoners' siblings, including emotional responses and withholding of information regarding the incarceration (Meek, Lowe, & McPhillips, 2010).

Though meager, some research has been dedicated to understanding the experience of prisoners' siblings (e.g., Meek, 2008; Tadros, Fye, & Ray, 2020) and parents (e.g., Condry, 2013; Dallaire, 2007) in Western countries. For example, a study that was conducted in Sacramento, USA, almost three decades ago, explored the relationship between teenage gender and delinquent behavior among high-risk youths. Its analysis confirmed the social expectation that brothers would be more delinquent than sisters, thus suggesting how social structures of gender are a major form of social control (Bottcher, 1995). In 2008, Meek also stated that "little is known about the social and psychological impact of having a sibling in custody" (p. 1) and interviewed eight young people (ages 9–17) with an older brother in custody, in England. Knowing that older brothers' social influence is major when it comes to certain criminal and risk behaviors (Aguilar, O'Brien, August, Aoun, & Hektner, 2001; Barnard, 2005; Conger & Reuter, 1996; Trim, Leuthe, & Chassin, 2006; Tucker, Barber, & Eccles, 1997), Meek (2008) strived to describe the nature of sibling influence. She found that siblings described an experience that included three major themes: an emotional response to a sibling being taken into custody, a reluctance to disclose information to teachers and peers, and perceptions of own behavior in the light of the sibling's experiences of the criminal justice system. For example, prison visits were perceived as an important way of keeping in contact, but many of the young people described feeling intimidated and anxious by it and expressed concern for their sibling's well-being. A more recent example is found in the qualitative work of Tadros et al. (2020), who showed how a sibling's incarceration is a complex experience which depends on a combination of circumstances. They showed that in coping with the impact of incarceration,

> participant experiences were viewed not only as a difficult adjustment for the family system but specifically a traumatic, stigmatized, and negative emotional experience for all individuals involved, with particular emphasis on the sibling subsystem. (p. 346)

The researchers interviewed five sisters of incarcerated men in the United States and identified five themes that emerged from their experience. The first theme, *emotional impact*, described their brother's incarceration as a life-changing event that evoked feelings of loss/grief, mistrust, and responsibility; the second theme, *adjustment*, incorporated lifestyle changes and adjustments that were

necessary for the sisters, the family, and the sibling to adapt to the incarceration experience. That was examined through a close relationship with their brother and financial impact. The third theme, *prison experience*, included what was previously referred to as "prison worries" (Braman, 2007) and focused on distress and worry about the welfare of the incarcerated brother. The theme revolved around the impact of prison culture on the brother, his mental and physical health while in prison, and the prison living conditions. The fourth theme was *family impact*, where the participants described additional familial stress (such as dealing with an illness of a parent), family communication changes, and family consequences (changes or cut off from other family members). The final theme was *stigma*, where sisters of prisoners encountered what they perceived as negative behavior and assumptions made about the incarcerated brother or the incarcerated population in general. Tadros et al. (2020) concluded that siblings had negative experiences throughout the incarceration process, be it before sentencing or during the person's incarceration sentence. Benisty et al. (2021) found similarities in Israeli families' experience and, based on Sykes' work (1958), described parents and siblings as going through "familial pains of imprisonment." The studies demonstrate the various ways through which siblings have a significant contribution to the entire familial experience.

Parents of prisoners are a population that needs support (Holt, 2010), not only for themselves but also because of their potential protective role in supporting their children and in helping them to desist from further crime. The small scope of existing research focuses mainly on the importance of parental support and the difficult experience that prisoners' parents go through. For example, Gueta's (2018) meta-synthesis of 10 qualitative studies conducted between the years 2000 and 2016 suggested a parental experience of "imprisonment by association." She consolidated four core themes (parenting from a distance; the burden of care; troubled parental identity; social reaction) and concluded that the parental experience is amplified by real and symbolic losses that contribute to a more complex experience of marginalization. Benisty et al. (2021) identified similar aspects of the experience of parents (and siblings) of prisoners and detected a familial counterreaction of social exclusion. In other words, due to experiences of helplessness, loss of control, stigmatization, and further struggles with formal and non-formal social reactions, families have consciously chosen to exclude themselves from a variety of social interactions. Halsey and Deegan (2012) emphasized the importance of fathers in assisting their children to manage the physical and emotional challenges of the prison and/or post-release environments, whereas Melendez, Lichtenstein, and Dolliver (2016) found that mothers carried the main burden of parental blame and guilt. McCarthy and Adams (2019) interviewed over 60 parents of incarcerated young men. They emphasized that parenting continues even when the child is physically restricted and elaborated on the social adversities experienced by caregivers. Goldman (2019) described a similar phenomenon as "linked lives," referring to the idea that problems in the lives of children can lead to maternal distress, less positive parental affect, worse parental self-evaluations, poorer parent–child relationships, and greater family strain. Overall, all studies highlighted that a better understanding of parental experiences is of superior

importance in affecting familial resilience (Gueta, 2018; Mills & Codd, 2008) and the familial choice to support the prisoner (Benisty et al., 2021).

## "OUR BLOOD IS THICKER": FAMILIAL SUPPORT IN WESTERN SOCIETIES

Similarities between prisoners' families were drawn in many Western countries in matters such as values (see, for example, Franceschelli & O'Brien, 2014; Katz & Lavee, 2005), as well as behavior before, during, and after incarceration (see, for example, Christian, 2005; Farkas & Miller, 2007; Machel, 2014), even during the COVID-19 pandemic (Testa & Fahmy, 2021). Although Israel is heterogeneous in its population, it is similar to Western countries not only in its punitive views (Cavadino & Dignan, 2006) but also in families' choice to maintain the relationship with the prisoner.

> The ideal family may well provide a stable emotional background and enable the development of favoured moral attitudes, but few families are ideal … when Jews and Christians together declare for the family and its values, they must be aware of the downside, and be ready in many instances to champion the rights of the individual against the family. (Solomon, 2020, p. 35)

Families do not always choose to stay in touch with their incarcerated relative, as it is "a time, resource, and labor-intensive process, which may create barriers to prisoners' maintenance of family ties" (Christian, 2005, p. 2). However, especially in more traditional societies where family values overarch individuality, the option of detachment from the prisoner is seldom on the table (Herz & Rozen, 1982; MacNeil, Church, Nelson-Gardell, & Young, 2015). Some studies have found that parents and siblings are most likely to keep their relationship with prisoners (Brodsky, 1975; Codd, 2008), specifically returning prisoners (Shollenberger, 2009).

The choice to support the incarcerated relative throughout the legal proceedings and sentence has many advantages. Family presence in a prisoner's life may increase the prisoner's levels of well-being, thus reducing actions of self-harm (Duthé, Hazard, & Kensey, 2014), and potentially induce the prisoner's levels of self-value, self-confidence, and self-control – both during and after the incarceration period (Mills, 2004; Souza, Lanskey, Markson, & Lösel, 2019). Research has also shown that meaningful family ties influence offenders in choosing to desist (Brunton-Smith & McCarthy, 2017; Markson, Lösel, Souza, & Lanskey, 2015; May, Sharma, & Stewart, 2008; Naser & La Vigne, 2006). The overall recognition of the important role played by supportive family relations and its effects on reintegration processes (Machel, 2014) and prevention of reoffending (Farkas & Miller, 2007) has affected policy changes and treatment goals (Codd, 2013; World Health Organization (WHO), 1999). However, when family members (parents, in particular) are socially expected to support the offender, it is usually because they are perceived by various social circles as equally or partly guilty for the offense (Codd, 2008; Condry, 2013; Hudson, 2006).

For many families, incarceration challenges relationships and does not necessarily enforce detachment, but relationships that were close pre-incarceration get

tighter, whereas those that were weak usually break off (Laing, 2003). For example, according to Herz and Rozen (1982), the American Ashkenazi Jewish family holds a strong belief that family is a sacred, central aspect of life. Indeed, from a religious perspective, family values are of supreme importance in Judaism (for example, Krieger, 2010; Pepi, 2013), Islam (for example, Franceschelli & O'Brien, 2014), and Christianity (for example, Moore, 2018). From a sociological point of view, Israeli mentality is partially defined as ranking family values very highly in personal and national priorities (Katz & Lavee, 2005). In that sense, families who have a relative in prison often do not perceive the situation as a matter of choice and believe that maintaining the relationship and supporting the prisoner is a default (Benisty, 2019). That "blind spot" in which relatives chose to overlook the possibility of detachment might explain Brodsky's findings (1975), which indicated that the relationship between a prisoner and his parents is the least probable to change due to incarceration. The presented study tried to gain information from parents and siblings of prisoners and describe the complex circumstances that shaped their experience the way they perceived it.

## PRISONERS' FAMILIES THROUGH THE INTERSECTIONALITY LENS

Originated in relation to feminism (Crenshaw, 2011), intersectionality focuses on the different ways through which social inequalities (such as those stemming from race, class, gender, sexuality, ethnicity, nation, ability, and age) and power reciprocate and shape social experiences (Collins, 2015; Gueta, 2020; Western & Wildeman, 2009). Three main issues are relevant when referring to prisoners' relatives through the intersectionality lens: (a) intersectionality might create or deepen marginalization; (b) some subgroups may experience harsher "vectors of oppression and privilege" (Ritzer & Stepnisky, 2017); and (c) experiences of people who share a common physical or social feature (e.g., a familial role) cannot be narrowed down into an identical and specific description. Some prisoners' families in Western countries come from a preordained marginalized background, especially among women (Souza, Lösel, Markson, & Lanskey, 2015; Woodward, 2003) and children (Wakefield & Wildeman, 2013). For example, families of prisoners often experience and fear social stigmatization because of their connection to the prisoner (Davies, 1980). However, many of these families are already socially excluded and experience stigma because of other characteristics such as poverty and race (Kotova, 2020). Entering a multileveled legal procedure that demands various adjustments might produce a deeper crisis where relatives struggle even harder to support the prisoner and the rest of the family. Therefore, questions such as "are there certain families that suffer more than others?" or "what is the experience of specific familial roles throughout the legal proceedings?" shed light on the notion that some families have a more complex journey than others.

Information from around the world paints a grim picture: when a family member goes into the legal system, two main factors play a crucial role in affecting the familial ability to cope: first, the social and economic status the family is in

(e.g., immigrants, single parenthood); and second, the attitudes family members hold toward the crime committed (e.g., ideological crimes, honor killings). The more hardships a family deals with (both as individuals and as a unit), and the worse the perception of the offense is – the more excluded it gets. For example, a family that has long, stable social connections with friends and family may be higher in resilience in comparison to immigrant family members who do not speak the national language. The latter will also (probably) struggle to find financial resources, as they might not have jobs because of language barriers or solid social bonds to assist them. Accumulation of these hardships decreases levels of resilience (Lanskey, Markson, Souza, & Lösel, 2019) and recovery capital (Best & Laudet, 2010). Specifically, the process of immigration generates emotional struggles (Aroian & Norris, 2000), a decrease in material quality of life (e.g., housing difficulties and reduced professional status) (Ritsner, Modai, & Ponizovsky, 2000), language barriers (Ding & Hargraves, 2009), struggles with the creation of social networks and establishing a professional identity (Alaverdyan & Zaharieva, 2019), distrust of the authorities and cultural gaps which can make gaining support more complex (Kirmayer et al., 2011), and changes in family roles, structure, and authorities (Booth, Crouter, Landale, & Landale, 2012). Stressful circumstances might damage familial resilience levels and not only make the situation harder to cope with but also harder "bounce back" from post-incarceration (Vesely, Letiecq, & Goodman, 2017) and help the prisoner with reintegration (Yakhnich & Walsh, 2020). It seems that despite having a high tolerance for ambiguous situations (Yakhnich & Ben-Zur, 2008), immigrant families deal with a combination of stressors that might increase their vulnerability and stress level. Also, immigrant parents struggle with the intersectionality of multiple stigmas as both immigrants and parents of children who are involved in delinquency (Yakhnich & Walsh, 2020). That contributes to social invisibility and discrimination (Remedios & Snyder, 2018) and makes gaining social support more complex; in particular, distrust of the authorities and cultural gaps are added to the stressor list (Kirmayer et al., 2011).

Alongside immigration, other social statuses may burden families. Single parenthood is also a complex stressor, especially among women (Souza et al., 2019). Lowenstein (1986), for example, concluded that there are emotional, interactional, and behavioral difficulties that prisoners' children experience due to incarceration, and that children's ability to adjust is related to mothers' familial and personal resources, as well as the degree of associated stigmatization. Intersectionality of lone parenthood and being a romantic partner (or ex-partner) increases women's vulnerability through increased and intensified family, work, and caregiving demands (Lee, Wildeman, Wang, Matusko, & Jackson, 2014; Souza et al., 2019). The described accumulating hardships might decrease resilience and increase the chances for substance use (Best & Laudet, 2010), self-harm (Sourander et al., 2006), and anti-social behavior (Wikström & Sampson, 2006). Despite similarities in the shared experience of prisoners' families in Western (and Western characterized) countries, intersectionality plays a major part when looking to better comprehend the phenomenon. Families may differ in their social integration and network levels, language barriers, familial bonds, socioeconomic status, and

unrelated struggles (such as mental illnesses) – all of which influence the support they can receive and their ability to "bounce back" post-incarceration.

Another social aspect that might affect the familial unit is the attitudes and perceptions families have regarding the offense itself. The perception of the offense also has a great influence on resilience levels, as it is "easier" to support an offender who you believe has done "the right thing" (Cooper, 2007; Lepper, Zanna, & Abelson, 1970). People who use various accounts for the offense construct a justifying narrative that reflects levels of resilience (Hauser, Golden, & Allen, 2006) and may even increase it (see, for example, Christian & Kennedy, 2011; Randall, Baldwin, McKenzie-Mohr, McKim, & Furlong, 2015). For example, even though murder is socially perceived as the most severe offense (Harvey, 1986), it can be mediated by cultural perceptions that justify the act, such as honor killings in the Islamic community (Zvinkliene, 2010). Thus, an Arab family will most likely grant more legitimacy to murder had it been done in the name of honor (Ne'eman-Haviv, 2021), compared to a non-Arab family. In fact, "despite modernization processes, the use of honor killings as a tool to strengthen patriarchal control seems to be widening" (Ne'eman-Haviv, 2021, p. 1). A murder offense can also be mediated by legal accounts, such as self-defense (Holmes & Holmes, 2001), or by ideological accounts. For example, an act of vandalism in a meat factory that was committed by a vegan activist relative or theft aimed to help a sick loved one. Cases in which family members struggle with intersectionality, together with disagreement with the specific act of crime, the situation is perceived by them as a major crisis (Wildeman & Western, 2010).

According to the literature in sociology and criminology (see, for example, Baah, Teitelman, & Riegel, 2019; Chesney-Lind, 2006; Crenshaw, 1991; Erez & Berko, 2010; Ocen, 2013), one of the most important consequences of intersectionality is marginalization. That means that a complex social situation (e.g., incarceration of a family member) might occur under existing marginalized circumstances (e.g., low socioeconomic status, immigration) thereby enhancing the marginalizing process (e.g., poverty, housing insecurity, unemployment). Parental experience of an offspring's incarceration is amplified by various aspects including some real and symbolic losses, which contribute to a more complex experience of marginalization (Gueta, 2018). For example, parents who have worked for decades and come from a mediocre or low socioeconomic background may use their pension funds to pay for their son's legal expenses. That choice might limit their already diminishing ability to pay other bills, forcing them into a more marginalized lifestyle (e.g., affordable housing located in an area of limited access to a variety of services) (Baah et al., 2019).

## THE RESEARCH

The research was conducted in Israel in the years 2015–2018, offering a phenomenological perspective of parents and siblings of incarcerated men who went through different stages of legal proceedings, arrest, and incarceration. Its goal was to gain insight into their perceived experiences with the criminal

justice system and its various phases. The analysis presented here is twofold: 1) to examine and compare the hardships parents and siblings describe, with those known about partners and children of prisoners; 2) to describe the familial reaction to imprisonment in a society in which familial values and consolidation are of extreme importance.

### *Research Sample and Method*

Twenty-seven parents and siblings of incarcerated men from 16 households participated in this study. Ten households experienced legal procedures and/or incarceration as a first occurrence within the family unit (62.5%), whereas for six households, it was at least a second occurrence within the family unit (37.5%). The sample was comprised of 12 mothers (44.4%, mean age = 52), 5 fathers (18.51%, mean age = 55.4), 4 brothers (14.81%, mean age = 25.8), and 6 sisters (22.22%, mean age = 31.3) of male prisoners (mean age = 28.7). Three of the families had gone through legal proceedings, jail, or house arrest, and the rest had experienced incarceration sentences of different lengths (the shortest was eight months; the longest was nine years). Out of the 16 households, 3 were of average to high socioeconomic status (18.75%), 5 were single mothers (31.25%), 3 had a physical and mental illness of one of the parents (18.75%), and 2 were immigrants (12.5%), one of which had evident language barriers. All participants declared themselves as Jewish, three of the households described a religious lifestyle (18.75%) and the others were traditional or secular.

All participants chose to stay in touch with the prisoner. Cases in which the committed offenses hurt family members directly or otherwise were excluded to avoid creating a biased sample (e.g., theft from a family member, domestic violence). Data were collected using semi-structured interviews with open-ended questions, spanning a variety of issues: relationship with the son/brother before the offense (e.g., "Describe your relationship with your son/brother throughout your life"), the choice to support him (e.g., "In what ways do you support him?"), experiences from courtroom sessions (e.g., "Were you present at courtroom sessions? If so, please describe it, if not – why not?"), visitation within jails and prisons (e.g., "describe a visitation that you remember"), coping choices (e.g., "how did you make yourself feel better?"), and their opinions about the felony (e.g., "what is your opinion about the offense he committed?"). To protect the research participants' anonymity, pseudonyms were used in place of their names in the narratives.

The study was conducted according to the traditional phenomenology approach and its wish to describe phenomena from a subjective point of view (Greene, 2007; Reynolds, 2017). A thematic analysis was chosen for identifying, analyzing, and reporting recurring themes (Braun & Clarke, 2006), striving to understand individual underlying experiences. The themes that consistently arose from at least half of the participants were counted as prevalent and were included in the findings, except the content relating to the feeling of loss, which was a part of the unexpected data that came up and was expressed by more than one third of the participants and therefore was considered a subtheme. Relationships were drawn across the themes, creating general concepts of the experienced

phenomenon (Creswell & Poth, 2017). The reliability of the study was verified through peer debriefing, based on expertise and qualifications of the professional parties, repeatedly deliberating on which themes were conveyed by the participants themselves as the most meaningful (Connelly, 2016).

## *Research Findings*

The findings yielded four main themes of parents' and siblings' experiences of their son/brother's incarceration: (a) family hardships, (b) negative social experiences and family reactions, (c) Negative Experiences with Formal Institutions and Family Reactions and (d) social self-exclusion.

### *Family Hardships*

The hardships family members described focused on the emotional and financial aspects of the experience. Specifically, physical, emotional, and financial aspects loss were described. First, a comparison to the *experience of physical loss* was made, when participants compared the incarceration period to the seven mourning days in the Jewish tradition ("Shiva") when the bereaved are visited and consoled by a wide social circle. That experience came both from the sibling's perspective (e.g., "He was suddenly gone, it's like sitting "Shiva" […] I felt like he passed away. We spoke about him in the past tense"; sister), and the parents' perspective (e.g., "I think it's like with bereavement, it takes you time to realize what's happened"; mother). Parents who made the comparison to a loss acknowledged that the feeling of loss made them anxious. Emotionally, parents and siblings discussed intense *worries* regarding the prisoner's physical and mental health (e.g., "they mix him up with criminal murderers … I think they probably abuse and pick on him, and I feel so bad about it"; sister), their fears concerning the criminality of cellmates and their possible influences on him (e.g., "It was important for me that he spends as little time possible in this 'school' … I was really scared he will get out of there having friendships"; mother), guards' treatment toward him (e.g., "If they treated us like we are criminals, how do they treat him, inside?" mother), and his physical health and hygiene (e.g., "As a mother you can't really take care of him, you don't know what kind of medicine he gets if he's sick, I constantly worry"; mother). The losses were described as accumulative in their affect specifically by mothers and in families that were characterized by an illness of a parent (e.g., "If I help him, I don't have enough money to but my own medicine, and then my situation worsens, and I need hospitalization. But who will pay for that?" mother, suffers from mental illness), single parenthood (e.g.,

> I've always struggled so he would have everything, on my own. Now, instead of two jobs, I work three, and a fourth on the weekends. I have no life of my own;

mother), and immigration (e.g.,

> I am lucky that the local grocer knows my mother's tongue, so I can get what I need, and we get along if I don't have money. But I don't understand what the lawyers want or what I can do to help my son. When he was here, he helped me with everything;

mother). These worries generated feelings of *anger and disappointment* that the parents described – both with the prisoner (e.g., "I was angry […] it hurt because I raised him […] it's like spitting in my face"; mother) and with the legal system (e.g., "You develop this anti-establishment view. You simply realize that the entire system is corrupt […] I really don't believe in the system anymore"; father). Parental *frustration* was expressed through comparison of the felon to his siblings (e.g., "Why did he come out like that, why not more like his brother?" mother), but it immediately followed *empathy* (e.g., "I understand his emotion, I understand his pain, I know the suffering he is going through because of this mistake"; mother). As for the siblings, they also expressed *anger mixed with empathy*, emphasizing the effect of their brother's actions on their parents (e.g.,

> There was reserved anger, frustration. I was angry at him for the state of our parents. But on the other hand, again […] I kept asking myself if I'm not asking for too much of him;

brother; "This situation is not simple, it's still my brother, he's not a stranger"; sister). Awareness of their son or brother's vulnerability, together with the lack of ability to physically be with him, was described by parents and siblings as generating *insecurity* (e.g., "It's like going back to being three years old, emotionally. It's waking up in the middle of the night crying, going to work crying"; father), leading to *physical and behavioral symptoms*, causing some stress-related symptoms as well as worsening existing physical issues (e.g., "I drank a lot more coffee, smoked a lot more … I couldn't sleep"; mother; "It turns you into a different person. I suffered tremendously, and my sugar levels and blood pressure went sky high"; father).

All the participants chose to maintain their relationship with the prisoner, despite their fear of potential social exclusion (e.g., "the social treatment is bad if the family wants to help, they are perceived as accomplices and then they are ruined by people talking about them"; father). According to them, their choice entailed paying increasing sums of money for legal fees, basic goods (e.g., hygiene products, food, clothing, means of communication), and visitation expenses (e.g., gas or public transportation expenses, losing their income of a missed workday). The financial hardships were described mainly by the parents, who described the general experience as a gradual diminishment of the family's socioeconomic status starting at the arrest. All the parents in the study described *financial struggles* (e.g., "The financial crash is a total one […] all the money I got for the retirement … still goes to lawyers and his therapy program"; father); only one couple set a clear boundary for their son, declaring they will not sell their house due to their son's actions and repercussions. Parents also reported that the financial costs sometimes created *deprivations and deficiencies for other family members* (e.g., "I told my other children that things will be denied of them at the expense of the situation"; mother).

### *Negative Social Experiences and Family Reactions*

The second main theme dealt with stigmatization, shame, and keeping any information about the familial crisis to themselves or their close relatives. Both parents

and siblings shared that *people talked either directly or indirectly about their situation*, expressing pity, shame, aggression, and even hatred (e.g., "The attitude toward families is negative if they want to help their son. It's like we are accomplices"; father; "Why should I, as his sister, who obeyed the law all my life – be ashamed of a crime I did not commit?" sister). Because of feelings of fear and shame, participants decided to *keep information regarding the arrest/incarceration a secret from certain social circles*, thus creating distance and sometimes alienation from these social circles (e.g.,

> No family or friends, let alone colleagues […] I don't speak to anyone about this crisis […] I don't want to. I'm scared people will grow apart from me because of it;

mother;

> I don't think I would tell anyone at my workplace, even though I need to take days off to go and visit him. It is just too shameful. I might be fired;

sister).

As for their opinion about the crime their relative committed, all participants expressed their understanding of the seriousness of the offense while still wanting to maintain the relationship with their family member. Their explanation was based on kinship (e.g., "This situation is not simple, it's still my brother, he's not a stranger […] at least he knows he's got people rooting for him, his family"; brother; "At the beginning I was so mad, I didn't go to visit him… but he is my son, and always will be"; mother; "If he did the crime, he deserves the time… I still love him because he is my brother"; sister).

*Negative Experiences with Formal Institutions and Family Reactions*

The third main theme that arose dealt with a lack of basic information about their rights, as well as information about judicial procedures, visitation privileges, and what is or is not allowed to be brought into the prison. Parents were shocked to find they were not getting any information, which they described as harming their expectations regarding parental rights (e.g., "When he was interrogated, I screamed – I am his mother, what do you mean I can't get any information? I wanted to know what he's in for!"; mother;). Missing information described by most parents and siblings also related to *sudden changes of known rules and regulations* without informing the public, which was perceived as arbitrary and senseless (e.g., "Almost every time we got there, there was something that was now forbidden for us to take inside but was allowed the last time"; sister). All the participants connected their inability to get information to feelings of helplessness, anxiety, and suppression (e.g.,

> I have rights, but if I don't know them or don't receive them – what can I do against the system? You can't. You feel the system harasses you, you feel helpless;

father). As mentioned previously regarding the various experiences of loss, the emotional effects were described as accumulative in families that were characterized by an illness of a parent (e.g.,

> My pills were changes because I have trouble sleeping after my visit with the social worker. Not only did she not help me, but she also talked to me as if it's my fault. I don't see a connection between my illness and the fact that my son is in prison [crying] … she should have helped, or at least be nice;

mother, suffers from mental illness), single parenthood (e.g., "Maybe if I was married, we'd have more people to support us, to offer as guarantors… I don't even know why they disqualified my brother, they never said"; mother), and immigration (due to language barriers).

Participants also described changes in their views of national establishments and the level of trust in them, that stemmed from a general experience of abandonment (e.g., "Nobody thinks about us on the other side, the systems' side. That the kid's family suffers the most… who cares about the parents who ate shit for two years?" father;

> You ask yourself where the justice is. There is no justice here. The lawyer told me that at this point I am in a position where no one even looks at me for my opinion;

father). Family members described upholding their national duties such as serving the military and paying taxes, as well as being active as civil guard volunteers before their relative's entrance to the legal system. However, negative experiences changed the positive, patriotic views they had about the state establishments (e.g.,

> You develop this 'anti' feeling towards the system. You realize it's simply corrupt … I used to volunteer with the police forces for years. Today I don't go. The prison service is also a big disappointment. It's a harsh, unfair system;

father; "I turned to the social services and they rejected me with all kinds of excuses. Nobody wanted to reach out. I felt anger"; mother).

*Social Self-exclusion*

The experience of negligence together with the loss of trust has evoked a spontaneous reaction of familial self-exclusion. Participants described no longer feeling a part of their community or wider circles. They described it as a betrayal of the people and organizations that are expected to assist or at least not judge in the light of courtesy stigma and said they felt a complete loss of faith and trust in formal social figures who are in charge of assistance and protection of citizens. As a result, family members started to withdraw from the general society both overtly (e.g.,

> We live here, work hard, pay our taxes… but we have this justified hatred towards the system … even the extended family doesn't want to do their military service. We feel like we no longer have any connection to this country;

sister) and covertly (e.g., "I don't want to go out with friends or date anyone because I don't want to be asked about it, and I don't trust people to not tell others"; brother).

## DISCUSSION

Prisoners are rarely viewed as children and siblings of their nuclear family. In a reality where parents often financially support their children to a late age, it is expected of prisoners to turn to their parents for help. When parents and siblings choose to maintain the relationship with the prisoner, they also provide other kinds of support such as emotional and mental support. The study presented in this chapter offered a rare glimpse into the lives of Israeli prisoners' families from the parents' and siblings' perspectives. Its goal was to explore the nuclear family's relationships with the prisoner, experienced hardships, and various perspectives of the legal system (Benisty, 2021). Following previous findings (see, for example, MacNeil et al., 2015), the current study highlights shared feelings and world views among parents and siblings of incarcerated men. These were formed as a result of the accumulating hardships, or "familial pains of imprisonment" (Benisty et al., 2021).

Family members of prisoners belong to a preordained marginalized group due to courtesy stigma (Hudson, 2006). However, despite the cultural and social similarities prisoners' families in Western countries share, each family is unique in its perception of the crime, social and economic resources, and inter-familial interactions. Relying on an intersectional perspective allows to address possible structural and representational factors underlying families' barriers and struggles throughout their relative's legal stages, as opposed to simply categorizing parents and siblings as guilty and responsible for the prisoner's acts. Acknowledgment of these differences will enable the detection of particularly vulnerable families and better allocate resources and assistance (Gueta, 2020).

The current study's findings show that all families expressed hardships encountering the various legal systems. However, some families were also struggling as single parents, mentally ill, immigrants, and low socioeconomic households. In some cases, several categories applied to a specific household and even to a specific parent. The preordained marginal background of some of the caregivers has shaped their experiences and influenced their ability to cope with the situation, as well as to assist the prisoner (Gueta, 2020; Western & Wildeman, 2009). Further marginalization through social determinants (e.g., socioeconomic status, gender, familial role) and intersecting systems of oppression and power (e.g., national judicial and enforcement authorities, the prison system, community interactions, and facilities) may shape the opportunities families receive for health and social services (Gueta, 2020).

The findings portray a process that begins upon the entry of the son or brother to the judicial system, which increases perceived and real losses for the family units and evokes negative feelings, both toward the prisoner and the judicial system. However, as the family experiences more perceived negative interactions with police forces, courts, prison services, and social services – they report dealing with greater social and financial insecurities than ever before. The findings also support the notion according to which intersectionality might create or deepen marginalization: all participants reported increased financial, social, and emotional losses regardless of their previous socioeconomic status, previous mental challenges,

gender, marital status, specific familial roles, or language barriers. With that said, some subgroups may experience harsher "vectors of oppression and privilege" (Ritzer & Stepnisky, 2017). Single mothers, for example, struggle with the intersectionality of multiple stigmas as both sole-providing women and parents of children who are involved in delinquency. As reported in previous studies (for example, see Cairney, Boyle, Offord, & Racine, 2003; Goldman, 2019; Kim & Kim, 2020), participants who were single mothers reported being socially stigmatized, feeling alone and anxious, and lacking financial and social resources. One of them also dealt with mental illness and another one was an immigrant, both are crucial factors that might contribute to their social invisibility and discrimination (Remedios & Snyder, 2018) and make gaining social support more complex.

Another relevant issue when referring to prisoners' relatives through the intersectionality lens emphasizes that experiences of people who share a common physical or social feature (e.g., a familial role) cannot be narrowed down into an identical and specific description. Thus, despite it not being the focus of the study, a variety of perspectives, levels of functioning, and role perceptions were demonstrated by family members of prisoners regardless of specific familial roles or expectations based on social scripts. For example, in some families, parents were so overwhelmed by the situation, that a sibling took it upon her/himself to deal with bureaucratic issues and procedures; in other families, mothers worked more hours as fathers took care of the house and the other children; some parents chose to open savings or take loans, whereas others chose to set a clear financial boundary for the incarcerated son. The only two things that all family members shared was that (a) they all chose to maintain the relationship with the prisoner, and (b) they all reported experiences of belittlement by authorities and their representatives. That said, molding the concept of "family members" based on any specific description, might belittle real and severe hardships that members of the same family feel as individuals. While certain differentiating themes may rise out of the experiences of siblings versus those of parents, or brothers versus sisters, the intersectional voice calls out to think about the problem of sameness and difference and its relation to power. In this case, participants' trials to manage themselves within a perceived powerful, restrictive, and arbitrary system generated feelings of helplessness and impotence, feelings that were magnified for families who have already experienced power relations due to pre-marginalized status. These feelings were described by participants as the cause for negative views and generalizations they developed toward formal authorities and their representatives. According to the findings, that generated one of two scenarios: families either shut themselves out and chose to drift away from the general society (by avoiding social interactions and keeping the 'family secret' from the outer world) or acted in defiance against other national establishments that are not directly related to the familial struggle (by declaring they are not interested in contributing to the country through military service, for example). Eventually, any defiant reaction or "counter rejection" (Benisty et al., 2021) on the family part might increase and strengthen the stigma and negative social pre-perception of the family, thus further pushing them to the margins, in what seems to look like a social vicious circle (Deegan, 2021). The idea of individual self-marginalization as a

way of differentiating oneself from a perceived oppressive majority is not new (Foner, 1998; Traber, 2001). However, self-marginalization of social subgroups whose contribution to the general society has been solidified (e.g., prisoners' families affect successful reintegration processes) might result in families' differentiation and separation from multiple social circles. Hence, in addition to allocating resources more efficiently, employing an intersectional approach may also benefit the entire social structure.

Elaborated practical implications refer to several aspects. First, increasing availability of relevant information (physically, via phones, and virtually) that could assist family members with going through the various stages of the crisis, might decrease feelings of vulnerability and increase resilience, as it might help the family recruit better and more efficient resources. Other practical implications include professional training for different relevant staff members within the police forces, the legal system, and the correction facilities. Intersectional perspective-based training can raise staff members' awareness and knowledge of accumulating familial hardships. Additionally, formal actions should be taken, such as the development of national support, assistance, and rehabilitation programs dedicated to helping prisoners' families as a subgroup but also include a tailored package for more fragile units and their individual, unique needs. Other formal actions should include tracing existing programs (if there are any), partially or fully fund, manage, and supervise them.

Though focused on a specific group, the study presented in this chapter is a gateway to further research and a better understanding of the unique features of this group. More research is needed for the goal of rethinking familial changes in structures and functioning and revisiting the way Western societies perceive prisoners' family members. Innovative data collection must recognize that family members deal with a variety of struggles in a variety of forefronts and differentiate between familial resources, backgrounds, and roles. For example, future research should explore experiences of specific familial roles under an intersectional lens: fathers, mothers, brothers, and sisters of prisoners share both the experiences as a family unit, as well as unique, individual experiences. The latter is related to their familial role and the dynamic degrees of responsibility it encompasses, their relationship with the prisoner, their perception of the crime, and social inequalities such as gender or age. Additional important data may shed light on the experience of prisoners' families in other parts of the world, where socio-political, economic, structural, cultural, and interpersonal circumstances are different than those of Western societies. Additional data of this nature may contribute to policy and structure changes and promote social justice and equity so that no one feels invisible.

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# CHAPTER 5

# SUPPORTING INCARCERATED PARENTS PRIOR TO REENTRY: A GENDER AND RACIAL EQUITY-ORIENTED LENS

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## ABSTRACT

*Over 2 million individuals are incarcerated in the US criminal justice system. More than half of incarcerated Americans are also parents of minors. Parental incarceration can lead to a higher risk of mental illness and enduring trauma in children, as well as other problematic cognitive, developmental, and educational outcomes. Examining parental incarceration through a racial equity lens is critical, as people of color make up 67% of the incarcerated population despite making up only 37% of the US population. Further, gender-related equity issues pose important challenges for families with incarcerated parents. Here, we discuss prison-based psychosocial interventions designed both to build parenting skills and to improve parent well-being within a racial and gender equity lens. We hypothesize that effective services in these areas are essential components in a broad strategy designed to mitigate the potential negative effects suffered by families and children of incarcerated parents of color as a result of their imprisonment.*

**Keywords:** Children; parental incarceration; race; gender; interventions; parenting

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More than half of incarcerated Americans are parents of children under the age of 18 (Glaze & Maruschak, 2010). Given this, a sizable number of children living in the United States are impacted by incarceration; a 2016 investigation estimated that around that time, roughly 5.1 million minor children were experiencing or had experienced one or both parents in prison (Annie E. Casey Foundation, 2016). Given the expansive nature of the US criminal justice system – which includes a wide variety of settings beyond prison where adults are serving time (e.g., jail, detention centers) – this is a conservative estimate of the numbers of children affected. Although parental incarceration may have variable impacts on children dependent upon factors such as parent contact and behavior within the family before incarceration, the current amount of contact with the parent, and the level of social support for the child and family, research suggests that parental incarceration threatens the emotional, physical, and financial well-being of children and families (Eddy & Poehlmann-Tynan, 2019). Thus, effective family-focused interventions for incarcerated parents both during and before release from lock-up could play an important role in both protecting and supporting children with incarcerated parents.

Exposure to adverse childhood experiences (ACEs) such as the incarceration of a parent is associated with an increased risk of specific problems for children, most notably antisocial behavior problems (e.g., Kjellstrand, Yu, & Eddy, 2019; Murray, Farrington, & Sekol, 2012; Tsehay, Necho, & Mekonnen, 2020). More broadly, experiencing the incarceration of a parent can increase children's stress levels and may disrupt aspects of their social and emotional development (Poehlmann-Tynan et al., 2021). Further, in several studies, the incarceration of a parent has been associated with a variety of problematic cognitive and educational outcomes for children and young adults, including developmental delays, learning disabilities, and school suspension and expulsion (Murphey & Cooper, 2015). The potential impacts on people of color are much greater because of the stark differences in incarceration rates for some populations of color. For example, today, 600 per 100,000 Black/African American adults and 420 per 100,000 Native American/Indigenous adults are incarcerated compared to 184 per 100,000 White adults (Statista, 2021). Considered across multiple years, this translates into even starker differences in the numbers of children of color who are affected by incarceration (e.g., Wildeman, 2010).

Several protective factors – such as involvement in community groups, family and peer support, and interventions guiding best practices during each stage of criminal justice involvement, from arrest to reentry – have the potential to buffer the impact of parental incarceration on a child. Throughout, a secure, stable home environment with a positive relationship with the child's caregiver is a key protective factor that can assist the child in overcoming the potential myriad of challenges related to the parent's incarceration (Cramer, Goff, Peterson, & Sandstrom, 2017; Kjellstrand & Eddy, 2011). The age of the child experiencing parental incarceration is also essential to consider. For example, older children may process traumatic situations like those related to parental incarceration in a more productive way than younger children (Buss, Warren, & Horton, 2015).

Although the research is still quite limited, "reentry" programs supporting incarcerated parents and families before and after release from incarceration show promise in helping mitigate the effect of incarceration on children (Mooney & Bala, 2018). Every week, more than 10,000 incarcerated individuals are released from state and federal prisons and return to their communities (United States Department of Justice, 2021). Reentry programs typically include a combination of clinical and preventive interventions, such as substance abuse treatment, job training, mentoring, counseling, and general education (Griffiths, Dandurand, & Murdoch, 2018).

Unfortunately, the process of reentry is often overwhelming to navigate for all involved. In particular, the tasks for the incarcerated parent to complete are complex, including reconnecting with family and friends, securing housing, finding employment, and coping with mental health needs that may not have been addressed in prison. Succeeding simultaneously in each of these endeavors would be difficult for anyone, but can be particularly hard for a person with a criminal record and a recent history of isolation from the community, and can put significant strains on the relationship between the newly released parent and their family (Valera, Brotzman, Wilson, & Reid, 2017). More directly, structural problems such as employment biases, housing discrimination, service fees, and post-prison supervision requirements and consequences can substantively interfere with effective reentry (Ortiz & Jackey, 2019). Additionally, substantive inequities – both race based and gender based – exist both in the prison system and throughout the reentry process and further complicate the reentry process for marginalized communities.

## RACIAL INEQUITIES IN THE PRISON SYSTEM AND CHALLENGES DURING REENTRY

Laws and practices that lead to greater policing and convictions of populations of color continue to drive unjust disadvantage (Clear, 2009). As a result, in state prisons, Black Americans are incarcerated at over five times the rate of White Americans. In some states, such as Iowa, Minnesota, New Jersey, Vermont, and Wisconsin, this disparity doubles (Nellis, 2016). After reentry, formerly incarcerated Black men earn lower wages (Johnson & Johnson, 2012) and have lower lifetime earnings than their White peers (Taylor, 2016). While racial inequities most disproportionately affect Black communities, there are substantive disparities for other racial groups. For example, despite lower rates of overall criminal behavior, Latino men are more than three times more likely to be incarcerated in jails and two-and-a-half times more likely to be incarcerated in prisons than their White counterparts (Pettit & Gutierrez, 2018).

Nevertheless, no group in the United States faces rates of incarceration that match the high rates of young, Black men who did not complete high school (Pettit & Guittierez, 2018). While White men may face employment barriers related to being previously incarcerated, Black men will face this same stigma with the added burden of racially discriminatory hiring practices (Purnell, 2013)

and the lack of access to "felon friendly" jobs and industries (Rucks-Ahidiana, Harding, & Harris, 2021). Relatedly, Black Americans often return to neighborhoods with high rates of poverty, crime, and unemployment. Further, a contextual analysis of recidivism suggests that Black individuals experience underlying socioeconomic disadvantages in their neighborhoods which have fewer businesses providing job opportunities to formerly incarcerated individuals (Lockwood, Nally, Ho, & Knutson, 2015).

Post-incarceration trauma is also a pressing concern for individuals with marginalized identities (Williams, Spencer, & Wilson, 2021), and Black men may be particularly vulnerable to stigma after reentry (Williams, Wilson, & Bergeson, 2019). Individuals undergoing the process of reentry often experience stigmatization and penalization, not only by others but also by themselves, which frequently leads to a lack of self-confidence (Dill et al., 2016). These experiences of stigma and discrimination are associated with a myriad of negative long-term outcomes, including social withdrawal and mental health concerns (Moore & Tangney, 2017), which may accumulate and create major barriers to employment. For Black men, facing both racialized and convict-related employment discrimination may also lead to an inability to perform gender related such as providing for their families (Williams et al., 2019). This is further damaging in the context of societal expectations that men serve as breadwinners for their families.

Black and Latina women may also endure a patriarchal and racial hierarchy in hiring in addition to the criminal conviction hiring discrimination (Garcia-Hallet, 2019). Similar to employment discrimination, these women may also endure increased housing discrimination. Because of their race and related biases, women of color are often forced to live in racially segregated neighborhoods (Garcia-Hallet, 2019). Racial housing segregation has been used as a means to engage in hyper-surveillance of these communities which in turn further marginalizes women of color (Garcia-Hallet, 2019).

Native American/Indigenous individuals reentering their communities post-incarceration can face similar issues as described above. Further, those returning to rural reservations may experience additional challenges in securing reliable transportation (Wodahl & Freng, 2017). Transportation is key for Indigenous individuals who are looking for jobs off their reservations post-incarceration. Racial segregation and poor economic conditions on reservations also create reentry barriers for Indigenous people, by way of poorer job opportunities and higher substance abuse (Wodahl & Freng, 2017). All of these difficulties can leave a lasting impact not only on the individuals but also their families and communities at large.

Due to the disproportionate levels of post-incarceration hardship, recidivism rates vary significantly by race (Wehrman, 2011). An investigation focused on predictors of recidivism found that being Black, and particularly a Black man, was the most potent predictor of recidivism in the United States, even when these individuals presented with lower risk factors (Ropes-Berry, Kennedy, Lloyd, Veeh, & Tripodi, 2020). These results suggest that factors such as racism and the related explicit and implicit biases drive recidivism rates, not just individual risk. In their Theory of African American Offending (TAAO), Unnever and Gabbidon (2011)

argue that past and present racial subordination and discrimination of Black Americans account for the substantive racial disparities in offending. Indeed, empirical research suggests that Black Americans who experience racial discrimination and believe harmful stereotypes about Black violence are both more likely to offend and more likely to experience mental health concerns related to self-control, anger, depression, and substance use (Unnever, 2014).

## GENDER INEQUITIES DURING AND FOLLOWING INCARCERATION

Gender inequities during and following incarceration are also important to consider. According to the Federal Bureau of Prisons (2021), 93.1% of federal inmates are men, compared to 6.9% who are women. This gender disparity suggests a possible institutional bias, where men are more frequently arrested, convicted, and subjected to longer sentences compared to their female counterparts (Starr, 2012). At the same time, women are typically offered fewer prison programs targeting their needs to lower recidivism rates than their male counterparts (Covington, 2009). Even parenting programs, which typically are more focused on mothers, sometimes disproportionately target men and fathers (Clark, 2009).

Although the number of men incarcerated exceeds the number of women, women's incarceration in the United States has grown twice as rapidly as men's incarceration since 1980 (Kajstura, 2019) increasing 700% during that time (Dhoakia, 2021). As a result, women are the most rapidly growing group within the US incarcerated population. This rate disproportionately affects Black women, who are incarcerated at a rate three times greater than White women (Equal Justice Initiative, 2018), as well as Native American/Indigenous women, who are four times more likely to be incarcerated than White women (The Sentencing Project, 2020). Preliminary literature also suggests that Latina women are 1.3 times more likely to be incarcerated compared to their White female counterparts, although more data are needed to understand the impact on this community (Hernandez, 2019).

Women are often incarcerated for reasons that are not as frequently seen in men (e.g., prostitution) or that have gendered effects, such as drug use and poverty (Kennedy, Mennicke, & Allen, 2020). Incarcerated women are also more likely to have substantial histories of childhood trauma (Kjellstrand et al., in press), which likely impact their experiences within prisons. To address prison disparities and treatment gaps, it is imperative to discuss the gender inequalities experienced by criminal justice-involved individuals: a topic lacking in the current literature base.

Additionally, there is little empirical work, and scant information, focusing on transgender and non-binary identities in the prison system, and most research focused on sex and gender in the criminal justice system further concentrates on cisgender populations despite disproportionate rates of incarceration of these individuals. For example, Reisner, Bailey, and Sevelius (2014) report that 19.3% of transgender women have been incarcerated. Criminal justice-involved trans, non-binary, and gender non-conforming adults (TNGC) often experience misgendering, body searches by different gendered officers, and housing based

on genitalia, rather than gender (Walker, Sexton, Valcore, Sumner, & Wodda, 2018). Within prisons, trans women housed in men's prisons are at a profoundly higher risk of sexual assault, rape, and gender-based violence (Jenness, Sexton, & Sumner, 2019). As a result, scholars have argued that incarcerated TNGC adults are "doubly imprisoned" – by both the physical prison and by experiences of transphobia that diminish personal dignity and sense of identity (Erni, 2013). Further, intersectional identities play a major role in discussing the risk of incarceration and victimization for TNGC individuals. For instance, both Black and Native American/Indigenous transgender women are much more likely to experience incarceration than their White transgender counterparts (Reisner et al., 2014). Consideration of identity and context is an important consideration for all aspects of prison and post-prison experiences, including parenting.

Nevertheless, improved support systems before and after reentry have the potential to benefit individuals and improve outcomes in education, health, and housing, among other areas (Ames, 2019). For people of color, reducing reentry barriers may require addressing issues related to systemic racism such as hiring discrimination (Feingold, 2021; Wehrman, 2011), underemployment (Williams et al., 2019; Wehrman, 2011), pejorative stereotypes of certain groups being more prone to crime (Unnever & Gabbidon, 2011; Williams et al., 2019), and exosystemic concerns within neighborhoods of reentry, as people of color may be more likely to live in neighborhoods of concentrated disadvantage (Wehrman, 2011). For women of color, there may also be a need to reduce systemic patriarchal barriers (i.e., barriers around parenting; Williams et al., 2021). Ultimately, successful reentry programs would allow formerly incarcerated individuals the opportunity to better support themselves and their families, increasing public safety and reducing recidivism.

## PARENTING BEHAVIORS

Parenting behaviors are one of the most well-studied modifiable predictors of child outcomes. Parenting has been explored via a range of dimensions – including both specific parenting behaviors and broad parenting styles – for over 75 years (Kuppens & Ceulemans, 2019). Furthermore, recent research has focused on examining domain-specific models of parenting behavior (Smetana, 2017). For example, immigrant families and families of color may be more likely to live in neighborhoods characterized by economic disadvantage and increased risk, which may be associated with greater authoritarian parenting behaviors (Lee et al., 2014). These behaviors may be interpreted as protective in these contexts (Smetana, 2017). Additionally, a child's developmental stage impacts both the most relevant parenting behaviors (Metcalfe, Guidinger, & Stormshak, 2021) and the relative influence of parents compared to others, such as peers (Stormshak, Kennedy, Metcalfe, Matulis, & Cheng, in press). Nevertheless, broadly speaking, scientifically rigorous research supports specific parenting constructs as predictive of beneficial outcomes for children when appropriately and adaptively tailored to a family's culture and context (Dishion, Stormshak, & Kavanagh, 2011).

These constructs include effective parental communication strategies, fostering warm relationships, and parental monitoring or limit setting.

Consequently, ecologically flexible parenting interventions pose substantial benefits to a wide range of families. Interventions based on Social Learning Theory, developed during the 1960s and 1970s (Gardner & Leijten, 2017), are among the most well-evidenced set parenting interventions. These include interventions such as the Incredible Years (Webster-Stratton & Herman, 2010), the Family Check-Up (Leijten et al., 2015), and Parent Management Training (PMT; Forgatch & Kjøbli, 2016). Collectively, these define the currently accepted standard of care for families (Kaehler, Jacobs, & Jones, 2016), with PMT-based interventions being one of the most empirically validated "families" of parenting intervention (Eyberg, Nelson, & Boggs, 2008; Southam-Gerow, McLeod, Brown, Quinoy, & Avny, 2011). Broadly speaking, Social Learning interventions focus on addressing fundamental driving interactional processes, such as modeling and reinforcement within family and school contexts, while also encouraging positive contextual supports, like nurturing, warm relationships, and moment-to-moment coping skills including parent, teacher, and child stress management practices (Gardner & Leijten, 2017). Social Learning parenting interventions show impacts at a wide range of ages (e.g., Stormshak et al., 2019).

Altering harsh, coercive, and ineffective parenting strategies may break a cascade of child developmental concerns that frequently result in serious adolescent behavior problems including the perpetration of interpersonal violence (Dodge, Greenberg, Malone, & Conduct Problems Prevention Research Group, 2008). Social Learning parenting interventions have demonstrated benefits for a range of outcomes including parental school involvement (Garbacz, Stormshak, McIntyre, & Kosty, 2019), child conduct problems (Leijten et al., 2017), mental health symptoms (Connell, Stormshak, Dishion, Fosco, & Van Ryzin, 2018), and adolescent suicide risk (Connell et al., 2019). Further, these interventions have demonstrated efficacy for developmentally relevant problem behavior across a range of severity levels, with higher risk families and children benefiting more than families and peers facing fewer challenges (Leijten et al., 2018).

Families with incarcerated parents typically face a variety of risk factors known to increase the likelihood of several problems, including mental health concerns (Tsehay et al., 2020), child social and emotional problems (Poehlmann-Tynan et al., 2021), and difficulties related to school and learning (Murphey & Cooper, 2015). Thus, many reentering parents may be returning to complex and challenging home situations. As a potential counter to this, many incarcerated and reentering parents report high levels of motivation to improve their parenting skills (Metcalfe, Matulis, Honn, Eddy, & Kjellstrand, 2020), a known predictor of treatment engagement (Nock & Photos, 2006). Thus, these parents may particularly benefit from evidence-based parental support.

Future research is needed to determine whether parenting interventions for incarcerated and recently incarcerated parents might reduce the risk of multigenerational incarceration. Although no rigorous study yet examines this topic, intergenerational "transmission" of incarceration is a substantive public health and wellness concern (Ng, Sarri, & Stoffregen, 2013). Given the association between

effective parenting interventions and child conduct and aggression (Shaw et al., 2016) as well as child arrest trajectories (Connell, Klostermann, & Dishion, 2016), the possibility of reducing some of these potential harms to children is plausible.

## INTERVENTIONS PRIOR TO REENTRY

Parenting interventions aimed at prison-involved parents could occur both before and following release from prison. However, there are several potential benefits to implementing interventions before reentry. Most notably, many incarcerated parents have had little contact with their children while in prison (Poehlmann, Dallaire, Loper, & Shear, 2010) and may be returning to a position where they have substantial or primary care of their children. This is particularly true for women. Compared to when their parents left home, children with formerly incarcerated parents may be in different developmental stages that require new parenting skills. Parents may feel "rusty" without the day-to-day practice of being a parent "on the ground," and/or they may have had little direct practice with applying appropriate parenting behaviors during their time with their families before their incarceration.

Because of factors such as these, implementing parenting interventions before reentry may improve parent readiness to engage with their children immediately following release. Parents may also benefit from the opportunity to meaningfully engage in parenting topics while they are not dealing with other reentry-related tasks such as job hunting, securing housing, and obligations related to parole. This is also consistent with parental stated needs. While incarcerated, parents are likely to identify the desire for increased child contact and need for education on parenting as critically important, whereas after release, they are more likely to focus on issues related to basic needs and day-to-day survival (Kjellstrand et al., in press).

Parenting interventions that take place in a prison setting likely need modifications to be helpful. Parents in prison face unique stressors related to parenting, such as anxiety around visitation (Houck & Loper, 2010), and these factors are worth tending to explicitly. Additionally, most incarcerated parents simply do not have access to their children to provide day-to-day parenting, which fundamentally alters the goals and scope of parenting programs within prison settings. Parenting interventions that are tailored to specific parental needs show greater promise (Smith, Knoble, Zerr, Dishion, & Stormshak, 2014). Thus, relevant adaptations for incarcerated parents have been a developing area of research (Miller et al., 2014).

## GENDER AND CULTURAL ADAPTATIONS FOR PARENTING INTERVENTIONS

When families have appropriate access to services, evidence-based parenting-focused prevention programs show benefits for diverse populations (Smith et al., 2014). In particular, van Mourik, Crone, de Wolff, and Reis (2017) found

that programs with a cultural lens appear to be more effective in improving parenting behaviors for diverse parents than programs without a cultural consideration. Researchers further emphasize the importance of cultural relevance and sensitivity for diverse populations for intervention implementation and outcomes (Bernal, Jiménez-Chafey, & Domenech Rodríguez, 2009). Attending to such issues has been shown to improve the acceptance and effectiveness of the intervention for participants (Griner & Smith, 2006). For this reason, recently developed parenting interventions often include adaptive, flexible frameworks to increase versatility to target families when delivered by a sufficiently multiculturally competent clinician (Dishion & Kavanagh, 2003).

Furthermore, the use of explicit multicultural adaptations may provide substantive advantages within a prison context, where families are likely to be demographically different from the surrounding communities. In general, prisons are located in predominantly White-majority areas, yet disproportionately incarcerate people of color. This highlights the need for racial and cultural considerations in prison interventions, as those incarcerated are likely to differ – not just by race and culture but also by parenting values, socialization, socioeconomic status, and more – from surrounding communities and prison staff alike (Wagner & Kopf, 2015). These differences are likely to further the divide between commonly used current parenting interventions and existing parenting techniques used by diverse groups. For example, protective parenting strategies such as racial socialization – the preparation for racist attitudes of others, emphasizing racial pride, and explicit fostering of equalitarian values – are utilized by Black American parents but often neglected in traditional parenting interventions (Coard, Wallace, Stevenson, & Brotman, 2004). By addressing these concerns explicitly, parenting programs in prison settings may significantly increase their relevance for their target populations.

Outside of work within prison contexts, there has been a growing culturally adaptive parenting intervention literature that can inform work on the inside. For example, the Strong African American Families (SAAF) program is one preventative intervention designed specifically for African American parents and their adolescent children (Brody et al., 2004). Adapted from more traditional parenting interventions, SAAF includes units on topics such as racial socialization to provide culturally specific support. Similarly, Familias Unidas, an intervention for families with parents who are Latinx immigrants, focuses on cultural themes as a central piece of its theory of change (Coatsworth, Pantin, & Szapocznik, 2002). Within prisons, interventionists may be limited by concerns about how to address these culturally specific factors within a diverse group of clients. However, their absence may affect both engagement and utility for potential intervention participants. Indeed, supposedly "universal" interventions often do not feel welcoming for underserved groups (McAllister, Burgess, Kato, & Barker, 2012).

Gender-based adaptation is also an important emerging area of work for parenting prevention research. Although researchers have long acknowledged the importance of gender in intervention research, gender-responsive interventions in prison contexts are often specifically applied to women's prison settings only (e.g., Fedock & Covington, 2017). Of course, men are also substantially affected by gender-related issues, and this is particularly striking in parenting contexts.

Research suggests that 93% of parents in prison are fathers, many of whom were financial contributors to the family prior to incarceration (National Fatherhood Initiative, 2016). Incarceration of a father may lead to housing instability and poverty for families as well as a host of poor mental health and social outcomes for youth (Dallaire & Kaufman, 2018). Further, research has demonstrated the positive role that paternal contact and relationships can have on child outcomes (DeGarmo, Nordahl, & Fabiano, 2016). Yet, fathers are generally underrepresented in the parenting intervention literature broadly and few parenting interventions focus on their specific needs (DeGarmo & Jones, 2019). Literature on parenting interventions specifically targeting the needs of corrections-involved fathers and their families is even more scant (Cioffi & DeGarmo, 2021).

Of equal importance is addressing the needs of incarcerated women, particularly mothers, whose numbers have grown noticeably over the past several decades. As a result of harsher drug sentencing laws, unique post-conviction reentry barriers, as well as expansive law enforcement efforts, the US population of incarcerated women increased by more than 700% between 1980 and 2019 (The Sentencing Project, 2020). Over 58% of these women are mothers (Bertram & Sawyer, 2021), significantly counteracting ongoing reductions in the men's population (Gramlich, 2021; Sawyer, 2018). Oftentimes, women are incarcerated following sexually or physically abusive relationships, drug abuse, mental health problems, prostitution, or other trauma (Kjellstrand et al., in press), whereas men have higher representation in serious crime categories, historically (Gender and Crime, 2021; Kruttschnitt, 1994). Given both their rising rate of representation in the US corrections system as well as their different trajectory into crime and prison, gender-informed evidence-based reentry programs targeting the mothers and their unique needs are warranted.

Even more dramatic are issues related to parenting in TNGC populations that are almost entirely unexplored (Tornello & Bos, 2017). TNGC adults often do not feel effectively served by family services aimed at cisgender populations and may question the competence of human services providers and clinicians who are not explicitly trained in working with them (Tasker & Gato, 2020). Curriculums that have not been vetted for inclusivity may feel unwelcoming to TNGC parents and may serve as a substantive barrier to accessing services (Tasker & Gato, 2020).

## CHANGES IN THE PRISON ENVIRONMENT TO SUPPORT PARENTING

A focus on improving parenting outcomes for incarcerated populations has been a growing topic of interest in recent decades. Historically, prisons often failed to consider an individuals' role as a parent during admission, which substantially impacted the services available (Christian, 2009). However, throughout the twenty-first century, states have begun to consider ways to incorporate family ties into the prison setting. For example, California law now requires that the department of corrections (DOC) assesses family and community ties following admission (McLeod & Bonsu, 2018).

One strategy has been environmental changes to improve the context for parenting, such as creating child-friendly visitation areas and improving access to phone and visitation privileges for families (Charles, Muentner, & Kjellstrand, 2019). This is particularly important in light of research showing that visitation may impact recidivism and future incarceration (Bales & Meers, 2008). However, there is substantial variation in what is available within a given jurisdiction or facility. A review of state DOC policies showed that rules around visitation varied on a wide range of factors, including the number of visitations, duration of visitations, eligibility for visits, and rules for visitors (Boudin, Stutz, & Littman, 2013). Video visitation services are one emerging area of research for prisons, with the potential to improve accessibility for some. Unfortunately, McLeod and Bonsu (2018) observe that fees associated with video visitation as well as a growing trend of completely supplanting in-person visitation with video calls may also lead to challenges in maintaining relationships for prisoners and their children and families.

### *Washington State DOC Residential Parenting Program*

Additional consideration is needed for expecting mothers in the US corrections system. An increasing number of women are pregnant at the time of incarceration and go on to give birth while in prison (Fritz & Whiteacre, 2016). A 2021 report by the Prison Policy Initiative illustrates that 2,019,900 women are jailed in the United States each year – 80% of these women are mothers, and an estimated 58,000 women each year are pregnant when they enter jails or prisons (Bertram & Sawyer, 2021). Prison nurseries, dedicated housing for incarcerated mothers to serve as their infant or child's primary caregiver, have been an emerging consideration to help improve parent and child outcomes.

Although not new – the first prison nurseries date back to 1901 at the Bedford Hills Reformatory for Women – increased attention on issues related to attachment has increased their prominence in the United States during the twenty-first century (Fearn & Parker, 2004). Nine states – California, Illinois, Indiana, Nebraska, New York, Ohio, South Dakota, Washington, and West Virginia – presently operate prison nursery programs, although access may vary based on medical complications, types of convictions, and disciplinary records (Yoho & Backes, 2015). Notably, these programs are also substantially more common in other countries (Byrne, Goshin, & Joestl, 2010).

Although programs vary, prison nursery programs are characterized by their rehabilitative focus (Feintuch, 2017). Behavior patterns during incarceration are associated with post-incarceration outcomes such as recidivism (Cochran, Mears, Bales, & Stewart, 2014). These programs have potential benefits for child attachment and family outcomes (Byrne et al., 2010) and may foster resilience in children of incarcerated parents (Goshin, Byrne, & Blanchard-Lewis, 2014). When prison nurseries are not available to pregnant mothers, most children born in prisons are placed in foster care (Fearn & Parker, 2004).

The Washington State DOC Residential Parenting Program (RPP) is one illustrative example of a prison nursery. First implemented in 1999 in one prison for women, RPP allows minimum security pregnant women with sentences less than 30 months the ability to keep their infants with them following birth (Pace, Krings, & Zhang, 2021; Wells, 2005). Women are screened for behavioral concerns (e.g., a history of violence) before admission to the program. RPP also hosts a partnership with Early Head Start (EHS), a federally funded early intervention program, which provides weekday services including childcare and education on early childhood development. Other programming may include drug treatment counseling or vocational training.

Once children are two months old, RPP requires engagement in educational or work programs, while babies are supervised by EHS childcare professionals. Unlike other units within the prison, RPP corrections officers do not carry firearms (Wells, 2005). Mothers who participated in RPP return to prison at less than half the rate of the general Washington State prison population, even though the majority of participants were classified by the criminal justice system as high risk to reoffend within three years (Pace et al., 2021). The success of this program provides support for calls for family-centered intervention in incarceration settings (Byrne, 2019).

## PARENTING SKILL-BASED INTERVENTIONS

A strategy more widely used with incarcerated parents is parenting education. Unfortunately, such programs are often developed "in-house," rather than utilizing or adapting established evidence-based parenting interventions (Buston, Parkes, Thomson, Wight, & Fenton, 2012; Eddy et al., 2008). Further, randomized controlled trials (RCTs) of these non-empirically based interventions are sparse, making it difficult to evaluate intervention effects (Buston et al., 2012). More research is needed to improve the literature and implementation of these existing prison-based programs. Fortunately, the robust evidence base for Social Learning parenting interventions, and particularly for PMT, makes these types of interventions a particularly good starting place for adaptation for use during reentry.

### *Parenting Inside Out*

Parenting Inside Out (PIO, 2017) is an adaptation of PMT that was designed specifically for parents involved with the criminal justice system (Eddy et al., 2008; Eddy et al., 2019; Eddy, Kjellstrand, Martinez, & Newton, 2010; Schiffmann et al., 2017). Based on traditional PMT models, PIO is learner centered and outcomes based. The program was created through a long-term collaboration between researchers, instructional designers, preventive interventionists, and clinicians from the Oregon Social Learning Center (OSLC) and administrators and practitioners from the Oregon DOC and the non-profit Pathfinders Network. To begin their work, the development team drew on the lived experiences and knowledge garnered from focus groups and individual interviews conducted with

incarcerated parents, with their loved ones in the community, and with parenting education experts working with incarcerated parents, as well as on the extant research literature on parenting interventions delivered in prison and in community settings. A first draft of the new curriculum was written and then pilot tested, reviewed by key stakeholders, revised, and then pilot tested again. Development occurred in this fashion through multiple iterations across a period of three years within multiple correctional facilities. This initial work was followed by a National Institutes of Health-funded RCT conducted with incarcerated mothers and fathers and their families. The trial began when participants were nine months before release from prison and extended to one year after release.

Since then, PIO has been adapted into multiple versions that meet various programming and population needs, including 90 hours (36 two-and-a-half-hour lessons taught over 12 weeks), 60 hours (30, two-hour lessons that can be taught over 10 or 14 weeks), jail (12 two-hour lessons), and community-based (24 two-hour lessons). The updating of existing versions and the creation of new versions in collaboration with new community partners are ongoing. Through PIO, incarcerated parents create and refine social interaction skills and other parent behaviors that collectively help guide children toward positive life outcomes. The curriculum includes a variety of topics, including effective speaking and listening, parent–child bonding through play and reading, emotion coaching, child development, family meetings, sibling relationships, nonviolent discipline techniques, parenting adolescents, and advocating for children. Within the context of the aforementioned RCT, outcomes for PIO show promise in a variety of areas, including significant and positive impacts during prison on parent adjustment, parent caregiver relationships, and parenting (Eddy, Martinez, & Burraston, 2013). In the year after release from prison, PIO also had a significant impact on reducing not only self-reported criminal behavior but also police arrest (Eddy, Martinez, Burraston, & Newton, 2021).

### *Strength in Families*

The clear importance of ecological considerations for incarcerated parents has demonstrated the need for a more multimodal intervention model to improve parenting outcomes. Through collaboration from the Reentry and Correctional Industries Division of the Washington State DOC, Eddy, Kjellstrand, Goff, McElravy, and House-Higgins (2020) worked to expand the supportive context around PIO to create the Strength in Families (SIF) program, which links PIO with other evidence-based and evidence-informed skills training programs and provides other supports through a case management model (see Fig. 1). While in prison, interested fathers work with a supervised case manager using a Solutions-Based Casework model (Christensen, Todahl, & Barrett, 1999) to focus on strategies to meet basic needs (e.g., housing, transportation) post-incarceration. Fathers are provided opportunities to connect with their family via videoconferencing and participate with them in brief family therapy. An Education and Employment Navigator works with fathers and facilitates educational planning, job skills training, and employment acquisition.

| Parenting Inside Out (PIO) | Strength in Families (SIF) | Future Directions |
|---|---|---|
| - Cognitive behaviorally based curriculum<br>- Adapted from other evidence-based parenting interventions | - Ecologically oriented<br>- Includes case management and employment navigation<br>- Adds job-seeking skills and relationship skills curriculums to PIO | - Explicit adaptations for vulnerable and underserved populations<br>- Improvements for equity and access |

*Fig. 1.* Evolution of Social Learning-Based Parenting Interventions in Carceral Settings.

Simultaneously, SIF participants take part in three skills training courses. The first is Walking the Line (Erlacher, 2010), a group cognitive-behavioral intervention focused on positive romantic and intimate partner relationships. The second is PIO (see description above). The third is Job Seeking Skills, a program developed by the Washington State Employment Security Department and DOC Offender Employment Services, which focuses on building specific vocational skills such as resume building as well as "soft" skills important to gaining and maintaining employment. SIF participants continue to work with case managers after being released as they resettle and gain a new prosocial foothold in their communities. Outcome research on SIF is forthcoming, although participants largely report satisfaction with their increased skills as a part of participation (Metcalfe et al., 2020).

## CONNECTION TO EQUITY ISSUES AND FUTURE DIRECTIONS

Ecological systems models of child development highlight the ways that a range of social systems – small and large – impact family well-being (e.g., Bronfenbrenner, 1979). Considering the impacts of these systems provides a framework for describing the potential additive benefits of case management, job connection, and additional skill-building over and above PMT alone for incarcerated parents, whether adapted or not. In other words, it is not likely to be sufficient to focus *only* on parenting skills when multiple systems impact families. Further, these models highlight the impacts of systemic factors – such as racism, sexism, and transphobia – on family systems. Ideally, interventions can and should target different levels within an evidence-based ecological model developed for a specific population in order to be responsive to each of the relevant and pressing needs of families.

While PIO, SIF, and other interventions currently delivered within the correctional setting address some of the common issues experienced by corrections-involved parents in general, many of these interventions need adaptation and expansion to more effectively address the specific needs of different racial and gender groups. For marginalized racial and ethnic groups in the United States, including but not limited to Black, Latinx, and Native American/Indigenous

parents, content focused on how families deal with and address systemic racism, oppression, racial socialization is likely to be helpful. Development of such interventions will require drawing both from the non-prison parenting literature and literature on experiences of discrimination following reentry for parents of color in order to explicitly incorporate themes relating to key issues such as racial socialization in children and discussion of experiences of racism and discrimination for families of color. Indeed, culturally tailored versions of evidence-based parenting programs allow for both inclusive content and the incorporation of cultural values and communication styles. Creating and rigorously testing the impacts of such programs are critical next steps.

Potential adaptations should be considered related to gender as well. Fathers and mothers may require adaptation to focus on the unique social pressures they face due to their typical gender roles, and these vary by other factors, including culture. That said, establishing appropriate interventions that best serve fathers and mothers requires both an examination of relevant topic areas addressing gender-specific challenges as well as explicit acknowledgment of services and practices that should be offered regardless of gender. On the other hand, some populations, such as transgender and gender nonconforming parents, may face unique circumstances and may benefit from a wide variety of other adaptations. For example, such parents might benefit not only from the inclusive use of pronouns and non-judgmental acknowledgment of diverse family structures and roles but also from explicit discussions of experiences of social marginalization and how to manage this reality in their lives.

In short, future research on tailored programs within prisons should explicitly look at intervention adaptations for specific demographic groups and confirm they are both acceptable and effective. Increased rigorous research is very much needed not only on post-prison experiences for those who participate in prison-based parenting interventions but also on parenting interventions designed for formerly incarcerated populations. Finally, direct advocacy that is grounded in research findings is needed in multiple areas relevant to incarcerated parents and their families, most notably in terms of policies that have been shown to effectively reduce experiences of racism, sexism, and transphobia within prison and post-prison contexts, including housing, employment, health care, education, and day-to-day life. This also includes decarceration and related issues such as over-policing, issues that are often not discussed in the parenting literature related to this population but must be ignored no longer.

While inequities, both inherent to the US prison system and in the context of specific implementation of parenting programming, continue to impact incarcerated parents, there is substantial hope in the emerging parenting literature. However, this work is clearly still in its infancy. The need for cultural adaptations of evidence-based interventions has been an increased topic of research and clinical focus (Haslam & Mejia, 2017) and examinations of key issues, such as the cultural competence of providers and flexible interventions, will help researchers begin to better understand the mechanisms of their interventions on clinical outcomes within specific populations (Smith et al., 2014). Research focused on more recently recognized issues of importance, such as lesbian,

gay, bisexual, transgender, queer, and others (LGBTQ+) parenting and diverse family structures, has begun to expand and in a dramatic fashion (Tasker & Lavender-Stott, 2020).

Similarly, deliberate inclusion of fathers in parenting research – an area that has historically focused mostly on mothers – has allowed for the creation of potentially more powerful interventions for men (DeGarmo & Jones, 2019). However, rigorous outcome studies of such interventions for fathers involved with the criminal justice system are sorely lacking. Finally, the advent of interventions such as SIF – i.e., expanding a prison-adapted and evidence-informed parenting curriculum and adding other interventions addressing topics vital to family functioning, including employment and housing – is a clear acknowledgment of the many structures that impact incarcerated parents. By fully considering the ecological system relevant to a given population of interest, future iterations of these interventions can maximize their power and relevance.

## CONCLUSION

The US criminal justice system poses substantial concerns for issues of racial and gender equity; these should be of particular importance to researchers and clinicians working with families of incarcerated parents. Increased understanding of the pervasiveness of racist, sexist, and transphobic structures within the criminal justice system combined with an evidence-based approach to improving outcomes for families, parents, and children can help promote positive outcomes for marginalized groups. Unfortunately, the current evidence base is deficient in fully informing such work. Efforts are needed by funders, administrators, researchers, and their teams to generate a database that reflects the diversity of parents, children, and families impacted by the criminal justice system.

The pervasiveness of discrimination in the criminal justice system must be addressed in addition to other intervention efforts within prison settings. Additionally, dominant-group designed parenting and family-based interventions are not the solution to racial and gender-based inequities faced by families involved in the criminal justice system, as they often fail to address systemic barriers marginalized groups face in addition to criminal conviction stigma. Instead, we argue that the development and inclusion of tailored, ecologically sensitive evidence-informed programs that address the needs of marginalized groups, and then the rigorous evaluation of these programs, is an important step toward improving outcomes for all incarcerated parents and their children and families.

In the meantime, clinicians continue to serve families affected by the criminal justice system. A focus on cultural humility, screening for experiences of discrimination combined with knowledge about the impacts of these experiences on interventions, and a thorough understanding of the literature on evidence-based parenting interventions is essential for ensuring high-quality care for these vulnerable families.

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# CHAPTER 6

# MAINTAINING FAMILY TIES AND FACILITATING FATHER–CHILD CONTACT DURING JAIL: THE ROLE OF EXTENDED KIN

Britni L. Adams


## ABSTRACT

*This chapter illuminates the central role of kin networks and the routines they construct to maintain family ties and support young fathers in jail. Recent research demonstrates variation in incarcerated fathers' contact with children. There is less focus on variation in contact with extended kin networks and how kin networks contribute to father–child contact during an incarceration period. Forty-three incarcerated young fathers (ages 19–26) in three Southern California jails, 79% of whom self-identified as Latino, were interviewed to explore fathers' descriptions of family contact during jail. Incarcerated young fathers rely on kin networks to coordinate routines for contact during jail, including father–child contact. Father inclusion in family life during jail depends not only on the mother of the child but – perhaps integrally – extended paternal kin. Available paternal kin can facilitate connectedness between children and incarcerated fathers in family contexts of complicated parental circumstances (e.g., parental relationship dissolution). Family members mitigate family challenges to maintain ties despite carceral policies meant to isolate fathers from families and children. A continued focus on kin networks and their role in maintaining family connectedness is crucial to understanding and*


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*reducing the collateral consequences to family members and incarcerated persons following release from jail.*

**Keywords:** Incarcerated fathers; parent–child relationships; social isolation; family support networks; family ties; paternal kin

As the number of children in the United States who will experience at least one instance of paternal incarceration in their lifetime climbs near 10 million children (Western & Pettit, 2010), researchers are becoming more concerned with variation in contact with family members while navigating incarceration contexts (Kirk & Wakefield, 2018). Incarcerated fathers often rely on the mother of the child, or paternal kin in contexts of relationship dissolution, to maintain connections with children. Given that families are often dense networks of people, it is reasonable to suspect that many kin members are involved in bridging contact within a family during an individual's incarceration; though, there is likely variation. Taking a broader perspective of the people involved in, and strategies for, maintaining family ties during parental incarceration is necessary. Inclusion of more family members will contribute to understanding how families remain close during an incarceration period while they navigate security policies meant to isolate incarcerated parents from children and kin.

Visiting and contact policies for jails reflect two goals: 1) keeping incarcerated persons separate from non-incarcerated persons and 2) restricting communication between incarcerated persons and non-incarcerated persons to reduce security breakdowns. These goals, related policies, and procedures separate incarcerated parents from children and other kin, compromising family ties and relationships. Within carceral facilities, parenthood programs are rare, are more likely to be offered to mothers than to fathers, and mothers more often receive programming that involves the child while incarcerated – even children residing in the carceral facility up to a certain age with mothers (Hoffman, Byrd, & Kightlinger, 2010). Therefore, incarcerated parents generally, and especially fathers, are at risk for loss of family ties and contact with children. Diminishing fatherhood programs in jails and prisons that provide parenting education to fathers without meaningful and regular contact with children to implement skills do little to buffer the separation and limited contact opportunities offered (Nurse, 2002). For the contact opportunities that do exist, restrictions – such as time-constrained non-contact visits, high costs of calls from jail or prison to loved ones, and proximity to facilities for visits – make father–child contact difficult from behind bars, and fathers become dependent on non-incarcerated kin (Braman, 2007; Curtis, 2019; Nurse, 2002). Phone costs from prisons have been reduced; however, costs of visits and contact during jail have received less attention and continue to be high. Families may struggle to absorb these costs to maintain ties despite family members potentially being closer to jail locations than to prison locations (Rubenstein, Toman, & Cochran, 2019). Recent shifts to further limit contact and communication include shifting policies to post-card length correspondence (rather than letters) (Sakala, 2013) and expensive video visits (Rabuy & Wagner, 2015).

Challenges (e.g., schedule coordination, transportation, costs) in accessing incarcerated fathers in jail are potentially exacerbated by increased, changing, or complex family diversity through relationship dissolution, repartnering, multi-partner fertility, and gatekeeping. Bringing attention to family diversity allows research and theory about the collateral consequences of incarceration to do the following: First, acknowledge changing contact, coordination, and support for routine family functioning as families adapt to incarceration; second, this approach helps reveal variation in the roles of extended kin; and third, can explain differences in father–child contact during jail incarceration – a common but understudied context (Turney & Conner, 2019). Following other scholars (Tasca, Mulvey, & Rodriguez, 2016), a conceptual focus on the interdependence of family members for operations within the family is applied to reveal patterns of family functioning and the role of kin to maintain family connectedness during paternal incarceration (Arditti, 2012). Specifically, this chapter investigates how extended family networks of kin support young fathers during incarceration as a response to the social conditions and contact policies of jail and family circumstances. In analyzing incarcerated, young fathers' descriptions of their family contact during jail, this chapter elucidates types of facilitation – or processes and routines for contact between non-incarcerated family members and incarcerated fathers – and contributes to our understanding of how families maintain ties during an incarceration period. Notably, this chapter suggests that it is possible that familism within Latinx families might mitigate the isolating contact policies of jail. Three themes important for understanding how families, especially Latinx families, maintain ties and connect father and child during paternal incarceration include: 1) family complexity, 2) extended kin, and 3) familism.

## BACKGROUND

### *Family Complexity – A Barrier or Benefit for Contact During Incarceration*

Family complexity, such as nonmarital childbearing, transborder family members, step- or social parent–child relationships, and mixed-status families may result in additional relationship challenges. Role changes for individual family members who depend on one another to support children and maintain family ties may also occur within families. For example, separated parents may choose to co-parent their shared biological child and a nonbiological social child from a new relationship. If the previous relationship between the separated biological parents was tumultuous or involved drug use or violence, then a parent may be reluctant to establish or continue co-parenting. Another example is when a parent has immigration paperwork, the child is a US citizen, and a grandparent has no documentation. These family circumstances can make connections difficult to maintain due to different statuses; alternatively, more complexity could mean more kin who are invested in children and are willing to bridge struggling and estranged mother–father relationships for father–child contact and participation in family life. Navigating these circumstances can become more challenging during parental incarceration, further compromising family cohesion and connectedness.

Mass incarceration patterns in America show that men aged 18–32 make up most of the incarceration population (Sykes & Pettit, 2014), a time when men are transitioning into adulthood and becoming fathers (Nurse, 2002). "Incarcerated fathers are part of highly complicated family systems" (Tasca, 2018, p. 132), where young fathers experience high rates of multi-partner fertility (Sykes & Pettit, 2014), high rates of fragile families (Carlson & McLanahan, 2010; Wildeman & Western, 2010), social parent–child relationships while cohabiting, and have high rates of family conflict (Tasca et al., 2016; Turney, 2015b). Research shows that the consequences of male incarceration extend to their partners and children, creating inequality in health and household economic stability, for example, and exacerbate preexisting inequalities (Wakefield & Uggen, 2010). Incarceration periods can also shape intrafamilial roles and expectations based on quality of contact and frequency during incarceration between incarcerated and non-incarcerated family members (Cochran, Mears, & Bales, 2017; Curtis, 2019; Nurse, 2002).

Consequences of family circumstances and contact can result in parenting strain (Arditti, Lambert-Schute, & Joest, 2003), changes to co-parenting practices (Arditti, Smock, & Parkman, 2005), heightened child awareness of adult needs and maternal gatekeeping (Nesmith & Ruhland, 2008), and changes in parental relationship quality related to relationship dissolution shortly after incarceration begins – especially for couples living together prior to incarceration (Turney, 2015a) and first time incarceration (Turney & Halpern-Meekin, 2021). Even after separation, children's mothers may take on helping children navigate the child's emotion related to father–child contact during father absence (Nesmith & Ruhland, 2008, 2011). Mother's, however, may not want to assist in the father–child relationship if mothers are needing to distance themselves from violent or drug-using men. Despite these changes, mothers perceive less support from their social and familial networks after paternal incarceration begins, despite needing it (Turney, Schnittker, & Wildeman, 2012), yet again challenging families to overcome jail policies and family circumstances. It is possible that paternal kin may offer to take over roles and routines that enable the father to maintain social ties to their family and children, reflecting the interdependence of additional family members during an incarceration period.

### *Extended Kin as Integral to Family Connections*

Marsiglio and Roy (2012) use the term "kin work" to recognize the interdependence of lives through intergenerational relationships as fathers connect children to their larger kin network. These expansive family networks can include diversity and complexity in family structures as mentioned prior, and diversity in living arrangements being spread across multiple parental households (i.e., divorce or separation) and countries (i.e., transnational family members). Consistent with Arditti's (2012) formulation of a "family process," kin work recognizes "how person-environment interactions occur in multiple ecological domains over time" (p. 183). Therefore, from an ecological perspective, these men and their family members – including kin beyond mothers of children and a nuclear notion of family – navigate incarceration together. Families may create sometimes complex coordination systems that can accommodate changes in homelife and incarceration

environments to shape how family members experience incarceration effects (Turanovic, Rodriguez, & Pratt, 2012) and contact with the incarcerated father, especially for children (Poehlmann et al. 2010). Research increasingly incorporates the interdependence of family members in and outside of the carceral facility while navigating incarcerated family life (Arditti, 2012; Braman, 2007; Comfort, 2002; Roy, 2005; Roy & Dyson, 2005; Tasca et al., 2016). The interdependence of partners in raising children and for relationship cohesion in family life outside of incarceration is often interrupted when incarceration begins and has permeating effects through the incarcerated person's extended family network.

Incarcerated fathers are purposively isolated from the public, including family members, which undermines contact and father participation in a kin system (Curtis, 2019; Marsiglio & Roy 2012). "Kin facilitation" refers to routines the fathers, paternal kin, maternal kin, child mothers, current romantic partners, and sometimes children organize to make father contact with non-incarcerated family possible. These routines highlight kin efforts to create opportunities for father–child contact during jail. The salience of parent–child interaction coupled with father dependence on a non-incarcerated caregiver to facilitate contact can result in father frustrations with – or appreciation for – children's mothers in determining father–child contact during incarceration (Arditti et al., 2005; Roy & Dyson, 2005). The tension between the benefits of father–child contact and facilities restricting contact is exacerbated when child caregivers do not want or are unable to participate in facilitating father–child contact during incarceration. Compared to other adults who can facilitate parent–child contact during incarceration, grandmother–child and mother–child dyads predict higher visitation during prison for maternal and paternal incarceration, respectively (Tasca, 2016). Facilitation processes for parent–child contact among multiple family members remains unknown, especially when additional kin (such as aunts, siblings, cousins) are involved to organize contact and maintain connections during jail.

Though important in the literature, focusing on an individual caregiver or a single kin member in helping during paternal incarceration limits our understanding of family processes: 1) in different contexts (e.g., jail, prison, immigration detention, home, or school) and 2) as a response to structural and social conditions, such as the disproportionate experiences of families of color having to navigate incarceration. For young fathers, and particularly for Latinx fathers with mixed-status families, the kin network is likely more expansive than a traditional nuclear family. An extended kin network willing to assist in maintaining the father–child bond during incarceration may be helpful, or even integral, to stabilize and maintain family ties for young fathers in jail. Given that young, low-income men of color are at higher risk of becoming fathers earlier in life (Thornberry, Smith, & Howard, 1997), and of being incarcerated, it is pertinent to examine how young Latino fathers in jail describe kin preservation of connections between the incarcerated father and non-incarcerated family members, including children.

### *Familism as a Response to Mass Incarceration in the United States*

Research that focuses on Latinx families, and specifically Mexican-origin families, has highlighted familism as an important aspect for understanding family

life. Confusion over the term "familism" has led to both cultural and constructionist definitions. Attitudinal components found to be important for familism include prioritizing family over self, family interconnectedness and support, and familial honor (Steidel & Contreras, 2003). Applying a social constructionist perspective acknowledges diversity in families as the result of "the uneven distribution of constraints and opportunities among families" (Baca Zinn & Wells, 2000, p. 462). Incorporating familism and kinship networks as sources of support, as part of survival strategies, and as a coping system for social and economic disadvantage (Baca Zinn & Wells, 2000) for this majority sample of Latino men frames variation in father–child contact during incarceration. As Latinx families negotiate their social position in America, and their disproportionately high rates of experiencing incarceration, kin facilitation can become an adaptation to paternal incarceration, helping us to understand how individual roles and interpersonal connections support young fathers in jail.

Despite young fathers being at higher risk of experiencing nonmarital parenthood and separating within five years of the child's birth (Cherlin, 2010), race and ethnic differences for a non-incarcerated sample suggest more family stability among Latinx families, as compared to White families (Hummer & Hamilton, 2010). Research within incarceration contexts has also found racial and ethnic differences in familial navigation. Studying an adult sample, Swisher and Waller (2008) speculate that because criminal justice contact has become an expected life event for Latino and African-American fathers, they did not find an association between incarceration and maternal distrust of fathers of color but found strong associations for White mothers and fathers. Therefore, they argue that families of color are better able to adapt to incarceration, making incarceration less detrimental to father–child contact after release. Nurse (2002) found that compared to children in White families during paternal incarceration among a juvenile sample, children in families of color were more likely to see paternal grandparents and live with maternal grandparents and their mother. As suggested, in response to disproportionate contact with the criminal justice system, it is possible that these effective social adaptations among families of color support family connectedness during paternal incarceration, resulting in maintenance of family ties during an incarceration period.

Family visitation is not distributed equally among incarcerated persons (Cochran et al., 2017) and legal status of caregiver or child can further reduce the number of visits (Patler & Branic, 2017). This is particularly relevant for Latino fathers being held in county jails in Southern California, an area with one of the highest Latinx populations (Lopez, 2014), and the largest immigrant population in the United States, the majority being from Mexico (Johnson & Sanchez, 2019; PPIC, 2016, estimates). Increasing rates in Latinx incarceration where they make up 3,395 (per 100,000 residents aged 15–64) of the people in Southern California jails, compared to 1,750 and 430 for White and Black residents, respectively (Kang-Brown, 2018), suggest it is necessary to examine how Latinx families navigate incarceration in the United States. I do want to note that it is important to recognize differences between Latinx families and the structural barriers they face in the United States, such as families from Mexico facing unique political

consequences from US President Trump from 2016 to 2020 when much of this data collection took place. Though the current chapter discusses "Latino" fathers as men from multiple Latin American heritages, most describe Mexican heritage. Given the few research studies about families during a jail incarceration period (for exceptions, see Arditti, 2003; Tripp, 2009; for a review, see Turney & Conner, 2019), and lack of Latinx/Hispanic respondents in incarceration literature (but see Tasca, 2016), this chapter becomes an early exploration of how a majority sample of Latinx families navigate jail in the United States. This chapter investigates how kin networks support young fathers in jail, highlighting variation in kin contact and father–child contact facilitation despite policies that aim to reduce fathers' social connections as a condition of confinement among jail populations.

## METHODS

### *Data Collection and Analyses*

This chapter uses baseline in-depth interviews from the longitudinal Jail and Family Life Study. Baseline interviews (first of two waves) were completed between July 2015 and October 2016 with 43 young (aged 19–26) fathers incarcerated in three county jails in California. I draw on father-reported descriptions of father contact with kin, including current and previous romantic partners, children, maternal and paternal grandparents of children, fathers' siblings, aunts, uncles, and cousins. The variation in routines and contact for the incarcerated father and non-incarcerated family is the basis for the analytical themes for the different types of facilitation.

For purposes of father–child contact, father-reported children include biological, step, and social children. Social children include children of a father's current partner, but that the father does not have a blood or legal relationship. Despite the inherent variation in social father–child relationships, all fathers with social children were involved in the social child's life prior to this incarceration. This is not surprising as social relationships of this kind often represent a current romantic partnership. Fathers could identify as many children as they felt they had a paternal relationship with, but this could mean a biological child they never see, and a social child they have known for six months and lived with prior to the current jail stay. Other fathers describe a family structure that included a social or stepchild and a biological child to the father, while both children are biological to the children's mother. Overall, child relation to the father (biological, step, or social) was not a distinguishing factor in facilitation, perhaps due to the diverse family structures fathers describe.

Fathers were recruited from a variety of classes offered to the men in the jails (e.g., parenting, GED, and money matters). Due to jails functioning as pre-conviction incarceration facilities, many of the fathers did not know how long they would be in jail for, some anticipating years, others stating they could be out any day. At the baseline interview, the average amount of time fathers spent incarcerated for the current stay was approximately 6 months, but up to 35 months in jail. Across this sample of young, incarcerated fathers, 84% described substance use

or abuse with alcohol or illicit drugs. The average reported age of first incarceration was 16.5 years old ($n = 41$, two were missing), with a range of 10– 23 years old. Only two fathers definitively reported this as their first time in jail. Many fathers reported a few times being incarcerated, and some reported experiencing different types of incarceration, including juvenile detention, jail, overnighters in jail, immigration detention, and prison.

The interviews took place in the jails and lasted an average of three hours per interview. These semi-structured, in-depth interviews asked respondents about their contact with the criminal justice system, romantic history, and family and child relationships. Family and child questions focused on relationship qualities, family circumstances, and contact over time. It was not permitted to audio-record the interviews in the jail facilities, resulting in a handwritten note-taking method during the interview. Interviewers went in pairs to the jails, one the lead interviewer and the other a transcriptionist of detailed interview notes following the progression of the interview. Immediately after the interview, interviewers audio-recorded the handwritten interview to ensure documentation of the highest quality data.

Interview transcripts were analyzed for any mention of contact with children and family in stories, family life before jail, and family life while the father has been in jail. Though helpful for providing context about their lives before this jail stay, retrospective information fathers provide is not meant to carry weight for causal relationships but reflects their knowledge and perceptions of their circumstances. The transcriptions were open-coded for themes related to contact with family members and children during jail. Through further analysis, it became apparent that contact was just one aspect of the process for fathers to be included in their extended families and their children's lives. Fathers' descriptions of the people involved in arranging contact during jail motivated the detailed coding and analyses of the three facilitation types for maintaining family ties. Italicized content indicates data taken directly from the interview transcript; italicized content in quotations indicates a direct quote from the father interview.

Contact is defined as any interaction, either directly (e.g., an in-person visit, phone call, or mail correspondence that occurs between father and kin) or indirectly (e.g., information passed through a kin member between father and child). An example of indirect contact would be that a father sends a letter and picture to his four-year-old child who cannot read; an adult must read the letter to the child and can facilitate a response to the father, such as the child drawing a picture and the adult placing it in an envelope, locating the address and addressing the envelope, purchasing and placing a stamp, and mailing it back to the jail. Another example of indirect contact is a sister spending time with her niece and then telling the father about his daughter.

It is worth noting that there are both variation and consistency in policies within and between county jails, despite varying levels of security. For example, for these data, two of the three facilities were maximum security and one was minimum security. Despite this, they shared more in common than not: in-person visitation was non-contact; fathers could send and receive mail, but this was monitored; calls were only outgoing from the jails and were collect, requiring family members to have an account with money to accept calls; calling outside of

the county was more expensive; visiting could only occur on Fridays, Saturdays, and Sundays, with Mondays added by the jails during data collection; each father could receive only one visit per day, requiring family coordination of days so someone does not unnecessarily wait for a visit that cannot happen, and each visit lasted approximately 30 minutes. Moreover, across facilities within this county, only two adults are permitted to visit at one time, and adults are defined as anyone five years old or older. A child (defined as under five years old) can be a third person, but no more than three people of any age can be at a visit. The main visiting difference across the data collection facilities is that at the minimum security facility, in-person visits – though still non-contact – occurred across a long table without a phone or glass, as if in a public grade-school lunchroom. This less physically restricted space could ease interactions, but the lack of contact was still prominent during father-described family visits.

### *Sample Characteristics*

Table 1 lists the sample demographics. Using self-identified race, 79% of the 43 fathers identify as Latino, Hispanic, Mexican, Chicano, or Mexican-American (forwardly referenced as Latino) ($n = 34$), 12% as White ($n = 5$), 7% identified as Mixed ($n = 3$), and 2% as Pacific Islander ($n = 1$). The racial composition of this sample is similar to the racial composition of the region from where it was drawn in Southern California. There is an overrepresentation of Latino men who are incarcerated; however, given the limited data on Latino/Hispanic incarcerated men, this is not considered a limitation but is a unique quality of the data and a contribution to the literature.

Fathers described seeing their family members and children as rarely as a few times in the child's life to everyday before entering jail and up to four times a week while incarcerated, capturing variation across families. The average age for when these young men became fathers is 19.2 years old; notably, over half of these men became a father for the first time during adolescence (aged 15–19; $n = 26$). The average number of children fathers described is 1.8, but the modal number of children fathers report is one ($n = 22$). Twenty-one fathers reported multiple children, and seven of these fathers described different facilitation types across children. All of the seven fathers described multiple mothers of children in their family structure.

I examine variation in kin facilitation of maintaining family ties through father-described contact with the extended kin network of family members. These young fathers draw on their familial resources to navigate current and terminated relationships in diverse circumstances. About 91% of men in this sample are fathers of a biological child and were not married to the mother at the child's birth. This likely contributes to the complexity of family roles and coordinating opportunities for contact between estranged maternal kin and non-incarcerated paternal kin to maintain paternal family ties with the child, the incarcerated father, and between father and child during a period of jail.

I open-coded the 43 transcripts using sensitizing concepts of contact with family during incarceration and contact with children during incarceration.

***Table 1.*** Demographics of Incarcerated Young Fathers ($N = 43$).

| | *N* | % |
|---|---|---|
| Fathers' age (years) | | |
| 19 | 1 | 2 |
| 20 | 3 | 7 |
| 21 | 8 | 19 |
| 22 | 7 | 16 |
| 23 | 7 | 16 |
| 24 | 3 | 7 |
| 25 | 7 | 16 |
| 26 | 7 | 16 |
| Self-reported race/ethnicity[a] | | |
| Latino | 34 | 79 |
| White | 5 | 12 |
| Mixed | 3 | 7 |
| Pacific Islander | 1 | 2 |
| Education | | |
| Less than high school | 21 | 49 |
| High school/GED/or equivalent | 17 | 40 |
| Some college/trade school | 5 | 12 |
| Not convicted for current case | 27 | 63 |
| Number of kids | | |
| Mean; range | 1.8; 1–6 | |
| Average age of father when he became a father | 19.4 | |
| Children's age: mean; range | 3.3 years old[b]; 3 weeks to 8 years old[c] | |
| Relationship status with the child's mother during current jail stay | | |
| Together (i.e., married, engaged, cohabiting before jail, in a relationship) | 15 | 35 |
| Not together with at least one child's mother (i.e., divorced, separated, broken up) | 33 | 77 |
| Not in contact with the father (specifically mentioned by the father) | 5 | 12 |
| Restraining order (from the child's mother or the government) | 4 | 9 |

[a]Self-reported race/ethnicity: Latino includes answers of Hispanic, Latino, Mexican, Mexican-American. Relationship status: numbers do not add to 100% because men with more than one mother of child can fall into more than one category based on the relationship with each mother of child. The modal number of children is 1, and the average is 1.8 children per father.

[b]This is the average age of children, not including the anomalous family child ages.

[c]This is the age range for biological children. Excluding an anomalous father's family structure, the height of the age range becomes 11 years old including step and social children.

The interview guide included specific questions about all contact types (mail, visits, and calls) with family members, children's mothers, and children during the current jail stay. This coding was used to understand variation in contact between fathers and children during jail. In coding for contact between fathers and children, topics of the people and the systems for achieving father–child contact was prominent. These topics became the basis for subsequent coding and the following themes: who is involved in facilitating father–child contact; the role of kin

in facilitating father–child contact; the ways that kin facilitation supports young fathers; and the inclusion of young, incarcerated fathers in non-incarcerated family life.

## RESULTS

### *Kin Facilitation to Maintain Family Ties During Jail*

Strategies for maintaining family ties during incarceration are made up of people that include current and previous partners, members of the family of origin – especially for the young men who still lived at home – and their children. Kin facilitation, again, refers to how families create (or do not) opportunities for young fathers to remain included in family life through communication, visits, and being updated about non-incarcerated family life. Tables 2 and 3 summarize the different ways kin may be involved to support young, incarcerated fathers, including the relationship to the child's mother and her role in kin facilitation. Notably, for a majority of the father's ($n = 39$, both cooperation and coordination groups described in Table 4), the kin network is active in maintaining communication and including the father in family life. Paternal kin are therefore integral for supporting fathers within family life and specifically for father–child contact during incarceration among this majority Latino sample in jail.

To elucidate kin facilitation and variation in father–child contact during the current jail stay, results are presented conceptually (Table 4), followed by example cases (Table 5) depicting contact with non-incarcerated kin, the role and relationship with the mother of the child, contact with the child, and fathers' perceptions

***Table 2.*** Ways That Paternal Kin Support Young Fathers in Jail for Kin Facilitation.

| Description | Example |
|---|---|
| Kin make efforts to communicate with the father during jail | The father's mother visits him |
| Kin communicate with the child's mother to bridge father–child contact | The father's mother calls the child's mother to pick up the child, and the father calls at these times to talk to the child |
| Kin support the mother of the child by providing childcare, housing, or other items for children | The father's mother watches the child while the mother is at work |
| Kin share information with the father from the child or mother of the child, about the child | The father's mother will tell the father how big the child is growing |
| Kin have custody of the child or live with the child | The child, or child and child's mother, lives with the father's family of origin |

*Notes*: These categories are not mutually exclusive, except if a child lives with paternal kin or they have custody, then providing for the child is assumed and not separately coded.
Extended kin includes all extended paternal family, including nonbiological adult children (one anomalous case), but for most families, this was most often female paternal kin, notably fathers' mothers.

***Table 3.*** Role of the Child's Mother in Kin Facilitation.

| Description | Example |
|---|---|
| The child's mother is actively involved in connecting father and child: | |
| Child's mother is in a relationship with the father | Child's mother brings child(ren) to visit the father |
| Child's mother is not in a relationship with the father | Child's mother allocates money for the father to call child |
| When the child's mother is not in a romantic relationship with the father: | |
| Child's mother is not involved in the incarceration; allows paternal kin to bridge father-child contact | Child's mother allows father's mother to pick up child so father can call his mom to speak with his child |
| Child's mother accepts letters and/or calls but does not take child to visit the father | Child's mother allows contact initiated by the father, but does not facilitate or initiate contact from her or the child |
| Child's mother does not permit paternal kin or the father to be in the child's life | Child's mother has cut off contact to and from paternal kin and the father |
| Child's mother is not in child's life | Child's mother has lost custody of the child and does not have contact with the child |

*Notes*: These categories are mutually exclusive.
Extended kin include all extended paternal family, including nonbiological adult children (one anomalous case), but for most families, this was most often female paternal kin, notably fathers' mothers.

of family ties. Table 4 summarizes differences between types of kin facilitation for support of the incarcerated father ($n = 50$ because seven fathers reported two types of facilitation across children). Of the non-Latino fathers in the sample ($n = 9$, but $n = 10$ here because a Mixed father-described complex coordination for one child and no access for the other and are counted separately), two (both White) described kin and maternal cooperation, five (White, $n = 3$; Mixed, $n = 1$; Pacific Islander, $n = 1$) described complex kin coordination, and three (all Mixed) described unavailable kin access. This means that 11% of the kin and maternal cooperation group self-identified as non-Latino White; 24% of the complex kin coordination group self-identified as non-Latino; and 27% of the unavailable kin access group self-identified as Mixed. This pattern reflects a higher proportion of non-Latino fathers describing groups with more difficult or no access to children. However, this pattern should be interpreted with caution as there is such a small amount of non-Latino fathers in the sample.

Fathers were acutely aware of their families' routines for contact or lack of contact, who was involved in those routines, and the conversations within their interactions with kin members. Conceptually, the father's available kin members and the role of the child's mother or caregiver outside of confinement distinguish between specific facilitation categories. Interaction represents family contact and father–child contact for incorporating fathers in family life through informational exchanges and shared moments. This reflects how families integrate a father in family life given the ways jail reshapes family communication and interdependence.

***Table 4.*** Summary of Differences Between Types of Kin Facilitation for Young, Incarcerated Fathers.

| | Categories of Kin Facilitation | | |
|---|---|---|---|
| Dimension | Kin and Maternal Cooperation ($n = 18$) | Complex Kin Coordination (– = 21) | Unavailable Kin Access ($n = 11$) |
| Pre-incarceration context | The father typically has a job or provides some financial contributions, is living with kin and/or the child, is involved in care of the child, and the family works together for the child to see both sides of the family | The father notes a downward spiral in his life, including escalating drug use or selling drugs, added institutional interactions (w/CPS or family court, restraining orders, birth complications (preemie or postpartum depression), or maternal incarceration), creating inconsistent child contact | The father has been in jail numerous times, has severe drug abuse issues, and housing instability; kin may be unwilling to help, are estranged, or inaccessible (death or cross-borders), so he has a depleted kin network and was perhaps cut off from direct child contact prior to this jail stay |
| Key elements | The family – extended or child's caregiver but often both – creates regular opportunities for the father to be involved in family life and with his child | The family – extended or child's caregiver but often both – negotiate a system to overcome institutional and relational challenges that otherwise impede father–child contact | The family is unable to provide opportunities, or the child(ren)'s caregiver is unwilling to provide opportunities, for the father to participate in parenting |
| Kin network structure | The father's kin network is expansive (minimum three people), consistent, and a cohesive whole<br>Extended kin actively participate in both the child's life and the father's incarceration<br>The father (usually) has contact with the mother of his child | Kin network members try to be involved in father's child's life with some success<br>The father has consistent but limited kin help (often only a family member or two)<br>The father may have some contact with the mother of his child but could be difficult | The father has minimal or tenuous kin connections because extended family is hard to reach or they have lost contact<br>Kin are not involved with the father's incarceration or his child<br>The father is not in contact with the mother of his children |
| Contact | Contact is often regular and expected on certain days<br>Multiple methods of communication are utilized (phone, mail, visit)<br>Contact is with kin and child(ren) | There has been a change in contact from more to less or less to more<br>Change can be from before to during this stay, or within this jail stay, or<br>There was a change in logistics for how contact occurs, or the method<br>Amount of contact varies | Contact is unpredictable in frequency and method, though mostly rare, or has not occurred during jail<br>Father has made attempts for contact, but they have not been reciprocated |

(*Continued*)

***Table 4.*** (*Continued*)

| | Categories of Kin Facilitation | | |
|---|---|---|---|
| Dimension | Kin and Maternal Cooperation ($n = 18$) | Complex Kin Coordination (– = 21) | Unavailable Kin Access ($n = 11$) |
| Interactions | There is a reciprocal and frequent flow of information between kin and the incarcerated father regarding the child's well-being, behaviors, struggles, updates, and the father has an active role in parenting as a result | Communication between father and kin is one directional, to or from the father, but not often both, and is made complicated by institutional or relational barriers regarding child caregivers or incarceration policies, resulting in a passive parenting role | Information flows one way to the father from a kin member, or there is no sharing of information, resulting in a lack of inclusion in family life |
| Consequences | Fathers are embedded in family life, and their role in the family is maintained during incarceration | Fathers are unsure about their role as a parent, but are still involved in family life with extended kin and child | Fathers are disconnected from family life without kin facilitation and are excluded from a parenting role |

Analytically, these dimensions are useful in understanding variations in fathers' descriptions of contact and their role in family life during incarceration. Detailed examples representing facilitation types for comparison (Table 5) were chosen based on their representation of the characteristics of the non-incarcerated kin and maternal roles in paternal incarceration for the maintenance of family ties and including fathers in non-incarcerated family life. All names are pseudonyms.

### *Kin and Maternal Cooperation*

Manny (24, Latino) and his partner married during this jail stay shortly after his son was born. His wife and children moved in with his mother for help with childcare and to save money. Manny's son is so young (10 months old) it makes it difficult to communicate directly; however, Manny sees his son through the glass at weekly non-contact in-person visits, and his son hears his voice through the connecting phone when his wife and mother bring him. When his six-year-old stepdaughter visits on Fridays with his wife, Manny can speak and interact with her through the phone. Despite non-contact in-person visits, his daughter is developmentally able to take advantage of direct communication with Manny through a phone, like when she requested to start softball. Manny calls his wife at least three times a week at the cost of at least $25 a week that his wife allocates for accepting his calls. Manny's mother provides childcare while his wife is at work, but they attend visits together once a weekend when the daughter is at her biological dad's house, restricted by the three visitor-maximum policies.

> *And on Sundays his … [wife] and [son] and his mom come to visit … we asked what they talked about. And he says "you know how girls are. They like to gossip." And sort of talks sometimes how they just kind of talk to each other for a little bit … He says the thirty minutes is not really enough time.*

This excerpt from the transcript shows how Manny's family comes together in visits to include Manny in what would otherwise be time spent together outside of a carceral facility, and how father–child contact becomes a family moment through facilitation from Manny's wife and his mother. Manny describes a cooperative family network that includes a nonresidential biological father of his stepdaughter and himself before and during jail. Manny's family makes contact with his children, wife, and family of origin possible. Active involvement from Manny's wife and access to paternal kin who reside together facilitate father–child contact during jail and preserve Manny's roles in the family. Manny says about writing to his wife,

> *And that like if they have questions for him he would sometimes just rather answer them on the phone than writing. And he said that at first … the visits at first were really sad and really difficult, but now he is "so happy to see them."*

Manny goes on to say, *"besides being in here I'm a good dad,"* when asked what makes a good dad. Manny reflects on his connections with family during jail, including with his children, and highlights how embedded he is in their lives despite being in jail.

***Table 5.*** Comparison Across Kin Facilitation Types During Jail.

| | Kin and Maternal Cooperation ($n = 18$) | Complex Kin Coordination ($n = 21$) | Unavailable Kin Access ($n = 11$) |
|---|---|---|---|
| | Manny – son and stepdaughter | Micklo – son | Tiny – son |
| Pre-incarceration context | was working with cars and in an apartment w/wife and kids<br>would party, drink, and not spend enough time at home but was not in trouble<br>This his second time in jail<br>in for 15 months at interview | selling drugs and informal glassmaking but could not pay bills<br>In drug rehab in Mexico, conflict w/child's maternal family, his mom bridges for child contact<br>In jail about three times<br>In almost three months at interview | selling drugs and running escort service; lived w/girls from work<br>Mother died in childhood and father disowned him at 16<br>No direct contact w/son, but paid $<br>In jail >25 times<br>In ~2 months at interview |
| Kin network | Mom<br>Sister<br>Cousin<br>Children's mom/wife<br>Stepdaughter's biological dad | Mom<br>Dad (since jail began)<br>Sister<br>Cousins<br>Child's maternal family allows access to paternal side through his mom | His legal guardian from adolescence, but she is not permitted access to his son, and Tiny rarely contacts her<br>His twin brother who uses drugs and Tiny must help him |
| Contact | Mail (letters/pictures) (2×/week)<br>Phone calls (3×/week)<br>Visits (3×/weekend)<br>Wife is at all court dates<br>Wife is paying for a lawyer | Calls family almost every day, usually his sister<br>Son's mom, with son, visited once before the facility transfer<br>Mail at times<br>Extended kin have visited sporadically | None with son<br>Does not contact family or guardian during jail |
| Interactions | Mom provides updates, mostly at visits<br>Wife provides updates through all formats of contact and mails pictures<br>Gives childrearing advice in letters to wife<br>Offers childrearing advice during calls and visits with his wife<br>Manny talks directly to children at visits and to his stepdaughter on the phone | Mom provides childcare three days/week and updates<br>Mom provides direct phone access to his son<br>Sister mailed pictures of the son to jail<br>Micklo sends mail to his son through his family<br>Dad visits and helps with case because he was at the same facility once | No informational exchanges with or about the child |

| | | | |
|---|---|---|---|
| Consequences | Fathers are embedded in family life, and their role in the family is maintained during incarceration | Fathers are unsure about their role as a parent but are still involved in family life with extended kin and child | Fathers are disconnected from family life without kin facilitation and are excluded from a parenting role |

*Note*: $n = 50$ across groups because 7 fathers described different types of facilitation for different children who have different mother (where fathers have multiple children with different partners).

For Adrian (Latino, 21), the mother of his 18-month-old son has a sister with a child and they watch each other's children while they go to work or school, but the maternal grandma helps with his son too; and he says, *"family helps a lot."* In discussing his son, Adrian

> *[…] said well he just barely learned how to talk. He learned how to walk and [Adrian] says well I've been in for a while so he knows "just what she tells me" … [Adrian] says "he's fussy because of his teeth" …*

He says his son's mother brings his son to visit at least once a month, sends letters, and puts money on the phone for him to call. *He says about his son "he knows me." He says he'll bang on the glass and says "papa, papa" …* Adrian states that he only knows what his son's mother tells him, but has an understanding of his son's development, and despite him being in jail for a fight, he is sober in jail and it has brought him and his wife closer. Though Adrian's mom and wife facilitate father–child contact separately, they all cooperate to visit Adrian so that he can periodically see his son since he has been in jail. Adrian's mom also passes on additional information to Adrian about his wife and son. Though different in how kin include incarcerated fathers in family life, Manny and Adrian represent cooperative kin facilitation as they highlight their fatherhood with interactions with their children, mothers of children, and paternal grandmothers of their children.

The expected schedule and consistency in contact that Manny and Adrian receive through non-incarcerated paternal and maternal kin facilitation contributes to maintaining family ties among the extended family network and themselves during jail. Every father who experiences this type of kin facilitation had contact with his child(ren) during the current stay, reflecting how extended kin and child mothers work together to include incarcerated fathers in their young children's lives.

Fathers describing kin and maternal cooperation ($n = 18$) are given access to their children through the mother of their child(ren), who they are typically married to or still in a relationship with, and who organizes paternal kin access to children. Though different kin structures, most children's mothers actively participated in connecting father and child through contact, but a few mothers who were not in a relationship with the father allowed access where paternal kin facilitated father–child contact while the child was in their care. Children's mothers actively supported father and children or include fathers (e.g., brings children to visits, exchanges letters with the father), embedding fathers in family life. These fathers are part of a connected and adapted family system that facilitates accessibility to, and stability in, family ties for children and fathers during jail.

### *Complex Kin Coordination*

Micklo (22, Latino) experienced a change in contact during his time in jail when he was moved from a maximum-security facility to a minimum-security facility where fathers sit across from their visitors at a table, though contact is still not permitted. Micklo says he prefers visits with the glass because his son's mother would bring his son to visit, but other fathers preferred the lack of glass. Micklo does not want his son to visit in the new minimum-security facility because he

will want to hug his almost two-year-old son and his son will want to jump across the table – both would lose Micklo his visiting privileges altogether. Aside from this structural change, there were also interpersonal adjustments within Micklo's kin that complicated his contact with his child, reducing potential opportunities to be included in family life. Before Micklo was transferred, he mailed a letter to his son's mother who then came to visit him at the previous facility with their son and Micklo's sister. However, during this visit, his son's mother yelled at him to change and stop being incarcerated and is no longer allowed to visit him. His son's mother also no longer wants Micklo to mail items for their son to where she lives, as they are not in a relationship.

In response to this change and no longer receiving visits from his son, Micklo sends mail for his son to his own mother's house where his parents and sister live. Micklo's mom provides childcare for his son three days a week. This childcare setup began before this stay in jail, facilitating father–child contact before and currently during jail. Micklo calls his family members – mom, dad, sister, and cousins – almost every day, receiving regular updates about his son. When his mom answers and is with his son, Micklo will talk to him so he can hear his voice, even though his son is too young to have a conversation. Micklo described his and his sister's relationship as very close and that his sister mailed photos of his son when he asked. Micklo's mother and sister are pivotal for facilitating contact with his son both in and out of jail, representative of families in this category as kin and child mothers coordinate intricate, changing, or tenuous circumstances, including a child's mother changing the access she allows or participates in for father–child contact.

Micklo's contact with his son is possible because his son's mother gives access to Micklo's side of the family, though it requires extra coordination to accommodate Micklo in jail.

> *[Micklo] says when he got – when he was back at home he could only get his son if his mom was going to be around … He said they have a regular schedule now, Tuesdays, Thursdays, and Saturdays.*

Micklo's mom is responsible for transportation for his son and for communicating with his son's mother because Micklo does not get along with his son's maternal family. With the difficulties of Micklo and his son's maternal family, and the change in contact with his son during incarceration, Micklo and his son experience irregular contact from kin facilitation that works to coordinate around non-incarcerated family members' own employment and relationships and incarceration. The complex facilitation from extended kin who adapt to changing incarceration circumstances results in limitations or uncertainty for young, incarcerated fathers, despite the herculean efforts of these family members.

Micklo's son's mother allows access for the child and father to interact, but she does not have to be solely responsible for the organization, time, and cost of supporting a father–child relationship.

> *[Micklo] says his mom and aunt and sister all put money in his books. So he gets about $100 a week. They keep it at about $100 a week. Asking how his relationship will be with his son's mom. He says, "for now, I'ma keep going through my mom," …*

This facilitation process is complex and dependent on his mom's role to bridge father–child contact for the incarcerated father to participate in his child's life. The inclusion of his mother for his contact with his child in and out of jail overcomes some obstacles to fatherhood and the isolation of jail policies, but being gone and only seeing his son with his mom present results in him questioning his future relationship with his son.

> *He says, "hopefully he knows who I am." He says he came back from rehab and his son looked at him weird and kind of was distant from him for a little bit. But then, after he stayed a couple of days and they started to get along and things were better.*

After the changes during this incarceration stay, Micklo explains that he does not know how things will be with his connection to his son when he is released.

Hank (Latino, 23) has a three-year-old daughter and six-month-old son. He had been working in construction while his cousin would watch his kids at the shared residence of his mom, his children, his children's mother, and himself after he returned from being deported to Mexico. He explains

> *[…] he got busted for the first time forty days after his daughter was born. And this time it was fifteen days after his son was born. So he understands that he- that it's "getting old" for [children's mother],*

referring to jail. She is not speaking to him unless it is about their children; she has ended the relationship and now lives with her family with their kids. Hank tells us that his kids spend time with his mom during the week, and his cousin still provides childcare when others are at work, connecting maternal and paternal kin. Hank's mom and his cousin coordinate his contact with his children, including when his cousin brought them to visit twice in the three months he has been in jail for this stay. The complexity of this facilitation type characterizes unpredictable contact with children and ambiguous notions about their role as a father. In response to what makes a good father, Hank explains he is in the parenting class so he can improve as a father but then immediately follows with *someone who spends time with the kids. So "I'm not being a good father"*.

Twenty-one fathers describe complex coordination systems for facilitation of father-child contact during jail. This type of kin facilitation includes family members having to navigate additional relational circumstances where kin act as a mediating facilitator who communicate with the father and the mother of the child since they do not speak to each other, as Micklo's story represents. The specifics of circumstances within this type vary, but the similarity is that granted child access and paternal kin are integral to facilitating father–child contact given the complications. Consequently, some kin contact and father–child contact are inconsistent or infrequent. Granting child access to paternal kin – and kin participating in the ways permitted by children's mothers – allows paternal kin to be a bridge between the child's maternal side (or institution, such as CPS or family court) and the incarcerated father. After kin arbitrate their own contact with children, this time is used as an opportunity to connect father and child. It is possible that the child's mother participates in access and facilitation, but this is more common for current romantic relationships. In these current romantic

partnerships in this group, the child's mother is usually limited due to restraining orders, her own incarceration, or probation. This group demonstrates the changing nature of kin work and contact when accommodating incarceration contact policies and complex family circumstances, resulting in a range of contact for maintaining family ties.

### *Unavailable Kin Access*

Tiny (26, Mixed – Latino and White) has a difficult relationship with the mother of his eight-year-old son and is excluded from his son's everyday life. Tiny used to see his son on occasion and talk to him on the phone, but he says he was forced to give up his rights. Tiny says his son's mother has a new boyfriend and does not permit visits between Tiny and his son when he is not in jail. When non-incarcerated, his son's mother used to give him updates about his son, but Tiny says the only time his son's mother contacts him recently, which is entirely through social media, is for informal child support payments, which he gives her. When Tiny is in jail, he accepts that he will not be communicating with his son or his son's mother without access to the internet, but she might know he is in jail if she looked it up on the county jail's website.

> *He says that they tried to work [things] out for about two years … two or three years after he picked up the domestic charge. But he says it wasn't working because of his lifestyle.*

Tiny and his previous partner's issues reflect the tumultuous nature of young relationships as well as more serious conflict regarding violence and, for many, drug use.

Tiny's mother passed away when he was a small child and his father disowned him during adolescence; however, an older neighborhood friend became his legal guardian at that time. Tiny said he does not rely on his guardian and rarely contacts her for help because she has her own life to worry about; plus, his son's mother will not interact with, nor allow child contact with Tiny's guardian. Like Tiny, without contact and the unavailability of kin members, fathers in this category do not experience facilitation and describe a disconnect from family life. Fathers in other groups maintain contact with their children through their kin, but fathers in this group are unable to utilize these interpersonal family relationships for facilitation. For Tiny, denied access from his son's mother and his sparse kin network result in a lack of father–child contact, confirming Tiny's exclusion from his son's life and broader family life.

The fathers who do not have anyone facilitating father–child contact during jail may seek contact but do not necessarily receive it or are extremely restricted in their interactions. These fathers are the most likely to describe a denial of access to children for incarcerated fathers and paternal kin. They have different circumstances regarding their minimal contact, but most of them did not have regular contact before or during this jail stay; or, they had contact prior to the jail stay but have not during jail. Fernando (Latino, 25) says his five-year-old daughter's mother is not speaking to him and has visited other jail stays, but only once this time, which is at least his fourth time incarcerated. *"'I've been asking for pictures,'*

*about – pictures of [daughter], and that [daughter's mother] won't send pictures of [daughter]."* Asking about other familial adults in his daughter's life,

> *[…] He says family, and then he says [daughter's mother]'s family. And then he says her sisters, her cousins, and that his family gets to see [daughter] as well. Not as often, but they do get to see her. So he says that they – [daughter's mother] brought [daughter] to his family's house for Christmas, and they gave her presents and were able to see her.*

Fernando describes how even though his family may see his daughter on rare occasions, that they are not granted independent access or care over the child without the child's mother being present, preventing kin facilitation for him to be in contact with his daughter.

Prior to jail, these fathers often experienced rare contact with children in the following ways: showing up unannounced and trying to see children (perhaps violating a restraining order); deciding it was too hard to work with the mother of the child for contact and consequently rarely seeking contact; or the father was homeless and using drugs, making contact limited and dependent on the father's circumstances. Some fathers are formally excluded from contact with children through a loss of custody, often times related to drug use on one or both parents' part. For example, Myrtle (Latino, 21) was doing drugs, and his son's mother has a restraining order against him giving her full custody.

The fathers experiencing this lack of facilitation were cut off from kin and the child's mother, meaning there was no access for father–child contact from paternal kin; or access was heavily restricted or nonexistent for fathers directly, but not necessarily for paternal kin, as Fernando described. Fathers describing being cut off from their own family members, or the child's mother cutting him and paternal kin off from contact, was characteristic of this group. Paul Padilla's (Mixed – Black and Indian, 22) mom was in prison most of his young life and was homeless, placing him in and out of foster care homes. His mom was homeless at the time of his interview and not available for facilitation. Flako's (Mixed – Mexican and White, 22) father was killed when he was young, and his stepfather abused him, his siblings, and his mom. Flako had limited contact with his own mom and siblings, but his siblings are minors which occupied his mom's time. The two mothers of his two children had cut him and his family off from contact, or his family was just not involved with his children. As the most vulnerable group of young fathers, they describe the most instability prior to incarceration due to childhood trauma, poverty, death, or unresolved paternal family conflicts. This often resulted in experiencing the structural exclusion and isolation from contact and visitation policies while incarcerated without reprieve from existing familial ties and contact.

### *A Note on Group Differences*

Latino fathers in the maternal and kin cooperation and complex kin coordination groups notably experience father–child contact from the help of a larger kin network that can include paternal and maternal grandparents, sisters, and sometimes aunts and cousins who are granted access from the child's caregiver to help maintain family life. White and Mixed fathers, though small groups, relied more on children's mothers for active participation in access and coordinating contact;

and, without this active maternal participation, White and Mixed fathers experienced less or no contact with children. For example, Michael (White, 21) and Derek (White, 23) describe limited contact with their kin and only describe the children's mothers as facilitating father–child contact. Without the active participation of the children's mothers, Michael and Derek would likely not have any father–child contact during this jail stay. Mixed fathers did not describe maternal and kin cooperation with their families and children and described the most instability in their own childhood and coming-of-age years. These comparisons should be cautiously noted because of the small group sizes, but it is important to note pattern differences in network access and kin facilitation to reveal consequences of incarceration to preexisting structural and social inequalities (Wakefield & Uggen, 2010). With a majority sample of Latino fathers, variation in their kin facilitation experiences can be examined, and cautiously, across groups. Latino fathers describe cooperation and coordination among a larger kin network compared to White and Mixed fathers who describe nuclear family members as providing help to maintain family ties.

## DISCUSSION

Non-incarcerated family members support young, incarcerated fathers in a variety of ways to maintain family ties. For many families, this includes children's caregivers (most often mothers) and paternal kin working together to include fathers in family life and with children. For more complicated circumstances, paternal kin become crucial actors in providing childcare and coordinating opportunities for children and fathers to interact, relieving child mothers and being a neutral person to facilitate father–child contact during an incarceration period. Though, for some fathers, they are estranged from their own kin, the mother of their child, and paternal kin are estranged from children, resulting in an overall absence of facilitation. Examining the ways kin support incarcerated fathers and the types of facilitation that result is significant because: 1) it highlights the many people and ways that family members are involved in paternal incarceration to support family life; 2), it incorporates the interdependence of family members as they adapt to incarceration confinement and contact policies; and 3) it helps explain variation in father–child contact. The limits and costs of communication during incarceration require changes in family functioning to overcome the structural isolation of incarceration (Curtis, 2019). Incarceration facility contact policies and dependence on non-incarcerated kin for access to children result in a loss of autonomy for fathers during incarceration (Arditti et al., 2005). An expanded perspective of kin illuminates how families adapt these circumstances to include fathers in family life during incarceration to maintain family ties. Kin networks are integral to maintaining family ties during paternal incarceration.

Mothers of children who are connected to the incarcerated father and facilitate father–child contact provide the necessary resources and shape their lives around the correctional facility, consistent with secondary prisonization literature in accessing fathers in prisons (Comfort, 2003). These mothers actively and directly

encourage father–child contact with the help of local paternal kin who can provide free childcare or housing to incorporate fathers into family life during jail. Fathers who describe complex kin coordination describe children's mothers allowing father–child contact through granting access to paternal kin who take over facilitating visits and communication when children are in their care. Fathers who do not have contact with children, experiencing unavailable kin access, highlight a lack of kin contact or note discouragement or denial of father–child contact from the children's mothers. Notably, most families (and a larger proportion of Latino families compared to non-Latino families) overcome incarceration-related isolation through their ability to facilitate regular contact with active maternal participation or through granted access as passive maternal involvement creating an adaptive and bridging family system for incarcerated fathers.

Variation in contact between fathers and family during incarceration suggests that interpersonal relationships and family networks function differently (Tasca, 2016, 2018). This results in different ways that children's mothers and other kin connect with fathers during incarceration and assist with father–child contact. Conceptualizing potential for father–child contact during incarceration as the result of kin coordination highlights the necessary role of others – not just primary caregivers – who navigate incarceration policies to include men in family life. Some families experience domestic violence, maltreatment, and heavy substance abuse which complicate these patterns and explain some variation in contact (Arditti, 2012). However, the quicksand nature of the criminal justice system, and churning nature of jail specifically (Comfort, 2016), engrains many of these men in the system at a young age. Early entrance into incarceration results in increasing social and family isolation over time (Cochran et al., 2017), beginning early in life and sustaining disadvantage throughout adulthood. Incarcerating young fathers when they are transitioning to adulthood compromises parenthood and romantic relationship stability and exploits familial adaptability, especially among Latinx families who experience other sources of disadvantage in the United States. Family members who coordinate childcare, provide resources, attend visits, exchange information across kin members, and facilitate contact challenge the exclusionary policies of mass incarceration in the United States to maintain familial and social ties. Consequently, kin facilitation becomes a salient and defining aspect of young fatherhood as a result of incarceration and institutional policies restricting visitation and communication between incarcerated fathers and family members.

Latino fathers may be the most socioeconomically disadvantaged (Hummer & Hamilton, 2010); however, their extended kin networks are protective for maintaining family ties while a loved one is incarcerated through facilitating father–child contact, even with limited maternal involvement if the child's mother does not want to help connect father and child herself. Familism – the value Mexican families place on family unity and solidarity and a socially constructed response to disadvantage in the United States (Baca Zinn & Wells, 2000) – may contribute to the cooperation in kin facilitation that included father–child contact, especially as the majority of Latino fathers described heritage from Mexico. Diversity in

Latin family structures from other countries, and responses to incarceration, may vary from those found here because immigrants from different Latin and South American countries experience different privileges and disadvantages (Baca Zinn & Wells, 2000). Additionally, jails and immigration detention facilities, compared to prisons, are not structured to provide long-term services that maintain family ties, in part due to the expected transient nature of jail terms and detention periods. The heterogeneous population in jail – people with pre- and post-conviction statuses, sentences to be completed in the jail, and immigration detainees – may also contribute to the ways families can facilitate contact. The use of county jails for immigration detention in California where there is a large Latinx population of immigrants and native-born citizens further complicates how Latinx families experience mass incarceration in the United States and experience disadvantages.

Given racial differences found in the negative effects of incarceration (Swisher & Waller, 2008), it is possible that maintaining social ties for families of color is hardest for the most vulnerable families with the most preexisting disadvantage. However, for White families, the threshold of disadvantage for maintaining family ties may be lower because incarceration is not an expected life event, and extended kin are often not involved in children's day-to-day routines. Regardless, isolating fathers by institutionalizing roadblocks to contact for families who seek contact with incarcerated fathers likely does more harm to family networks and children by undermining how contact during incarceration can improve family stability (Mowen & Visher, 2016) and reduce the permeation of collateral consequences.

For young fathers (especially when fatherhood began in adolescence), involvement with children is likely part of an ongoing socialization process for learning to be a good father, while not being ready to settle down into adult life (Marsiglio & Roy, 2012). Once incarcerated, coordination-of-care networks become necessary for fathers to maintain a place in their children's lives and implement their parenting socialization through father–child contact. Paternal kin members help fathers navigate fragile or volatile communication between fathers and previous and current partners while providing care for children when available. Paternal kin were often actively involved in facilitating fathers' inclusion by overseeing the coordination for father–child contact, in and out of incarceration. More research is needed to understand parenting socialization that is interrupted by incarceration and dependent on non-incarcerated kin.

Kin networks that are disadvantaged in economic stability and scheduling flexibility to attend jail during specified visiting hours and days may be unable to coordinate during incarceration. This could result in young fathers being disconnected from their children, missing opportunities to be involved. Of course, fathers who were not involved before incarceration may remain uninvolved during incarceration, but many fathers are likely to be involved with their children at least at times (Geller, 2013), even if in a cyclical nature related to incarceration (Haney, 2018). Therefore, continued investigation of how extended family members assist in facilitating contact for young, incarcerated fathers is crucial to understanding variation in family functioning during and after incarceration.

## CONCLUSIONS AND IMPLICATIONS

Paternal incarceration can be harder on children than general absence, especially when children lived with fathers prior to incarceration (Geller, Cooper, Garfinkel, Schwartz-Soicher, & Mincy, 2012). Kin members can facilitate father–child contact during incarceration to buffer some of the separation for children, especially when mothers of children do not want to be involved in organizing father–child contact during paternal incarceration. Nesmith and Ruhland (2011) found that caregiver "inaction was tantamount to denying access [to the incarcerated parent] without their coordinating efforts" (p. 110) for parent–child contact. However, in this chapter, paternal kin who want to connect children and fathers during incarceration can relieve caregivers of active involvement in paternal incarceration. This limits the child's mother's role in supporting the fathers' family ties while still supporting the child (Nesmith & Ruhland, 2008) and forges a collaborative effort in family work. Focusing on the larger kin network with incarcerated fathers at the center reveals alternatives to caregiver or mother-dependent action where family connectedness and father inclusion can be maintained, even in family contexts of complicated or estranged parental relationships. These findings highlight a route for future research to develop theories for explaining father–child contact among diverse family structures and parental relationships that do not solely rely on maternal or caregiver action or inaction.

Cochran et al. (2017, p. 546) assert that "disparities in visitation constitute a form of potentially unequal punishment …" that may impact families that are disproportionately at higher risk for experiencing paternal incarceration and increasing inequality, such as for families of color. Some families are in even more precarious positions to maintain systems of contact for fathers and children because even with child access, family members may fear attending visitation, or may not have documentation papers and fear deportation. Limitations in the number of participants of different racial and ethnic identities make group comparisons difficult. Not having full sample information on citizenship status further restricts conclusions for Latinx families and incarceration. Despite these limitations, it is clear how families go to admirable lengths to remain connected and functioning as a unit during paternal incarceration in jail. Echoing Curtis (2019), I support an overhaul of jail security policies and pre-trial confinement so that families can maintain family life during court, reducing the multiple transitions of adapting to systems of contact facilitation for children, parents, and extended kin.

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# CHAPTER 7

# THE RIPPLE-EFFECTS OF CARCERAL POLICY

Linda Mussell

## ABSTRACT

*Intergenerational confinement is an under-recognized, policy-driven issue which greatly impacts Indigenous and racialized peoples in countries with ongoing colonial legacies. Numerous policy solutions enacted over colonial history have exacerbated instead of mitigated this situation. This chapter advances an improved understanding of the impacts of carceral legacies, moving beyond the dominant focus of parental incarceration in the literature. Focusing on Indigenous peoples, multiple generations in families and communities have been subjected to changing methods of confinement and removal. Using critical policy analysis and interview research, this chapter interrogates these intergenerational impacts of carceral policy-making in Canada, Australia, and New Zealand. Drawing on qualitative interviews with 124 people in the three case countries, this chapter centers perspectives of people who have been intergenerationally confined in carceral institutions. With a goal of transformation, it then explores an alternative orientation to policy-making that seeks to acknowledge, account for, and address the harmful direct and indirect ripple-effects of carceral strategies over generations.*

**Keywords:** Critical policy studies; intergenerational; Indigenous; prisons; comparative, carceral policy

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## INTRODUCTION

The impacts of imprisonment are felt throughout generations in families and communities. Intergenerational impacts of confinement are an under-recognized, policy-driven issue which especially impacts Indigenous and racialized peoples in countries that grapple with ongoing colonial legacies. Canada, Australia, and New Zealand share these histories and ongoing hyper imprisonment of Indigenous and racialized peoples (Cunneen, 2013; Cunneen & Tauri, 2019; Grant, 2016). In this chapter, I focus on hyper and intergenerational imprisonment experienced by Indigenous families and communities. Hyper imprisonment refers to the specifically large numbers of Indigenous and racialized peoples imprisoned (Anthony & Blagg, 2020),[1] and intergenerational imprisonment refers to imprisonment over generations in a family (Halsey & de Vel-Palumbo, 2020) and community, not only in prisons but other carceral institutions (Mussell, 2020). Indigenous peoples have been imprisoned in many forms over generations and differing by country: confined to forts, camps, boarding schools, group homes, orphanages, hospitals, jails, prisons, reservations, and missions (Agozino, 2018; Anthony & Blagg, 2020; Cunneen & Tauri, 2019; Mussell, 2020; Ogden, 2009; Ross, 1998). Carceral policies involve removal, isolation, coercion, assimilation, and confinement throughout these locations (Mussell, 2020). The policy issue explored in this chapter is that carceral strategies generate ripple-effects of harm for Indigenous families and communities and do not effectively mitigate hyper and intergenerational imprisonment. I argue policymaking approaches must shift to account for the ripple-effects of carceral decisions.

Aside from immense social, financial, physical, cultural, spiritual, and emotional costs to prisoners, families, and communities (Comfort, McKay, Landwehr, 2016; George et al., 2014), the financial costs of confinement[2] in prisons continue to rise totaling over $5 billion in Canada 2018/2019 (Malakieh, 2020),[3] over $5 billion in Australia 2019/2020 (Australian Government, 2021),[4] and $1.7 billion in New Zealand 2019/2020 (Department of Corrections, 2020a).[5] Current policy approaches, while costly, have not been successful in reducing hyper and intergenerational imprisonment. Many existing approaches exacerbate harms, and the effects are felt harshly by many Indigenous peoples in each country: First Nations, Inuit, Métis (Canada), Aboriginal and Torres Strait Islanders (Australia), and Māori and Pacific Islanders (New Zealand). Policy approaches feature ongoing policing, imprisonment, and child removal, while attempting to "Indigenize" by drawing on or co-opting different Indigenous cultures (Moyle & Tauri, 2016; Tauri, 2016). The intergenerational dimensions of imprisonment still lack focus as a policy and research priority.

I focus on Canada, Australia, and New Zealand as most-similar case studies (Seawright & Gerring, 2008), with high rates of Indigenous imprisonment, legacies of British colonialism (and colonialism by other nations), and Westminster political models. I do not include the United States in this chapter because it has different rates of Indigenous imprisonment (lower at the national level than the three cases I investigate but high in specific states), does not have a Westminster political model, and is considered an outlier by some theorists due to the country's carceral practices and imprisonment rates (e.g., Clear & Austin, 2017).

There is little literature that exists on intergenerational imprisonment throughout families and communities, reflecting Indigenous kinship (e.g., Bennett, 2015). Most literature focuses on parent–child relationships within nuclear families (e.g., Halsey & de Vel-Palumbo, 2020). There is a paucity of research examining carceral policies (rather than imprisoned people) as an issue across borders (e.g., Monchalin, 2016; Povey, 2017), particularly acknowledging the intergenerational impacts of imprisonment policy and perceptions of those situated closest to the issue, including former prisoners and families. This chapter draws upon data from interviews with 124 people, including 49 who have lived experience of intergenerational confinement. I interviewed people with a range of perspectives (including frontline workers and policy workers) and choose to amplify the perspectives of those with lived experience in this chapter. In addition, there is a lack of work discussing the extended effects of policy, identifying the impacts of carceral policy not only on this generation but generations to come. This chapter uses critical policy analysis and explores an alternative orientation to policy-making that seeks to acknowledge, account for, and address the harmful direct and indirect effects of carceral strategies on generations of families and communities.

I first describe the methodology of this research, outlining critical policy analysis and interpretivism and discussing the value of standpoint theory in this work. I provide a policy and statistics sections discussing the landscape in the three countries. I then discuss my interview findings and results, namely themes of what intergenerational imprisonment is among people with lived experience and what people want to happen in terms of government approach. In the discussion section, I discuss the implications of these findings including support for changes to the policy process, namely an intergenerational policy approach. I conclude asserting the need for community-led transformation.

## METHOD

Despite having much to offer in terms of analyzing power, political decision making, and policy change, scholars under the umbrella of political science have rarely devoted attention to the study of carceral topics (e.g., Gottschalk, 2016; Lerman, 2014; Lerman & Weaver, 2014; Thorpe, 2015; Walker, 2020). I use critical policy analysis, which embraces interpretive, argumentative, and discursive approaches to studying and making policy (Fairclough, 2013; Fischer et al., 2017; Orsini & Smith, 2007). Critical policy analysis also falls under the umbrella of interpretivist analysis.

Interpretivism has grown in use and significance in public policy over the last three decades (Hay, 2011). This paradigm centers interpretation at the heart of analysis of social and political life in terms of establishing the beliefs that influence the behavior of political subjects (Hay, 2011). It also acknowledges the social embeddedness of researchers in analysis, meaning that my work is an interpretation of meaning and activity in the world (Hay, 2011). An interpretive approach following Mark Bevir and Rod Rhodes (2012) is rooted in locating and examining the beliefs of policy actors. This is done by looking at policy actor's "meaningful actions" and then unpacking these beliefs by situating them in context

(e.g., traditions and dilemmas) (Bevir & Rhodes, 2012). When seeking to understand actions and beliefs, this analysis entails moving back and forth between aggregate concepts (e.g., discourse, traditions, ideologies) and beliefs of individuals, who are situated in a social context (Bevir & Rhodes, 2012). This approach then reveals what constitutes public policy, the limits and contradictions of narratives, expertise, and rationalizations (Bevir & Rhodes, 2012).

Interpretive policy analysis is not necessarily critical (Fischer, 2016). Critical policy analysis rejects that analysis can be neutral and emphasizes the importance of contextual understandings, ordinary knowledge, narrative storytelling, emotional expression, and communicative practices generally (Fischer et al., 2017). Political understanding belongs to citizens not just experts, embracing participatory orientation and moving beyond technocratic conceptions. I take a critical approach by seeking the narratives and knowledge of a wider range of actors – including people with lived experience in carceral systems, Indigenous elders, and frontline workers. This furthers a view of policy and politics operating at multiple levels in society and not only at the elite level.

Situated knowledge is a key theoretical underpinning of this research. This theory dismisses the objectivity of research and acknowledges that all knowledge comes from positional experiences (Haraway, 1988). The perspectives of oppressed individuals are enhanced because they anticipate the perspectives of oppressors in addition to holding the perspective of a marginalized person (Harding, 1986; Hartsock, 1983; Hesse-Biber, 2013). Research, particularly that focused on power relations, should begin with the lives of the marginalized. Following from this theory, centering the insights of oppressed people in this research design provides an enhanced understanding of power. I interviewed 124 people who have a range of experiences and knowledge, including policymakers, professionals and staff, community members, and individuals with lived experience in carceral systems. My focus on lived experience in this chapter seeks to center learnings with situated knowledge.

Indigenous participants figure strongly among the number of those interviewed ($n = 57$) as policymakers, professionals, and people with lived experience. I interviewed a total of 49 Indigenous participants with lived experience in carceral institutions. This includes a combination of experience in prisons, jails, youth detention, hospitals, group homes, and foster care. Table 1 provides a breakdown of the numbers of people with lived experience and Indigenous identity that I interviewed in each country. A total of 53 participants (Indigenous and non-Indigenous) stated they do policy work, 83 do community work, and 42 do

***Table 1.*** Participant Identity.

| Country | Indigenous | Not Indigenous | Lived Experience | No Lived Experience |
|---|---|---|---|---|
| Canada ($n = 36$) | 14 | 22 | 13 | 23 |
| Australia ($n = 39$) | 20 | 19 | 16 | 23 |
| New Zealand ($n = 31$)[6] | 23 | 8 | 20 | 11 |
| Total | 57 | 70 | 49 | 80 |

research. Further, 19 participants do work around or in courts, and 72 do work in or around prisons. These categories are not mutually exclusive, and some participants belong to more than one category (e.g., policy and community work).

The participant sample was chosen through internet search, organization referral, and snowball technique. Some of the interviews were conducted with more than one participant during a session, at the request of participants. I continued interviewing until saturation of understandings was achieved. The length of interview time varied from 45 minutes to 1.5 hours. Interviews were semi-structured and questions focused on personal experiences or understandings of intergenerational imprisonment, current conversations happening about this topic, policies and programs in place, changes needed to better attend to different people's needs, ensuring policy implementation and uptake, and measuring when inequities are reduced. I used Foucauldian discourse analysis to identify themes in the transcribed interview data, with a focus on truth, power, and positionality (Waitt, 2005).

In terms of positionality (Harding, 1986; Hartsock, 1983)[7] and reflexivity (Foucault, 1994),[8] I am a settler, white, Canadian woman, with no lived experience in prison. At the same time as undertaking this work, I am also reflecting on my privileges, scrutinizing ongoing colonial carceral power, and participating in social change. I am humbled by Indigenous work and knowledge in this area and committed to being informed of the ways that policy and research has and can serve as a harmful instrument. My positionality – as a person with racial and scholarly privilege, a young woman, an outsider to Indigenous communities, and different communication styles and cultural understandings as a product of my socialization – likely impacted who accepted interviews and what was shared in interviews.

## LITERATURE REVIEW

Much of the literature on the impacts of imprisonment on family focuses on parental imprisonment and nuclear families (e.g., Johnson, 2009) and does not speak to broader family and community kinship in Indigenous communities. Literature tends to focus on the need for reform such as program change (e.g., Purvis, 2013), rather than transformative change to institutions and government-community power relations.

A recent volume from the United States with relevance is J. Mark Eddy and Julie Poehlmann-Tynan's *Handbook on Children with Incarcerated Parents* (2019). This book focuses primarily on children and does not speak to the broader effects of imprisonment on families and communities nor the impacts on Indigenous peoples. Marian Harris and J. Mark Eddy (2019) published *Children of Incarcerated Parents: Challenges and Promises* that year with the same orientation. Mark Halsey and Melissa de Vel-Palumbo's (2020) *Generations Through Prison* is the latest volume on intergenerational imprisonment. Halsey and de Vel-Palumbo (2020) are interested in causal mechanisms, why "prison seems to run in certain families" (p. 12), and focus on explanations of individual behavior and "pathways to prison" (p. 1). Their role is not to "demonise the prison"

(p. 2), although they do note that prison can "reproduce/aggravate[e]" (p. 4) intergenerational imprisonment. They question briefly if prison "is the fit and proper place for acutely traumatised people/offenders" (p. 66) and "whether it is structurally bound to reproduce [intergenerational incarceration]" (p. 147). Yet, they spend more time discussing how to make prisons better through screening for prisoner trauma, training guards, and educating prisoners on "the challenges and complexity of prison officer work" (p. 65). In this book, trauma is discussed, but historical trauma (trauma carried by a people) is omitted, and instead intergenerational trauma is briefly noted (trauma transmitted between generations). Amelia Radke and Heather Douglas (2020) also treat trauma as individual rather than collective in their examination of the intergenerational impacts of child removal in Queensland, Australia.

The literature on parental imprisonment tends to focus on individual responsibility rather than the state's role in perpetuating criminalization. There is emphasis on the need to cease the cycle of criminality among parents, who may serve multiple prison sentences over time (Bales & Mears, 2008; Morgan, Leeson, & Dillon, 2013). Imprisoned women receive specific attention for their more common role and identity as primary caregivers (e.g., Baker, 2021; Zhao et al., 2020a), imprisoned fathers are often viewed as negative role models (e.g., Thombre, Montague, Maher, & Zohra, 2009) or missing in the literature (Lewis & Hong, 2020), and other family members (e.g., uncles, aunts, grandparents) receive little to no attention (DeHart, Shapiro, & Clone, 2018). Moreover, younger children are generally the focus as vulnerable and/or innocent (e.g., Nesmith & Ruhland, 2008), who require support or intervention to avoid later imprisonment. Less attention is provided to adults with imprisoned parents (Luther, 2016), along with other family and community members. The agency and capacity of people is seldom acknowledged, and a strength-based model is infrequently employed (e.g., Rossiter et al., 2017). Indigenous peoples are rarely of focus (e.g., Bennett, 2015), and the diversity and heterogeneity of identities is generally not distinguished.

There are few studies which look at impacts on families and communities more broadly. These studies do not focus on Indigenous peoples, with the exception of Ojibway scholar Marlyn Bennett's (2015) report featuring direct narrative inquiry with previously confined Indigenous individuals and families. Her report seeks to understand the impacts of imprisonment on families, effects on new generations, and intergenerational trauma on Indigenous communities. Other examples that do not speak to Indigenous peoples but do look beyond parent–child relationships include Joyce Arditti's (2014) book *Parental Incarceration and the Family*, focusing on the experiences of caregivers in addition to children. Kirsten Turney (2015) researched relationship dissolution following confinement in the United States, and Tasseli McKay and colleagues (2018) examined family life before and during imprisonment in the United States. Johnna Christian and colleagues (2015) looked at agency and resilience among prisoner's family in the United States, and Mark Halsey and Simone Deegan (2015) focused on partners of confined men in Australia. Tracey Woodard and Jennifer Copp (2016) examined sibling relationships and child delinquency in the United States, and Samuel Norris and colleagues (2021) examined the effects of parental and sibling imprisonment for

children. Dana DeHart and colleagues (2018) conducted research with prisoners and family members in the United States, including impacts on communication, health, finances, and involvement with community supports.

Generally, the focus of the literature is on negative impacts, namely transmission or cycles of imprisonment (e.g., Besemer, Axelsson, & Sarnecki, 2016; Foley et al., 2020; Zhao et al., 2020b), parental imprisonment as presenting risk for children (Bradshaw et al., 2020), children externalizing behavior and delinquency (Ruhland et al., 2020), adolescent arrests (Noel et al., 2020), children later engaging in adult criminal activity (Finkeldey et al., 2021), and the need for crime prevention (Battams et al., 2021). There is also a focus on challenges to health (Boch & Ford, 2021; Jackson et al., 2021; McCauley, 2021), internalizing problems (Kjellstrand et al., 2020), substance misuse (Quinn et al., 2021), and school performance (McCauley, 2021; Testa & Jackson, 2021). There is little focus on strengths and possible positive impacts. One exception is that families and children are considered a factor of desistance from crime for individuals in prison (Perez-Feliciano et al., 2020), which effectively instrumentalizes family bonds.

## POLICY REVIEW

Carceral policies and the impacts felt over generations differ in each case country with goals of removal, isolation, coercion, assimilation, and confinement, not to mention genocide. In Canada, there are legacies of violence and injustice across the country including introduced disease, dispossession of land, residential schools,[9] and the Sixties Scoop[10] (Truth and Reconciliation Commission (TRC), 2015a). In specific places, as examples, there was government policy of starvation of Cree, Ojibway, and Assiniboine peoples in the prairies (Daschuk, 2013),[11] severe maltreatment of Inuit with tuberculosis in the North (Canadian Broadcasting Corporation (CBC), 2019),[12] and bounties placed on Mi'kmaq lives in Nova Scotia (Hornborg, 2008).[13] In Australia, there was an introduction of diseases, dispossession of land, massacres, and poisonings perpetrated by colonizers, and Stolen Generations[14] (Australians Together, n.d.; Short, 2003). In particular places, Aboriginal communities[15] in the Northern Territory (NT) were targeted by the Northern Territory National Emergency Response (NTER) in 2007 (Commonwealth of Australia, 2008),[16] and in 2014, Aboriginal peoples[17] in Western Australia faced dispossession by the state government which sought to close more than 100 remote communities (Davidson, 2014).[18] In New Zealand, there is injustice of past violent conflict, land dispossession, and assimilation through Native Schools (Wirihana & Smith, 2014).[19] The violent conflict between the British Crown and Māori predominantly was fought in the Northern Island during the New Zealand War in the nineteenth century, followed by land dispossession throughout the North and South Islands (Wirihana & Smith, 2014).[20]

The ongoing trauma and hyper punitive controls inflicted on Indigenous peoples today emerge from the legacies of prior carceral controls. There are high levels of removing Indigenous children, policing Indigenous peoples, sentencing Indigenous peoples, and imprisoning Indigenous peoples across the three

case countries (Anthony & Blagg, 2020; Cesaroni, Grol, & Fredericks, 2018; Chartrand, 2019; Tubex & Cox, 2020). Colonialism is not a thing of the past but continuing.[21] Policy approaches have reformed methods of removal, isolation, coercion, assimilation, and confinement and not addressed the hyper and intergenerational impacts on Indigenous peoples. I will focus on policy approaches to imprisonment, child removal, and policing as a few key areas of the carceral state.

*Imprisonment*

Within Canada, policy approaches to Indigenous imprisonment include the evolving Aboriginal Justice Initiative since 1991 – now known as the Indigenous Justice Strategy – which seeks to enhance the role of Indigenous communities and culture in correctional practice and operations (Fleming, 2008; Vecchio, 2018). A new federal Indigenous Justice Strategy is currently awaited (Stefanovich, 2021). The *Corrections and Conditional Release Act* (CCRA) enacted in 1992 provides special provisions (sections 81 and 84) intended to ameliorate "over-representation" of Indigenous peoples in prison (Office of the Correctional Investigator (OCI), 2012). Section 81 provides the Correctional Service of Canada (CSC) capacity to enter into agreement with Indigenous communities for the custody of prisoners otherwise held in prison (OCI, 2012). Section 84 allows prisoners applying for parole to be released into or supervised by an Indigenous community (OCI, 2012). In connection, Social Impact Bonds (SIBs) are partnership agreements with government and community partners to deliver an outcome the government seeks to achieve, and through SIBs, there are 200 community justice programs federally funded across Canada (Vecchio, 2018).[22] In 1995, Parliament passed Bill C-41 amending sentencing in the Criminal Code (section 718.2e) with the intention of decreasing imprisonment rates of Indigenous peoples. The Supreme Court of Canada interpreted the section through cases *R.* v. *Gladue* (1999) and *R.* v. *Ipeelee* (2012). These decisions directed sentencing judges to look at broad systemic and background factors that affect Indigenous peoples generally and the criminalized person specifically and to consider alternative sentencing options.[23] The 2003 *Youth Criminal Justice Act* (YCJA) mandates diversion for all first-time and non-serious youth defendants and the restriction of remand and prison to the most serious cases (Bala & Anand, 2009). At the institutional level, CSC has developed a series of policies to strengthen Indigenous programming and enhance the role of Indigenous communities in correctional operations and practices, including the *National Strategy on Aboriginal Corrections* in 1997, the *Aboriginal Corrections Continuum of Care* in 2003, the *Strategic Plan for Aboriginal prisoners* in 2006, the *Aboriginal Women Offender Correction Programs* in 2010, and the *Sivuppiak Action Plan for Inuit Offenders* in 2013 (Vecchio, 2018).

Australia also has a history of strategies beginning in the 1990s up to the most recent, *National Indigenous Law and Justice Framework (2009–2015)* (Standing Committee of Attorneys-General Working Group on Indigenous Justice, 2009). The emphasis is on increasing self-governance and decision making of Aboriginal and Torres Strait Islander peoples and diversion of Indigenous young defendants with from the formal penal system (Blagg, 2012). The Corrective Services Administrators Council (CSAC, 2016) has an *Indigenous Strategic Framework* for

managing prisoners, focusing on systematic issues that impact "over-representation" of Indigenous peoples in penal systems. *Closing the Gap* (CtG) (Department of Prime Minister and Cabinet, 2017) calls for national state/territory collaboration to close the health and life expectancy gap between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians within a generation. The new CtG implementation plan proposes that each state and territory commit to reducing adult imprisonment by 5%, and Indigenous youth in detention by 11%–19% (National Indigenous Australians Agency, 2021). There is a poor track record of achieving these targets, and the 2021 plan includes implementation plans, accountability, and Indigenous service involvement. Regarding youth, in a 2018 meeting, the Council of Attorneys-General (2018) established the Minimum Age of Criminal Responsibility Working Group in consideration of raising the age of criminal responsibility among children from 10 years of age (Raise the Age, n.d.). The Attorneys-General have not yet taken policy action. At the regional level, Australian states offer different policy offerings. For example, Queensland Corrective Services (QCS) established its Aboriginal and Torres Strait Islander Unit, the Murridhagun Cultural Centre, to provide advisory, planning, and support services to QCS and prisoners (QCS, 2018). Queensland also has Elder service providers (QCS, 2018), Murri Courts (Westcott, 2006), the Community Justice Group (CJG). Further, the Department of Justice and Attorney General (DJAG) provides funding to Aboriginal and Torres Strait Islander organizations to develop justice-related strategies within communities (DJAG, 2012).

New Zealand has released different strategies to address Māori imprisonment (Tauri, 2005) with *Hōkai Rangi (2019–2024)* as the current approach. *Hōkai Rangi* aims to reduce the Indigenous prison population to 16% to reflect Māori in New Zealand's general population (Department of Corrections, 2019a). The strategy includes designing reforms with Māori and access to more Kaupapa Māori (Māori worldview) services in prisons. In 2009, the Department of Corrections established the Rehabilitation and Reintegration Service, which provides anti-recidivism programs and services featuring tikanga Māori (customary Māori) concepts and values, including therapeutic programs and programs that aim to establish links between imprisoned individuals, their whanau (family), hapū (clan), iwi (tribe), and the local community (Anaya, 2015). Programs and services in place include Te Tirohanga (Māori Focus units) (MFUs), custodial units that are intended to provide a culturally appropriate and holistic environment for Māori (Department of Corrections, 2017; Nakhid & Shorter, 2014).

### *Child Removal*

In Canada, many child apprehensions can be attributed to section 88 of the *Indian Act,* added in 1951, that allows the application of provincial and territorial laws to Indigenous peoples living on reserve (National Collaborating Centre for Aboriginal Health, 2017). Structures were established for providing child welfare services to on-reserve communities and the state began to apprehend large numbers of Indigenous children from the 1950s onward. Many children were placed in non-Indigenous homes as part of the Sixties Scoop (Johnson, 1983; TRC, 2015c). In the early 1980s, child welfare agencies operated by Indigenous

communities began to emerge but were impeded by strict federal funding controls and a moratorium on recognizing new agencies (Sinha & Kozlowski, 2013). Children continue to be removed from their homes in large numbers, and this later period is sometimes referred to as the "Millennium Scoop" (Maurice, 2014). Most recently, the *Act respecting First Nations, Inuit and Métis children, youth and families* came into force in January 2020, with a primary goal of reducing the number of Indigenous children under state guardianship. The Assembly of First Nations (AFN) and Government of Canada consequently signed a protocol to establish a new structure for the purpose of discussing implementation (Government of Canada, 2020).

In Australia, the Australian Human Rights and Equal Opportunity Commission's (AHRC) 1997 *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* brought legislation and policies of separating Aboriginal and Torres Strait Islander children from their families into greater awareness. The report of the Inquiry, *Bringing Them Home* (AHRC, 1997), underscored the importance of understanding contemporary separations in the context of colonial policy. Most recently, the *National Framework for Protecting Australia's Children 2009–2020* (Council of Australian Governments, 2009) aims to improve child protection responses and reduce child neglect and abuse. The *National Framework* has presented an understanding of the spirit and intent of the Aboriginal and Torres Strait Islander Child Placement Principle in national policy: prevention, partnership, placement, participation, and connection (Tilbury et al., 2013). Through the *National Framework*'s action plans, all Australian governments have committed to implementing the Principle (Council of Australian Governments, 2018). However, the Principle has often been narrowly conceptualized as a placement hierarchy for Aboriginal children (Arney et al., 2015). The *Fourth Action Plan 2018–2020* (Council of Australian Governments, 2018) has a renewed commitment to upholding the Principle in full.

In New Zealand, post-1960s, there was a large movement of Māori from rural to urban centers. With this shift, the role of Māori extended family was not recognized and supported by the official child welfare system, and there has been increasing state involvement with Māori children since (Libesman, 2004). In the 1970s, the Department of Social Welfare commissioned a Committee to inquire and report on planning and delivery of services to Māori communities. In light of this report, the *Children, Young Persons and Their Families Act 1989* was developed, superseding the *Children and Young Person Act 1974* (Libesman, 2004). High numbers of child removals have continued, with recent focus on growing numbers of infant removals (Keddell et al., 2021). In 2016, the government announced a transformation of the system to a new care and operating support model through the *Children, Young Persons, and Their Families (Advocacy, Workforce and Age Settings) Amendment Bill*.

### *Policing*

In Canada, the North-West Mounted Police (NWMP) (precursor to the contemporary Royal Mounted Canadian Police) were formed by federal government

in 1873 and employed to enclose, dispossess, and regulate Indigenous peoples (Shantz, 2016). The NWMP was formed to assert Canadian sovereignty and was directed to suppress the Métis-led provisional government that had been established in the Red River in 1869 (Ayala & Carrington, 2016). Police were also deployed to displace Indigenous peoples from the Prairies and granted wide-reaching ability to not only apprehend but try and sentence (Nettelbeck & Smandych, 2010). With these powers, police were also used to enforce the Pass System on the Prairies that restricted the movements of Indigenous peoples on and off reserves (Barron, 1988). Police were used to further the assimilation of Indigenous peoples through apprehension of children to force them to attend residential school and later in support of child welfare agencies (Fournier & Crey, 1997). As another example of an agenda of assimilation, in 1950s and 1970s, the Royal Mounted Canadian Police killed thousands of sled dogs on Inuit territory (Kingston, 2015). More recently, through the *First Nations and Inuit Policing Program* (FNIPP), policing services are supported through tripartite policing agreements among the federal government, provincial or territorial governments, and First Nation or Inuit communities (Public Safety Canada, n.d.)

In Australia, like Canada, mounted police were formed as a paramilitary force to assert sovereignty and aid the occupation of the state by dispossessing Indigenous peoples of land and suppressing Indigenous resistance (Nettelbeck & Smandych, 2010). In the nineteenth century, policing was also focused on protecting economic interests, allowing the rapid expansion of the pastoral industry and serving the ambitions of property owners (Nettelbeck & Smandych, 2010). Policing Aboriginal peoples involved policies of massacre, dispossession of land, and the Stolen Generations (Commonwealth of Australia, 1991; Hooper et al., 2020; Rogers & Bain, 2016). In 2007, the Council of Australian Governments agreed to several targets as part of CtG. One of the six targets is "Safe Communities" which calls in part for accessible and effective policing. The Standing Committee of Attorneys-General Working Group on Indigenous Justice (2009) introduced the *National Indigenous Law and Justice Framework for 2009–2015*. Under the framework, strategies are developed to build the capacity for police to address systemic racism and to provide better police training (Standing Committee of Attorneys-General Working Group on Indigenous Justice, 2009). In 2012, as part of CtG, the government committed to funding 60 remote-area police officers, 4 remote-area police stations, and community night-patrol services for the next 10 years (Macklin, 2012).

In New Zealand, like the other two countries, policing emerged hand in hand with colonialism. Police were also involved, like in Canada and Australia, in protecting property interests on stolen land (Wynyard, 2019), child removals, as well as the criminalization of children under state guardianship (Stanley, 2016). In 1996, the New Zealand Police Service commenced the *Māori Responsiveness Strategy* to address the overrepresentation of Māori in the criminal justice system (Lithopoulos, 2007). This strategy had its origins in the 1980s, when successive governments defined policy parameters for appropriate cultural Māori responsiveness in government departments (Lithopoulos, 2007). In 2012, *The Turning of the Tide Strategy 2012/13–2017/18* was launched by the New Zealand Police (2012) service with the goal of decreasing youth imprisonment numbers. This strategy features

partnership with iwi and focuses on prevention rather than enforcement. One of the key goals of the 2012 strategy is seeking a 10% decrease in the number of first-time youth and adult offenders who are Māori. Another youth-focused policy is Te Pae Oranga (New Zealand Police, n.d.), which involves police referral to an iwi community panel after arrest, with the goal of diversion from imprisonment.

## INTERGENERATIONAL POLICY IMPACTS

Imprisonment rates have been significantly increasing among Indigenous peoples due to ongoing policies that police, criminalize, and remove people from communities. The reforms discussed in the last section have largely not mitigated intergenerational and hyper imprisonment. I will present statistics on the impacts of imprisonment, child removal, and policing in turn.

Rates of Indigenous imprisonment have increased in the three case countries; policy reforms have not fundamentally mitigated this trend. In Canada, 2018/2019, Indigenous adults accounted for 31% of provincial/territorial admissions and 29% of federal admissions to prison, while representing 5% of the Canadian adult population (Malakieh, 2020).[24] In federal corrections, Indigenous men accounted for 29% of men admissions to custody, and Indigenous women represented 41% of women admissions to custody. Despite decades of reforms, Indigenous prisoners in federal institutions rose from 20% of the total population in 2008–2009, 28% in 2017–2018, to 29% today (Department of Justice, 2020). Over the last 10 years, imprisonment of Indigenous adults has increased by 43.4%, while imprisonment of non-Indigenous adults has declined by 13.7% (OCI, 2020). In 2018, Indigenous youth represented 43% of youth admissions to custody in 2018/2019, while comprising 8.8% of the youth population in Canada (Malakieh, 2020). Data show that in 2006–2007, Indigenous youth were 21% of those youth in detention, and 10 years later, Indigenous boys comprised 47% and Indigenous girls accounted for 60% (Malone, 2018). In Australia, Aboriginal and Torres Strait Islander prisoners account for 29% of prisoners, while comprising 3% of the overall Australian population (Australian Bureau of Statistics, 2020).[25] Rates of Indigenous incarceration have increased since CtG was established more than 10 years ago (Shepherd et al., 2020). Since 2004, the number of Aboriginal peoples in custody has increased by 88% compared to a 28% increase for non-Aboriginal Australians. In 1992, one in seven prisoners was Aboriginal, and by 2020, that ratio had risen to one in four (Korff, 2021). Just under half (48%) of all young people in detention in 2020 were Aboriginal or Torres Strait Islander, while comprising 6% of the Australian population aged 10–17. While there have been some decreases in the number of Aboriginal youth detained over the last five years, Aboriginal youth are 17 times as likely to be in detention (Australian Institute of Health and Welfare, 2021). In New Zealand, Māori comprise 53% of prisoners and nearly 17% of the overall New Zealand population (Department of Corrections, 2019b).[26] Adult imprisonment of Māori has increased; 50.8% of adult prisoners were Māori in 2009 (Department of Corrections, 2009). In 2009, 56% of women prisoners were Māori, and this number has increased to 63% in

2020 (Keddy, 2020; Te Ara, 2012b). The number of Māori in prison under the age of 25 has decreased since 2012; however, the number of young Māori arrested has increased from just under 40% in 2011 to 66% in 2018 (Harawira, 2021).

### *Child Removal*

Despite policy reform, rates of Indigenous child removal have increased in the three case countries. In Canada, more than half of children under age 15 under state guardianship in Canada are Indigenous (14,970 children), while representing 7.7% of the child population (Statistics Canada, 2016). There are more Indigenous children under state guardianship now than there were in residential schools (Blackstock, Trocmé, & Bennett, 2004). Indigenous children are "over-represented" at all points of child welfare decision making. For instance, in Ontario, among non-Indigenous Children's Aid Societies, the proportion of Indigenous children admitted to state guardianship was 2.6 times higher than their proportion in the child population (Ontario Human Rights Commission, 2018). In Australia, Aboriginal and Torres Strait Islander children represent 37% of all children living in out-of-home guardianship across the country (20,077 children) (Family Matters, 2020). Aboriginal and Torres Strait Islander children are 10 times more likely to be in out-of-home guardianship. As in Canada, more children are being taken now than during the Stolen Generations. Removal of Māori children has continued at a high rate. There are 6,450 of children and young people in New Zealand's Oranga Tamariki (state guardianship), and 68% are Māori or Pasifika (Oranga Tamariki, 2019). From 1960 to 1999, data show an estimated 70% of children in state care being Māori (Neilson, 2019).

### *Policing*

While there is a paucity of race disaggregated data to show trends over time, the data are clear that reforms have not addressed the "disproportionate" harms inflicted on Indigenous peoples. In Montréal, Québec, data from 2014 to 2017 show that Indigenous and Black people are four to five times more likely to be stopped by police than White people, and Indigenous women were 11 times more likely to be stopped by police than White women (Armony et al., 2019). Statistics Canada data show that Indigenous people (44%) were more likely than non-Indigenous people (34%) to report contact with police in the previous year, and Indigenous participants reported the lowest level of confidence in the police in Canada with only 27% saying they had a great deal of confidence in the police (Ibrahim, 2020). Between 2007 and 2017, Indigenous peoples represented one third of people shot to death by the Royal Canadian Mounted Police (RCMP) (Freeze, 2019). Between 2017 and 2020, 25 Indigenous people were shot and killed by the RCMP. In Western Australia, police data show that Aboriginal drivers received 3.2 times more fines after being pulled over than non-Aboriginal drivers (McGowan & Knaus, 2020). In Queensland, one in four adults and 40% of children charged with public nuisance were Indigenous, while representing 3.5% of the general population (Walsh, 2018). In New South Wales, police took to court 82.6% of Indigenous people found with a

non-indictable amount of cannabis, while the percentage was 52.3 for non-Indigenous people (McGowan & Knaus, 2020). Since 1991, at least 474 Aboriginal people have died in custody in Australia. Aboriginal people are 12 times more likely to be in prison or police lockup and exposed to this harm (Mao, 2021). In New Zealand, Māori are more likely to be subject to police proceedings, comprising 42.5% of people subject to a proceeding (e.g., court appearance, police warning, or youth referral) from March to April 2020 (Daalder, 2020). Māori are almost eight times more likely to be the victims of police violence (e.g., pepper spray, empty hand tactics, taser, and firearms) (New Zealand Police, 2018). Force was used against Māori 40% more often, an increase from 24% in 2014 (NZ Herald, 2020). In the last decade, 66% of people shot by police were Indigenous (NZ Herald, 2020).

### *Crossover Between Institutions*

Little statistical data are available about crossover between carceral institutions within generations and across generations. A 2009 report by the British Columbia Representative for Children and Youth found that more youth in the child state guardianship system crossed over to the justice system (35%) than graduated high school (24%). A CSC (2013) study found that half of the sample of prisoners they interviewed indicated that they had been under state guardianship (71% had spent time in foster care and 39% in a group home). Further, 61% had family members who had spent time in prison, 73% reported a family history of involvement with the residential school system, and 18% said they themselves were residential school survivors (OCI, 2014). In Australia, youth placed in out-of-home care are 16 times more likely to be under youth justice supervision in the same year (Australian Institute of Health and Welfare, 2016). The Royal Commission into Aboriginal Deaths in Custody reported in 1991 that almost half of the Indigenous people whose deaths were reviewed were removed from their parents as children. In New Zealand, the Children's Commissioner (2015) reported that 30% of children in care between the ages of 14 and 16 were charged with offences, compared to about 1% of children in the general population. In a retrospective study of residents born in 1989, the New Zealand Ministry of Social Development found that among those who were in prison by the time they were 20, 83% experience in the child welfare system. Youth in state care were 15 times more likely to have criminal record and 107 times more likely to be imprisoned by age 20 (Stanley, 2016).

## INTERVIEW FINDINGS

Participants spoke about their direct experiences with intergenerational confinement, which are not well represented in the literature or statistical data, and show the inadequacy of policy reforms to shift hyper and intergenerational legacies. I present findings on experiences with intergenerational imprisonment, the roots of this issue, problems in policy response, and changes needed to policy process.[27] The particular change I focus on in this chapter is participants' call for a longer term focus or better accounting for the intergenerational ripple-effects of

policy-making. I first amplify the expertise of participants with lived experience and then bring in findings from people who do frontline service and policy work.

In Australia, New Zealand, and Canada, I heard from people with experience in carceral institutions which is felt throughout families and communities. In the words of one Aboriginal man in Queensland, Australia, regarding the immediateness of criminalization in his life: "Black fellas, there's no degree of separation for us. Family inside, or died, deaths in custody and all that. There's no degree of separation" (T18). Participants also spoke about the immediacy of trauma and grief by extended kin. An Aunty[28] in Queensland said: "I've got a lot of family itself who have people in prisons, incarcerated, a lot of youth" (T6). And a former prisoner with a son behind bars added: "As a mother it does, it breaks your heart, because you know what you've been through" (T12). In New Zealand, a Māori former prisoner said:

> A lot of our women and men are on a hamster wheel, they keep going in and out of prison. I've seen that there's been cycles of it. I've seen in prison a grandfather, father, and son. It's intergenerational. (T49)

The scale of separation was also described; the great numbers of people removed from extended families and communities. A Māori former prisoner notes: "It wasn't just my grandfather, it was my uncles, my fathers, and my cousins. There was one group of my family, across all avenues, were criminals" (T57). These experiences are also echoed in Canada, with a focus on confinement in other institutions than prisons. A Cree/Salteaux former prisoner reflected on the generations of institutional confinement in his family, saying:

> My mother who went to residential school and my father who went through residential school and how that affected them, and how it affected me intergenerationally. I have a daughter, I have a son. How does that affect them intergenerationally? (T94)

An Anishinaabe[29] man with institutionalized family shared:

> What does that mean for me as an Indigenous male to be 45 years old and not have a criminal charge or record, how hard I've had to work with seven brothers who are all institutionalised? (T82)

Participants underscored that intergenerational confinement is not only in prison, and they referenced the separation, confinement, and assimilation through other institutions (e.g., residential schools).

Indigenous participants with lived experience spoke about the roots of intergenerational imprisonment, underscoring the societal context they and prior generations have lived in, with little government acknowledgment or support. Rather than a focus on individual responsibility, there was a focus on policy, institutional violence, and racism. In Australia, a Murri[30] Aunty with imprisoned family spoke about the punitive nature of the prison system especially for Aboriginal peoples: "Some of them are in there for minor offences. For minor offences it should not be … they shouldn't even be in prison" (T5). An Australian woman who previously was in prison also spoke about living in conditions of poverty and racism: "It's not because the family's bad, or they're criminals. It's about that they're marginalised and impoverished, and targeted because of racism" (T20). An Aunty

with family imprisoned also noted trauma and institutional history: "It is trauma. To say for example, the stolen generations. I'm a part of that, my mom was. Many, many people, it still goes on and on each year" (T6).[31] In New Zealand, a Māori former prisoner man spoke about the colonial and racist structure that criminalizes people:

> They are going through that experience not truly understanding why, the context. It's the environment they are born into, if they don't understand it they are going through the motions. (T49)

In Canada, people with lived experience noted institutional violence and racism. As explained by an Anishinaabe man:

> Well, those street stops, back in the day, involved arresting my father, arresting my brothers just walking down the street. Then they would ultimately just get fingerprinted, processed and let go. So, there is just a really overwhelming lack of positive relationship between Indigenous people and the justice system. (T82)

Participants shared that attempts at discussion have not led to policy action regarding intergenerational imprisonment of Indigenous peoples. In Australia, participants with lived experience note that issues are not addressed. In the words of an Aunty: "A lot of reports go by the wayside. We see that all the time" (T6). Frontline workers also note the lack of action. As explained by an Aboriginal frontline worker:

> In the last two or three years there's been this emergence of talking about Aboriginal women in prison, it's become this buzz issue. But it feels like reading the same thing over and over again. Because no one wants to tackle the fundamental problems. (T20)

The presence of buzz issues was discussed by others, such as "early intervention" instead of intergenerational imprisonment. In the point of view of another frontline worker:

> There's early intervention, it has emerged in the past years. A large focal point of our advocacy and a lot of advocacy in this sector. The government has sort of listened a little bit, they've started consultation projects and things. But we're seeing absolutely no actual investment. (T29)

Other participants noted that attention is on "prison numbers." One lawyer said that: "I think governments are concerned about the increasing prison numbers. But they're not doing anything too innovative to change it" (T11). Another lawyer noted the Royal Commission into Aboriginal Deaths in Custody as bringing awareness of massive problems, yet: "There has been a lot of focus, there has not been a lot of change" (T17).

In New Zealand, participants with lived experience noted little change when it comes to intergenerational imprisonment. As shared by one former prisoner: "Everything stays the same" (T57). Community workers identify subtle shifts and the need for more fundamental change. As explained by a Māori frontline worker:

> There is a shift in policy thinking. But until we have constitutional reform, until we get that big picture stuff sorted properly, we are going to always be rear-guard fighting. (T1)

From the perspective of Māori lawyers: "I don't see any significant change. Māori programs may get a little bit of a boost, but it will always be peripheral"

(T48). In the public policy sector, alternately, it was discussed that the change of government at the time[32] provides mandate to create change, namely to: "Look at the treaty, and whānau, and whānau sentence solutions" (T65).

In Canada, participants with lived experience note the lack of action and change regarding intergenerational imprisonment. As explained by an Indigenous former prisoner: "It's the way the system is run that is really bogus. It's all about 'lock 'em up and throw away the key" (T104). Among frontline workers, there is an expressed sense that the system is unable to change. According to one Indigenous worker: "Everybody's got their idea on how to make the change, but I feel that people are just replicating the system because that's all they know" (T71). Public policy sector participants also noted little progress overall. One government worker shared:

> Despite many commitments made and the mandate letter of the Prime Minister to the Minister of Justice and the Minister of Public Safety, little has been done in the last almost three years now. (T77)

Participants expressed the need for decision makers to account for the long-term impacts of carceral decisions on Indigenous peoples, rather than only short-term horizons. In the words of an Australian social worker:

> This a government issue, they're only interested in short term. A number of social issues that need to be addressed by long-term planning, rather than everything being so short term. (T27)

According to a Canadian policy participant:

> There's a lot of interest in looking at preventative or upstream approaches. The problem is you don't tend to see the benefit within an electoral cycle. So, the political will – these are policy decisions that can and should be made by different hands – often isn't there, because you're unlikely to see the change within the three or four years. (T81)

Participants also assert the need for decision makers to understand the need to focus on generational change. As stated by an Aboriginal youth worker in Australia:

> We are operating with support of government, but it has its challenges, because they don't understand the intergenerational or even the long-term commitment of making changes. To break cycles, it takes generations. (T14)

There is a need for decision makers to pay attention to the impacts of decisions. A Canadian policy participant noted the lack of political interest and how this work is not the focus at the senior levels. In his words:

> It's very typical to have a mid-level manager where either their whole job or part of their job is Indigenous programming or managing the contracts with Elders or whatever. You don't really have the most senior levels of organisations focused on this issue. (T84)

As explained by a Māori policy manager:

> We need better leadership in this space, to just own it, to say we're trying to address systemic racism, and we're trying to address the place of Māori in our justice system. (T65)

Carceral systems and impacts on Indigenous peoples now and in the future must be understood in a context of colonialism and racism. For example, a community worker stated:

> New Zealand is a deeply racist society, because the criminal justice system impacts on Māori more than non-Māori – it means its tolerable, because people don't care as long as it's Māori. (T42)

Acknowledging the harm of carceral policy and impacts on individuals, families, and communities is not something governments are eager to do. According to a Māori policy manager: "We're very reluctant to be in that uncomfortable place, as government people" (T65). Viewing the ripple-effects of policy, and accounting for that in decisions, is a humanizing process. From the perspective of a woman with imprisoned family:

> In order to 'other' somebody or vilify someone, you have to dehumanise them. I'm not going to say it's conscious, but it's definitely purposeful to family members, children. So, I think we are purposefully locked out. (T88)

Participants identify that the fundamental structure of the country rests on violence, and societies must grapple with it. In the words of a legal practitioner: "The fundamental architecture the justice system is built upon is that colonising perspective in this country" (T24).

## DISCUSSION

The language of "over-incarceration" or "disproportionate" incarceration is the norm. To use this language is to assume that there is an appropriate level of imprisonment of Indigenous peoples. It also assumes that the current outcomes are an abnormality, unintended consequence, or a crisis (Anthony & Blagg, 2020; Arbel, 2019; Cunneen, 2013). Erfat Arbel (2019) argues we should move away from using the language of crisis, as it implies that levels of Indigenous imprisonment are exceptional and capable of resolution through decisive change. The framing of crisis ignores the imprisonment of Indigenous peoples as the outcome of generations of policies that have targeted Indigenous peoples. This framing also ignores the need to restore autonomy rather than deploy successive policies that tweak the carceral system. Following from the knowledge of the interviews, I argue for an intergenerational "ripple-effect" policy approach as assessing and pursuing actions and change that center what policy impacts have been on individuals, families, and communities, what the impacts are now, and what impacts may be generations down the road. Policies are currently not made with such a long-term view. It is difficult for decisions to be made with consideration past a three- or four-year political term of office, much less considering and making decisions that account for the ripple-effects on generations now and to come.

Pueblo scholar Ted Jojola (2013) describes a seven generations model in North American Indigenous planning. It is not unusual to have three generations before and three generations after in an extended and intergenerational family. A seven generations model means planners or policymakers (with generations before and after them) are the bridge that span past and future, with knowledge of the past building a vision for the future. To sustain the community into the future, it is the responsibility of the current generation to make sure that generations to follow

continue to maintain the community's worldview. Jojola (2013) gives the example of the Pueblo Bonito settlement in New Mexico, where the ancestors who began the construction did not expect to see its completion and instead intended each generation to continue the construction based on the founding beliefs. It took approximately seven generations to complete.

Māori scholar Hirini Matunga (2013) claims that Indigenous peoples have always been active participants in planning, and the problem has been the colonial state's inability to accommodate it. Speaking in the context of New Zealand, the colonial-settler state has operated to decimate Māori and clear the way for the state, settlers, and economy.[33] Matunga (2013) argues that Indigenous worldviews are based on "deep and abiding" connection as kinfolk with place, land, territories, environment, and resources since "time immemorial" – and that these links and temporality are important in planning and decision making.

Māori scholar Mason Durie (2003) speaks about the survival of Māori for the next thousand years and describes the capacity of whānau (family) to care (manaakitia), share (tohatohatia), steward (pupuri taonga), empower (whakamana), plan ahead (whakatakoto), and survive. To plan ahead is identified as the most important function and key to survival (Durie, 2003). Memory of the last 1,000 years is present, yet in colonized society, the focus is on the "here and now," with poor capacity for making long-term plans. The mainstream time horizon is limited by three-year fixed-term contracts, annual budgets, and annual reports. Durie suggests lengthening visions to at least a 100-year plan,

> so that our visions for the next millennium, and the survival of our people, can give future generations a greater degree of certainty – a head start, so to speak. Long-term planning is key to survival. (p. 30)

Durie (2003) describes a narrative of Kupe, who returned to Hawaiki[34] with a message for survival to "not look inwards or backwards, but to seek out distant horizons" (p. 33).

Libby Porter (2017), in the Australian context, identifies that the scope of change required is intergenerational, demanding commitment and strategic resourcing across generations of decision makers to come. In the context of the Wurundjeri, the responsibility is to continue the practices of countless generations of ancestors. According to a Wurundjeri Elder:

> Our old people's responsibility was caring for country, caring for family, and we still feel like we've got that same role that's been passed down even though it was very nearly cut off. (Porter & Barry, 2016)

In the context of the West Kimberly region, Mardoowarra scholar Anne Poelina (2020) explains how knowledge and practices have been handed down from thousands of generations of Aboriginal traditional owners of the land for future generations. She speaks from her responsibility as a guardian of the Mardoowarra to uphold that temporal commitment.

Interview participants expressed the need for decision makers to center the ripple-effects and long-term impacts of policy decisions. Participants with lived experience especially urged the need for addressing the carceral harms of the past,

accounting for the impacts now, and working together with a long-term horizon. The reverberations of carceral policies will continue to be felt by new generations. Solutions need to be made with future generations in mind and with close partnership of Indigenous peoples.

### *Seven Generations Continuum of Care*

The AFN (2019a) carried a motion (19/2019) by consensus at their July 2019 Annual General Assembly to develop a "Seven Generations Continuum of Care for First Nations and by First Nations." This vision of care is important for centering the seven generations value – which means making decisions today by thinking about the impact on the seventh generation to come in the future (Moran & Bussey, 2007). This approach accounts for the ripple-effects of policy. It also centers Indigenous leadership and control. The motion proposed a holistic approach to develop a continuum of supports and services, rejecting a program-based approach (AFN, 2019a). Such an approach is crucial to address "long-standing and growing gaps" for continuing care[35] in Indigenous communities with focus on health, social, and economic well-being. Indigenous Services Canada (ISC) offered to work with AFN, First Nations, and other federal departments to identify needs and gaps in supports and services, capacity and infrastructure, and develop options for moving toward a Seven Generations Continuum of Care (AFN, 2019a). The federal government also indicated that part of $8.5 million allocated in the 2019 Budget for long-term care in First Nations and Inuit communities could be used to develop the continuum of care model (AFN, 2019a).

AFN (2018) argues that transformation must be led by First Nations for First Nations. Nations express wanting self-determination, comprehensive systems that are rooted in culture and traditional ways of knowing, and a coordinated continuum of approaches. AFN (2018) explains this means supporting the capacity of First Nations – recognizing, supporting, and amplifying preexisting Indigenous-built programs. This also means ownership – systems must be managed, delivered, and owned by First Nations. AFN adds there is a need to avoid jurisdictional gaps, and that initiatives must be community led, based, and driven. Lastly, they argue that immediate needs and long-term goals need to be balanced, and transformation will take time (AFN, 2018). To create these relationships, there needs to be shared decision making (not only consultation), shared priorities, proper engagement allowing full consent, trust and transparency, clear jurisdiction, and honoring agreements.

According to the former AFN National Chief Perry Bellegarde:

> We must think not only of our children, and what we leave them, but we must think of the impacts of the decisions we make today, and the impacts for seven generations into the future. (Newswire, 2016)

Crown-Indigenous Relations Minister Carolyn Bennett expressed support for a seven generations approach, in relation to climate change policy:

> If only the settlers had listened to the First Nations when they arrived about thinking seven generations out. As a society, we have made so many decisions that weren't thinking seven generations out. (Newswire, 2016)

Awareness of this thinking in policy is not new. In a standing committee session from 2003, Member of Parliament Pat Martin shared[36]:

> Some have advised us we shouldn't go forward with any piece of legislation as it pertains to first nations until we consider the impact seven generations before and seven generations ahead. That is the rule. This means anything we do, whether it's trying to assess the impact on the environment or assess the impact on the human resources of the community, no piece of legislation should be entered into until we've seriously considered not only seven generations back to review the history and the wisdom of the people who came before, but also the impact it will have on seven generations in the future. I envy them that approach to decision-making, because we're making decisions not based on the impact of seven generations ahead. Often we're making decisions based on the political expediency that we can measure in terms of months, not in terms of years, and certainly not in terms of generations and certainly not in terms of seven generations. (HOC, 2003)

While AFN's initiative is specifically focused on ageing and disability (AFN, 2019c), justice is also a key priority of the AFN. Centering the seven generations principle through the Seven Generations Continuum of Care could demonstrate the value of applying this approach more widely to justice as well. Following the 2019 assembly, the AFN convened experts to assist in defining a Continuum of Care, with future meetings over the next 1–2 years to ensure that this work is driven by First Nations and reflective of First Nation voices (AFN, 2020a).[37]

## CONCLUSION

Current carceral policy approaches are not working. Through policy, many Indigenous peoples are over-policed, removed from communities, and confined through carceral systems. Families and communities have lived through this over generations. It is essential to acknowledge that conventional policy-making has served as a harmful tool to families and communities, and future policy work must center the experiences, knowledge, and strengths of Indigenous families and communities. Work must acknowledge the impacts of policy on generations past, current, and future; focusing on the intergenerational impacts of policy would be an advancement. In Canada, the Seven Generations Continuum of Care most explicitly advances this type of approach through centering a seven generations principle. That said, this initiative is focused on ageing and disability and currently does not speak to the impacts of carceral policies.

Mainstream policy interventions have not been leading to lower confinement rates within Indigenous families and communities, and interviews undertaken for this research underscored the need for transformative action. Addressing intergenerational imprisonment means breaking down structures which criminalize people and building up those that keep people well and whole. Breaking ongoing colonial legacies of Indigenous intergenerational and hyper imprisonment entails looking beyond reforms to court process and prison programming. It means establishing a focus on upstream support and autonomy rather than a fixation on arresting or imprisoning communities. This means moving funding away from punishment and toward serving actual human needs. To get there,

we need a long-term and inclusive approach to decision making that centers and devolves to communities.

## NOTES

1. Anthony and Blagg use the term "hyper incarceration" to describe Aboriginal confinement in Australia and other colonial countries. They claim it is more accurate than the term "mass incarceration" coined by David Garland (2001, p. 2) – because it is certain people who are targeted, not the masses.
2. Note that these numbers are only accounting for confinement in prisons and not policing, involuntary hospitalization, child removal, etc.
3. Increasing from $4.7 billion in 2016/2017 (Malakieh, 2018).
4. Increasing from $4.1 billion in 2016/2017, and $4.7 billion in Australia in 2018/2019 (Australian Government, 2018, 2020).
5. A total that is $126.6 million higher than in 2018/19 (Department of Corrections, 2020a).
6. In New Zealand, a higher proportion of the population is Indigenous (16% of the total population), the country is small, and snowball recruitment technique meant I was able to interview more people with lived experience and Indigenous identity.
7. Positionality refers to the location of the researcher in relation to the social and political context of the study, including the community, organization, or participants. The position of the researcher affects every phase of the research process (Harding, 1986; Hartsock, 1983).
8. Reflexivity is the recognition of an individual as embedded in what they study, and active in the production of knowledge (or "truth") rather than an objective observer (Foucault, 1994).
9. Residential schools were boarding schools for Indigenous children in operation from the 1880s to 1990s, funded by the federal government and run by Christian churches (TRC, 2015b).
10. The Sixties Scoop refers to a child-welfare policy that removed Indigenous children from their homes and placed them with non-Indigenous families from the 1950s to the 1980s (TRC, 2015b).
11. Despite guarantees of food aid in times of famine in Treaty 6, officials denied food as a means to ethnically cleanse a vast region of the plains to facilitate expansion of the Canadian Pacific Railway (Daschuk, 2013).
12. For example, in 1964, over 70% of Keewatin Inuit were placed in hospitals for periods ranging from three months to nine years. Together with this practice, children were adopted to outside families (Dickason, 1992).
13. In the 1720s, British soldiers were promised ten guineas in bounty for every Mi'kmaq person they killed (Hornborg, 2008).
14. Aboriginal and Torres Strait children who were removed from their families by the Australian federal and state government agencies over the last century.
15. Northern Territory nations include Alyawarre, Anmatjera, Arrernte, Gurindji, Kunibidji, Luritja, Murrinh-Patha, Pitjantjatjara, Tiwi, Warlpiri, and Yolngu.
16. The immediate aims of the NTER measures were to protect children from abuse and make communities safe. The intervention targeted an area which encompassed more than 500 Aboriginal communities. The measures introduced under the NTER were a collective imposition based on race (Commonwealth of Australia, 2008).
17. Western Australia nations include Noongar, Yamatji, Wankai/Wongai, Kimberley, and Ngaanyatjarra.
18. In 2012, Premier Colin Barnett claimed that the state government could no longer afford to keep funding all the communities and some would have to close (Radio New Zealand, 2016). The position eventually shifted to withdrawing services delivered to more than 100 small outstations (Government of Western Australia, n.d.).
19. Many Māori children were punished for speaking their language at school. The priority of the education system was teaching and enforcing English (Te Ara, 2012a).

20. The New Zealand Settlements Act in 1863 and the Native Lands Act led to the confiscation of three million acres of Māori land. This law was used as a method to "punish North Island tribes which were deemed to have rebelled against the British Crown in the early 1860s" (Ministry for Culture and Heritage, 2014).
21. Colonialism occurs pervasively, down to everyday routines. Sherene Razack (2015) describes an everyday devaluing of Indigenous life and taken-for-granted performance of white dominance in carceral systems.
22. Family Group Conferencing and Sentencing Circles are some of the most well-known justice initiatives that are promoted.
23. Key results of these interpretations include Gladue reports and Gladue courts.
24. This is an increase from 2017/2018, when Indigenous adults accounted for 28% provincial/territorial and 27% federal admissions (Malakieh, 2018).
25. This is a 2% increase from the previous year (Australian Bureau of Statistics, 2020).
26. This is a 1% increase from the previous year (Department of Corrections, 2019b).
27. The full findings from the interviews focused on other important areas of change (AUTHOR, 2020). First, participants suggest shifting attitudes, educating around the impacts of historical trauma and confinement on Indigenous families, to shift support and action away from punitive and retributive action. Second, participants recommend handing over the keys, meaning handing over power and resources to Indigenous communities. Third, interview participants speak to narrowing the net, in other words, narrowing the criteria to target, sentence, and detain peoples. Fourth, another pathway recognized is resourcing upstream, meaning supporting Indigenous communities in offering and providing support for families and community members to survive and thrive.
28. An Aunty is an older respected Indigenous person, who may be an organizer or advocate in the community.
29. Anishinaabe is the autonym for a group of culturally related Indigenous peoples in Canada and the United States.
30. Aboriginal Australians of Queensland and northwest New South Wales (NSW).
31. Children are still removed from Aboriginal families in large numbers.
32. Labour government elected October 26, 2017.
33. Also see Patrick Wolfe (2006).
34. In Polynesian mythology, Hawaiki is the original home of the Polynesians before dispersal across Polynesia.
35. This approach does not focus on imprisonment or criminalization specifically.
36. Member of parliament, Winnipeg Centre (Manitoba, Canada), from 1997 to 2015.
37. AFN held a meeting to discuss the engagement process, and the AFN Health Sector (2019b, 2020b) is gathering research on developing the Continuum.

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# CHAPTER 8

# CRIMINAL JUSTICE CONTACT AND CORESIDENCE IN YOUNG ADULTHOOD: EXPLORING THE ROLE OF THE FAMILY CONTEXT

Cody Warner


## ABSTRACT

*For contemporary American young adults (aged 18–29), coresidence with parents is now the most common living arrangement. Recent research on residential transitions out of and back into the parental home shows that residential independence is still common, meaning that many young adults coreside with parents after first leaving the nest. The timing of residential independence and subsequent coresidence is often tied to other life-course outcomes, such as relationships and employment, as well as characteristics of the family context, such as family structure and financial resources. A small body of research also demonstrates that residential transitions are common following criminal justice contact experiences such as arrests and periods of incarceration. While this association does not appear to be explained by the family context, the current study argues there are several reasons to anticipate heterogeneity in coresidence patterns based on the childhood family context. Drawing on data from the 1997 cohort of the National Longitudinal Survey of Youth, I find that criminal justice contact is associated with coresidence with parents during young adulthood in a fairly consistent manner across different dimensions of family context (although parental education may play a role). These findings demonstrate the power of the criminal justice system in directing or redirecting*


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*residential trajectories and have implications for both individuals with contact and their families.*

**Keywords:** Incarceration; parental coresidence; family relationships; family context; NLSY; residential trajectories

## INTRODUCTION

In the 1960s, fewer than one third of young adults aged 18–29 in the United States were residing with their parents. Rates of coresidence increased in the subsequent decades, and by 2000, nearly 40% of young adults were living in the parental home (Fry, Passell, & Cohn, 2020). Since the early 2000s, the combined effects of the Great Recession (2007–2009) and the coronavirus pandemic have contributed to even steeper rises in rates of coresidence, and the most recent estimates show that more than half of young adults are now living with their parents (Fry et al., 2020). Importantly, many of these children are residing with their parents after first experiencing a spell of residential independence, and a recent body of research has started to explore the correlates of both exits from – and subsequent returns to – the parental home (Gillespie, 2020; Gillespie & Lei, 2021; Houle & Warner, 2017; Lei & South, 2016; Sandberg-Thoma, Snyder, & Jang, 2015; South & Lei, 2015; Thomeer & Reczek, 2019; Warner & Houle, 2018; Warner & Remster, 2021).

This research has demonstrated that residential transitions during adolescence and young adulthood are generally tied to other life-course transitions, socioeconomic resources, and the family context (Sandberg-Thoma et al., 2015; South & Lei, 2015; Stone, Berrington, & Falkingham, 2013). Further, a group of studies have shown that residential transitions can be shaped by young adult experiences with the American criminal justice system (Raphael, 2007; Siennick & Widdowson, 2017; Warner & Remster, 2021). Arrests and spells of incarceration are tied to both residential independence and returns home, with young adults especially likely to leave and return home around the time they experience contact (Warner & Remster, 2021). However, while the evidence is fairly clear that criminal justice contact is associated with residential transitions, it is less clear if *all* parental homes are in positions to provide housing assistance to their justice-involved children.

The present study thus expands knowledge on residential outcomes following criminal justice contact in two ways. First, I explore for potential heterogeneity in coresidence by childhood family context. As noted in the literature review, the burden of criminal justice contact falls disproportionately on disadvantaged households, but research in this area has treated all households the same. I thus explore if the association between criminal justice contact and residential transitions varies based on family context dimensions including family structure, parental financial resources (e.g., parental education), and parental attachment. Second, I extend recent research by focusing specifically on coresidence with parents after first living independently during the period of young adulthood (defined as ages

18–29). Prior research in this area has mostly utilized available longitudinal data stretching across time based on the timing of interviews. I take an alternative approach by creating a synthetic cohort in the data to explore coresidence starting at age 18 and ending at age 29.

I start by overviewing the state of knowledge on residential transitions, focusing on the role of the family context and the links with the criminal justice system. Here I discuss potential variation by family context in leaving or returning home following arrests or periods of incarceration. I then describe the data, drawn from the National Longitudinal Survey of Youth–1997 (NLSY97) cohort, present results, and close by discussing the contributions to research on residential transitions, more broadly, and how these transitions unfold in the context of coming of age during an era of criminal justice expansion.

## LITERATURE REVIEW

### *Residential Transitions in the Era of Mass Incarceration*

Each year, police in the United States make more than 10 million arrests, and about the same number of individuals is processed through local jails (FBI, 2020). From here, many are held without bail, awaiting action on their charges, and many are subsequently convicted and sentenced to serve a punishment in the community (often via probation supervision) or in a secure correctional facility such as a jail or prison. According to recent estimates, as many as 100 million Americans (or more) have a criminal record (Vallas & Dietrich, 2014), more than 7.3 million American adults have been incarcerated (Shannon et al., 2017), and approximately 600,000 individuals are released from prison every year (Carson, 2018). This is no new trend, as all aspects of the American criminal justice system have expanded considerably since the 1970s. System growth stemmed largely from policy changes that lowered the bar for incarceration and increased sentence lengths. Even with recent declines in American prison populations, the current imprisonment rate is about four times higher than it was prior to the prison boom in the 1970s (Carson, 2020).

These steps of the criminal justice process (arrest, conviction, incarceration, community supervision) are also generally processes of residential and housing instability. Todd Clear (2007) referred to this as a process of "coercive mobility," and research shows that incarceration and other forms of criminal justice contact are associated with a range of housing insecurities including residential instability, residence in more disadvantage neighborhoods, and homelessness (Harding, Morenoff, & Herbert, 2013; Herbert, Morenoff, & Harding, 2015; Massoglia, Firebaugh, & Warner, 2013; Remster, 2019; Warner, 2015, 2016). While specific individuals are arrested and incarcerated, entire family units are impacted by criminal justice contact. Partners and children of those incarcerated, for example, experience their own housing insecurities, including more frequent moves and residence in more disadvantaged neighborhoods (Leibbrand, Carll, Bruns, & Lee, 2019). Furthermore, a robust and growing body of research shows that system contact – particularly incarceration – is linked to relationship dissolution, partner

mental health issues, and child behavioral and educational outcomes (Haskins, 2016; Massoglia, Remster, & King, 2011; Turney, 2015; Wildeman, Schnittker, & Turney, 2012).

That incarceration has deleterious effects on family processes is especially noteworthy because families are a key resource for individuals who are being processed by the criminal justice system or who are exiting secure confinement. Families provide a broad range of resources to their justice-involved family members, both tangible and intangible. One particularly salient family resource is housing. Many individuals rely on parents or other family members for short- and long-term housing assistance during the reentry process (Visher, La Vigne, & Travis, 2004). More minor – and much more common – forms of criminal justice contact are also linked to young adult housing outcomes, with arrests triggering both exits from and returns back to the parental home (Warner & Remster, 2021). Families are also a key source of financial resources, as family units often take on the legal financial obligations attached to criminal convictions (deVuono-powell, Schweidler, Walters, & Zohrabi, 2015). However, research in this area has largely considered family processes and the family context to be consistent across individuals who encounter the criminal justice system (i.e., as something to be controlled away). It remains to be seen if different families are differentially situated to provide housing assistance for their children following criminal justice contact.

## CRIMINAL JUSTICE CONTACT, HOME LEAVING, AND HOME RETURNING

Recent growth in coresidence with parents has spurred a research agenda focusing on individual patterns of home leaving and home returning in relation to three primary elements: (1) contemporaneous life-course transitions, (2) individual well-being, and (3) the family context. For adolescents and young adults, residential transitions are often the result of other life-course events that occur during the transition to adulthood. Completing high school and making transitions to either college or the labor market often trigger moves out of the parental home (F. Goldscheider, Goldscheider, St Clair, & Hodges, 1999; South & Lei, 2015). Relationship formation (e.g., cohabitation and marriage) fosters residential independence, while relationship dissolution fosters home returning (Houle & Warner, 2017; South & Lei, 2015). Residentially, independent young adults are also more likely to return home if they drop out of college or struggle in the labor market (Houle & Warner, 2017; Sandberg-Thoma et al., 2015). Emotional distress and substance use (e.g., drinking and drugs) are also associated with an increased likelihood of returning to the parental household (Sandberg-Thoma et al., 2015).

Research is also clear that the family context plays an important role in the pathways out of and back into the parental home. Family structure has been linked with residential independence, with youth from single-parent families more likely to exit the parental home (Buck & Scott, 1993; F. K. Goldscheider & Goldscheider, 1998). Family financial resources are also linked with residential

independence, as youth can lean on family for assistance during the (often) tumultuous first months out of the parental home (South & Lei, 2015). Recent research finds that family connectivity is also tied to residential transitions, although findings have not been consistent. Gillespie (2020) found that a strong parent–child relationship facilitates home leaving, while South and Lei (2015) found that maternal closeness delays home leaving.

While not a central focus of research on residential transitions, a small group of studies have explored if residential independence or coresidence with parents is more likely in the aftermath of incarceration and other forms of criminal justice contact. Raphael (2007), for instance, found that incarceration was associated with a higher likelihood of coresidence among men who came of age during the early 1980s. More recently, Siennick and Widdowson (2017) found a complex relationship between incarceration and coresidence across adolescence and young adulthood. Incarceration is associated with an increased likelihood of coresidence during the late teenage years, then a decreased likelihood in the early 20s, followed again by an increased likelihood after the early 20s. Finally, Warner and Remster (2021) found that both arrests and periods of incarceration are linked to residential transitions. Individuals with criminal justice contact leave home earlier and, once independent, return home earlier than their peers with no contact.

It is thus clear that, independent of other individual transitions to adulthood, both the family context and experiences with the criminal justice system are associated with residential transitions as individuals attempt to form an independent household. However, one shortcoming of existing research on the role of criminal justice contact on residential transitions has been a neglect of potential heterogeneity in coresidence by the family context. That is, there has been limited consideration especially of the types of families that disproportionately experience contact with the criminal justice system. The rapid and long-term expansion of the criminal justice system did not touch on all families equally. Rather, justice-involved families are disproportionately drawn from disadvantaged and minority households (Western, 2006).

Following contact, research shows that justice-involved individuals rely on families for housing and other resources. But it remains an unexplored question if this is consistent across families, or if there is heterogeneity by family context in the relationship between criminal justice contact and coresidence with parents. Exploring this question is valuable as well because there are some potential competing expectations in how family context might mater for those with a history of incarceration and other forms of contact.

## CRIMINAL JUSTICE CONTACT, CORESIDENCE, AND THE FAMILY CONTEXT

Recent research exploring the association between criminal justice contact and residential transitions has accounted for the family context primarily by treating it as a potential source of spuriousness. Siennick and Widdowson (2017), for instance, controlled for family context measures including family structure,

parental economic hardship, and parental incarceration while exploring coresidential patterns across adolescence and young adulthood (see Siennick & Widdowson, 2017, Table 2, p. 409). Furthermore, Warner and Remster (2021) included a block of family context and connectivity measures as controls in models examining the association between criminal justice contact, home leaving, and home returning (see Warner & Remster, 2021, Table 1, p. 326). These studies thus demonstrate that the association between criminal justice contact residential transitions (including coresidence) is likely robust to the types of families that individuals with criminal justice contact come from. They have neglected, however, to consider if or how the association between criminal justice contact and coresidence varies across the family context. I argue that it is worth exploring if this association is dependent on (1) family structure, (2) family financial resources, (3) family connectivity, and (4) parental incarceration.

***Table 1.*** Descriptive Statistics for all Variables.

| | Full Sample | Young Adult CJC? | | *t*-Test |
|---|---|---|---|---|
| | (Mean/%) | No (Mean/%) | Yes (Mean/%) | |
| Arrested at given age (1 = yes) | 5.3 | – | 19.8 | |
| History of arrest (1 = yes) | 12.5 | – | 46.3 | |
| Incarcerated at given age (1 = yes) | 1.2 | – | 4.4 | |
| History of incarceration (1 = yes) | 3.1 | – | 11.4 | |
| Coresidence rate | 7.0 | 6.3 | 8.0 | *** |
| Ever coreside (1 = yes) | 35.8 | 33.6 | 41.7 | *** |
| *Family background/connectivity* | | | | |
| Family structure (from baseline) | | | | |
| 2-Parent biological (referent) | 48.0 | 52.1 | 37.0 | *** |
| Step parent | 13.9 | 13.2 | 15.6 | *** |
| Single parent | 33.1 | 30.2 | 40.9 | *** |
| Other family structure | 5.0 | 4.4 | 6.6 | *** |
| Parent education (from baseline) | | | | |
| HS degree or less (referent) | 50.5 | 48.6 | 55.7 | *** |
| Some college | 26.8 | 26.9 | 26.5 | |
| College degree | 22.7 | 24.5 | 17.8 | *** |
| Parental attachment | 8.438 | 8.575 | 8.067 | *** |
| | (2.080) | (2.085) | (2.022) | |
| Parental incarceration (1 = yes) | 7.0 | 05.5 | 11.1 | *** |
| *Control variables* | | | | |
| Gender (male = 1) | 50.0 | 42.5 | 70.3 | *** |
| Race | | | | |
| White (referent) | 50.9 | 51.9 | 48.1 | *** |
| Black | 27.1 | 25.7 | 30.9 | *** |
| Hispanic | 21.2 | 21.6 | 20.2 | ** |
| Mixed race | 0.8 | 0.8 | 0.8 | |
| Education (highest degree earned) | | | | |
| <HS degree (referent) | 18.7 | 13.7 | 32.1 | *** |
| HS degree/GED | 67.5 | 69.8 | 61.4 | *** |
| College degree | 13.8 | 16.5 | 6.5 | *** |

***Table 1.*** (*Continued*)

| | Full Sample | Young Adult CJC? | | *t*-Test |
|---|---|---|---|---|
| | (Mean/%) | No (Mean/%) | Yes (Mean/%) | |
| Relationship status | | | | |
| Unmarried (referent) | 66.7 | 66.1 | 68.4 | *** |
| Cohabitating | 14.1 | 12.8 | 17.5 | *** |
| Married | 17.5 | 19.6 | 11.8 | *** |
| Divorced/separated | 1.7 | 1.5 | 2.2 | *** |
| Full-time employment (1 = yes) | 42.0 | 42.8 | 39.7 | *** |
| Wages[a] (thousands of dollars) | 14.40 | 15.22 | 12.18 | *** |
| | (17.59) | (18.06) | (16.07) | |
| Parenthood (1 = yes) | 31.5 | 29.3 | 37.3 | *** |
| Problem drinking (1 = yes) | 35.3 | 31.0 | 46.8 | *** |
| Age at first residential independence | 21.32 | 21.38 | 21.15 | *** |
| | (3.290) | (3.181) | (3.563) | |
| Region of origin | | | | |
| North east region (referent) | 16.2 | 16.3 | 16.0 | |
| North central region | 23.0 | 22.4 | 24.7 | *** |
| Southern region | 38.7 | 38.3 | 39.6 | * |
| Western region | 22.1 | 23.0 | 19.7 | *** |
| Person-age-observations | 48,877 | 35,674 | 13,203 | |
| Persons | 6,692 | 6,692 | 6,692 | |

*Notes*: Standard deviations for continuous variables only (in parentheses). HS: high school; CJC: criminal justice contact.
[a]Wages reported in 2010 dollars.
*t*-Test: $+p < 0.10$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.

***Table 2.*** Discrete-Time Hazard Models Predicting Coresidence During Young Adulthood (Ages 18–29).

| | Model 1 | Model 2 | Model 3 |
|---|---|---|---|
| Arrested | 0.460*** | | 0.433*** |
| | (0.071) | | (0.078) |
| Arrest history | 0.101+ | | 0.102 |
| | (0.059) | | (0.063) |
| Incarcerated | | 0.489*** | 0.138 |
| | | (0.142) | (0.156) |
| Incarceration history | | 0.094 | −0.003 |
| | | (0.110) | (0.117) |
| *All controls not shown* | | | |
| Person-age-observations | 48,877 | 48,877 | 48,877 |
| Persons | 6,692 | 6,692 | 6,692 |

*Source*: NLSY97.
*Note*: Controls not shown: background family structure, parental education, parental attachment, parental incarceration, young adult relationship status, young adult educational attainment, young adult full-time employment, young adult wages, young adult problem drinking, race/ethnicity, gender, age at residential independence, region of origin, dummy variables for age intervals (age 18 = referent).
$+p < 0.10$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.

First, childhood family structure is tied to both residential transitions and criminal justice contact. Research has demonstrated that children of "disrupted" family units are more likely to contact the criminal justice system (Harper & McLanahan, 2004). At the same time, children of these homes tend to exit the home earlier and remain independent longer compared to their peers with no contact (F. K. Goldscheider & Goldscheider, 1998). These children, who are less likely to live with parents in the first place, may thus be less likely to coreside after criminal justice contact. Their peers from two-parent families, on the other hand, may lean more on their parents given higher levels of housing assistance in general.

Second, the ability of a family to take in a child following criminal justice contact may vary based on the financial resources of the family. Criminal justice contact is concentrated in disadvantaged and marginalized households, and criminal justice contact can compound these struggles for both individuals (Maroto, 2015) and their family members (deVuono-powell et al., 2015). Parents with limited resources may have to allocate these to help with legal fines and fees, rather than allocating toward the direct and indirect costs of housing a young adult child. Thus, while less likely among advantaged households, criminal justice contact may be associated with a higher likelihood of coresidence for children who have parents with financial resources to help in multiple domains including housing, food, and legal financial obligations.

Third, coresidence following criminal justice contact could depend on the nature of the relationship between the parent and child. Criminal justice contact can be a source of family stress and can damage a child's relationship with their parents (Edin, Nelson, & Paranal, 2004; Nurse, 2002). How this may be linked to coresidence is complicated because research has not been consistent on the role of parent–child relationships in residential transitions. South and Lei (2015), for instance, found that a strong bond with parents delays residential independence, while Gillespie (2020) found that a strong bond can facilitate residential independence. That said, if criminal justice contact damages the bond, it could create hesitancy on behalf of the child and/or parent in terms of sharing a household again.

Finally, the likelihood of coresidence following criminal justice contact could be shaped by the intergenerational nature of that contact. Crime and criminal justice contact are more common for adolescents and young adults who have crime-involved parents (Besemer, Ahmad, Hinshaw, & Farrington, 2017). In these families, increased exposure to the criminal justice system may lead to coresidence because of familiarity with the social consequences of criminal justice contact (Kirk & Wakefield, 2017). On the other hand, children of these households may avoid the parental home in hopes of "knifing off" from potential criminal justice exposure or associations (Kirk, 2012; Laub & Sampson, 2003).

In sum, while past research demonstrates that criminal justice contact is associated with coresidence over-and-above characteristics of the childhood family context, there are reasons to expect that contact may be tied to coresidence in different ways depending on the family context. These expectations are explored using longitudinal social survey data from the United States, described next.

## METHOD

Data from this study are drawn from the NLSY97 cohort. The NLSY97 is part of the larger National Longitudinal Surveys overseen by the Bureau of Labor Statistics and is a national representative sample of 8,894 individuals who were born in the United States between the years of 1980 and 1984. Interviews occurred annually from 1997 to 2011, and biennially up to the most recent round of released data in 2017. The NLSY97 data have been used extensively to explore residential transitions (Gillespie, 2020; Sandberg-Thoma et al., 2015; Warner & Houle, 2018) as well as the social consequences of criminal justice contact (Apel & Sweeten, 2010; Sugie & Turney, 2017). Key for the current study, the data also contain several measures of the family context, including characteristics of the childhood home and relationship with parents.

## STRUCTURING THE DATA TO CAPTURE YOUNG ADULTHOOD

Given recent research and media attention directed at coresidence during young adulthood (Fry et al., 2020), I focus here specifically on the young adult of ages 18–29. This age range was selected for three primary reasons. First, the low end of the range captures the time period around when it is common for American adolescents to first leave home. Indeed, the average (mean) age of first self-reported residential independence in the NLSY97 is 20.7, while the modal age is 19. Residential transitions during this time are thus more likely to capture the normative first exit from the parental home, as well as any subsequent coresidence. Second, the age range captures the transition to the most common age of criminal responsibility (age 18). During this period, when many encounter the adult criminal justice system for the first time, crime-involved individuals are more likely to receive criminal justice statuses that are lasting. Third, the results can speak directly to a common age range, rather than structured around the timing of when respondents are first or most recently interviewed.

From a practical standpoint, this entails modifying the year-to-year structure of the original NLSY97 data to create a synthetic cohort of respondents who enter the working data at the same age. At the baseline interview in 1997, respondents were as young as 12 and as old as 18. By the last interview, in 2017, respondents were aged 31–39, meaning that all respondents were interviewed during the young adult years. To capture young adulthood, a cohort was created and structured around age, using a combination of age and survey year, where every respondent enters the working data in the interview closest to their 18th birthday. Given the age range under consideration, individual respondents can have a total of 12 person-age-observations, or one for each age interval between 18 and 29. The reconstructed working data thus follow a group of individuals (or synthetic cohort) who all age together following their entrance into young adulthood.[1]

## PARENTAL CORESIDENCE IN YOUNG ADULTHOOD

Existing research has consistently found that criminal justice contact is associated with residential independence, returns to the parental home, and other forms of coresidence (Raphael, 2007; Siennick & Widdowson, 2017; Warner & Remster, 2021). Following this research, the present study utilizes a series of questions specifically designed to capture residential transitions out of and (for many) back into the parental home (Dey & Pierret, 2014). These questions start by prompting respondents with a definition of a permanent households. This means that (1) all respondents are answering based off a common definition, and (2) temporary residences such as dorms are explicitly excluded from this definition. Following the prompt, respondents are asked about "living on their own." Starting retrospectively in 2003 and then updated at each subsequent interview, respondents are asked if they have been the head of a household, or shared that role equally with others, for a period of at least three months. A follow-up is then asked about moving back in with their parents or into someone else's household, again for a period of at least three months.[2]

Respondents who answer in the affirmative to these questions about home leaving and home returning are asked to report the year the transition occurred. I utilize this information alongside respondent age to create the focal dependent variable of the present study: coresidence with parents during young adulthood. I focus on coresidence following a spell of residential independence, as this appears to be the most common pathway. Most American young adults have at least one spell of residential independence (Gillespie, 2020; Houle & Warner, 2017), while continuous residence with parents from 18 to 29 is relatively rare. Thus, the focal dependent variable is a dichotomous measure coded 1 if a respondent coresided with parents following a spell of residential independence between ages 18 and 29. The measure is coded 0 in any age-specific observation a respondent has left home and remains in an independent household.

## YOUNG ADULT CRIMINAL JUSTICE CONTACT

At each wave of data collection, respondents are asked detailed questions about their criminal justice contact experiences, and I follow recent research here by focusing on arrests and periods of incarceration (Siennick & Widdowson, 2017; Warner & Remster, 2021). Respondents are first asked if they have been arrested since the prior interview, and I use this information to create two time-varying dichotomous measures of arrest covering ages 18–29. The first is coded 1 if a respondent reported being arrested during a particular age observation and 0 otherwise. This is considered the *arrest event*. Once arrested, respondents are then considered to have an *arrest history*, captured by the second time-varying variable. These measures are coded 0 prior to an arrest (or in all observations for those with no arrests) and 1 in all observations following the arrest event. For instance, if a respondent reported an arrest in the year 2008, when they were 24 years old, their arrest event measure is coded to 1 at age 24, and their arrest history measures are coded 0 up to age 24 and 1 after age 24.

The same process is used to capture *incarceration events* and *incarceration history*. Of those arrested, follow-up questions capture additional criminal justice processing, including being sentenced to a juvenile or adult correctional facility. Incarceration can also be captured via a residence item, taken at each wave, indicating that the current residence for a respondent is in jail. If a respondent reports having been incarcerated since the last wave, then the respective age-specific indicator is coded 1 (and 0 otherwise). This is the incarceration event. The second time-varying measures capture incarceration history and are coded 0 at all ages before incarceration (and in all observations for those never incarcerated) and 1 in at all ages after incarceration.

## FAMILY CONTEXT AND CONNECTIVITY

My primary focus in this manuscript is on the potential moderating role of the family in the overall relationship between criminal justice contact and coresidence during young adulthood. Based on prior research and theory, I focus on four elements of the family context. First, because different family structures are often associated with different resources and processes, I create a measure of background family structure (two biological parents [reference category], step-parent, single-parent, and other family). Second, because parental socioeconomic status may shape the resources available to a crime-involved child (Siennick, 2011), I create a measure of parent education based on highest degree of a resident parent in 1997 (high school or less (reference category), some college, college degree). Third, family connectivity is captured with a measure of parental attachment, a time-stable measure created using a series of statements: (1) I think highly of him/her, (2) he/she is a person I want to be like, and (3) I really enjoy spending time with him/her. Respondents rate these statements a maximum of five times (1997, 1998, 1999, 2001, and 2003), and following past research, I averaged all available waves to create a summed scale of parental attachment. And finally, given the intergenerational transmission of advantages and disadvantages including crime and criminal justice contact (Besemer et al., 2017), I control for parental incarceration (1 = either parent was incarcerated before the respondent turned age 16).

## CONTROL VARIABLES

Individuals who come into contact with the criminal justice system are disadvantaged across many of the life-course transitions and trajectories that may foster residential independence and reduced the likelihood of coresidence. Thus, I include measures of several potential sources of spuriousness, including demographic measures and relevant life-course transitions that may explain any association between criminal justice contact and coresidence. Demographic measures include gender (male = 1), race/ethnicity (White (reference group), Black, Hispanic, other), region of origin (Northeast (reference category), Northcentral, Southern, or Western United States), and age at first reported spell of residential independence.

I control for a range of potentially confounding life-course characteristics that commonly drive residential transitions. I include measures of full-time employment (1 = reported working 35 hours or more in the past year), earnings (adjusted for inflation to 2010 dollars), educational attainment (less than high school (reference category), high school degree or equivalent, and college degree), relationship status (unmarried (reference category), cohabitating, married, divorced/separated), and parenthood (1 = yes). Following prior research (Sandberg-Thoma et al., 2015), I include a measure of problem drinking coded 1 if a respondent reported binge drinking or drinking before school/work in the 30 days prior to the most recent interview. Like the criminal justice contact measures, each of these time-varying controls are created using a combination of age and survey year to create a maximum of 12 person-age-observations (one each for age interval from 18 to 29).

## ANALYTIC STRATEGY

As noted above, the yearly data accessed through the NLS investigator was first transformed to create a synthetic cohort to follow the same group of respondents from ages 18 to 29.[3] Each respondent can be at-risk for coresiding with their parents for a maximum of 12 observations (or one each for ages 18–29). Time-stable measures are consistent across these observations, while up to 12 age-specific measures are created for each time-varying measure. Following recent research on residential transitions, I estimated the likelihood of coresidence by age using discrete-time event history models (Houle & Warner, 2017; South & Lei, 2015). I adjust for the underlying time trend by including dichotomous variables for each specific age, with the age 18 observation as the reference category. Respondents become at risk for coresidence if they are living independently at age 18, or at whatever age they first live independently between ages 18 and 29. They remain at risk until the age they report coresidence with their parents or when the time series ends at age 29.

After listwise deletion across all study covariates, the final working sample is comprised of 6,692 respondents who provide 48,887 person-observations. To explore if the family context moderates the association between criminal justice contact and coresidence in young adulthood, I proceed as follows: First, I present descriptive statistics on criminal justice contact, coresidence, and all study covariates. This provides a bivariate association between criminal justice contact and coresidence. Second, I present multivariate analyses to interrogate the link between criminal justice contact and coresidence after adjusting for all study covariates. Third, I present a series of figures based on statistical interactions between criminal justice contact and family context (see the Appendix for summary tables with coefficients). For ease of interpretation, and to allow for comparisons across criminal justice contact and family context indicators, I graph the marginal effects from these models using the margins and coefplot commands in Stata (Mize, 2019).

## RESULTS

Table 1 displays descriptive statistics for all study variables. The three columns provide summary statistics for the full sample, those with no criminal justice contact in young adulthood, and those with criminal justice contact in young adulthood. Given that the data are structured in a long-format arranged by person-age, the descriptive statistics reflect the averages across all age observations from 18 to 29. Thus, Table 1 indicates that respondents reported an arrest in 5.3% of all observations between ages 18 and 29 and reported being incarcerated in 1.2% of all person-age-observations. Over 12% of all observations follow an arrest, and over 3% of all observations follow a spell of incarceration.

Table 1 also shows that, at any given age between 18 and 29, 7% of all residentially independent respondents returned home to coreside with parents. Consistent with existing research, the rate of coresidence is significantly higher among those with criminal justice contact during young adulthood (8.0%) compared to their peers with no criminal justice contact (6.3%). By age 29, 41.7% of those respondents with criminal justice contact have coresided with parents, compared to 33.6% of their peers without contact.

It is also noteworthy for the present study that, as shown in Table 1, there are some differences in family context and connectivity based on history of young adult criminal justice contact. Those with contact, for example, are less likely than their peers without contact to come from a two-parent biological household (37% versus 52%), and more likely to come from a step- or single-parent household. Respondents with criminal justice contact are more likely than their peers to have parents with only a high school degree (or less) and have lower levels of parental attachment. Finally, and reflecting the intergenerational transmission of criminality, respondents with criminal justice contact are more likely to have had a parent incarcerated before they turned 16 (11.1% versus 5.5%).

The descriptive results thus show that young adults with criminal justice contact are more likely to coreside with parents and more likely to come from disadvantaged family environments. To determine if criminal justice contact is associated with coresidence after accounting for potential sources of spuriousness, I turn to multivariate statistics in Table 2, predicting coresidence from 18 to 29 using discrete-time hazard models.

Consistent with existing research (Warner & Remster, 2021), being arrested (Model 1) or incarcerated (Model 2) at a given age is associated with an increased likelihood of coresidence over-and-above contemporaneous life-course outcomes, demographic characteristics, and features of the family context. Indeed, the results in Model 1 show that being arrested in the last year increases the odds of coresidence by 58.4% ($e^{0.460} = 1.584$). Respondents with a history of arrest (i.e., they have been arrested at some point in the past) are also marginally more likely to coreside in young adulthood. Model 2 shows that having been incarcerated in the past year is also linked to coresidence, increasing the odds of living with parents by 63% ($e^{0.489} = 1.630$). It is worth emphasizing here that it is the associations between coresidence and the *event* measures that are especially robust, suggesting

that young adults are likely to coreside shortly after criminal justice contact. Each of these event measures captures criminal justice contact within the last year. Finally, in Model 3 (with all indicators of criminal justice contact included), the results indicate that incarcerated individuals are more likely to coreside primarily because of their prior arrest experiences. In this final model, only the measure for the arrest event is a significant predictor of coresidence.

The results in Tables 1 and 2 are consistent with existing research and demonstrate that criminal justice contact in young adulthood is associated with an increased likelihood of coresidence with parents. Descriptive results in Table 1 also indicate that young adults who contact the criminal justice system are more likely to have lived in step- or single-parent households, to have lived in households with parents with lower levels of education, have lower levels of attachment with their parents, and are more likely to have had a parent incarcerated during childhood. While these features of the family context do not explain why young adults with criminal justice contact are more likely to return home, there are plausible reasons to examine if the association between criminal justice contact and coresidence is different across these features of the family context. To explore this potential heterogeneity, I present a series of interactions between arrest, incarceration, and the four focal elements of the family context. For ease of interpretation, I have plotted the marginal effects of these interactions in Figs. 1–5, and I make summary coefficients available in the Appendix.

## FAMILY CONTEXT INTERACTIONS

To explore heterogeneity in the relationship between criminal justice contact and family context, I estimated the following interactions with each of the arrest and incarceration measures: (1) family structure, (2) parent education, (3) parental attachment, (4) parental incarceration. I separately interact arrest and incarceration experiences with these time-stable measures of the family context, and the four figures that follow all contain two panels: Panel A of each figure shows plotted marginal effects for interactions with arrest events and arrest history, and Panel B of each figure shows plotted marginal effects for interactions with incarceration events and incarceration history. Each is based on a model that is adjusted for the underlying time trend (dummy variables for each age, with age 18 are the reference category), but with no other control variables. Following the initial exploration of interactions, I then plot marginal effects for significant interactions controlling for all other study covariates.

I begin with Fig. 1, with criminal justice contact measures interacted with baseline family structure.

Across both Panels A and B, the figure reflects Table 2, showing that coresidence is especially common when a young adult is recently arrested or experiences a recent spell of incarceration (the blue bars in each panel of the figure). It is also worth pointing out that there is considerable variance around the estimates for the criminal justice contact measures. This contributes to larger 95% confidence intervals, especially those estimates capturing a criminal justice contact *event*

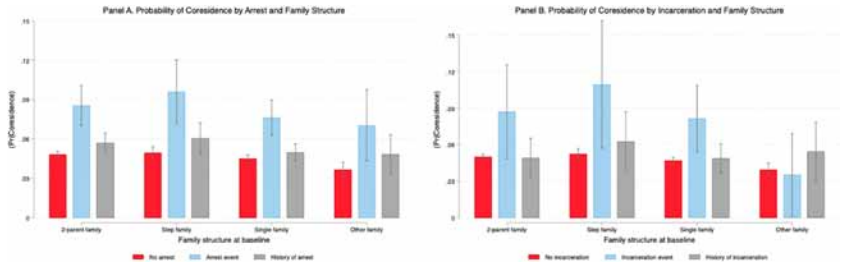


*Fig. 1.* Predicted Probability of Coresidence by Criminal Justice Contact and Family Structure. *Source*: Author calculations of NLSY97 data. See Table A1 for coefficients and standard errors.

(i.e., being arrested or incarcerated in a specific observation). This is a trend that will hold across the figures, and readers are reminded that criminal justice contact is not especially common, with arrests reported in 5.3% of all person-observations and incarcerations reported in 1.2% of all person-observations.

That said, with the exception of "Other family" in Panel B, the trend of increased coresidence after criminal justice contact is fairly consistent across family structure types (within each cluster of bars). While the likelihood of coresidence is highest for respondents from step-family households, the pattern of results is roughly the same across family structure types. In other words, the relationship between criminal justice contact and coresidence does not depend on family structure. Young adults of all family types are most likely to coreside if they have been recently arrested or incarcerated.

The same cannot be said for parental education, and the results in Fig. 2 suggest that coresidence may be especially likely for arrested children of parents with higher levels of education (see also Table A2 for coefficients).

In Panel A of Fig. 2, focusing on the blue bars, the probability of coresidence is significantly higher for respondents who have parents with some college education, compared to their peers with parents who have a high school degree or

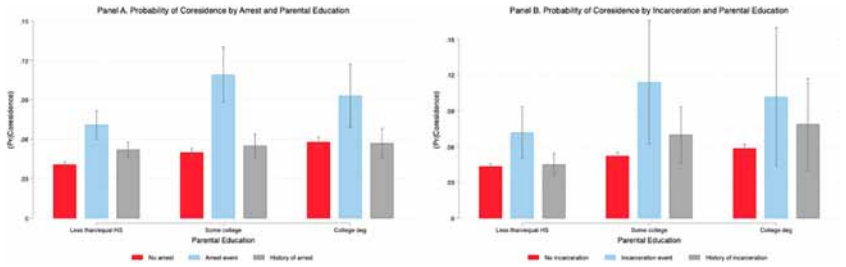


*Fig. 2.* Predicted Probability of Coresidence by Criminal Justice Contact and Parental Education. *Source:* Author calculations of NLSY97 data. See Table A2 for coefficients and standard errors.

less. Indeed, the predicted probability of coresidence for recently arrested young adults with parents who have some college education is about 54% higher than the probability for recently arrested young adults with parents who have a high school degree or less. The difference between respondents who have parents with college degrees and those with high school or less also nears statistical significance. Again, this corresponds to an arrest event or a respondent reporting being arrested since the date of the last interview. A larger history of arrest (the gray bars) is linked to coresidence in roughly the same way as no arrest (the red bars). A similar pattern is observed in Panel B, focusing on incarceration, but here the probabilities across levels of parental education are not statistically significant. It is worth mentioning, however, that the probability of coresidence does increase consistently across levels of parental education for respondents who have a history of incarceration. While the different does not reach conventional levels of statistical significance, young adults who have ever been incarcerated have a predicted probability of coresidence that is 54% higher if their parents have college degrees compared to if their parents have a high school degree or less (gray bars of Panel B).

There is also some evidence in Panel A of Fig. 3 that coresidence is especially likely for arrested respondents with high levels of parental attachment. The 95% confidence intervals do overlap across the three blue bars, but the probability that a respondent with a recent arrest will coreside is almost 40% higher if they have a high level of attachment to their parents compared to a low level of parental attachment.

The results in Panel B show that the probability of coresidence does increase in the aftermath of an incarceration event across levels of parental attachment. That said, none of the comparisons in Panel B of Fig. 3 are statistically significant.

Finally, while research demonstrates that crime and criminal justice contact cluster across generations within the same family, this does not appear to play a role in coresidence, as displayed in Fig. 4.

Again, coresidence is highest when respondents report they were arrested or incarcerated since the last interview, but the differences between respondents who do and do not report parental incarceration are not statistically significant.

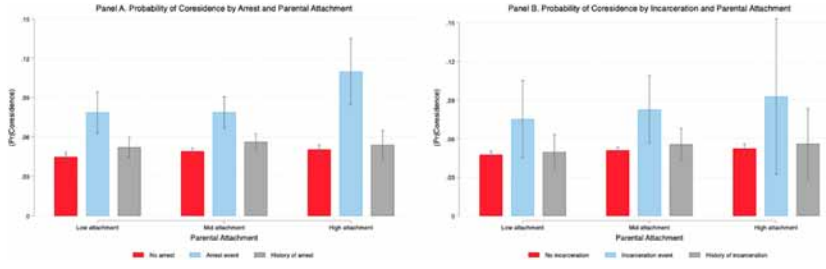


*Fig. 3.* Predicted Probability of Coresidence By Criminal Justice Contact and Parental Attachment. *Source*: Author calculations of NLSY97 data. See Table A3 for coefficients and standard errors.

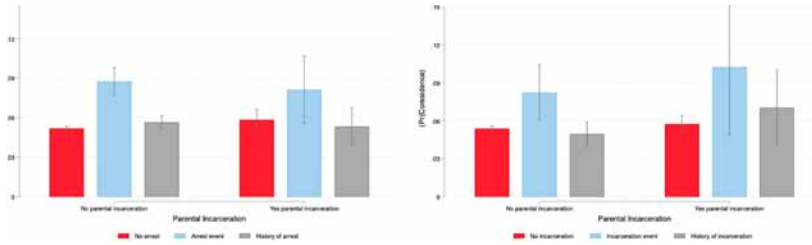

*Fig. 4.* Predicted Probability of Coresidence by Criminal Justice Contact and Parental Incarceration. *Source*: Author calculations of NLSY97 data. See Table A4 for coefficients and standard errors.

To review, the results presented so far indicate that, by and large, criminal justice contact is associated with coresidence in a consistent fashion across different elements of family context. In other words, coresidence following criminal justice context does not seem to depend on characteristics of the family context such as childhood family structure. The main exception here is the indication in Panel A of Fig. 2 that recently arrested respondents are significantly more likely to coreside if they come from households with more educated parents. Recall that the preceding figures were adjusted for the time trend (or hazard) but did not contain other study covariates. To see if this interaction is robust to potential sources of spuriousness, I plot in Fig. 5 the marginal effects of the interaction between the two measures of arrest and parental education, controlling for all other study covariates. I focus on arrest only, as this was the type of contact most linked to coresidence in Fig. 2.

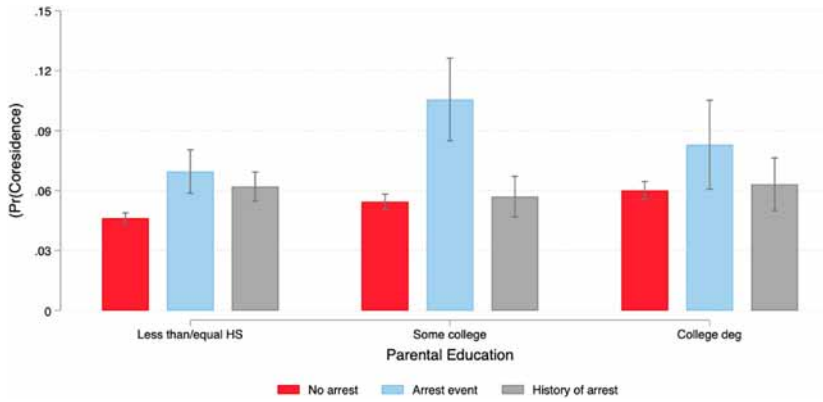


*Fig. 5.* Predicted Probability of Coresidence by Arrest and Parental Education With Full Controls. *Source*: Author calculations of NLSY97 data. See Table A5 for coefficients and standard errors.

The results in Fig. 5 are consistent with those in Panel A of Fig. 2. For respondents who have parents with a high school degree or less, coresidence is significantly more likely in the year a respondent is arrested (arrest event) and in the years following (history of arrest). For respondents who have parents with some college education, however, coresidence is significantly higher in the year a respondent reports an arrest, and the 95% confidence intervals show coresidence is significantly more likely for these respondents compared to their peers who have parents with lower levels of education.

## DISCUSSION

Among contemporary American young adults (aged 18–29), coresidence with parents is currently the most common living arrangement (Fry et al., 2020). That said, research on the residential transitions of home leaving and home returning shows that most American young adults leave the parental home at least once (Gillespie, 2020; Houle & Warner, 2017). Returning to the nest and subsequent coresidence with parents is often the result of struggles in the domains of education, work, and relationships (Sandberg-Thoma et al., 2015; South & Lei, 2015; Stone et al., 2013). But background factors, namely the parental context, and other contemporaneous factors, namely contact with the criminal justice system, are also relevant, and the present study advanced research on the residential outcomes of American young adults in two primary ways. First, I explored if coresidence with parents following criminal justice contact is moderated by relevant features of the larger family context. And second, I focused explicitly on the young adult years of 18–29 and coresidence among previously residentially independent young adults. The results support four primary conclusions.

First, consistent with existing research on residential transitions and coresidence in the context of criminal justice contact, I find young adults who are arrested or incarcerated are the most likely to coreside in the year that an arrest or period of incarceration occurs. Recently, arrested or incarcerated young adults are significantly more likely than their peers with no criminal justice contact to coreside with their parents during young adulthood. My findings thus join a growing body of research demonstrating that criminal justice contact is a key pathway – alongside other life-course transitions – that contributes to overall patterns of exiting and returning back to the parental home (Raphael, 2007; Siennick & Widdowson, 2017; Warner & Remster, 2021).

Second, with the exception discussed next, the results paint a fairly consistent picture related to family context and coresidence following criminal justice contact. Interactions between the two criminal justice contact measures (arrest and incarceration) and the four family context and connectivity measures (family structure, parental resources, parental attachment, and parental incarceration) demonstrate that there are not large differences across families in their ability or willingness to take a child in following criminal justice contact. In other words, criminal justice contact does not appear to result in coresidence differently based on the circumstances or standing of the family (see also Siennick, 2011).

That said, this consistency must be considered alongside the reality that incarceration and other forms of criminal justice contact are concentrated in disadvantaged households and communities (see Sugie & Turney, 2017). While there may not be large differences in coresidence following criminal justice contact across advantaged and disadvantaged families, disadvantaged families are more likely to contact the system and thus are likely to disproportionately deal with child housing (and other) needs following contact.

Third, and with the above consistency noted, it is also worth noting that there is some evidence that parents with more socioeconomic resources may be in a better situation to take in their recently arrested children. In both baseline and multivariate models, recently arrested children are significantly more likely to coreside if their parents have some college education than if their parents have a high school degree or less. For these parents, bringing the child back into the parental home may not represent as large of a burden or commitment compared to parents with lower levels of education or fewer socioeconomic resources.

And finally, it is worth emphasizing that the results support recent research documenting the social consequences of "low-level" forms of criminal justice contact, particularly arrests (Sugie & Turney, 2017; Uggen, Vuolo, Lageson, Ruhland, & Whitham, 2014; Warner & Remster, 2021). Sugie and Turney (2017), for instance, found that controlling for arrest experiences explained nearly half of the association between incarceration and mental health functioning. Arrests are linked to employment outcomes and residential independence and boomeranging as well (Uggen et al., 2014; Warner & Remster, 2021). These results support this research and also find that any potential moderation by family context is likely to work through arrest experiences as well. In short, the 10 million arrests made each year may be placing a significant burden on mostly poor and minority members of the population. Reuben Miller (2021), in *Halfway Home*, perhaps best captures the power of an arrest; "It need not be well understood, or even true, to exercise power" (p. 6).

## CONCLUSION

These findings should be considered alongside some limitations with the data and approach. First, the data are drawn from a single cohort in the United States and thus might not be representative to other cohorts or contexts. I did try to minimize potential cohort and period effects by (1) including dummy variables for each person-age-observation and (2) creating a synthetic cohort where respondents become at risk for the outcome starting at a common age. Second, the family context measures utilized are mostly static, taken from the initial interview (in 1997) or during the respondent's youth. Treating these family context and connectivity measures as stable across time neglects the dynamic nature of families, family resources, and relationships with parents (especially during adolescence and young adulthood). Future research should explore the interconnections between family transitions, criminal justice contact, and assistance provided to crime-involved children. Third, it is worth mentioning that the wording of the question

utilized to capture coresidence includes the phrase "someone else's household" when capturing exits from independent living. Thus, it is possible that respondents coded as coresiding did not necessarily move into the parental home. That said, the series of questions has been utilized by the Bureau of Labor Statistics (who oversee data collection) and a growing body of research to capture leaving and returning to the parental home (Dey & Pierret, 2014; Gillespie, 2020).

These limitations in mind, results from this study extend research on the role of the family during the era of mass incarceration in two ways. First, the findings provide further evidence that residentially independent adolescents and young adults lean on parents for housing assistance in the wake of criminal justice contact. Focusing specifically on the period of young adulthood, my results show that coresidence between ages 18 and 29 is especially common following an arrest or period of incarceration. And second, the findings indicate relative consistency in this assistance across family types, family financial resources, and family connectivity. While there was some reason to expect that coresidence after criminal justice contact could be shaped by the family context, the results clearly support other research showing that crime and criminal justice contact do not necessarily mean a cleavage in parent–child relationships or support (deVuono-powell et al., 2015; Siennick, 2011). That said, this consistency must be considered alongside the reality that contact with the criminal justice system is not random. While parents in general are there to support their children during contact with the criminal justice system, these contacts fall disproportionately on poor and minority households. These households thus provide a disproportionate share of support and resources back to their children, potentially contributing to cycles of intergenerational transmission of advantages and disadvantages.

## NOTES

1. The timing of the interviews means that some respondents do not have a survey year that corresponds to each age interval between 18 and 29. In these cases, I back filled responses from the subsequent survey year.
2. The exact wording of the question includes the phrase "someone else's household" and thus could capture residential transitions outside of coresidence with parents. That said, these questions have been used by the Bureau of Labor Statistics (Dey & Pierret, 2014) and in a growing body of scholarly research (Gillespie, 2020; Houle & Warner, 2017; Warner & Remster, 2021) as indicators of parent–child coresidence.
3. Access to the NLS investigator can be found at https://www.nlsinfo.org/investigator

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# APPENDICES

***Table A1.*** Discrete-Time Hazard Models Predicting Coresidence During Young Adulthood: Interactions With *Family Structure*.

| | Arrest Interaction | | | Incarceration Interaction | |
|---|---|---|---|---|---|
| | Coefficient | SE | | Coefficient | SE |
| Arrested | 0.554*** | 0.103 | | – | – |
| Arrest history | 0.231** | 0.075 | | – | – |
| Incarcerated | – | – | | 0.565* | 0.248 |
| Incarceration history | – | – | | 0.061 | 0.174 |
| *Family structure* | | | | | |
| 2-Parent family (referent) | – | – | – | – | – |
| Step family | 0.028 | 0.055 | | 0.049 | 0.049 |
| Single family | −0.074+ | 0.041 | | −0.069+ | 0.037 |
| Other family | −0.287** | 0.086 | | −0.248** | 0.076 |
| *CJ event interactions* | | | | | |
| 2-Parent X CJ event (referent) | – | – | – | – | – |
| Step X CJ event | 0.098 | 0.181 | | 0.202 | 0.372 |
| Single X CJ event | −0.052 | 0.145 | | −0.005 | 0.313 |
| Other X CJ event | 0.075 | 0.248 | | −0.711 | 0.571 |
| *CJ history interactions* | | | | | |
| 2-Parent X CJ history (referent) | – | – | – | – | – |
| Step X CJ History | 0.033 | 0.139 | | 0.202 | 0.279 |
| Single X CJ history | −0.069 | 0.106 | | 0.059 | 0.220 |
| Other X CJ history | 0.116 | 0.199 | | 0.351 | 0.307 |
| Constant | −3.686 | 0.070 | | −3.653 | 0.069 |
| Person-age-observations | 48,877 | | | 48,877 | |
| Persons | 6,692 | | | 6,692 | |

*Source*: NLSY97.
*Notes*: Interaction models control for only the underlying hazard (dummy variables for each age interval, with age 18 as reference). CJ: criminal justice; SE: standard error.
$+p < 0.10$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.

***Table A2.*** Discrete-Time Hazard Models Predicting Coresidence During Young Adulthood: Interactions With *Parental Education*.

| | Arrest Interaction | | | Incarceration Interaction | |
|---|---|---|---|---|---|
| | Coefficient | SE | | Coefficient | SE |
| Arrested | 0.530*** | 0.087 | | – | – |
| Arrest history | 0.310*** | 0.064 | | – | – |
| Incarcerated | – | – | | 0.506** | 0.166 |
| Incarceration history | – | – | | 0.115 | 0.113 |
| *Parental education* | | | | | |
| HS degree or less (referent) | – | – | – | – | – |
| Some college | 0.216*** | 0.044 | | 0.194*** | 0.039 |
| College degree or more | 0.372*** | 0.045 | | 0.316*** | 0.041 |
| *CJ event interactions* | | | | | |
| HS degree or less (referent) | – | – | – | – | – |
| Some college X CJ event | 0.256+ | 0.143 | | 0.315 | 0.309 |
| College degree X CJ event | −0.076 | 0.174 | | 0.066 | 0.364 |
| *CJ history interactions* | | | | | |
| HS degree or less (referent) | – | – | – | – | – |
| Some college X CJ history | −0.157 | 0.113 | | 0.275 | 0.218 |
| College degree X CJ history | −0.275* | 0.128 | | 0.284 | 0.294 |
| Constant | −3.891 | .073 | | −3.826 | 0.072 |
| Person-age-observations | 48,877 | | | 48,877 | |
| Persons | 6,692 | | | 6,692 | |

*Source*: NLSY97.

*Notes*: Interaction models control for only the underlying hazard (dummy variables for each age interval, with age 18 as reference). HS: high school; CJ: criminal justice; SE: standard error.

$+p < 0.10$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.

***Table A3.*** Discrete-Time Hazard Models Predicting Coresidence During Young Adulthood: Interactions With *Parental Attachment*.

| | Arrest Interaction | | | Incarceration Interaction | |
|---|---|---|---|---|---|
| | Coefficient | SE | | Coefficient | SE |
| Arrested | 0.539*** | 0.116 | | – | – |
| Arrest history | 0.217* | 0.087 | | – | – |
| Incarcerated | – | – | | 0.458* | 0.223 |
| Incarceration history | – | – | | 0.125 | 0.151 |
| *Parental attachment* | | | | | |
| Low (referent) | – | – | – | – | – |
| Mid | 0.098* | 0.045 | | 0.075+ | 0.041 |
| High | 0.125* | 0.053 | | 0.103* | 0.048 |
| *CJ event interactions* | | | | | |
| Low X CJ event (referent) | – | – | | – | – |
| Mid X CJ event | −0.097 | 0.146 | | 0.028 | 0.285 |
| High X CJ event | 0.243 | 0.179 | | 0.127 | 0.431 |
| *CJ history interactions* | | | | | |
| Low X CJ history (referent) | – | – | – | – | – |
| Mid X CJ history | −0.019 | 0.108 | | 0.045 | 0.195 |
| High X CJ history | −0.090 | 0.146 | | 0.022 | 0.309 |
| Constant | −3.762 | 0.077 | | −3.707 | 0.076 |
| Person-age-observations | 48,877 | | | 48,877 | |
| Persons | 6,692 | | | 6,692 | |

*Source*: NLSY97.

*Notes*: Interaction models control for only the underlying hazard (dummy variables for each age interval, with age 18 as reference). CJ: criminal justice; SE: standard error.

$+p < 0.10$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.

***Table A4.*** Discrete-Time Hazard Models Predicting Coresidence During Young Adulthood: Interactions With *Parental Incarceration*.

| | Arrest Interaction | | | Incarceration Interaction | |
|---|---|---|---|---|---|
| | Coefficient | SE | | Coefficient | SE |
| Arrested | 0.522*** | 0.069 | | – | – |
| Arrest history | 0.124* | 0.053 | | – | – |
| Incarcerated | – | – | | 0.443* | 0.147 |
| Incarceration history | – | – | | −0.031 | 0.103 |
| *Parental incarceration* | | | | | |
| Never incarcerated (referent) | – | – | – | – | – |
| Ever incarcerated | 0.126+ | 0.075 | | 0.067 | 0.067 |
| *CJ event interactions* | | | | | |
| Never X CJ event (referent) | – | – | – | – | – |
| Ever X CJ event | −0.207 | 0.201 | | 0.172 | 0.339 |
| *CJ history interactions* | | | | | |
| Never X CJ history (referent) | – | – | – | – | – |
| Ever X CJ history | −0.187 | 0.169 | | 0.307 | 0.262 |
| Constant | −3.653 | 0.071 | | −3.612 | 0.071 |
| Person-age-observations | 48,877 | | | 48,877 | |
| Persons | 6,692 | | | 6,692 | |

*Source*: NLSY97.

*Notes*: Interaction models control for only the underlying hazard (dummy variables for each age interval, with age 18 as reference). CJ: criminal justice; SE: standard error.

$+p < 0.10$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.

***Table A5.*** Discrete-Time Hazard Models Predicting Coresidence During Young Adulthood: Interactions With *Parental Education (Full Controls*).

| | Arrest Interaction | |
|---|---|---|
| | Coefficient | SE |
| Arrested | 0.383*** | 0.092 |
| Arrest history | 0.263*** | 0.072 |
| Incarcerated | – | – |
| Incarceration history | – | – |
| *Parental education* | | |
| HS degree or less (referent) | – | – |
| Some college | 0.173*** | 0.047 |
| College deg. or more | 0.278*** | 0.051 |
| *CJ event interactions* | | |
| HS degree or less (referent) | – | – |
| Some college X CJ event | 0.284+ | 0.147 |
| College degree X CJ event | −0.087 | 0.178 |
| *CJ history interactions* | | |
| HS degree or less (referent) | – | – |
| Some college X CJ history | −0.264* | 0.124 |
| College degree X CJ history | −0.258+ | 0.137 |
| Constant | −3.908 | 0.093 |
| Person-age-observations | 48,877 | |
| Persons | 6,692 | |

*Source*: NLSY97.
*Notes*: Controls not shown: background family structure, parental education, parental attachment, parental incarceration, young adult relationship status, young adult educational attainment, young adult full-time employment, young adult wages, young adult problem drinking, race/ethnicity, gender, age at residential independence, region of origin, dummy variables for age intervals (age 18 = referent). HS: high school; CJ: criminal justice; SE: standard error.
$+p < 0.10$, $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.

# CHAPTER 9

# RESTORATIVE JUSTICE AND CRIME VICTIM'S FAMILY IN CHINA – A CASE ANALYSIS

Hong Lu, Bin Liang and Deena DeVore

## ABSTRACT

*The victim's rights movement and restorative justice (RJ) have gained momentum around the world. More laws and policies have focused on crime victims and their families. Western literature suggests that the victim's family suffers physical, emotional, and financial tolls and that the power of the victim's family in pursuing justice for their loved ones remains limited. This is particularly concerning within the political and legal context of the abolitionist movement, innocence project, and human rights groups' campaigns against police torture. Grounded in the perspectives of RJ and Chinese legal culture, this study examines the victim's family, represented by Ding and senior Yu, of the Nian Bin capital murder case. Drawing on published reports and using the thematic content analysis method, this study examines the following aspects of victim's family in a death penalty case: 1) victim family's physical, emotional, and financial tolls; 2) victims' family and the criminal justice system; 3) victims' family and the media; and 4) the relationship between the victims' and the accused's families. This study concludes with discussions of the competing goals of families impacted by a crime and RJ practices that would help mitigate the loss of the victim's family and enhance their confidence in the criminal justice system.*

**Keywords:** Victim's family; restorative justice; death penalty; wrongful conviction and exoneration; criminal justice reform; China

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## INTRODUCTION

Western developed countries have long rooted their rule of law framework in principles such as universal human rights and procedural safeguards to prevent governmental abuse of power. Within this political and legal framework, Western countries promoted global initiatives of the rule of law and a formal legal system that ensures the rights of the accused in criminal proceedings. Contrarily, the victim's rights movement and restorative justice (RJ), gaining momentums in the 1980s and the 1990s, attempted to shift the focus from the offender to the victim, and from the state's sole responsibility of handling crimes to a more collaborative process by involving victims and their family, and mobilizing community resources.

A series of studies have since examined the roles of victims and their families in the criminal justice system (Doak, 2005, 2009; Edwards, 2004), their emotional and financial suffering (Beard & Kashka, 1999; Connolly & Gordon, 2015; Jackson & Gouseti, 2015; Malone, 2007; Shapland & Hall, 2007), and their attitudes about the criminal justice system (Armour, 2002; Englebrecht, Mason, & Adams, 2014; Gekoski, Adler, & Gray, 2013; Pastia & Palys, 2016). Studies have shown some positive outcomes of the RJ approach in handling minor crimes in programs such as family group conferences in Australia and New Zealand (Braithwaite, 2002).

RJ is neither a novel concept nor new practice. Its roots can be traced back centuries ago where tribal council meetings handled disputes among villagers through reconciliatory, restitutive, and compensatory processes with goals of amending and restoring the damaged relationship. Ethnographic studies have documented these types of restorative and peacemaking dispute resolution programs around the world (Braithwaite, 1999; Willis, 2020). China also has a long tradition of relying on mediation for dispute resolution. As it embarked on legal reforms in the 1980s, laws and the criminal justice system have become increasingly more formal (B. Liang, 2008). In an effort to build a "harmonious society," mediation and reconciliation programs, designed to minimize social conflict and restore broken community ties, have been reintroduced into the criminal justice system in recent years, which presumably give Chinese victims and their families more power to impact dispositional outcomes (Braithwaite & Zhang, 2017).

The abolitionist and exoneration movements (Leo, 2017; O'Leary, 2012) seemed to complicate these national and international narratives of RJ and empowerment of victims and their families. Recent decades witnessed significant support for abolishing the death penalty, and The Innocence Project (Giberti, 2017), in particular, exposed wrongful convictions and raised awareness of official abuse of power. Within this context, what role RJ and victims and their families may still play is thus worth exploring.

Grounded in the RJ perspective, and the intricacies of various national and international contexts regarding the death penalty, wrongful convictions and exonerations, and the victim's rights, this study examines the victim family's roles in China's criminal justice process. Drawing on one death penalty case, the Nian Bin case, and using a thematic content analysis method, this study analyzes

several key aspects of victims' families, including 1) the victim's family's physical, emotional, and financial tolls; 2) the victim's family and the criminal justice system; 3) the victim's family and the media; and 4) the relationship between the victims' and the accused's families.

While a case study generally lacks external validity and the Nian Bin case could be unique, this study aims to reveal the convoluted relationships of the victim's family with the criminal justice system, the accused's family, and society at large. Furthermore, it aims to shed light on whether and how RJ ideas may still be implemented, and victims' families be empowered under seemingly unconducive circumstances. This study concludes with discussions of theoretical implications on RJ and victim's movement as well as policy implications for death penalty reforms in China.

## RJ AND CRIME VICTIMS' INVOLVEMENT

RJ emerged as an alternative approach to existing criminal justice practices globally in the 1970s (Braithwaite, 1999), although some countries have a strong historical tradition of RJ principles. China, for example, has a long history of restorative philosophy with its modern neighborhood mediation programs such as bangjiao, focusing on reciprocity, relational justice, and forgiveness (Braithwaite & Zhang, 2017). RJ proposes a participatory criminal justice in which key stakeholders engage in a collective process that promotes rehabilitation and reintegration of the offender, empowerment and healing of the victim, and restoration of the community (Braithwaite, 2002; Dodge, 2015). The process is designed to humanize the parties involved while being highly responsive to local norms and shared meanings among stakeholders (Berry & Magee, 2017; Van Ness, 2002). There are four key elements to RJ: 1) the focus on shareholders' harms and needs; 2) the responsibility of offenders to make amends through apology or reparation; 3) the promotion of shareholders' participation in an open dialogue that helps to form shared meaning and understanding; and 4) transformation achieved through the formation of new relationships or behavioral change (Schormair & Gerlach, 2020).

The minimum bar for a successful RJ practice is to avoid power imbalance, though ethnographic research shows that RJ processes tended to favor privileged middle-class forms of communication (Braithwaite, 2017; Willis, 2020). It also aspires to a higher principle that restores human dignity, relationships, communities, citizens' sense of duty, as well as social support and prevention of future injustice. While RJ approaches have been found effective to reduce recidivism, widen the net of social control, enhance victim and offender satisfaction, and reduce criminal justice costs, its effect on serious offenses appeared rather mixed (Asadullah & Morrison, 2021; Shapland, 2014; Sherman & Strang, 2007).

RJ has prompted victims' rights movements in Western countries. New laws and policies regarding victims' rights are adopted to strike a balance between the rights of the victims and their families and the rights of the accused (Doak, 2005; Edwards, 2004). In an adversarial system, this balance must also consider

the rights of the state within the system, thus victims' rights are often not one of decision-making powers, but play merely a participatory role (Doak, 2009). For example, the US President's Task Force on Victims of Crime (1982) upheld the core value of laws and policies that victims and their family's rights be heard and be present at criminal proceedings. The US Crime Victims' Rights Act (2004) further enhanced victims' rights to timely notice of court proceedings, to confer with legal counsel, to financial restitution, and to be treated with fairness and respect for the victim's dignity and privacy.

### *Physical, Psychological, and Financial Tolls of Victim's Family*

Crime victims and their family members often suffer tremendous tolls. Western literature documented both physical and psychological effects of crimes on victims or their families as physical effects are typically related to psychological distress and depression (Charmaine & Mahoney, 2004; Rinear, 1988). Studies found victims of violent crime experience feelings of shock, loss of trust in society, uncertainty, vulnerability, or fear for personal safety (Jackson & Gouseti, 2015), and sometimes guilt derived from being a victim (Shapland & Hall, 2007). Victims' families may experience feelings of vulnerability with worries about victims' or their own safety (Shapland & Hall, 2007), lost confidence in society (particularly for surviving parents whose children were victims) (Beard & Kashka, 1999), rage, guilt, blame, and changed worldviews (Connolly & Gordon, 2015). The psychological and emotional tolls often manifest in post-traumatic stress symptoms (PTSS) or post-traumatic stress disorder (PTSD). Research indicates that family members of homicide victims experience disproportionately high levels of distress, including PTSD, anxiety, grief, and depression (McDevitt-Murphy et al., 2012).

Crime takes financial tolls on victims or their families as well. For example, they might require time off work to report crimes or to attend court hearings (Shapland & Hall, 2007), resulting in a loss of income besides other significant costs such as funeral expenses, lawyer fees, and costs to attend the trial (Malone, 2007). Studies found that in the United States, states with strong victim's rights legislations typically incur higher financial costs for victims or the family due to the time required for their involvement with the criminal justice system (Kilpatrick, Beatty, & Howley, 1998).

### *Victim's Family's Satisfaction With Criminal Justice System*

Regarding what mattered to crime victims' families, studies have identified rather common themes such as seeking justice for the loved one, dealing with the injustice in the process, and trying to make sense of the senseless act that disrupted their lives (Armour, 2002). Victim family members' level of satisfaction with the criminal justice system was found closely connected with whether they were duly informed about the case or the process in general (Dawson & Riches, 1998; King, 2004; Rinear, 1988), whether they were treated with sensitivity (Beard & Kashka, 1999; Norris, Ruback, & Thompson, 1998; Pastia & Palys, 2016; Rinear, 1988) or fairness (Adkins, 2003; Clements & Vigil, 2003; Klass & Peach, 1987), and whether they were empowered to take part in the system (Englebrecht et al., 2014).

Secondary victimization by the criminal justice system was another salient factor that affects the victims' family's grievances with the criminal justice system. Studies found that many participants lost their faith in the system because of their frustrating experiences (Gekoski et al., 2013). Furthermore, family members may feel lost in dealing with the system, and their rights as individuals were secondary to that of the state and public agenda. Family members of homicide victims also expressed objection to media presentation of crimes as disrespectful and sensationalist (Adkins, 2003; Armour, 2002; Dawson & Riches, 1998; Rinear, 1988). When seeking information, victim family members often reported feeling denied or patronized (Armour, 2002), in particular when their requests were ignored repeatedly, and when information was provided on conditional terms (Gekoski et al., 2013).

One potential benefit of RJ is to mitigate negative feelings that the traditional adversarial criminal justice produces for victims and their families, in part by offering them a voice in the process. When participating in RJ meetings, crime victims would often be able to face the offender, explain the effect of the crime on them, and ask emotional questions such as "why me" directly, which help to bring closure (Strang et al., 2006). For family members of homicide, in particular, the "why"-related questions characterize the general feelings of loss of control, as well as a lack of relief from the pain of loss (Armour, 2002). Such practices could lead to greater satisfaction with the criminal justice process and draw such emotional benefits as reduced fear of the offender; reduced levels of anger, distress, and trauma; a sense of the offender being held accountable; and closure (Angel et al., 2014; O'Mahony & Doak, 2017).

The responsive nature of RJ practices implies that improved experiences and satisfaction depend on the specific needs of the victim and circumstances of the crime. As such, RJ practices would benefit from empowering all stakeholders' active participation and involvement (O'Mahony & Doak, 2017). At its core, RJ practices must consider all stakeholders' importance and relevance to the justice process (Braithwaite, 2017). This responsiveness allows for improved satisfaction for victims' families as they are provided a space to articulate their specific wants and needs in a manner that upholds human value and dignity for all stakeholders.

## THE RESEARCH CONTEXT

This study examines the roles of the victim's family in China with a double-murder/poisoning case, the Nian Bin case. As a non-Western nation, China possesses unique historical, political, and legal developmental paths. A review of its core ideas and ideals pertinent to the current study is helpful for readers to understand this capital murder case and related theoretical and policy implications.

### *Summary of the Nian Bin Case*

The Nian Bin case spanned from 2006 with his initial arrest to 2014 with his eventual exoneration in Fujian province, China. During this eight-year ordeal, Nian received four death sentences (three from the trial court and one from the

appellant court). Nian was accused of poisoning his neighbors with sodium fluoroacetate (Buckley, 2014), a compound used commonly in rodenticide, which allegedly resulted in the death of two children.

On July 27, 2006, Ding Yunxia and her three children shared a meal with her landlord and the landlord's daughter. Within a few hours, four of the six people fell violently ill. Two children of Dings were taken to the hospital where they succumbed to poisoning (Xu & Wan, 2014). On July 28, Pingtan county police arrived on the scene and identified the cause of death as poisoning (Ma, 2014a). On July 30, police tested blood and emesis from the victims and reportedly found traces of fluoroacetate. On August 7, police took Nian Bin's door handle for forensic testing and found a trace of the same compound present on the handle, matching what was found in samples taken from the victims. Nian Bin was taken into police custody and questioned. On August 8, Nian confessed to the poisoning, stating that he added rodenticide to a cooking kettle in retaliation against the Ding family for luring away a customer on July 26 (Ma, 2014a). Nian was subsequently detained on August 9.

While in police custody, Nian claimed he was tortured and coerced to confess. He endured extreme agony and attempted to bite his tongue in an effort to die (Buckley, 2014) and only confessed when police threatened to interrogate his wife (Wan, 2014). His confession tape, officially certified and admitted as evidence, had an unaccounted two-hour gap, indicating that the tape had been edited – a fact confirmed by the police only during Nian's final trial in 2014.

In February 2007, the Fuzhou Procuracy formally charged Nian with poisoning. In March, the Fuzhou Intermediate Court (the trial court) held its first trial, during which Nian recanted his confession. Nevertheless, Nian received his first death sentence in February 2008. Afterward, Nian's sister Nian Jianlan hired lawyer Zhang Yansheng from Beijing to work on an appeal (Lu, Trejbalova, & Liang, 2019). In December 2008, the Fujian Provincial High Court (the appellant court) rejected the trial court's verdict and ordered a retrial. In June 2009, the trial court resentenced Nian to death in its second trial. In April 2010, the appellate court affirmed Nian's death sentence and transferred the case to the national Supreme People's Court (SPC) for final review and approval. In April 2011, the SPC rejected Nian's death sentence on the grounds of unclear facts and insufficient evidence. The case then went back to the appellant court, which remanded the case back to the trial court for another trial in May 2011. In September 2011, the trial court held a third trial and once again sentenced Nian to death in November 2011. In July 2013, the appellate court reviewed the Nian Bin case once more.

During the 2013 retrial, Nian's defense called upon six expert witnesses who contended that the majority of evidence collected was in violation of proper procedures and that the police had fabricated key pieces of evidence. This resulted in the calls for the police to turn over unaltered data and photos which exposed further contradictions (Lu et al., 2019). For example, new documents/evidence showed that some key witness statements were never disclosed at previous trials, police failed to pursue other suspect leads, and the laboratory samples and results were tampered with and fabricated (Wan, 2014; Xu & Wan, 2014). Finally, on August 22, 2014, the appellant court exonerated Nian Bin, citing insufficient

evidence for a conviction. Ten days later on September 1, 2014, however, the Pingtan county police refiled this case by naming Nian the suspect again, citing newly emerged evidence (Shao & Zhu, 2014). In 2017, Nian was awarded 1.19 million yuan in state compensation (Nian Bin Poisoning Case, 2021). Nian remains a suspect in this poisoning/murder case as of 2021, which placed him under constant police surveillance and made him ineligible to apply for a passport for travel purposes (Shao & Zhu, 2014).

*Characteristics of China's Political and Legal System Pertinent to the Nian Case*

For thousands of years, China is known for its Confucianism, family-oriented value system, and paternalistic governance (Windrow, 2006). Despite significant transformation after the establishment of the People's Republic of China, the influence of traditional cultural values, notions, and practices still permeates in many aspects of contemporary Chinese society. In solving personal and social disputes, for instance, people often turn to their family members, social connections (guanxi), local authorities, and, if necessary, the central government for help. Sometimes, it is done as an alternative or even at the expense of the proper legal system. For instance, the modern "letters and visits" (xinfang) practice with its roots in Chinese imperial practices allows Chinese citizens to circumvent the legal system and petition the top authorities for redress (e.g., Minzner, 2006). In major crimes in which human lives are lost, Chinese culture and tradition support punitive punishment (e.g., the death penalty), retribution, and even private vengeance (though it is outlawed).

In many aspects, Nian Bin was both a victim and a beneficiary of China's criminal justice system, still evolving with four-decade, ongoing reforms. China's first codified Criminal Law (CL) and Criminal Procedural Law (CPL) were adopted in 1979 and were amended multiple times in the last three decades. While both the numbers of crime categories and capital offenses were increased to cope with increasing economic and social activities, the increased procedural rules were largely circumvented due to the surging crime rates and the national "strike hard" campaigns launched as a response to suppress the crimes in the 1980s and 1990s (B. Liang, 2005; Tanner, 2010; Trevaskes, 2002, 2003, 2004). For example, the three-tiered process involving an original trial court, an appellate court, and the final review and approval by the SPC was replaced with a simplified two-tiered process. The final approval phase was only resurrected in 2007.

The revived SPC's final review turned out to be crucial to Nian's fate. When Nian was arrested in 2006, the local government just established "eight mechanisms" for investigating murder cases, which tied the crime clearance rate directly with officers' job performance, in order to implement the national policy of "murder cases must be cracked" (Wei, 2014). The pressure was high. In 2010 after the appellant court affirmed Nian's death sentence, the SPC reviewed and remanded the case for a retrial. But for the re-instituted SPC's final review, Nian's death sentence would have most likely been carried out. In addition, the amended SPC's death penalty review process in the 2012 CPL (Articles 235–240) literally saved Nian's life – it stipulated that the SPC *shall* interrogate the defendant and listen to

the opinion of a defense lawyer if the defense lawyer so requests. Nian was indeed interviewed in person by an SPC judge and was told that the SPC review would emphasize evidence, not his confession (Nian, 2014).

A series of new procedural rules adopted in the early 2010s were also timely and critical. For instance, the SPC issued the "Opinion on Certain Issues Concerning Implementation of the Criminal Justice Policy of Balancing Leniency and Severity" in 2010, and this new "balancing leniency and severity" (kuanyan xiangji) policy replaced the "strike hard" policy as the dominant criminal justice policy (Trevaskes, 2010). In the same year, joined by four other ministries, the SPC issued the "Rules on Certain Issues Concerning Examination and Judgment of Evidence in Death Penalty Cases" and the "Rules on Certain Issues Concerning Exclusion of Illegal Evidence in Criminal Cases," both of which aim to deal with evidentiary issues in criminal cases and raise the bar of evidentiary quality control. The 2012 amended CPL was most instrumental: for instance, Article 39 allowed defense lawyers to request evidence withheld by the police or the procuracy; Article 54 mandated that confession obtained through torture be excluded (see also Article 50); Article 53 established the "beyond reasonable doubt" standard and stipulated that defendants' confession alone was not sufficient for a conviction; a number of articles (Articles 56–57, 187–188, 192) set the requirement for witnesses (including police officers) to testify in court when evidence was disputed and the defense right to present their own expert witnesses; Article 223 mandated public trials when a death sentence appeal was reviewed. All of these substantive changes in law affected the Nian case directly, leading to his final acquittal.

Yet, there is no denial that Nian suffered tremendously during the eight-year ordeal and perhaps will continue to suffer for the rest of his life. While no system can be 100% error-proof, the police blatant abuse of power (e.g., fabricating evidence) and a lack of effective checks and balances among the police, procuratorate, and the court and within different levels of the same organization (e.g., the trial court was allowed three chances to try/retry the Nian decision) put the criminal defendant in a structural disadvantage (Chen, 2000; Liebman, 2015; Liu & Halliday, 2016).

Substantively, criminal defendants do not have the right to remain silent and are expected to cooperate with the authorities. Defendants' right for cross-examination is also weakened in practice, as witnesses often do not testify in court, and documents and written testimonies are routinely permitted and admitted as evidence. Moreover, the adjudicative body that hears the case may not be the one that decides the final sentence, especially when a case is of "significant importance." Sentencing decisions instead can be made by an adjudicative committee of a people's court behind closed doors, to which the defense has no formal access. These issues were on full display in the Nian case. For instance, when Nian Bin was given a fourth death sentence in 2011, the appellant court requested multiple extensions to reconsider the case, and it took the court almost three years to finally render the acquittal decision due to the political and institutional tensions. Even though the political and legal climate in the mid-2010s leaned more toward procedural safeguards and evidence-based legal rulings, an outright reversal of a lower court's ruling was rare, let alone in a major death penalty case such as the Nian's case.

After Nian's acquittal, defense lawyer Zhang Yansheng applauded the appellant court judges for their courage to uphold the law and right the wrong (Si, 2014).

### *China's Legal Protection of Crime Victims' Rights*

In China, crime victims' and their families' rights are primarily stipulated in the CPL (with the latest revision in 2018) and its interpretations adopted by the SPC (with the latest revision in 2020). Some of the rights have consistently been afforded to crime victims and their families in various amendments, including the right to seek legal representation (Article 46, CPL), to bring up a civil suit collateral to criminal proceedings (Article 101), and to report a crime (Article 110). Besides the right to initiate self-prosecution (Articles 210 and 214), crime victims may contact a people's procuratorate for further review if the police decided not to investigate a case (Article 113), may appeal to a superior procuratorate for a review if the procuratorate decides not to prosecute, and may bring up a suit to a people's court if the "no prosecution" decision is sustained by the superior procuratorate (Articles 180 and 210). Crime victims are entitled to have their opinions written in the official record during the criminal investigation and prosecution phase (Article 173); during the trial phase, crime victims have the right to attend trial, comment on the prosecutorial indictment, and ask the defendant questions with permission of the chief judge (Article 191). They can call witnesses, experts, the police, and other parties to testify in court (Article 246 of the interpretations), cross-examine other witnesses' testimonies (Article 61), and have their testimonies included as evidence (Article 50). They also have access to written evaluations by experts and can request supplementary or new evaluations (Article 148).

Regarding sentencing, the 2020 "Opinion on Certain Issues Concerning the Standardized Sentencing Procedure" adopted by five ministries stipulates that crime victims and their legal counsels may opine on sentencing (Articles 10 and 21). They may petition the court to collect evidence relevant to sentencing during the investigation and prosecution phase (Article 20). If victims and their legal counsels are not satisfied with the verdict of the first-instance court, they are entitled to petition the procuratorate for a protest (kangsu) (Article 229 of the CPL). During the entire legal proceeding, they should be informed about the proceedings and decisions.

During the 2000s, within the framework of building a "harmonious society," court-sponsored victim–offender reconciliation programs were promoted and implemented. In particular, the new laws and practices incentivize defendants to compensate the victims and to seek forgiveness by the victims (Article 276 of the interpretations) and promote the offender–victim settlement (Articles 288–290, CPL). These reconciliatory programs are designed, at least in theory, to empower the victims and victims' families to have more control over the outcome of the case and, in turn, benefit from the process both financially and emotionally. As RJ theory suggests, the process of receiving an apology and repentance and providing forgiveness helps the healing process.

Despite all these legal rights, the laws fall short in several aspects. For example, civil compensation is contingent upon a criminal conviction; civil compensation

does not cover emotional damages (jingshen sunhai); there is no separate proceeding for a potential civil lawsuit in case that criminal conviction fails; there is no state compensation program for crime victims and their families (there is one for the wrongfully convicted defendant); and the state legal assistance programs to victims and their families are still lacking, though scholars and legal practitioners have called to set up such funds and programs (Kou, 2014; Wu, 2020; Ye, 2014).

## THE CURRENT STUDY

Drawing on published reports on the Nian Bin case, this study attempts to address four interrelated questions: 1) what are the physical, emotional, and financial tolls that the victims' family had suffered? 2) What are the expectations, roles, and frustrations that the victim's family had with the criminal justice system? 3) What were the relationships between the victim's family and the media? And 4) how did the relationships of the victim's and the accused's families evolve throughout the case? These research questions were informed by the data and may potentially help address RJ both as a theory and a practice, because RJ is about stakeholders (in this case, victims, defendants, and their family members) and their experiences and desires. Understanding their tolls, roles and expectations with the criminal justice system, and their relationship with the media and the defendant's family will help assess various factors that influence the victims' family's attitudes and actions toward reconciliation and restoration.

### *Data and Method*

It is worth noting that the two lead authors of this current study have previously published two articles on the Nian Bin Case, with one focusing on defense lawyers (Lu et al., 2019) and the other focusing on the defendant's family (Lu, Li, & Liang, 2020). Both published studies relied on data retrieved from open Internet sources. For this study on victims' families, we conducted two sets of searches. The first set involved searches using Chinese keywords "Nian Bin" and "Ding Yunxia" via a Chinese search engine baidu.com and a main academic search engine, the China Knowledge Resource Integrated Database (https://www.cnki.net/, zhongguo zhiwang). The second set involved searches using English keywords "Nian death penalty" and "Nian victim Ding" via google.com for general reports and scholar.google.com for academic writings.

Regarding their sources, the Chinese search results mainly consisted of the following types of documents: 1) reports from national and/or reputable news agencies (e.g., China News (zhongguo xinwen wang)); 2) reports from popular websites (e.g., ifeng.com, sohu.com) or less known websites (e.g., xilu.com); 3) individual blogs (e.g., defense lawyers' blogs; Nian Jianlan's blog; Ding's supporter's blogs); 4) entries from popular discussion forums (e.g., tianya.cn); and 5) academic articles. In contrast, the English results are primarily from the following sources: 1) Western mainstream media (e.g., the *Washington Post*); 2) Chinese overseas media (e.g., the *China Daily*); 3) reports by human rights groups (e.g., Dui Hua Foundation); and 4) academic writings.

An overview of the search results showed that the majority of these reports, Chinese or English, focused on Nian, his offense and defense, his family members, and China's criminal justice system and reforms. In contrast, very few focused on the victims and their families. For example, of the 741 Chinese general search results, 11 entries had the victims' family in the title (compared to 34 entries on Nian Jianlan); of the 147 Chinese journal articles, only one had the victims' family in the title. Among the 68 English reports, none had the victims' family in the title and directly covered the victims' family.

We utilized thematic content analysis to process the data. Given our experience gained from the two published studies and our review of the new search results, deductive and latent thematic content analysis methods were used for data coding. The deductive content analysis involves using existing themes (with notably different substantive content), in this case, the categories used in our previously published works, as the structure for analysis. The latent analysis refers to coding not only the words based on their literal meanings but also their underlying meanings that may be subject to interpretation (e.g., Ding suffered major financial setbacks because of this victimization experience). We took into consideration both the types of documents (e.g., academic articles, blogs) and the sources (e.g., discussion forums, reputable news agencies) when coding the data. Several mechanisms were used to enhance reliability and validity of data coding. For instance, we cross-checked references of multiple data sources to ensure the accuracy of facts regarding this case (e.g., the various timeline and the court rulings about this case). Thus, a fact stated in a single entry (particularly in a blog) was not coded unless it was corroborated from other sources (e.g., Ding's symptoms on the night of the poisoning). We weighed more heavily the "original source" of the stated fact (e.g., an interview with Ding is given more weight than a journalist's opinion) and the source of publication (e.g., the interview was conducted or reported by Xinhua News). In the age of media explosion and competitive market for attracting viewership, it is difficult to sort through facts versus fictions. We are thus mindful of the validity and reliability of these data and documents as many are filtered through the lens of the media, and media bias and sensationalism are widely known.

Data utilized in this current study were organized into four broad themes, including 1) victims' family's tolls; 2) victims' family with the criminal justice system; 3) victims' family with the media; and 4) victims' family with the offender's family. Each of these themes is discussed below.

### *Victims' Family's Physical, Emotional, and Financial Tolls*

Based on available reports, the crime took a heavy toll on the victims' family, particularly on Ding Yunxia, the mother of the two deceased children. Ding was a 32-year-old widow at the time of the crime. Her husband Yu died in 2003 due to a fishing accident. To support herself and three young children, Ding rented a storefront adjacent to Nian's storefront and befriended the landlord whose husband also died in a fishing accident. The two deceased children (aged 10 and 8, respectively) helped her out from time to time. Soon after the incident, Ding quit her grocery store and occasionally relied on her father-in-law, Yu Zhaofa (senior

Yu) for help. There had been very little reporting on Ding's only surviving son, who, by 2015, was a high school senior. Ding told the reporter that he had become introverted and rarely communicated with others ("Secondary Victimization and Protection," 2018).

The death of her husband and two children and continued stress over the extended course of this case wore Ding down: she was diagnosed with cancer (thyroid carcinoma) in 2008 and received a surgery in 2012. Emotionally, Ding also suffered tremendously. She questioned if she had brought misfortune to the family, as the Chinese traditional patriarchal ideology would likely blame such tragic deaths to the cursed wife and mother (T. G. Wang, 2014). In an interview conducted in 2015, nine years after the incident, Ding was still described by the reporters as "distrustful, emotional, and frail," and easily became "distraught" ("Secondary Victimization and protection," 2018). Needless to say, every time when Nian was sentenced and then his death sentence was rescinded, Ding went through a roller coaster of emotions only to be disappointed in the end. It is hard to imagine how she coped with so many tragic deaths and dramatic turns. She tried to move forward and named her Wechat account "Let it go" (suan le ba) (J. J. Cao, 2014), but only time will tell if she would be able to truly let it go.

The main source of financial compensation that Ding and her family were potentially eligible for as the victims' family was through a collateral civil lawsuit against Nian. Should Nian be found guilty, he could be ordered by the court to pay the victims or their family for medical expenses and loss of wages. According to Nian's final judicial document, Ding requested compensation of over 220,000 yuan from Nian, lower than the amount requested in the first trial in 2008 (the initial request was 540,000 yuan but was cut to 220,149 yuan by the trial court after Nian was sentenced to death). However, upon Nian's acquittal, Ding is no longer eligible for financial compensation from Nian. Heartbroken, Ding told reporters that "financial compensation has no [more] meaning to them, and [they] only want the real criminal to be punished" (L. L. Wang, 2014). Unlike Nian Bin who received over one-million-yuan state compensation for his wrongful conviction, Ding does not qualify for financial compensation as a crime victim as there are no such laws in China. The financial support she received from the authorities was mostly ad hoc and discretional. For example, Ding moved to a free, government subsidized housing with an additional 200-yuan monthly low-income subsidy; she also received 30,000 yuan from the local government. Despite the strenuous circumstances, both Ding and senior Yu showed tremendous grace by returning donations while keeping a ledger of all donors and saving the donation envelopes to acknowledge the kindness and support of their fellow villagers. There was at least one public interest group trying to lend help, though it is unclear if Ding accepted it (Li & Li, 2014).

As reported, Ding, senior Yu, and other family members all shared some common features: they believed in Nian's guilt, bore deep resentment against the Nians and defense lawyers, and distrusted the court and the media. After Nian's acquittal, senior Yu complained to the reporters: "[It has been] eight years. [Death] sentence comes and goes, and the murderer is still at large. Two children lost. Who is going to give us an answer?" (J. Cao, 2015). Another relative of the Yus said,

> We have no power and connection, and don't know much. [We] only have a pair of fists and can cry out and make a scene after losing the legal battle. (J. J. Cao, 2014; J. Cao, 2015)

As discussed below, Ding and the Yus clearly perceived media as being biased against them, instead of being fair.

### *Victims' family and the criminal justice system*

A review of the relationship between the victims' family and the criminal justice system in the Nian case reveals several characteristics. First, the victims' family trusted the local police and government officials wholeheartedly. In his own words, senior Yu said that "the news [was] broken from the public security. How can the police arrest anyone randomly?!" (Z. Liu, 2014). After the police named Nian as the primary suspect, Ding suspected no one else but Nian, and the villagers started to recall bad deeds of Nian to rationalize him as the real criminal. Senior Yu, in particular, recalled Nian's unusual manner, acting as if he was planning something (Z. Liu, 2014). Even after Nian was acquitted, most local villagers from Ding's and Yu's family clans remained sympathetic to the Dings and suspicious of Nian. Many of them were angry with the acquittal decision and wondered how the government could be possibly wrong after four trials (Liu, Lu, & Jia, 2014). A local teacher, for instance, asked, "if Nian did not commit the crime, why was he sentenced to death four times?" The doubt about the acquittal decision by the Dings and Yus and their insistence on Nian's guilt affected some members of the Nian clan as well, making it difficult for them to believe otherwise (Ma & Liu, 2014).

Second, the way the local police and government officials handled the Nian case clearly helped solidify the victims' family's convictions about the case and Nian Bin. From the very beginning, the local police portrayed the case as ironclad. Under the political mandate to crack all murder cases, the police swiftly declared the clearance of the case in 13 days. They arrested Nian in front of his fellow villagers and announced to the media that Nian confessed. About a month after the crime, the local governments of Pingtan county held a widely publicized celebration for the clearance of three major criminal cases including the Nian's case: key personnel involved in these cases were appraised, some were promoted, and a prize of 56,000 yuan was awarded (Wei, 2014). Such a high-profile celebration put tremendous pressure on the procuracy and the court to convict Nian and also made the victims' family members and the general public believe that the true criminal was caught. The subsequent eight-year court battle putting Nian on the verge of death four times reveals several forces at work: 1) the grave nature of this case, 2) the weakness and messiness of the evidence, 3) the assembly-line working nature of the criminal justice system (that the court, procuratorate and the police are more likely to cooperate and support one another than to provide checks on each other's power and errors), and 4) the subordinate, yet ever-present criminal defense team. Despite Nian's ultimate acquittal, the repeat death sentences strengthened people's belief in Nian's guilt and their hatred toward the defense lawyers.

Third, the traditional notion of vengeance played a role in the mindset of many villagers. After Nian was arrested, the victims' family and clan members

raided and trashed Nian's house. When Nian's brother sought police's help, the police told the Nians that the victims' family lost two young children, and it is reasonable for them to vent their anger (Z. Liu, 2014). The police inaction or tolerance of private vengeance aggravated the conflicts between the victims' and Nian's families, and emboldened the aggressive, harassing, and sometimes violent behavior of the victims' family. The Dings would hang up banners outside the courtroom during every court hearing and confronted the Nian's family and defense lawyers both inside and outside the courtroom. For instance, one defense lawyer documented in his blog senior Yu's disruptive behavior during the July trial in 2013 and wrote that "[Yu] constantly interrupted defense lawyers' statements and ignored the warnings of the chief judge and bailiffs." Yu also tried to approach defense lawyers and warned them to "be careful with what they are about to say." The lawyer tried to explain to him that the goal of a trial is to find out the truth and avoid a wrongful conviction; defense lawyers are sympathetic to the victims, but letting go the true criminal and wrongfully convicting Nian would not serve justice for the two deceased children. Nevertheless, Yu did not accept the explanation and started cursing and called to handcuff the lead defense lawyer Zhang (Li & Li, 2014). After the final acquittal decision was announced, Ding and the elders moved into the court reception room for days in order to pressure the officials to bring justice to this case (Xue, 2016). To calm them down and comfort them, court officials provided a cot for the elders, carried out conversations with them, and a deputy judge had meals with Ding every day. In the meantime, one local police chief showed up at a village donation congregation in support of Ding and the Yus, made a donation, listened to the fellow villagers' complaints, and promised that the government would not let them down (Z. Liu, 2014).

Fourth, different from the strategy taken by the Nian's team which targeted the state case and successfully questioned the police/prosecutorial evidence, the Dings and Yus leaned on the state for truth finding. Instead of blaming the sloppy police work for failing to secure a conviction, they blamed the Nians, the defense lawyers, the media, and eventually the high courts. They did receive legal representation from three lawyers of the legal aid program who worked pro bono. These lawyers, however, did not seem to have much trial experience, national stature, and influence, particularly when compared with Nian Bin's high-power defense team (Z. Liu, 2014). Contrary to Nian Jianlan's "law and evidence" approach, the Dings and Yus resorted to the extra-legal approach by exerting pressure on the local government. They demanded an "answer" from the officials and insisted that the local government parental officials (fumu guan) be responsible for catching the criminal and bringing justice to the victims.

### *Victims' Family and the Media*

The media, unfortunately, showed less interest in the victims' family's stories, and its portrait of the victims' family was mostly less favorable. For instance, after Nian's acquittal, one report chose the title "Victims' family stayed inside the Fujian High Court hoping to solve the problem through crying and making a scene" (T. G. Wang, 2014). In contrast, reports on Nian's family were rather

positive such as "Sister wages 9-year battle saving brother from death" (Y. Cao, 2015), and "Nian Bin's sister's road to innocence can be duplicated" (M. Yan, 2014). Granted, some reported Ding's hardship after the death of her two children. Among them, Li and Li (2014) provided the most overt support to date. Portraying the Dings and Yus as powerless individuals who suffered from severe financial difficulties, Li and Li described how Ding had to close her store after the incident, and how all financial burden fell on the shoulder of senior Yu. It further described how Ding decided to stay at the courthouse after the acquittal verdict, and how she would rather die there than step outside of the courtroom. Nevertheless, sympathetic reports on the victims' family such as this one paled compared with the sensational coverage on the Nians. For example, after Nian's fourth death sentence in 2011, Nian Jianlan reportedly claimed that "It was my doomsday … At the time, our mother became ill, and Nian's daughter [sic – should be son] often asked me where her [his] father was" and "love made her determined to clear his name and bring him home …" (Y. Cao, 2015). After Nian's acquittal, one story described that

> Many times, Nian recalls days prior to the crime: wind blows on the seashore like singing, and family gathers around relaxing and chatting while kids chasing after one another before dusk. All of these are gone and will never return … [Even after his acquittal] Nian still had sleepless nights with nightmares, in which he was wearing shackles … thinking of his cellmate's final smiles when being taken away for execution. (Tan, 2019)

These reports garnered tremendous attention from the media and the public.

The unbalanced media coverage can perhaps be attributed to the overlapping narratives of the mainstream media and the Nian case: 1) procedural legal reforms, 2) the exoneration movement, and 3) international abolitionist movement. In China, an essential role of the mainstream media is to disseminate official messages and channel mainstream values to promote governmental policies. The *Law Online* (fazhi zaixian) is one such program run by the CCTV, and its special report on the Nian case won the China News Broadcasting Award in 2015. This report involved interviews with 42 individuals (including 9 family members, 9 defense lawyers, among others) and presented case-related legal documents, videos, digital medias, testimonies, and physical evidence. Its discussion put the case in the context of the newly adopted exclusionary rules and the "when in doubt, acquit" principle (Yang, Xiong, & Gong, 2019), and thus inevitably geared the discussions more toward the offender, not the victims.

The massive media coverage of Nian is also partly due to the explosion of social media, which allowed stakeholders to timely disseminate information, and received instant feedback from supporters who helped circulate the news and amplify its effect. As Nian's story was mostly consistent with the mainstream narratives, the media picked up the blogs posted by Nian Jianlan and Nian's defense team, repackaged them, and reinforced the legal principles embodied in their posts (Xu, 2015). In turn, Nian Jianlan and Nian's defense team took advantage of the authority and credibility of the mainstream media to strengthen their arguments (Bai, 2016). A similar effect can be seen in the international media coverage of the Nian's case. For example, the overseas edition of the *China Daily* hailed

Nian's acquittal as a major progress for China's legal reform (J. Liang, 2014); two *Washington Post* reports cited Chinese domestic reports and narratives and commended the triumph of physical evidence (Wan, 2014; Xu & Wan, 2014). Human rights groups such as the Dui Hua Foundation (2015) and the Human Rights Watch, though often being critical of China's politics, acknowledged Nian's acquittal as a progress in criminal defense rights (Richardson, 2015).

Another factor involved the messengers. On the defendant's side is Nian Jianlan who was a college graduate, disliked a petition (xinfang) approach but favored a law and evidence approach (J. Yan, 2014). Along with the defense team, they relentlessly challenged key evidence in the state's case. Speaking on a national TV program, People in Focus (jiaodian renwu), for instance, Nian Jianlan was emotional when she complained about the sloppy works by local officials that could have resulted in her brother's death, yet she was largely coherent and focused on evidentiary issues (Tengxun Video, 2016).

In contrast, on the victims' side, Ding and senior Yu both had limited education, did not understand much about the law, and had the mere assistance of three low-key lawyers from the legal aid program (Z. Liu, 2014). In several TV interviews, Ding and senior Yu appeared not well prepared, and spoke over each other with a heavy accent that at times made it difficult for the audience to understand; they were emotional and argumentative, and cited mostly hearsay evidence and relied on personal opinions; several neighbors angrily vented about the unbalanced reporting of the media (mostly inaudible due to their accent and speaking over one another); senior Yu accused Nian Jianlan of having connections in Beijing, implying she had an unfair advantage (Youku Videos, 2012a, 2012b, 2014). One reporter wrote that many older victims' relatives had never gone outside the village; frustrated with little media support, a relative of Yu complained about not knowing how to find a high-power lawyer and how to get the public interest on their side (Youku Video, 2012c).

Though there were sympathetic coverages of the victims' family via blogs, open letters, and media interviews (Tianya Blog, 2014a, 2012b; Youku Video, 2012a), such stories and reports were overtaken by the media's attention on Nian's wrongful conviction and death sentences and continued discussion on legal reforms (Cheng, 2014). One strand of media reporting that gained support for the victims' family called for governmental or social assistance programs for the victims' family, especially in the event of an exoneration.

In short, this case showed intricate interactions between the media and both Nian's and victims' families. As Nian's family stole the media attention, the victims' family was unsatisfied, upset, and even angry about the media coverage. They accused the media of distorting the truth, misleading the audience, and being manipulated by money and power and extremely unfair to them (Tianya Blog, 2014a, 2012b; Youku Video, 2012a). Scholars also criticized journalists' prejudice and unprofessionalism as their judgments were already made when a case was still ongoing (Cheng, 2014). Albeit Nian's acquittal deserved media celebration (Tao, 2014), ignoring, or disparaging the victims' family is unjustified and likely to rip open victims' family's wounds for a second time (F. Liu, 2017; Zhao, 2014).

### *Victims' Family and Nian's Family*

There is little doubt that this case changed the two families forever. Nian Jianlan said that every exonerated offender has a family member willing to "roll on a nailing board" (J. Yan, 2014). Elsewhere the defendant and his family's physical, emotional, and financial tolls were discussed in detail (Lu et al., 2020). As described above, victims' families, Dings, and Yus also suffered tremendously from this crime.

It is unfortunate that the conflict between Ding's and Nian's immediate families escalated into confrontations between their family clans. The Dings and Nians were two large clans in Aoqian village. Before the crime, Ding's and Nian's brothers got along. Ding's brother could not believe Nian did it. Nevertheless, after the police announced Nian as the criminal suspect and arrested him in public, the whole village erupted in calling Nian a murderer and denouncing his savageness (Z. Liu, 2014). As mentioned, hundreds from the Dings and the Yus sacked Nian's house and forced his parents to move and hide at their relatives' (Tan, 2019; Y. Wang, 2014). Nian's brother contacted the police for help to no avail. Murdering two young children was so sinful, and the villagers vowed to make the criminal pay (Z. Liu, 2014).

The two families had crossed many times on the court days over the next eight years. Large numbers of both families gathered inside and outside the courthouse on these days, forcing the court to order more security guards. Senior Yu and his folks would hold the pictures of the two dead children and curse Nian's family and lawyers outside the court; to counter, Nian's family would hold banners demanding justice. Inside the courtroom, Dings and Yus would engage in verbal insults and interrupt defense lawyers during trials. Defense lawyer Si once stated in his blog that he had the worst trial experience in his entire career, as defense lawyers were constantly interrupted and insulted by the victims' family, yet the court was indifferent and claimed that the trial was orderly (Ma, 2014b). In the 2011 retrial that resulted in Nian's fourth death sentence, the emotions ran high, and the two parties engaged in a shouting match. Nian cried out and said "Ding Yunxia, your children were poisoned to death. I am sad too, but I am framed and I am also a victim." When officer Weng, a lead officer in Nian's investigation testified in court, Nian Jianlan cursed him for being responsible for Nian Bin's torture; the victims' family, on the other hand, supported Weng and cheered him as the "People's good cop" (Liu et al., 2014).

On the day of Nian's acquittal, the appellant court blocked off the streets, and the police set up check points to prohibit the Yus and Dings from leaving the village (Y. Wang, 2014). To tamper down high emotions, the local government officials persuaded the Nians not to celebrate with firecrackers and arranged getaway vehicles to take the Nians away from the courthouse immediately after the verdict. As for the victims' family, upon learning the acquittal verdict, Ding and senior Yu refused to accept the verdict, cried out in the courtroom, and then moved into the court's reception room and stayed there for days, refusing to come out "until justice is served" (Z. Liu, 2014).

The Dings and Yus demanded an answer from the officials (Y. Wang, 2014), and many Aoqian villagers agreed with them. Hundreds of fellow villagers made

voluntary donations to Ding. As they claimed, "One can't die in vain" (Z. Liu, 2014). At the donation site, they asked the Pingtan County police chief, "how could this case be over? If Nian is released, who is the criminal?" Facing the emotionally charged villagers, the police chief could only nod his head and comfort them, saying that "the government won't let you down" (Z. Liu, 2014). With tears running down his face, senior Yu said, "If the real criminal were not caught, I would live without meaning. But when I die, I won't die alone." Ironically, Nian Jianlan said the same thing in her darkest hours when Nian Bin received his fourth death sentence in 2011. Inside a mourning hall, the victims' family members set up banners denouncing Nian and his defense lawyers (with their photos) and kept broadcasting Nian's videotaped confession on a small TV (Tan, 2019). The victims' grandmother argued that "[Nian was] three times sentenced to death … If he were not the murderer, who was?" (Y. Wang, 2014).

The two families won't likely see closure of this case any time soon. The Nian family continues to avoid encounters with the victims' family but fight to win complete freedom for Nian in courtrooms, whereas the victims' family will continue to go after Nian and the government for an answer. Each time, Ding and senior Yu recounted evidence supporting their assertion that Nian is the true perpetrator, including hearsay evidence from a police officer who claimed that Nian did not say "no" when his wife asked if he committed the crime in a police-wiretapped phone conversation (Ding's Supporter Blog, 2014), Nian's videotaped confession allegedly made during Nian's first meeting with a defense lawyer at the detention center (which was coerced according to Nian's defense as police officers were standing right behind the lawyer during their meeting), and the fact that Nian's first hired lawyer quit the case and claimed that "he could not do unethical things (i.e., defending Nian); if he did, he would not be able to face these two kids," thus implying Nian's guilt. Ding believed that the only reason Nian received an acquittal was because of the money and connections that Nian's family had (Y. Wang, 2014). Even after Nian's acquittal, Ding questioned Nian's motive of attempting to leave the country for medical treatment. To the Dings and Yus, undisputable evidence like these proved that Nian was the true murderer, despite court rulings otherwise.

There are no winners in this case. To date, Nian and his family could not go back to their old house for fear of retaliation. To the victims' family, the not-guilty verdict ripped open their wounds and nipped any hope of winning financial compensation from the Nians. As the banner outside the courthouse wrote, "two innocent children died miserably; over seven years, the criminal unpunished and justice not served" (Wei, 2014).

## DISCUSSION AND CONCLUSION

Based on available documents and reports, this case study examined the experience of victims' family in a capital double-murder case, the Nian Bin case. Readers must be cautioned that findings from this study involved one high-profile, wrongful conviction case with death sentences in China and thus may not be

generalizable to other cases. In addition, victims' family's experiences described in this chapter may not be interpreted as their true experience, but rather experiences filtered through the media coverage, which may be biased and inaccurate. The potential biases and inaccurate depiction of victims' family's experiences could further perpetuate the pain the victims' family members suffered, particularly given that the media coverage tended to favor the defendant's side and ignore the needs, frustration, and anguish of the victims' family. To overcome the potential biases with one type of data sources, data triangulation, such as interviews and court data, would potentially enhance data validity and generalizability. We call on future research to utilize a variety of data sources to further examine this case.

Given the rapid transformation of China's legal system, much of the roles and functions of crime victims and their families are understudied. This study is thus exploratory. This case study offers a unique perspective to gain insights into structural, institutional, and individual factors that help shape victims' actions, attitudes, and their relationships with other institutions (e.g., media, police, and courts) and actors (e.g., defendant's family, lawyers, reporters, government officials). One of the advantages of the case study is that it offers context-specific knowledge. It also serves as a useful tool to propose hypotheses for future studies. While research findings cannot be generalized to the larger population due to the uniqueness and the non-random nature of the case study, the findings can help clarify or falsify some of the prevailing assumptions, in this case, for example, the assumptions about the victims' family and their experience in the current criminal justice system (e.g., victims' family and the fellow villagers' indignation about serious crime and their unwavering belief in the system's ability to get to the bottom of the truth) in China.

We also acknowledge that this capital murder case may not be a typical, ideal case suited for addressing the RJ theory and the crime victim's family in China. A minor case with a closure where blame was assigned and amends were made would be arguably more appropriate for RJ. Nevertheless, this capital case has its unique benefits. For example, certain elements of this case are rather common among many criminal cases, minor or major, where the relationship between the offender and the victim (and their families) was strained due to the crime, police mishandling the evidence, and the overzealousness of the police and the prosecutor for convictions. Because of the severity of this case, all the problems embedded in these elements are magnified. Another element common among many criminal cases is the need for finality based on substantive justice. This steadfast belief in the pursuit of truth in China is rather consistent with its civil law tradition and the sociocultural tradition of retributive justice.

The findings from this study help clarify several long-standing beliefs and assumptions about the victim family's roles, functions, and dilemmas in China. The first involves the tremendous physical, psychological, and financial tolls the victims' families endured. The extended legal battle and drastic twists and turns only aggravated their agony. These tolls dovetailed findings from the literature. While the victim's family in the Nian case received some, albeit minimal, financial support from the local government after Ding's repeat visits and petitions and perhaps also due to the high-profile nature of the Nian case, it

appeared that they did not receive financial assistance from the court. The victims' family had no legal redress for seeking financial compensation from the accused after an acquittal, unlike in some Western nations where a separate civil lawsuit may be filed to recover financial losses; there is no national compensation program available for victims' family in China. While some courts across China have experimented with victims' and/or their family's assistance programs, a more transparent and formal program has yet to be established ("Secondary Victimization and Protection," 2018).

The second finding involves a seemingly close alliance between the victims' family and the police. This is partly due to a long Chinese history of patriarchal and paternalist culture in which governmental officials act as parents who look out for the interests of the common people, and its inquisitorial legal system that emphasizes state's responsibility in truth finding. Even after the exposure of police abuse of power in the Nian case (e.g., the police fabricated the key evidence of lab results, and hid evidence contrary to the state's case), the victim's family remained uncritical of the state, contrary to some findings from the Western literature. Rather, the victims' family blamed the media, the defendant's family, and their lawyers for distorting the truth.

The third finding involves the antagonistic relationship between the victims' family and the media. Privatization, commercialization, and the we-media grew exponentially in the past few decades in China; media's social responsibility and professionalism have yet to be established. Covering crime stories involves particular challenges as it requires legal knowledge, a sense of community norm, and a keen awareness of the psychological impact that the crime and the media stories may have on victims' family. Similarly, it presents a challenge to the victims' family in dealing with the media. Ding and the Yus had high hopes for the media's coverage of their stories and actively participated in media interviews at first but only realized later that the media covered their stories far less frequently than the Nians' and portrayed them in a less favorable tone. As Seymour and Bucqueroux (2009) wrote, it requires more than speaking about the truth or sharing one's thoughts when dealing with the media but rather skills and strategies. In this regard, the disparity between the educational levels of Ding and Senior Yu and Nian Jianlan became critical, especially in the we-media age when the courtroom is only one of the battlefields contesting for the truth, and more battles are fought in the media arena. People who are skillful in presenting the evidence and communicating ideas and emotions (such as college-educated Nian Jianlan) tend to win over the public. This seemingly imbalanced social status (e.g., education), its resulting social support, and social response (e.g., media coverage) may have certainly impacted the public's perceptions and the case outcome. One way to level the playing field is for Dings and Yus to receive (legal) assistance and advice on how to present their stories and arguments (e.g., demeanor, evidence) so as to project a more favorable public persona, besides the minimum legal aid assistance in the court of law. Another is to call on more future studies to explore and identify potential social class differences between the offender and the victim and their families and potential impact of such differences on key decisions. While there is less concern in theory about such disparities in criminal processing in China due

to its inquisitorial system (e.g., judges, not juries, render dispositional decisions; the goal is truth finding and serving substantive justice), such disparities may well impact decisions at various levels of the case processing in practice, without the knowledge or acknowledgment of the officials involved.

Last, but not least, this study sheds light on the feasibility of RJ in a death penalty and wrongful conviction case and offers some suggestions for criminal justice reforms. As interviews of Ding, the Yus and their supporters revealed, there existed a strong retributive attitude toward the calls for Nian's death sentence, a tolerant culture toward private vengeance (e.g., harassment, defamation, and violence by fellow villagers), and a deep belief in the presumption of guilt. More so, the idea that truth will emerge seems ingrained in the minds of victims' family, the police, and those top governmental officials who engineered the policy of "serious crimes must be cracked."

For RJ to work, there seems a need to lay out a clear common understanding about the uncertainty of the "truth" about crimes (in the absence of the direct physical evidence, credible and corroborated confession, and direct eyewitness), that most cleared crimes involve circumstantial evidence and that the police, prosecutors, or judges make a decision based on legal criteria (e.g., probable cause, beyond a reasonable doubt), not on absolute truth. The general public and the victim's and defendants' family should be educated about this. To begin with, the public and legal officials should not convey false hope but recognize not all crimes are solvable and educate the public that a cleared case by an arrest does not mean a guilty verdict. This was particularly important in the Nian case, as a competing theory was proposed by the defense team about possible accidental food poisoning instead of intentional poisoning and murder (Nian Bin Case, 2012). Only when crime fighting is dictated by science, not politics, can there be a rational assessment of responsibilities, costs, and remedies. For example, when the government acknowledges that a sizable number of crimes are unsolvable, and victims and their family typically face financial and emotional difficulties, the governmental and/or social institutions should then enact policies to deal with their needs. We thus suggest more future studies on RJ involving minor or major criminal cases in China to pursue this line of inquiry and assess if the dialogs about responsibilities and losses and reconciliation and compensation in mediation become more reasonable among all parties of such cases.

Another aspect is to create more space for victims' family to express their feelings and claims. Granted, the current criminal justice system creates multiple opportunities for victim's family to express their wants and needs – via a collateral civil suit where they make their legal claims, contacts, and participation in the system to learn about the case process and media interviews. Yet, it appears that the victim's families are not satisfied with the process and the result – they felt the criminal justice system failed them and the media marginalized them in the Nian's case. While the victims' family was not prohibited from demonstrating outside the courthouse, chasing after defense lawyers in the hallway, and shouting during the court proceeding, we suggest that laws similar to the practice of victim impact statement be enacted to provide the victims' family a more dignified, formal opportunity to make a public statement. This impact statement in court

would become an official record, which potentially impacts the judge's sentencing and sends a signal that "we care about your feelings and we hear you."

Fundamentally, RJ is about reconciliation and restoration, both in terms of offenders taking responsibility to make amends through apology or restitution and the shareholders (in this case, the offender, victim, their families) maintaining an open and respectful channel of dialogue procedurally. Even though it is unfortunate that the two families and the clans in the Nian's case ended up being on the opposite side of a seemingly insurmountable gulf of misunderstanding and hatred, we remain hopeful that the two sides may still have a chance to work out their emotional anguish and financial difficulties as the two families had a shared experience shaped by the tragic loss of two young children. The Nian and his family have an incentive, that is, going back to their hometown and living in the family house, to reach out and have a dialogue with the victims' family. On multiple occasions, Nian's sister stated that she does not blame the victims' family for what Nian Bin had gone through as they lost two children. For the victims' family and the villagers who sympathized with the Dings and Yus, the key seems to be in the hands of the local village cadres, community leaders, the police, and the criminal justice system. As the current legal system promotes mediation to maintain social harmony even in criminal cases, more creative ways should be called to help the parties to reconcile and heal. Nian received the state compensation due to his wrongful conviction; the victims' family should be given some compensation for emotional suffering and financial hardship as well for the eight agonizing years due to sloppy work by the police. While courts of various jurisdictions have started experimenting with financial assistance to the victims' family, in the Nian case, unfortunately, courts in Fujian Province had no similar initiatives. Nevertheless, if the court could offer some financial assistance under an overarching framework of meaningful dialogues between the two parties hosted by the police and/or court, there is a better chance that RJ might work. Consistent with RJ, both parties shall listen to each other's stories and be allowed to express their feelings and desires; both parties shall extend goodwill to amend the broken ties. For the Nians, they could have used their legal team to spread goodwill via media or provide pro bono service for the victims' family to recognize their loss and obtain financial assistance for them; for the victims' family, they could have promised to stop disseminating false information, harassing the Nians, and using violence should the Nians decide to move back to their family house. Only when understanding and trust are re-established, reconciliation and healing is possible. This study thus calls for policymakers and legal practitioners to focus on post-acquittal mediation and reconciliation policies and practices, if delivering justice and rebuilding a harmonious society is the ultimate goal.

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# CHAPTER 10

# FALLING THROUGH THE FAULT LINES: VICTIMS EXPERIENCING POOR AND FRAGMENTED LEGAL RESPONSES TO DOMESTIC ABUSE IN ENGLAND AND WALES

Mandy D. Burton

**ABSTRACT**

*Domestic abuse presents significant challenges for legal systems around the world. In England and Wales, victims of domestic abuse sometimes find that they are pulled in different directions by multiple legal interventions in the criminal, civil, and family justice spheres. This is often due to inadequate information and evidence sharing but also inconsistent approaches and court orders. The "Harm Panel" report published in 2020 examined the approach of the family justice system in child arrangement cases involving allegations of domestic abuse. It found "silo working" was one of four structural barriers contributing to unsafe processes and outcomes. The Harm Panel provided renewed impetus for a policy to introduce integrated domestic abuse courts (IDACs) to address the problems of fragmented legal responses. There has previously been one unsuccessful attempt to introduce an IDAC in England Wales. This chapter will explore what went wrong and whether the evidence base for IDACs in other countries supports another attempt.*

**Keywords:** Domestic abuse; legal intervention; court orders; England; Wales; child safety

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## INTRODUCTION

Domestic abuse is a global issue which many legal systems across the world have found challenging. In England and Wales, historically there has been a heavy focus on physical violence and sexual violence, both in the substantive criminal law and the criminal justice response. It was only in 2015 that an offense of "coercive and controlling" behavior in intimate relationships was introduced into English law. Many victims of physical and non-physical abuse in intimate relationships never come to the attention of the criminal justice system because they do not report their abuse to the police. They may, however, seek a civil remedy in the form of protective injunction or be involved in family court proceedings relating to children if they separate from the perpetrator of abuse. When victims do come to the attention of the legal system, and if they are involved in multiple legal spheres, they can find themselves facing conflicting approaches. This chapter will examine how victims are "pulled in different directions" as a result of "silo working." It will draw on the findings of the "harm panel," set up by the government in England and Wales to examine the process and outcomes in child arrangement cases involving allegations of domestic abuse. In addition to "silo working," the harm panel found three other structural barriers to safe process and outcomes: resource constraints, the pro-contact culture/minimization of abuse, and adversarialism. The potential for integrated domestic abuse courts (IDACs) to remedy some of these problems, especially "silo working," will be explored. This chapter will draw on some of the research on IDACs in other countries such as North America and Canada and look at the reasons why a previous attempt to introduce an IDAC in England failed.

## THE PREVALENCE AND NATURE OF DOMESTIC ABUSE

Domestic abuse is a significant social problem. The Crime Survey England Wales (CSEW) found that 26% of all women and 13% of all men surveyed said that they have experienced domestic abuse in their lifetime (ONS, 2020). In the period up to March 2020, 7.3% of women and 3.6% of men said that they had experienced domestic abuse in the previous 12 months. The Covid-19 pandemic has prevented the collection of more recent data, but it is possible that the prevalence of domestic abuse may have increased (ONS, 2021; Speed, Thomson, & Richardson, 2020). These reports are similar to global estimates, which say a third of women experience domestic abuse at some point during their lifetime. It is reported that there is a "shadow pandemic" of domestic abuse, with increases in domestic abuse and support being more inaccessible (UN Women, 2021).

Although there is no single agreed definition of domestic abuse, it is increasingly recognized that it includes non-physical abuse as well as physical and sexual violence, and that it is gendered. Stark (2007) describes a wide variety of abusive behaviors that male perpetrators of abuse use to control women, including financial and emotional abuse and "micro-management" of their delay lives to restrict the ways that they can develop and express themselves and interact with others. The focus on women as victims is not to obscure male victims or victims in same

sex relationships, but rather to highlight the interaction between domestic abuse and gender inequality; the two are reinforcing (Herring, 2020). Not all domestic abusers go on to kill but in England and Wales, on average, two women a week are killed by their male partner or ex-partner (ONS, 2021). Spotting the signs on the "homicide timeline" and intervening effectively is therefore vital preventative work (Monckton Smith, 2021).

## LEGAL INTERVENTIONS-LEGISLATION AND POLICY IN ENGLAND AND WALES

Given the nature and prevalence of domestic abuse, and the huge personal and societal cost (Walby, 2004), there is a clear need for effective legal interventions. The human rights arguments for this are overwhelming. The United Kingdom has obligations under the Human Rights Act 1998, which incorporated the European Convention on Human Rights 1950, to provide remedies and redress for victims of domestic abuse (Herring, 2020). Legal interventions will never be a complete solution to the problem of domestic abuse, but nevertheless, the legal system has an important role to play (Schneider, 2000; Smart, 1989).

Traditionally, in England and Wales, there was no specific offense of domestic abuse. Police and prosecutors had to rely on the general criminal law, including legislation dating back to 1861, which was enacted at a time when there was very little public recognition of domestic abuse and, within limits, wife beating and even marital rape was not illegal. The focus of the criminal law was almost exclusively on physical violence resulting in physical injury (actual or grievous bodily harm) and sexual offenses committed outside of the marital/intimate relationship. As the criminal law began to change slowly to reflect domestic violence, including the criminalization of rape in marriage, the debate also began as to whether there needed to be a specific offense of domestic abuse to mark out the particular wrong (Burton, 2008; Tadros, 2005). In 2015, a new offense of "coercive and controlling" behavior in intimate and family relationships was introduced (Bettinson, 2016).

In addition to developments in the range of criminal offenses that can be prosecuted, the police in England and Wales have also seen their powers expanded so that they are now able to impose emergency barring orders (EBOs) when called to incidents of domestic abuse (Burton, 2015). EBOs are short-term civil protection orders applied for by police. They are designed to give victims a "breathing space" to carry out longer term safety planning. The use and effectiveness of EBOs is a matter of some debate, with some concerns being raised about the willingness of police to apply for remedies and under enforcement of breaches (Burton, 2015). Nevertheless, there is some evidence that these types of orders can be useful as a supplement to the traditional criminal justice response to domestic abuse, removing the burden, both financial and emotional, from the victim in seeking a remedy for themselves. In England and Wales, the government decided to strengthen the regime of EBOs introduced in 2014 by enacting a revised scheme in the Domestic Abuse Act 2021, which when piloted and implemented will allow for orders of longer duration and with criminal sanctions for breach (Bishop, 2021).

The introduction of EBOs has continued a trend of blurring the lines between the criminal and civil justice responses to domestic abuse through hybridization of legal responses (Bates & Hester, 2020). However, the existence of multiple and potentially overlapping legal proceedings in different spheres is not a new phenomenon in domestic abuse cases. Victims entering the criminal justice process may already have some interaction with the legal system, either through seeking a non-molestation order/occupation order under the Family Law Act 1996 or because they have separated from their abuser and are contesting post-separation child arrangements under the Children Act 1989. For the past two decades, the family courts have had legal guidance to follow in cases where parents are contesting contact/residency and domestic abuse allegations are made. In Re L and others (2000), the Court of Appeal said that a "fact-finding" hearing may be necessary and, if abuse is proven, when weighing up whether an abusive parent should have contact with children, consideration should be given to whether the perpetrator has recognized his past conduct, the need for change and made "genuine efforts to do so." The case was described as "landmark" in signaling domestic abuse should be taken seriously (Burton, 2008, p. 31). The process and approach for courts to follow was subsequently set out in a practice direction (PD12J). However, victims in the family court may also find themselves interacting extensively with different parts of the legal system, which can be a problem. The issue of lack of a "joined up" approach was a major theme emerging from the "harm panel" report.

### *The "Harm Panel"*

In 2020, the government in England and Wales published the "harm panel" report examining how allegations of domestic abuse are handled in child arrangement proceedings (Hunter, Burton, & Trinder, 2020). The panel was set up to oversee a public call for evidence from individuals and professionals with experiences of the process and outcomes in child arrangement cases, it received over 1,200 submissions, 1,115 of which met the criteria of the call. Over 80% of the submissions were from individuals, either mothers or their family (786 submissions) or fathers (202 submissions) who had experiences as litigants in the family court (some of the fathers were alleged perpetrators, others victims). Ten percentage of submissions (108) were from professionals, for example, lawyers or domestic abuse support workers, and a further 3% (32) responded on behalf of their professional body or organization. In addition, the harm panel carried out focus groups with children, mothers, fathers (both victims and alleged perpetrators), and roundtable discussions with professionals. The panel also commissioned a literature review (Barnett, 2020a). Hunter et al. (2020) discuss the methodology in Chapter 2 of the harm panel report, arguing that the large number of submissions and the consistency between them and other data sources suggests that the panel's findings present a reliable picture of the day-to-day workings of the family justice system.

Allegations of domestic abuse are a common feature of child arrangement proceedings in England and Wales, with a series of studies finding that such allegations are present in between nearly half to two thirds of these cases (Barnett,

2020a, Table 4.1). In theory, if the courts follow the guidance in Re L and PD12J, then they should be able to identify and respond to domestic abuse appropriately. However, the research evidence reviewed by Barnett (2020a) for the harm panel demonstrated that over many years, there have been substantial issues with the implementation of PD12J: it is applied inconsistently, and the presumption of parental involvement in the Children Act 1989 overrides legitimate safety concerns.

Following analysis of the multiple sources of data it collected, the harm panel concluded that there are "deep-seated and systemic problems with how the family courts identify, assess and manage risk to children and adults" in child arrangement cases involving allegations of domestic abuse in England and Wales. In Chapter 4 of their report, the harm panel identify four structural barriers to safe process and outcomes: resource constraints, the pro-contact culture and the minimization of abuse, silo working, and adversarialism. The panel argues that individually and in combination, these barriers result in the systemic minimization of domestic abuse and ongoing harm from court orders.

The panel found: "resource constraints hampered the ability of the system to identify and address domestic abuse at all stages of the process, from identification, to adjudication and intervention" (Hunter et al., 2020, p. 41). The level of demand for family court intervention has been increasing in recent years, but resources have not kept pace. For litigants, the resources available have reduced drastically because, since legislation in 2012, unless parties can bring themselves within a domestic abuse "exception" and satisfy a strict means test, they are ineligible for publicly funded legal representation. There has been a sharp upturn in unrepresented litigants in person, which has placed additional pressures on the family courts (Richardson & Speed, 2019). It has also put pressure on agencies such as the Child and Family Courts Advisory Service (Cafcass), who are charged with completing "safeguarding" reports to alert the family court to issues that may result in a full welfare report being ordered.

The evidence submitted to the harm panel confirmed that resource constraints are causing serious problems in child arrangement cases. In some cases, an alleged abusive parent acting without legal representation was allowed to cross-examine in person the non-abusive parent, with little or nothing being done by way of judicial intervention to protect the victim of domestic abuse from being re-traumatized. In other cases, victims without legal representation had to try to cross-examine their abuser. It is difficult to construct a case and line of questioning without appropriate legal knowledge and training (Fitzgerald & Douglas, 2020), but especially when you are fearful and intimidated. The harm panel received submissions from third sector professionals supporting victims of domestic abuse stating that their clients had been unable to access legal representation partly because of the strict means test for legal aid but also because of financial abuse. Some unrepresented victims faced well-resourced and legally represented alleged perpetrators who used their dominant financial position to exploit the unequal power dynamic and the financial abuse already underpinning the relationship. This "inequality of arms" within the court process exacerbated the vulnerability of victims.

Although parts of the family justice system had received small increases in resources in the years leading up to the harm panel's report, both Cafcass and the judiciary cited resource constraints as limiting their response. Despite Cafcass' crucial role in writing safeguarding and welfare reports and making provision for the child's voice to be heard, the panel found widespread concern about their ineffectiveness. For example, safeguarding interviews with parents are typically carried out over the telephone and last for less than one hour. The alleged victim of domestic abuse has little or no opportunity to build up any rapport or confidence in the person they are speaking to, which is crucial in identifying the nature and extent of abuse and its impact on the children. Judges told the panel that this process was not conducive to disclosure as it is often: "serious and distressing experiences that they are required to talk about" (Hunter et al., 2020, p. 58). The panel also found that the resource constraints experienced by the courts provide incentives for them to ignore or sideline domestic abuse allegations: putting pressure on the courts to avoid or severely constrain the scope of fact-finding about abuse, limit consultation with children, and cut corners on risk assessment and the protection of victims from abuse during the court process. In an ideal world, judicial continuity would be good practice in domestic abuse cases as this could save the parties having to repeat distressing details of abuse at each hearing and enable the judge to build up a comprehensive picture of what is happening for the family. It may also help to avoid inconsistent decision making and ensure that properly trained judges deploy special measures, such as screening, to protect vulnerable witnesses. The harm panel found:

> Judicial and practitioner respondents were unanimous in agreeing that resource constraints are a major impediment to the effective implementation of PD12J, including delays caused by listing pressures and the court being unable to dedicate proper time to individual cases. (Hunter et al., 2020, p. 92)

The second structural barrier that the harm panel identified to domestic abuse being effectively addressed in the family courts in England and Wales is the pro-contact culture and the minimization of abuse. The presumption of parental involvement in the Children Act 1989 is rebuttable where the child is at risk of suffering harm. However, the panel found that, in practice, the presumption is interpreted to prioritize contact and minimize the risk of harm posed by an allegedly abusive parent and: "is rarely disapplied" (Hunter et al., 2020, p. 88). This is described in some of the literature as "contact at all costs" (Barnett, 2020a). Both mothers and fathers submitted to the panel that they had been told by their lawyers that the nonresident parent was going to get contact irrespective of the abuse and that there was "nothing that they could do about it" (Hunter et al., 2020, p. 87). Consequently, the harm panel found the pro-contact presumption results in children and parents who resist contact being regarded with suspicion. Mothers are regarded as obstructing contact, labeled "hostile" or a parental "alienator," rather than having their concerns about domestic abuse and safety taken seriously.

The panel found that professionals working in the family justice system have a poor understanding of coercive and controlling behavior and its impact.

They tend to focus on incidents of physical abuse in the months leading up to the court hearing, regarding anything in the years before as "historical" and "irrelevant." Even in rare cases where some of the judges recognized that psychological, emotional, and financial abuse might be relevant, they said that they struggled with finding corroborating evidence. The panel received also submissions that judges and other professionals working in the family courts were looking for the stereotypical "ideal" victim of domestic abuse. A range of stereotypes were identified in both individual and professional submissions to the panel, including an expectation that a "real" victim of domestic abuse would report to the police immediately, would leave the abuser in order to protect the children, and would neither be under or over emotional when presenting at court. These stereotypes are inconsistent with research that shows that victims of domestic abuse may take a long time to report to any third party, may stay in an abusive relationship to try to protect the children from unsupervised contact, and Post Traumatic Stress Disorder (PTSD) resulting from the abuse may impact on how they present at court. Yet: "mothers repeatedly told of being discouraged from making allegations or not being believed because they had not acted in a way that a 'stereotypical' victim would behave" (Hunter et al., 2020, p. 49).

The stereotype that a "real" victim would report to the police is highly contestable. However, the harm panel found in the submissions of some mothers that even when police evidence was available it was "dismissed or disregarded" (Hunter et al., 2020, p. 57). For example, a mother told the harm panel that she had reported the nonresident father to the police for rape and other sexual offenses, and the police had put in place protective measures including emergency alarms. Despite trying to bring this evidence to the family court, it was dismissed on three occasions, and she was ordered by the family court to carry out handovers for contact (Hunter et al., 2020, p. 57). This finding resonates with that of first instance judge in *Re H-N* (2021) who disregarded police evidence that the victim had visible injuries following a violent incident. The Court of Appeal rightly criticized the judge for failing to take into account the police report that indicated that the mother had red markings to her face (Burton, 2021).

Both professional and some individual mother's submissions to the panel indicated that in their view: "there was an element of sexism and class prejudice in the stereotypical assessments of victims and abusers" (Hunter et al., 2020, p. 52). From an intersectionality perspective, it was evident to the panel that the barriers to safe process and outcomes in child arrangement cases are magnified by class, race, and disability, as well as gender stereotyping about appropriate behavior. The panel received evidence from Southall Black Sisters (a third sector organization supporting victims from Black and Minority Ethnic (BAME) backgrounds) that indicated the particular problems faced by them with stereotyping. For example, one victim from a BAME working-class background, for whom English was a second language, said that she felt severely disadvantaged by facing her middle-class perpetrator, who appeared "calm" and "respectable" to the court, especially because he worked in the legal profession himself. In circumstances like these, legal representation, or at the very least a support worker in court, can be vital to safer process and outcomes.

Legal representation is not, however, a panacea. In some cases where mothers had legal representation, they recounted being advised by their own lawyer not to tell the court about domestic abuse because it would make them appear obstructive of contact and therefore count against them. The harm panel found that many mothers mentioned fears of false counter-allegations of parental alienation or hostility to co-parenting as a barrier to raising domestic abuse in child arrangement proceedings. One mother said: "I am the one who faces false allegations of parental alienation and brainwashing." A professional submission noted: "women are often told if they mention abuse then they'll lose custody of their children to their abuser" (Hunter et al., 2020, p. 59). The harm panel received evidence suggesting that the narrative of parental alienation is being used by some alleged domestic abusers to drown out the voices of their children. This is despite parental alienation being a highly contested concept (Barnett, 2020b). The pro-contact culture resulted in "selective listening" to children; the voices of children who said they wanted contact were amplified, while children who said they did not want contact with an abusive parent were ignored, marginalized, misrepresented, or dismissed (Hunter et al., 2020, chapter 6).

The third structural barrier to safer process and safer outcomes in child arrangement cases is silo working. There are multiple elements to silo working: conflicting ideologies, contradictory orders, and poor information sharing. The conflicting ideologies finding is consistent with previous research that suggests that the approaches of the different parts of the justice system in domestic abuse cases (child protection, private family law, and criminal justice) operate according to different objectives. Hester (2011) introduced the "three planet model" to describe the differing approaches; in the criminal justice system, the non-abusive parent is treated as a potential "victim," in child protection as a potential "protector" of the child and in private law as a potential "obstructer" of contact. Thompson (2020) has also discussed how mothers who are victims of domestic abuse are in an "impossible" position: in public law, they are expected to terminate relationships with the abusive father to protect the children, but in private law mothers, they are expected to promote those relationships or risk being labeled "hostile." Both Hester's and Thompson's work resonate with the findings of the harm panel, who noted that while the non-abusive parent might receive a sympathetic response in the criminal justice system, or when seeking a protective injunction from the civil court, this did not translate into the response in child arrangement proceedings. In these cases: "the mother would be more likely to be treated, not as a victim or protector, but with suspicion as a threat to the abuser's relationship with the child" (Hunter et al., 2020, p. 44).

The silo working approaches of the justice system sometimes resulted in directly contradictory orders. For example, in the criminal justice system, the defendant/domestic abuser awaiting criminal trial might be granted conditional bail not to contact the alleged victim or to go within a specified distance of where she and the children live, work, or attend school. However, at the same time, the family courts would tell the mother she must supervise the handovers in direct contradiction of the bail conditions. The family justice system internally adopted contradictory approaches and orders when operating in public and private law

capacity. Thus, the family justice system would be ordering contact, while at the same time social services would be threatening care proceedings and removal of the children from the mother unless the she adopted a "protective" stance of leaving the abuser and cutting off contact. As Cafcass operates both in public and private laws, it was sometimes even the same social workers who were adopting these contradictory approaches.

Poor information exchange between the different parts of the system has been a long-standing issue in legal responses to domestic abuse in England and Wales (Burton, 2004). It was therefore concerning to the harm panel that they received multiple submissions detailing instances where reliable information that other agencies had about the family was not used by the family courts to inform decision making. It was noted above that one mother recounted multiple calls to the police resulting in interventions, including an alarm being installed, but this was not considered by the family court. This was not an isolated example. The panel was told that the courts, and Cafcass in preparing welfare reports for the courts, failed to use evidence from services and agencies who knew the family's situation well, including domestic abuse services, counselors, schools, and doctor/General Practitioners (GPs). The panel received submissions from professionals as to the reasons why they thought information sharing between the systems is so poor, which again suggest that four structural barriers are intersecting, with resource constraints being part of the explanation. The report states:

> In judicial submissions to the panel it was noted that the length of time it takes to obtain disclosure from the police can add delay to a case and courts do not have the resources to regularly review files and chase outstanding disclosure between hearings. (Hunter et al., 2020, p. 58)

Judges said that the courts have to bear in mind the principle of no delay in the Children Act 1989. It appeared to the panel that time pressures and resourcing issues for both the family courts and criminal justice agencies were a factor in poor information sharing.

The fourth structural barrier to safe process and outcomes identified by the Harm Panel is the adversarial court process. The panel notes:

> In theory, family justice can be an investigative process with the court proactively undertaking a wide-ranging enquiry to establish which arrangements would best promote the welfare of the child. In reality, proceedings are brought by one parent and, especially where allegations of domestic abuse or child abuse are denied, are conducted on an adversarial basis where the court has to adjudicate between the two opposing parents, each trying to win the case.(Hunter et al., 2020, p. 45)

The adversarial process in child arrangement cases in England and Wales creates real harms for victims of domestic abuse, often re-traumatizing them. Many mothers' submissions to the panel described the process as being "horrendous" and one of the "worst experiences" of their lives or similar. Victims told how they feared for their physical safety before, during, and after court hearings. The emotional and psychological impact of attending court was also great. The family court infrastructure, including the waiting areas and the courtrooms, was often said to be inadequate. It is common for victims and their alleged abuser to arrive and leave by the same door, opening up the potential for unsafe confrontations.

Victims and alleged perpetrators frequently have to wait in the same area of the court building and sit in close proximity in the small and ill-equipped courtrooms.

In theory, the "special measures" which are available under Family Court Procedure Rules (FPR 3AA) could potentially mitigate some of the problems encountered by victims in the court setting: separate waiting areas, screening in the courtroom, or use of video link evidence for example. However, in practice, submissions to the panel suggested that special measures are rarely used. Sometimes special measures are not granted because judges, particularly magistrates (lay judiciary in the lower courts), were concerned that they might be perceived as favorable treatment for the victim or convey the impression of pre-judging the issue (Hunter et al., 2020, p. 118). For the harm panel to find that special measures were not effectively deployed because they are seen as contrary to the adversarial mode of face-to-face combat was concerning. The prospect of appearing at court without a supporter is a daunting one for both alleged victims of domestic abuse and alleged perpetrators. If the parties did not have legal representation, the panel was told "McKenzie Friends" could potentially provide vital support for parties, particularly fathers facing allegations of domestic abuse (Barnett, 2020a, p. 82). However, the panel was told that judicial practice was inconsistent in relation to whether McKenzie Friends were allowed into the courtroom, and it was not uncommon for judges to refuse to allow domestic abuse support workers (sometimes referred to as "do-gooders") into the courtroom, either because of judicial hostility or the father's objections (Hunter et al., 2020, p. 121).

The panel recommended fundamental reforms to child arrangement process in England and Wales to address the structural problems it identified. It recommended a trauma-informed and safety-focused approach. The full range and extent of the reforms are not discussed here. The panel made detailed recommendations in the final chapter of their report (Hunter et al., 2020, chapter 11). However, one approach to tackling "silo working" will be considered; the implementation of an IDAC.

### *Integrated Domestic Abuse Courts*

In some countries that have experienced similar problems of "silo working" in legal responses to domestic abuse innovative solutions, such as IDACs, have been tried. In England and Wales, there were no IDACs in operation at the time the harm panel produced its report. However, there had been a previous attempt to introduce an IDAC in Croydon, England, in 2006. The Croydon IDAC pilot was short lived, for reasons that will be explored below. It emerged out of a specialist domestic violence court (SDVC), which dealt exclusively with criminal proceedings relating domestic "violence" through a method of clustering such cases together. Croydon SDVC built on the lessons of five SDVCs established in various parts of England and Wales the late 1990s/early 2000s (Cook, Burton, Robinson, & Vallely, 2004). These first SDVCs were evaluated on the basis of traditional criminal justice measures of "success": reducing victim retraction, bringing more perpetrators to justice, speeding up the processing of cases, and reducing the number of hearings. They were not "successful" on all of these measures;

however, clustering of cases was beneficial in that it facilitated the provision of independent advocacy support for victims and did help with the deployment of special measures, where courts had the equipment and facilities available (Vallely, Robinson, Burton, & Tredidga, 2005). Before the harm panel was set up, it had been argued that the family courts should, by analogy with the criminal justice system, go down a route of specialization in domestic abuse cases (Burton, 2018). However, court specialization in the separate spheres of criminal and family justice would not directly address the problem of "silo working" described above: conflicting ideologies, contradictory orders, and poor information sharing. An IDAC, in contrast, does have the potential to address these barriers to safe process and outcomes.

The now defunct Croydon IDAC, or integrated domestic violence court (IDVC) as it was known, aimed to bring together domestic violence cases where there were concurrent proceedings in the criminal, civil, and family justice settings. The setting up of the IDVC in Croydon was not straightforward. There was concern about human rights legislation, particularly the European Convention of Human Rights, preventing criminal matters from being heard by the same judge who had dealt with civil matters (Hester, Pearce, & Westmorland, 2008). Questions were also raised regarding perceived bias if the criminal trial was held by the same judge who had, for example, granted an injunction or restricted contact with children based on findings of domestic abuse. Some of those interviewed for the Croydon IDVC pilot expressed concerns about criminal and family matters being listed at the same time, fearing that it would heighten tensions and potentially create additional safety and security problems in the court building and courtroom setting (Burton, 2018; Hester et al., 2008). However, ultimately, these matters were never tested because the caseload during the pilot was too small. The pilot floundered for a number of reasons, key among these being limited caseload and resourcing issues. It was originally intended that Croydon IDVC would be supported by an independent lay advocacy service; however, for funding reasons, the independent advocates who had been providing in-court support for the SDVC cut back on their involvement in both the SDVCs and IDVC, negatively impacting on the success of both (Hester et al., 2008; Vallely et al., 2005). After just over a year of operations, the Croydon IDVC closed.

The limited data on the Croydon IDVC means that is impossible to know whether had there been more cases going through the court and secure funding for victim advocates, it could have addressed the problems associated with silo working and improved victim safety and perpetrator accountability. The international evidence base on IDACs suggests that they do have the potential to overcome the negative consequences of silo working because they attempt to move from "separate spheres" to a more holistic approach. IDACs operating in the United States have provided policymakers around the globe with insights into alternatives to the traditional justice approach of responding to domestic abuse, not just through "integration" of proceedings but by adopting a more "problem solving" approach (Mazur & Aldrich, 2002). The "therapeutic" or "problem solving" approach is used not only for domestic abuse but other types of offending that may benefit from more specialist and holistic intervention (Donoghue, 2014).

The harm panel report provided renewed impetus for looking at IDACs in other jurisdictions, as the government response to the report committed to piloting an IDAC, building upon an earlier election manifesto commitment and a funding commitment in a budget (Centre for Court Innovation, 2020).

There is no single model of IDAC which can be transplanted from one jurisdiction to another. In the UK, Scotland has its own emerging evidence base showing that the approach of the family courts in child arrangement cases may be flawed where there are allegations of domestic abuse, partly as a result of the "dislocation" between criminal and civil proceedings (Campbell, 2021). The Scottish government has published a report on the effectiveness of IDACs as it looks for a solution to the problems in its legal system. It states that comparison of the different models and courts is very difficult because the evidence base is quite weak; it is impossible to "cleanly" evaluate and compare models. However, by examining the published research available and carrying out a small number of interviews with key stakeholders, the report conducts a broad-brush comparison between models (Scottish Government, 2019). It found that the drive to set up an IDAC often appears to be the same wherever in the world they are instigated; frustration with the limitations of the traditional justice system approach and high-profile cases of the system tragically failing when children are killed by their fathers on court-ordered contact visits (Koshan, 2018; Scottish Government, 2019). There can be no more profound harm to occur as a result of family courts failing to address the risk presented by domestic abuse; this tragic outcome is also present in England and Wales (Women's Aid, 2016).

While North America and Canada are replete with examples of IDACs, even within one jurisdiction such as New York, there is no single approach to integration. The Scottish report categorizes the different types of IDAC into "simple" or "complex," with an additional category of "problem solving" courts which are not really IDACs because they do not deal exclusively with domestic abuse in most instances. A "simple" IDAC is one that deals with pre-trial summary-level criminal offenses and concurrent private law family proceedings relating to contact with/residency of children but does not deal with public law (child protection) or criminal trials. A "complex" IDAC is one that deals with additional legal proceedings with a domestic abuse component, such as child protection and even divorce and property disputes and might, in some examples, run criminal trials. The "simple" IDACs included in the report are the now defunct Croydon IDVC and the IDAC in Ontario, Canada, which has been operating since 2011. The "complex" IDACs are the New York courts (42 of which had been established by 2016) and two (now also defunct) Vermont IDACs that operated in different counties between 2007 and 2014. The Vermont courts were both set up and managed by one judge who was interviewed for the report; his vision and involvement appeared crucial as without him they collapsed. A key lesson from "complex" IDACs therefore seems to be that they are heavily dependent on key individuals and highly tailored to the circumstances of the local jurisdictions. The approach and remit of each of the New York courts varied according to the individual judicial discretion exercised in the setting up and running of the courts. Therefore, despite being visited extensively within the United States and

further afield, the New York models never seem to provide a good "fit" for others (Scottish Government, 2019, p. 11).

While there are often similarities in objectives of IDACs, such as avoiding child homicides, the Scottish review found that "different jurisdictions emphasised the challenges of the two court system differently" (Scottish Government, 2019, p. 15). In Canada, the Ontario court emphasized avoiding silo working because of the risk of conflicting orders and increased safety risk for women and children. The New York courts, and also the Croydon IDVC to some extent, focused more on the efficiency aspects of integration, particularly reducing the costs of repeated court appearances. However, there was also commitment to the other objectives such as better information sharing and improving the availability of support services before, during, and after court hearings. The broad goals of all IDACs are similar, with variation in emphasis; all aim to improve victim safety, increase perpetrator accountability, and use resources more efficiently (Birnhaum, Bala, & Jaffe, 2014). Whether they achieve those objectives is a separate question.

The evidence from New York and elsewhere shows that it is often not straightforward to identify overlapping or concurrent proceedings. Typically, the process has to be done manually as the information technology (IT) systems that are in place in the different justice spheres do not "talk" effectively to each other, preventing automatic matching. In some jurisdictions, all domestic abuse cases in the summary criminal and family courts enter the IDAC and are filtered in that way. Given the evidence from the Croydon pilot regarding low caseloads, the policymakers in England and Wales will need to be mindful that an approach which is more inclusive is likely to be more successful than one which relies on identifying concurrent cases (Centre for Court Innovation, 2020). A well-resourced IDAC coordinator may be key in addressing the issue of effective case identification and management. The Scottish overview of the research suggests that this is a role which is often "undervalued and under resourced" (Scottish Government, 2019).

There are also resource implications for putting into place the appropriate level of advocacy support for victims and legal representation for both parties in the IDAC process. Successful SDVCs and IDACs tend to rely heavily on well-funded independent advocacy support for victims. In contexts where this supporting resource is not readily available, the safety of the process and outcomes is likely to be significantly diminished. As in the United States and Canada, the issue of litigants in person in family cases in the United Kingdom has now become "endemic" (Scottish Government, 2019, p. 18). The effectiveness of IDACs may turn on the availability of publicly funded legal representation for all parties. However, this is likely to be expensive as the fact that proceedings in civil, family, and criminal matters are being brought together may mean that the legal representation for one aspect of the proceedings has to be done by someone who has no expertise or rights of audience in relation to the other matters. In relation to criminal proceedings, for example, these are brought on behalf of the state by a public prosecutor, who is not the victim's lawyer, although they may take the victim wishes and interests into account. The public prosecutor would have no experience of child contact proceedings or civil applications for injunctions, but in some IDACs (in New York at least), the prosecutor remains to hear proceedings

in these matters so that the objectives of information exchange and the avoidance of conflicting orders can be facilitated. Multiple lawyers, all specially trained in domestic abuse on a rolling basis, are a resource-intensive commitment.

Another factor which needs to be addressed where all parties are attending on the same day to hear all matters in the same case is the issue of security. It was noted above that some interviewees in the defunct Croydon IDVC pilot anticipated heightened tensions as a result of multiple issues being heard together. There is already considerable evidence to demonstrate that the traditional courtroom can be a frightening place where victims can be exposed to further abuse and intimidation, the harm panel added to this evidence. The location for IDACs should be selected, where possible, in buildings that have separate entrance/exits and waiting areas and courtrooms fully equipped with a wide range of protective "special measures." This might include not only screens for vulnerable witnesses but also the possibility of remote video link from another courtroom or even from a safe place outside the court building such as a women's refuge. While the evidence is mixed, remote hearings during the pandemic may have delivered some unexpected safety benefits for victims of domestic abuse (Speed, Richardson, Thomson, & Coapes, 2021).

There is no doubt that the IDAC challenges the traditional ways of delivering "justice," and there are evidential/due process challenges to be addressed in relation to multifaceted legal proceedings. Trying to fit the IDAC into a framework of existing legal rules about the burden of proof and standards of proof in criminal, civil, and family matters has exercised policymakers everywhere it has been tried. Different legal systems will come up with different solutions, dependent upon their own legal and procedural rules. However, the higher standards of proof in criminal proceedings means that the criminal matters probably do have to be determined first and possibly by a different judge to the one dealing with the civil and family matters. However, there is now some convincing evidence that the judicial involvement should not end once all the matters have been determined. An important part of the success of some IDACs appears to be ongoing judicial monitoring of orders to bring back those who breach the terms of their sentences or protection orders before the same judge to be dealt with promptly through a system of escalating consequences. This element of ongoing involvement with a family may have symbolic as well as practical significance. One of the fears associated with some IDACs was a perception that they might be seen as a "soft" option (Scottish Government, 2019, quoting Judge Suntag, instigator of the Vermont IDACs). Ongoing monitoring sends a signal that the court is not done; it wants to monitor compliance with its orders from the point of view of both victim safety and perpetrator accountability (Burton, 2006).

## CONCLUSION

There is a lot that is wrong or inadequate in traditional justice responses to domestic abuse, including poor understanding of what constitutes domestic

abuse and how to identify it and assess the significance for decision making. Many of the problems in providing an effective legal response to domestic abuse are replicated in advanced legal systems around the world, including poor interface between different parts of the legal system. The harm panel report shed a harsh light on the handling of allegations of domestic abuse in the family courts in England and Wales, revealing "uncomfortable truths." One of the key problems the panel identified was that silo working of the criminal, civil, and family justice systems results in conflicting approaches, contradictory orders, and poor information sharing. All these issues contribute to unsafe processes and outcomes, which can in the most extreme cases result in children being killed on contact visits with their domestically abusive parent. However, the day-to-day workings of the family justice system are holding many victims of domestic abuse captive for years, as one professional submission to the panel indicated; the presumption of parental involvement in the Children Act 1989 had been "disastrous" and gave "a controlling abusive ex 18 years free reign to abuse/control" the mother and children. Non-abusive parents, typically mothers, told the panel that they felt that their abuser had been given a "legal weapon" to use to continue their abuse and that their children's voices were lost or drowned out by the pro-contact presumption.

The setting up of an IDAC in England and Wales will not address all the problems that the harm panel identified; it is merely part of a broader package of recommended reforms. Nevertheless, IDACs could potentially address some of the existing structural barriers to safe process and outcomes. Having tried and failed once already with the Croydon court, what is likely to make a further attempt at integration in England and Wales succeed? There is no IDAC model that can be borrowed from another legal system for easy implementation. The differing legal frameworks and broader context of initiatives in other jurisdictions have prevented models being copied even within the same country, let alone across continents. However the potential for IDACs to deliver a better way of dealing with domestic abuse in a more holistic approach continues to make them attractive to policy makers. Lessons for "success" suggest that they must be intensively resourced and have an inclusive approach to establishing caseload. Some have critiqued the approach of integration suggesting that it might reduce victim autonomy, and it would be better to focus on improving responses in each separate legal sphere (MacDowell, 2011). Concerns have been raised that victims will be directed to unwanted services in the IDAC and feel compelled to take them for fear of being judged negatively in relation to child protection and contact matters. There may be some pressure on victims to settle child arrangement matters in IDACs and whether this prioritizes child safety is contestable (Birnhaum et al., 2014; Birnhaum, Saini, & Bala, 2017; Burton, 2018) However, in relation to England and Wales, the harm panel recommended an ongoing monitoring mechanism for child arrangement cases, which should apply to IDACs. Monitoring will flag up any issues, and if integration is done well, it has the potential to help stop families experiencing domestic abuse "falling through the fault lines" of the existing fragmented and disparate approaches.

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# CHAPTER 11

# DOMESTIC VIOLENCE AGAINST LGBTQs: THE PROMISE AND THE CHALLENGES OF THE ISTANBUL CONVENTION

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## ABSTRACT

*The Convention on Preventing and Combating Violence against Women and Domestic Violence was adopted by the Council of Europe and opened for signature in Istanbul in 2011 (the Istanbul Convention). The Istanbul Convention offers a treaty-level protection against domestic violence to all people, including LGBTQs, that is, lesbian, gay, bisexual, transgender, and queer persons. Intimate partner violence (IPV) occurs in same-sex relationships as well as different-sex relationships. In addition, LGBTQ persons face the risk of violence in homophobic and transphobic family environments. The Istanbul Convention has faced significant backlash, a process driven by the global anti-feminist movement that also calls for the protection of traditional family values. In the Convention, "gender" is described as "the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men" (Article 3(c)). The opponents of the Convention suggest that gender roles are not "given" by the society but inherent in different natures of women and men. The dissatisfaction of many States, such as Bulgaria, Armenia, Ukraine, and so on, is related to the perceived excessiveness of rights given to LGBTQ persons in the Istanbul Convention. This research paper sets aside the issue of political campaigning against the Convention in Eastern Europe, which has already been well reported. Instead, it aims to reveal how*


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*the protection against domestic violence under the Convention raises normative, conceptual, and substantive challenges in States entrenching the ideology of traditional family values in law.*

**Keywords:** Domestic violence; Istanbul Convention; LGBTQ; family environment; legal rights; legal protection

# 1. INTRODUCTION

## *1.1. Research Problem and Questions: Normative, Conceptual, and Substantive Challenges*

This chapter addresses the key challenges posed by the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).[1] Already at the time of adoption, the Convention was criticized by the Russian Federation and the Holy See (Vatican), both suspicious on the so-called gender agenda for law.[2] Political campaigns against the Convention have been led in Eastern parts of Europe for the last decade.[3] This political campaign or backlash is not the subject of this text. I aim at analyzing the key normative, conceptual, and substantive challenges as posed by the Convention.[4] Only those challenges perceived as problematic are addressed, which are related to legal issues. This chapter will not analyze irrational rumors and misunderstandings about the Convention, which are numerous.[5] Neither will it discuss the "constitutional problem" which has been rebuffed by the international Venice Commission,[6] an advisory CoE body of independent constitutional law experts.

The key research questions are these: 1. What are the key challenges of *normative* nature as posed by the Istanbul Convention, that is, challenges related to norms and obligations? 2. What are the *conceptual* challenges posed by the Convention, that is, challenges related to conceptual understanding and approach to violence? 3. What are the challenges of *substantive* nature as posed by the Convention, that is, challenges related to effect on the substantive law[7] in ratifying States? 4. What is the effect of all these challenges posed (or perceived as posed) by the Istanbul Convention?

The first research question aims to identify the challenges of a *normative* nature. In this chapter, normative challenges relate to undertaking of a clear State obligation to protect all people against domestic and intimate partner violence (IPV). Furthermore, "norms" are understood broadly here, that is, as referring to norms of international law and social norms which are not necessarily codified or legally binding. Legally binding norms of international law can be entrenched in a treaty or customary international law. Social norms refer to social expectation of heterosexuality, perceived as the only acceptable "social norm" in certain States.[8]

*Conceptual* challenges relate to treating interpersonal partner violence as "domestic" violence and, by definition, a certain recognition that same-sex couples are capable of constituting a family. Note that for the purposes of Istanbul

Convention, "domestic violence […] occurs *within the family* or domestic unit or between former or current spouses or partners [.]."[9] Under the broad definition, domestic violence may also encompass violence against men.

*Substantive* challenges relate to the perceived necessity to change the substance of the national law, such as a national definition of rape,[10] in order to accommodate violence inflicted on LGBTQ persons and fulfill the obligations under the Convention.

### *1.2. Methodology, Positionality, and Delimitations*

First, this chapter employs a legal dogmatic methodology to describe the key legal obligations provided in the Istanbul Convention. This classical methodology means staying close to legal rules and their hierarchies. For instance, I will reflect which rules are legally binding, or only recommendatory, which have primacy over the others, and which relate to substantive legal changes. Considering that the Istanbul Convention is an instrument that leaves a broad discretion for the participating States, the legal dogmatic method needs to be contextualized.[11] Thus, the text explains the context that allows interpretation of the treaty language, wherever possible.

Second, this chapter uses the method "What's the problem represented to be" (WPR) by Carol Bacchi[12] to compare the framings of the problem in the Convention and the national law of some of the Convention-resistant States. Analysis of framing the perceived problems in this area allows illustrating different strands of politics that creates the clash of ideas. The analysis also relies on the intersectional theory[13] to discuss the legal (in)visibility of violence against LGBTQ persons as a vulnerable group.

A researcher needs to critically assess own subjectivity[14] and declare a clear position on normative issues, which I consider necessary and timesaving. I studied and worked in Lithuania, Latvia, Estonia, and Sweden. Originally, I come from Lithuania. My first PhD thesis concerned violence against women under international law and the second focused on cross-border recognition of formalized same-sex relationships in private international law. I stand *for* and *with* gender equality, women's rights, and LGBTQ rights. At the same time, the goal of this chapter is to approach the perceived challenges analytically rather than dismiss them.

This chapter is restricted to the analysis of domestic violence against LGBTQ people, for instance, IPV and violence by other family members. If references are included to treatment of violence outside of the family or "domestic units," it is only done for the sake of illustration in differences of treatment.

The current analysis is considered necessary and significant, because the Istanbul Convention is the very first *legally binding* international treaty that aims at elimination of domestic violence and includes a prohibition to discriminate against LGBTQs in relation to State protection against such violence. The Istanbul Convention has been seen as problematic in many States, and this research attempts to analyze these concerns from a legal perspective rather than dismissing them.

## 2. HISTORICAL CONTEXT: A RELATIVELY NARROW PROMISE OF THE CONVENTION

The Istanbul Convention is an international treaty specifically designed for combating and preventing violence against women and domestic violence. This is the very first regional treaty *in Europe* that tackles violence. The first regional treaty on violence against women globally, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), was adopted in 1994 by the Organisation of American States. Istanbul Convention is "more comprehensive" than regional treaties in this area but also "significantly reinforces" these regional efforts.[15]

The Convention states at the start that "women and girls are exposed to a higher risk of gender-based violence than men," but at the same time, it provides that "domestic violence affects women disproportionately, and that men may *also* be victims of domestic violence."[16] Hence, the Istanbul Convention builds on the previous global and regional documents but takes a step away from essentialization of violence[17] as always constituting a case of discrimination experienced by women. That has been the case under the 1979 Convention for Elimination of all Forms of Discrimination against women (the CEDAW), which due to its scope and aim, that is, the fight against discrimination, can only address violence as a *form of* discrimination against women.[18]

Although the CEDAW Convention does not mention violence at all, it has always been on the mind of experts in this area, and in 1992, the CEDAW Committee[19] adopted a General Recommendation No. 19 on violence against women.[20] In 2017, it adopted a General Recommendation No. 35 on gender-based violence against women.[21] General Recommendations are not legally binding, in contrast to the Istanbul Convention, and do not have such a significant legal status as an international treaty. In both Recommendations, violence is a form of discrimination against women.

The Istanbul Convention can be seen as having two separate purposes: to fight violence against women, which is still seen as a form of discrimination, and to combat domestic violence, which is partially detached from the framework of sex discrimination. Domestic violence is defined as

> all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.[22]

Due to this broad definition and the possible application to men (see further in Section 3.2.), the Convention could even be accused for "implying that domestic violence is unrelated to the structural issues of violence against women."[23]

Nevertheless, the Istanbul Convention retains a rather strong gender analysis discourse and interrelation with the CEDAW. Its approach to violence is as follows: "violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men."[24] In the future, it may very well be interpreted to fully "unleash the gender equality potential"[25] by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO).[26] This potential is repeatedly reinforced by

the interconnections between the Istanbul Convention, the CEDAW and the 1950 European Convention on Human Rights (the ECHR). The latter documents, the CEDAW and the ECHR, have been interpreted in a solid case law[27] which allows a better understanding of the Istanbul Convention.

## 3. VIOLENCE AGAINST LGBTQ PERSONS

### *3.1. Empirical Considerations*

IPV occurs in same-sex relationships as well as in different-sex relationships.[28] Research on violence in such relationships is rather scarce and novel. It has been discussed that LGBTQ persons reported higher rates of IPV than heterosexual respondents, while violence was enacted mainly by male perpetrators.[29] In the research by Nicole Ovesen:

> Interviewees reported that different factors such as mental health, migration status and lack of economic resources impacted the violence they experienced and their helpseeking processes. This shows that it is not enough to look at LGBTQ people's experiences of IPV through the categories of gender or sexuality alone.[30]

That means the problem is not only gendered but also related to sexuality and various other aspects of personal identity. Asymmetry of power and inequality in relationships causes the risk of controlling behaviors, abuse, and violence. Treating same-sex relationships in the exactly same manner as heterosexual relationships may aid to invisibility and impunity of domestic violence. Under human rights law, treatment of a vulnerable group in the identical manner as majority may amount to indirect discrimination. The awareness of different experiences of domestic violence due to sex, gender, sexuality, race, and other factors is important while addressing IPV among LGBTQ persons.[31]

### *3.2. Narrow and Incidental Scope of Application to LGBTQs*

The Istanbul Convention applies to men *only if* the States agree to such application:

> Parties are encouraged to apply this Convention to all victims of domestic violence. Parties shall pay particular attention to women victims of gender-based violence in implementing the provisions of this Convention.[32]

The Convention recognizes only two genders, men and women,[33] and it is only women who are seen as victims of gender-based violence. The term "gender-based violence" has been elsewhere defined in a more gender-neutral manner[34] and could in theory include violence against LGBTQ persons, who do not adhere to traditional gender roles. Meanwhile, from the Istanbul Convention, it follows that the participating States do not have an obligation to protect LGBTQ persons against gender-based violence but only to protect *women* against gender-based violence, which is recognized as a structural problem.[35]

The scope of the key obligation toward LGBTQ persons appears incidental, because the only duty is to make sure that implementation of the Convention should not be discriminatory due to a person's gender, sex, gender identity, and other identity markers:

> The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.[36]

The duty not to discriminate while implementing the Convention is much narrower than the independent obligations of the States in protecting against violence, preventing violence, and specifically addressing violence.[37] The narrow promise given by the Istanbul Convention, hence, is merely that LGBTQ people would not be turned down in situations of violence and refused help *solely due to the fact* that they are LGBTQ people.

## 4. THE NORMATIVE CHALLENGE: THE DISCRETION OF RESPONSE TO VIOLENCE AGAINST LGBTQ PEOPLE

Violence against LGBTQ people has *not* been strictly prohibited under international law to this date, in contrast to prohibition of violence against women. In 70 states or more, LGBTQs are punished as criminals and sometimes are threatened by death sentence. Furthermore, even in Europe, open homosexuality is punished by administrative fines by the pretext of harm to minors (Russia). In respect of that enactment, the European Court of Human Rights ruled:

> by adopting such laws the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society.[38]

Nevertheless, the enactment remains valid in Russia, and there are no attempts to comply with the decision of the Court. On the contrary, administrative fines for an open expression of one's homosexuality or bisexuality have skyrocketed in 2021.[39]

The Istanbul Convention that prohibits discrimination of LGBTQs while protecting against violence, hence would be a step forward, however tiny. The hesitant States do not want to undertake such a duty, because it restricts the discretion of response to LGBTQ people and violence faced by them in the family or in the community.

The discretion exercised by the Convention-critical States can be summarized as follows[40]: First, the State may *undertake* violence against LGBTQs. For instance, an anti-gay purge is undertaken, where a number of LGBTQ people are forced into disappearance by State agents, tortured and murdered[41]; children are taken away from same-sex couples solely because they are considered unfit parents due to their sexual orientation.[42] Second, the State may *approve* violence against LGBTQs. For instance, State agents do not prosecute violent hate crimes against LGBTQs in the family and community. Honor killings and violence against lesbian, bisexual, gay, or transgender family members may even be considered justified and private.[43] Third, the State may *ignore* violence against LGBTQs. For instance, the domestic violence enactments apply only to married couples and/or heterosexual couples, without a possibility for LGBTQs to receive help.[44]

Finally, and this is the approach most coherent with the Istanbul Convention, the State may protect against domestic violence for LGBTQs "on the *margins*." For instance, although domestic violence shelters suitable to LGBTQs might not be available, Sate agents could provide certain help to all people (e.g., issuing a protection order).[45] The help could be provided on the condition of "passing," fitting-in, and keeping LGBTQ identity private.

The suggested range of responses is not exactly chronological, even though many States start from de-criminalizing homosexuality, that is, abandoning a "lawful" State violence against LGBTQ.[46] The last State to recall criminalization of homosexuality in Europe was Northern Cyprus in 2014.[47] Gradually, most States in Europe, or at least in European Union, grant some form of rights to LGBTQs in family law.[48] The Istanbul Convention, however, does not require recognition of the family *civil status* in a form of marriage or registered partnership but only to provide protection in cases of violence. Thus, the Convention requires only the recognition of *social reality* of domestic violence against LGBTQs, among others.

In the Convention-critical States, negative reactions may overlap, for instance, the State officials may condone or ignore violent hate crimes but provide some help "on the margins." Moreover, ratification of the Convention is not necessarily a definitive step, because of a backlash against feminism and LGBTQ rights in Eastern Europe and globally.[49] For instance, Turkey initially had ratified the Istanbul Convention and then withdrew in 2021, the President explaining that the Convention "was hijacked by a group of people attempting to normalize homosexuality – which is incompatible with Türkiye's social and family values."[50] Poland had also ratified the Convention, but the current political leader campaigned against the LGBTQs in 2020 calling them "ideology, not people"[51] and Poland plans to withdraw from the Convention as allegedly connected to LGBTQ rights.[52]

The key point is that the Convention-critical States imply or directly admit that they want to retain *the discretion* of response to violence against LGBTQ people, rather than be obliged by the Istanbul Convention. Some of the States may even consider re-institutionalizing the State violence[53] or to restrict the protection against domestic violence only to heterosexual couples. In the absence of a clear international law norm prohibiting violence against LGBTQs in principle, the States may consider having the discretion on the measures of response.

## 5. THE CONCEPTUAL CHALLENGE: "GENDER" IS ON FIRE

### *5.1. How is the Problem of Violence Framed in the Convention?*

The key problem tackled in the Istanbul Convention is that of violence against women, including domestic violence. Considering that the Istanbul Convention entrenches the principle of fundamental rights, equality, and nondiscrimination (Article 4), which encompasses sexual orientation and gender identity (Article 4 part 3), it applies to domestic violence against LGBTQs, provided that the victims are women, or if the State extends the application of the Convention to men.

The Convention also tackles gender-based violence against transgender women[54] without getting into heated and awkward debates on what "a woman" should mean. Even "other groups of persons that do not correspond to what society has established as belonging to 'male' or 'female' categories" should in principle be protected against violence.[55]

However, it must be recognized that the prohibition of discrimination under Article 4(3) is "much more limited"[56] because it only requires *refraining* from discrimination while protecting persons against violence or providing certain support services. That is a negative obligation, i.e., the duty not to take discriminatory actions. Meanwhile, Article 4(2) requires States to "condemn" discrimination against women and "take necessary measures" to decrease it. That creates a positive obligation, which has much further-extending consequences. A negative obligation demands passivity, that is, to stay neutral while providing help, whereas a positive obligation requires active and purposive means which are oriented to reach the goal.

It can also be said that the text of the Convention creates a hierarchy of protected identities, placing women at the very top, where it reiterates[57] that "particular attention" should be paid to women victims. Considering that it focuses on violence against women, it does not address gender-based violence that is inflicted on gay men or transmen in the community. The drafters of the Istanbul Convention recognize that gender-based violence and domestic violence can be understood differently on structural and on individual levels: these are "complex phenomena and it is necessary to use a variety of approaches in combination with each other in order to understand them."[58]

To summarize, the problem framing in the Istanbul Convention is as follows: violence is a gender-based problem, related to structural gender inequality and forcing women into subordinate position to men.[59] LGBTQs may be discriminated while providing *protection* against domestic violence, hence a certain awareness needed. The goal is to *stay neutral* while providing help to victims of violence, including neutrality toward sexual orientation or gender identity.

### *5.2. How is the Problem of Violence Framed in Certain National Laws?*

In all of the European States resisting the Convention, such as Poland, Lithuania, Bulgaria, Armenia, and others, LGBTQ families are refused legal existence. National legal frameworks provide a general requirement for the State agents to react in cases of *all serious incidents* of violence. IPV in LGBTQ relationships is hence addressed as a problem of violence that could *at best* be seen as a violence problem between two random individuals but not a problem of violence within the family.[60] Furthermore, law or political instruments may even fail to recognize that women are the most common victims of violence, and the men are often the perpetrators. In other words, the problem of violence against women is not necessarily viewed within the frame of structural inequality.[61]

In contrast, the Istanbul Convention certainly views the problem violence against women through the prism of gender inequality. Violence against women is a gender-based problem, rather than a neutral problem of miscommunication

or the loss of temper. This approach to violence is coherent with other international instruments, such as the CEDAW, Convention of Belém do Pará, and the ECHR.[62] International courts and independent monitoring bodies under treaties have, at least since 1992,[63] considered violence to be a problem related to structural inequality.

In addition, the Convention puts a pressure on the police, courts, and the legislators to consider the complexity of the phenomena of gender-based violence and domestic violence in queer families. By that, a conceptual clash of framing the key problems in certain States' national understanding of violence with the problem framing in the Convention appears evident.

To summarize, the problem framing at national level of the Convention-resistant States is often as follows: violence is a gender-neutral problem. It could be related to the lack of "peace in the family."[64] It could be caused by the use of alcohol and weapons, bad social habits, lack of knowledge that domestic violence is punishable, etc.[65] LGBTQs do not exist in the legal system and law, and hence, discrimination is impossible. The approach is "we cannot discriminate if we are not aware."

## 6. SUBSTANTIVE CHALLENGES: THE EXAMPLE OF SEXUAL VIOLENCE

This chapter so far identified the following key challenges. First, a normative challenge is that the Convention provides that violence needs to be responded to, and that norm clashes with the desire to have a discretion whether to respond to violence against LGBTQ persons. The key conceptual challenge is that the Convention recognizes gender inequality as the structural cause of violence, which some States do not recognize in national laws. Furthermore, the Istanbul Convention is seen as a threat due to its potential impact on substantive law definitions. Law on sexual violence and rape is the best example for analysis. In many of the Convention-critical States, law in this area has been frozen for the last few decades.[66] Ratification of the Convention would mean that the States need to revisit the substantive definitions in their national laws.

In addition, the Convention also introduces a number of substantive law definitions, not known in national systems of Eastern European States, such as female genital mutilation.[67] These substantive law definitions that appear "foreign" *do not* pose a lot of tension, in my opinion. Including a definition of a specific crime associated with "not us, but Others"[68] may prove to be less problematic than revisiting the substantive definition of sexual violence and rape.[69]

Substantive law definitions are also closely related to conceptual understandings. For instance, there are varied conceptual models of understanding the phenomenon of sexual violence and rape.[70] Historically, rape and sexual violence were violations of property. It then became a crime or criminal offense against honor and decency.[71] In some States, rape is still described as a crime against "decency."[72] Meanwhile, the Istanbul Convention offers the definition of *consent* as central for understanding sexual violence:

> Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.[73]

There are various legal models regarding the significance of consent in law regulating sexual violence. One model focuses on force and coercion, another combines both requirements to prove consent and coercion. There is the "Yes model" which requires to show that a verbal consent was present and the "No model" which requires to show that there was no consent, thus allowing *implied* consent. Consent in general can be understood as an attitude (again, this relates to the "No model") or a clear performativity (the "Yes model"). Feminist approaches to consent also vary.[74] The feminist criticism on the focus on consent relates to "traumas of description"[75] or losing the focus of gender roles and gender inequality.[76] It is then argued that a focus on coercion would have fewer disadvantages.

The text of the Convention does not put a strong pressure on the States to adopt one specific legal definition of rape, sexual harassment, or sexual violence. Instead, it requires criminalizing and prosecuting sexual violence (Article 36 of the Convention). There is a great range of interpretation what could that mean: certain States retained the definition centered on coercion, and Sweden since 2018 introduced a consent-related definition.[77]

Nevertheless, the body in charge of interpreting the Convention, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) has criticized coercion-based models and strongly promoted the consent-based understanding of rape.[78] As a result, States which had considered their coercion model to be compatible with the Convention gradually are moving toward the consent model.[79]

Meanwhile, the Convention-resistant States *do not* define rape in a consent-centered manner. That could constitute a significant substantive challenge. Furthermore, according to the definition of rape in certain States, such as the Convention-resistant Lithuania, "sexual intercourse" by force can only be done by a vaginal penetration by a penis, while anal or oral penetration is described as a crime under a different legal rule than rape and relates to milder sentences.[80] A lack of any penetration is treated as much less serious, even though in current understanding of violence, rape may take place over Internet, and other sexual acts could also compare to forceful penetration.

A move toward the Istanbul Convention would likely redefine the outdated understandings of sexual violence as only applicable to heterosexual couples and, in fact, of "sex" itself. Meanwhile, the decision makers are rather resistant to definition of LGBTQ sex as part of the national understanding of sex and sexual violence. Instead, they prefer to treat only vaginal penetration by a penis as "real sex" and, adequately, a "real rape."

## 7. CONCLUDING REMARKS: ACCUMULATION OF CHALLENGES

States which desire to retain discretion of institutionalizing violence against LGBTQ persons in the future, or approve it, or intentionally ignore such violence,

are not ready to ratify the Istanbul Convention or take it seriously. The only *normative* position compatible with the Istanbul Convention to some extent is that of the States which provide help against domestic violence for LGBTQs "on the margins," that is, they do not exclude this group by definition.[81] In fact, even the Istanbul Convention itself includes LGBTQ persons only marginally or incidentally. The definition of gender-based violence does not apply to LGBTQ persons as such but only to women. It may include, incidentally, LGBTQ women.

When *conceptual* and *substantive* challenges are considered, the problems accumulate. Conceptually, the States which have been resistant to the Convention do not frame domestic violence as a problem related to gender roles, inequality, or sexism, differently from the Convention. Instead, they choose to approach it neutrally and not to include a mention of gender equality of prohibition of discrimination in the legal acts on domestic violence. A conceptual change would require some serious rethinking of the very framing of the problem. It would also require recognition of LGBTQ people as capable to suffer violence in the family and capable of being discriminated due to their identity. Meanwhile, the approach has been "what we do not see, we cannot discriminate."

Substantive changes in rape laws, envisaged by the Convention, require rethinking the outdated definitions of rape, focused solely on coercion and heterosexual sexual intercourse. That is also a significant challenge.

Gender equality remains a radical and perplexing idea in some parts of Europe. Accepting that men and women are of *equal* worth would mean that they can replace each other in all social interactions and roles. That would include family and sexual relationships, and, unfortunately, these can be violent, regardless of the sex, gender, or sexual orientation of the partners. The idea of gender equality clashes with the idea of traditional sexual complementarity between the man and the woman, together supposedly creating a "normal" and whole unit, *the family*.

Therefore, the clash between the national understandings of domestic violence (normative, conceptual, and substantive) and the Convention appears to be at a deeper cultural layer than the surface. In many States, in Europe and globally, the ideas of gender inequality are appealing again. States are not very quick to abandon their international obligations in this area altogether[82]; yet they refrain from adopting new obligations under the Istanbul Convention. The said delay should be used for a serious discussion within the societies of the meaning of gender equality, domestic violence, family, sex, rape, and sexual violence.

## NOTES

1. Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul, CETS No. 210.
2. Mary Anne Case. (2011). After gender the destruction of man – The Vatican's nightmare vision of the gender agenda for law. *Pace Law Review, 31*(3), 802–817. Address of Vladimir Putin of September 19, 2013 (Valdai Forum), calling for the defense of Christian family values.
3. See, for instance, a paper on political campaign against the Convention in Bulgaria, Ilcheva, M. (2020). Bulgaria, and the Istanbul Convention – Law, politics and propaganda

vs. the Rights of victims and gender-based violence. *Open Journal for Legal Studies, 3*(1), 49–68.

4. I have used a similar categorization of issues and challenges in my PhD thesis "Violence against Women under International law: Filling the gaps at international, regional and national levels," defended in 2017 at Mykolas Romeris University (Lithuania).

5. See, for instance, questions and answers on the Istanbul Convention, released by the Council of Europe in many languages, including the languages of the Convention-critical States. The publication aims to "end speculation and misinformation about the Istanbul Convention". https://rm.coe.int/istanbul-convention-questions-and-answers/16808f0b80.

6. Opinion on the constitutional implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) adopted by the Venice Commission at its 120th Plenary Session (Venice, October 11–12, 2019).

7. Here, substantive law means defining a certain crime (criminal offence) in a relevant Act (Criminal Code) and regulating which elements constitute it in substance. In contrast, procedural law regulates criminal procedure.

8. Bicchieri, C. (2017). *Norms in the wild: how to diagnose, measure, and change social norms* (pp. 28–41). Oxford: Oxford University Press.

9. Istanbul Convention, Article 3.b.

10. Chapter V of the Convention is devoted to Substantive Law, but for the sake of clarity, substantive law on rape is discussed in this chapter as the most relevant.

11. Twinning, W. (1997). *Law in context, enlarging a discipline*. Oxford: Clarendon Press.

12. Bacchi, C. (2012). Why study problematizations? Making politics visible. *Open Journal of Political Science*, *2*(1), 1–8.

13. Crenshow, K (1989). Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics. *University of Chicago Legal Forum, 1*(8), 139–167.

14. Peshkin, A. (1988). In search of subjectivity – One's own. *Educational Researcher*, *17*(7), 17–21.

15. Para 6 in Explanatory Report on CETS 210 – Violence against women and domestic violence.

16. Preamble of the Istanbul Convention. My emphasis.

17. See, for instance, Scully, P. (2009). Vulnerable women: a critical reflection on human rights discourse and sexual violence. *Emory International Law Review, 23*, 113–112. Goldscheid, J. (2013–2014). Gender neutrality, the "violence against women" frame, and transformative reform. *UMKC Law Review, 82*(623), 623–666.

18. Certain researchers suggested partially de-gendering the frame, and others argued against this suggestion as losing the focus on women. Rosenblum, D. (2011). Unsex CEDAW, or what's wrong with women's rights. *Columbian Journal of Gender & Law, 20*(98), 98–194. Truyol, B. E. H. (2011). Unsex CEDAW? NO! Super-Sex It! *20 Columbian Journal of Gender & Law*, 195.

19. The CEDAW Committee is the body of monitoring the CEDAW Convention.

20. General Recommendation No. 19: Violence against women, adopted by the CEDAW Committee in 1992, 11th session.

21. The later General Recommendations of the CEDAW Committee in fact include LBT women, and intersex women, see, for instance, General Recommendation No. 35, para 12. General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, July 14, 2017, CEDAW/C/GC/35.

22. Article 3(b) of the Istanbul Convention.

23. McQuigg, R. (2012). A contextual analysis of the Council of Europe's convention on preventing and combating violence against women. *International Human Rights Law Review*, 370.

24. Preamble of the Istanbul Convention.

25. Peroni, L. (2020). Unleashing the gender equality potential of the Istanbul Convention. In J. Niemi, L. Peroni, & V. Stoyanova (Eds.), *International law and violence against women: Europe and the Istanbul Convention* (pp. 43–56). London: Routledge.

26. The GREVIO is appointed as a monitoring body of the Istanbul Convention, Article 66 of the Istanbul Convention.

27. The ECHR is interpreted in binding judgments that need to be implemented by States to whom they are addressed, whereas the CEDAW Committee's assessments are recommendatory.

28. Ovesen, N. (2021). *Intimate partner violence and help-seeking in lesbian and queer relationships*: *Challenging recognition*. Uppsala: Uppsala University.

29. Donovan, C. (2020). Why legal equality is not enough. the case of domestic violence and abuse in the relationships of LGBTQ+ people. In F. Hamilton & G. N. La Diega (Eds.), *Same-sex relationships, law and legal change* (pp. 254–255). London: Routledge; reporting on surveys in the United States and UK. Lifetime prevalence was considered in studies; hence, previous male partners could be explanation for these data.

30. Ovesen, N., *Intimate partner violence and help-seeking in lesbian and queer relationships*, p. 202.

31. Subirana-Malaret, M., Gahagan, J., & Parker, R. (2019). Intersectionality and sex and gender-based analyses as promising approaches in addressing intimate partner violence treatment programs among LGBT couples: A scoping review. *Cogent Social Sciences*, *5*(1), 1–14.

32. Article 2(2) of the Istanbul Convention.

33. Article 3(c) states: "gender shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men."

34. In contrast, see how the EU Victims' Rights Directive 2012/29/EU describes gender-based violence in the Preamble: "a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships [...]" In principle, this definition of gender-based violence is gender neutral.

35. The Preamble stresses the "structural nature of violence against women as gender-based violence."

36. Article 4(3) of the Istanbul Convention.

37. Explanatory report to the Istanbul Convention, para 54.

38. *Bayev* v. *Russia*, application number 67667/09, June 20, 2017, para 83.

39. See, for instance, the most recent amendment of the Russian Code of Administrative Offences, Article 6.21, which applies up to 1 million roubles administrative fines for "propaganda" of nontraditional sexual relationships.

40. The said classification of responses is suggested by the author and is limited to examples from the States in the Council of Europe, which have been critical of the Istanbul Convention.

41. UN Human Rights Office of the High Commissioner, Chechnya: UN experts urge action after reports of renewed persecution of lesbian, gay and bisexual people, February 13, 2019.

42. Human Rights Watch, "Life Unravelling for Russian Same-Sex Couple and their Kids. Authorities View Gay Parents as Unfit by Definition," July 24, 2019.

43. Joe Sterling, Chechen leader: No gays here – but if there are, take them away. *CNN*, July 17, 2017.

44. For instance, the Armenian Act on the Prevention of Domestic Violence, Protection of Victims of Violence and Restoration of Peace in the Family (2017).

45. For instance, the Lithuanian Act for Protection Against Domestic Violence (2011).

46. It must be noted that there are exceptions. For instance, Poland never criminalized homosexuality but in practice, LGBTQs were harassed by State agents in Soviet times. Recovery of that history has barely started. Piotr Żuk, Codename: "Hyacinth" [Kryptonim: "Hiacynt"] by Andrzej Selerowicz, Pink Files [Różowe kartoteki] by M. Milcke, *Journal of Homosexuality*, *63*(8), 1167–1170.

47. ILGA-Europe, "Northern Cyprus Abolishes the Last Law in Europe Criminalising Homosexuality," January 27, 2014.

48. For research on chronological development of LGBTQ rights in the CoE States, see report by Waaldijk, K. (2018). Extending Rights, Responsibilities and status to same-sex families: Trends across Europe. *Council of Europe*.

49. See, for instance, Defago, M. A. P., Faúndes, J. M. M., & Vaggione, J. M. (2018, November). *Religious conservatism on the global stage: Threats and challenges for LGBTI rights*. Global Philantrophy Project.

50. Presidency of Turkey, Statement regarding Türkiye's withdrawal from the Istanbul Convention, March 20, 2021.

51. Polish Election: Andrzej Duda says LGBT 'Ideology' worse than communism, *BBC News*, June 14, 2020.

52. Sandrine Amiel, Istanbul Convention: Poland moves a step closer to quitting domestic violence treaty, *EuroNews*, April 1, 2021.

53. For instance, an Act with a popular title "Stop LGBT" is debated in the Polish Parliament in 2021, aiming to prohibit any public displays of homosexuality, peaceful protests, and prides. See, for instance, a press release by the Amnesty International: Poland: new "Stop LGBT" Bill is "discriminatory to its core", October 28, 2021.

54. Explanatory report to the Istanbul Convention, para 53.

55. Explanatory report to the Istanbul Convention, para 53.

56. Explanatory report to the Istanbul Convention, para 54.

57. Article 2 part 2 of the Istanbul Convention.

58. Explanatory report to the Istanbul Convention, point 25.

59. This conceptual understanding follows other international treaties, such as the CEDAW and the regional Convention of Belém do Pará.

60. Hence, policy measures aimed at reducing family violence are not applicable, and there is no need to specifically address this violence nor attempt to prevent it. Special protection orders or shelters are also not necessary.

61. For instance, Act on Domestic Violence of Lithuania (adopted in 2011, Act No. XI-1425) does not mention gender-based violence. Furthermore, gender equality or nondiscrimination are not mentioned either, despite 16 principles on application of the Act, enlisted in Article 3. The closest principles to nondiscrimination and equality are probably the principles of "humanity" and "protection of person's rights and freedoms." Also see the gender neutral Bulgarian Domestic Violence Protection Act No. 27/29 March 2005 and the Polish Protection against Domestic Violence Act of 2005, as amended (DW 2021 poz. 1249).

62. The ECHR does not mention domestic violence, but its understanding has been developed in case law, and the failure of State to provide adequate response to domestic violence against women has been recognized as a form of discrimination. See, for instance, the decision of the ECtHR in case *Opuz v. Turkey*, 33401/02, June 9, 2009.

63. The date of General Recommendation No. 19 of the CEDAW Committee, which described domestic violence as one of the most prevalent forms of discrimination of women.

64. See, for instance, the Armenian Act on the Prevention of Domestic Violence, Protection of Victims of Violence and Restoration of Peace in the Family (2017). Also the Lithuanian Act for Protection Against Domestic Violence (2011), which suggests violence could be prevented by "teaching the ways of peaceful resolution of domestic conflicts" (Article 4(3)(5)).

65. Article 4(3)(5) of the Lithuanian Domestic Violence Act, focusing particularly on prevention, which should be tackling roots of the problem, mentions these specific areas of intervention (alcohol abuse, weapon possession, information about punishable domestic violence, and training skills on peaceful conflict resolution).

66. For instance, in Lithuanian national law, the definition of rape has not changed, in principle, since the adoption of the Criminal Code in 2000. That has been criticized by lawyers (including myself), psychologists, and sociologists. In Poland, the definition of rape has not changed since 1932. Magdalena Grzyb, The legal definition of rape in Poland needs to change – but so do cultural attitudes, *Notes from Poland*, April 17, 2021. Nevertheless, in order to ensure compliance with the Istanbul Convention, a possibility to initiate ex officio proceedings was introduced in 2014. See Sękowska-Kozłowska, K. (2020). The Istanbul Convention in Poland. Between the "War on Gender" and legal reform. In J. Niemi, L.

Peroni, & V. Stoyanova (Eds.), *International law and violence against women: Europe and the Istanbul Convention* (pp. 259–276). London: Routledge.

67. Article 38 of the Istanbul Convention.

68. Here, foreign cultures are imagined to be the home for such violence. On criticism to the Convention for giving special attention to the specific crimes of forced marriage, female genital mutilation and forced abortion and sterilization, see Niemi, J., & Sanmartin, A. V. (2020). The concepts of gender and violence in the Istanbul Convention. In J. Niemi, L. Peroni, & V. Stoyanova (Eds.), *International law and violence against women: Europe and the Istanbul Convention* (pp. 89–91). London: Routledge.

69. Leskinen, M. (2020). The Istanbul Convention on sexual offences: A duty to reform the wording of national law or the way we think? In J. Niemi, L. Peroni, & V. Stoyanova (Eds.), *International law and violence against women: Europe and the Istanbul Convention* (pp. 133–156). London: Routledge.

70. McPhail, B. A. (2016). Feminist framework plus: Knitting feminist theories of rape etiology into a comprehensive model. *Trauma, Violence and Abuse, 17*(3), 314–329. One school of thought stresses that it is about power rather than sex, another school of thought stresses heteronormativity, the third group studies it from the perspectives of intersections, yet another stresses performative gender and masculinities, and the fifth sees it as an attack of women's embodied agency.

71. Fourth Geneva Convention provides: "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault." Article 27 part 2. Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, August 12, 1949.

72. For instance, Poland introduced the legal definition of rape in 1932, where it was described as an offence against sexual liberty and decency. This substantive definition remains unchanged. For a more elaborate and recent account of the Polish law, see Magdalena Grzyb, The legal definition of rape in Poland needs to change – but so do cultural attitudes, *Notes from Poland*, April 17, 2021.

73. Article 36(2) of the Istanbul Convention.

74. See Feminist Perspectives to Rape, Stanford Encyclopaedia of Philosophy, 2009, revised in 2021. http://plato.stanford.edu/entries/feminism-rape

75. Pillay, N. (2010, Fall). Address – Interdisciplinary colloquium on sexual violence as international crime: Sexual violence: Standing by the victim. *Law and Social Inquiry, 35*(4), 847–853.

76. MacKinnon, C. A. (2016). Rape redefined. *Harvard Law and Policy Review, 10*, 431–477. In the context of international criminal law, the same has been argued by O'Byrne, K. (2011). Beyond consent: Conceptualising sexual assault in international criminal law. *International Criminal Law Review, 11*, 495–514.

77. Minni Leskinen, "The Istanbul Convention on Sexual Offences," 139. The changes in Sweden were related both to the Istanbul Convention and even more so, to the MeToo movement.

78. Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), baseline report on Finland. GREVIO/Inf(2019)9.

79. For instance, Denmark adopted rape definition focused on consent in 2020, which entered into force 2021. Finland has also been impacted to change the definition of rape to a consent-based definition.

80. Vaige, L., *Violence against women under international law*, pp. 214–215.

81. Lithuanian law, cited previously, could serve as an example, because LGBTQ persons are not excluded from protection against violence, yet the help provided is accidentally due to neutrality of the law.

82. A wave of initiatives directed against women's rights and LGBTQ rights is sweeping across Eastern Europe. These developments, however, mostly take place in "grey areas," where the European supranational courts had no opportunity to rule yet or left the States an opportunity of broad discretion.

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# CHAPTER 12

# FAMILIAL VIOLENCE AND HUMAN TRAFFICKING: STORIES FROM INDIA

Sharon Menezes

## ABSTRACT

*This chapter juxtaposes human trafficking of children by their families with structural disadvantage characterizing cycles of violence to suggest that carceral approaches alone cannot break trajectories of crime. It highlights contexts where familial violence is culturally normalized and where the victim–offender binary is challenged. The devadasi system in a district in the Northern region of the State of Karnataka, India, and stories of women and communities in urban India provide a context for the discussion. This chapter posits the need to explore community corrections, restorative and transitional justice, and social justice in criminal justice administration to build safe families and communities for children.*

**Keywords:** Family violence; human trafficking; India; restorative justice; child safety; community

## INTRODUCTION

Human trafficking for commercial sex is an organized crime, with grievous harm caused to those exploited through it. Extant literature on justice responses to human trafficking commonly defines successful case outcomes through the lens of the prosecution, with primary focus on securing a conviction against the

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trafficker (Newton, Mulcahy, & Martin, 2008, cited in Hussemann et al., 2018). Harm to women and child victims of trafficking and state responses form yet another field for engagement and study. A lesser represented, albeit significant aspect of crime studies in general and criminal justice social work – a field that I affiliate with – in particular, is addressing traffickers beyond carceral approaches in order to break trajectories of crime. Traffickers and their experiences are not homogeneous. Diversity lies in aspects including gender, trafficking engagements, level of agency and control over their participation, voluntariness, former and current victimization, and intimate relationships (see Broad, 2015; Siegel & de Blank, 2010; Serie et al., 2018). However, law enforcement, social intervention, and empirical works attempting to address human trafficking are offender focused or victim focused, often treating offenders and victims as homogeneous and exclusive categories.

Family involvement in child trafficking has been an area of concern across geographies (see International Organisation for Migration, n.d.; TACFS, 2021; UN, 2017). The United States Department of State (2021) encapsulated the complexity of family involvement in varied forms of human trafficking thus,

> When the family member is the trafficker, the exploitation is often normalized and accepted within the family culture, sometimes spanning generations. This normalization of exploitation may also occur when the familial trafficking is tied to economic and cultural factors, such as in some cases of forced child labor in agriculture. If another family member notices the exploitation of the child, there is a strong incentive to look the other way to protect the family, both physically and in reputation, from outside interventions.

When trauma occurs in the presence of a supportive – even if helpless – caregiver, the child is likely to mimic the response of the parent (Browne & Finkelhor, 1986, cited in van der Kolk, n.d.). Children experience a crisis of loyalty and organize their behavior to survive within their families. Prevented from articulating what they observe and experience, they keep the secret and deal with their helplessness with compliance or defiance (Summit, 1983, cited in van der Kolk, n.d.).

While families identified as offenders are prosecuted and penalized upon conviction, child victims having no other family support enter state-care systems that lean toward institutionalization. State care carries its set of inadequacies. Mendes (2009) observed that young care leavers are one of the most vulnerable and disadvantaged groups in society. They face difficulties in accessing education, employment, housing, and other developmental and transitional opportunities. A significant number of them experience significant health, social, and educational deficits, including homelessness, involvement in juvenile crime and prostitution, mental and physical health problems, poor educational and employment outcomes, inadequate social support systems, and early parenthood (Centre for Excellence in Child and Family Welfare (CECFW), 2005; Community Affairs References Committee (CARC), 2004, 2005; cited in van der Kolk, n.d.).

A study across five Indian states (Udayan Care, 2019) observed that children exiting child care institutions on attaining the age of 18 years were "no-one's responsibility" (p. xix). It indicated that a significant number of children went through multiple placements; were not consulted about their care and rehabilitation planning; had no adult mentors and no knowledge of aftercare services

or welfare schemes; did not receive support for housing, health insurance, and caregiving during illness; and had inadequate training and sources of earning. The study pointed to emotional distress and lack of professional help to address it and inability in maintaining familial and romantic relations. Increased negative impact on emotional well-being was greater among female care leavers.

This directs attention to the arrest-the-offender-and-institutionalize-the-child approach. Carceral intervention alone does not treat families' and children's futures. This chapter therefore juxtaposes human trafficking of children by their families with structural disadvantage characterizing cycles of violence, to suggest that carceral approaches alone cannot break trajectories of crime. It draws from contexts where familial violence is culturally normalized in rural parts of a district in the Northern region of the State of Karnataka, India, and where women trafficked for commercial sex in urban India later engage in trafficking. It highlights the tensions between cultural norms, socio-economic realities, and legislation and suggests initiatives that show promise for addressing familial violence beyond carceral approaches.

In the rural context, one form of familial violence is part of the *devadasi* tradition wherein young girls are dedicated as *devadasis*. *Deva* means god and *dasi* means female servant. *Devadasi* means female servant of god. *Devadasis* are married to the gods/goddesses, after which they are not permitted to marry, and their dedication is considered irreversible. The practice is legally prohibited in India but continues to receive customary sanction. While there are variations in the customary practices across regions of the country, it is (as Tambe, 2009, suggested) one source of recruitment in commercial sex. The *devadasi* system is prohibited[1] across the country. Since the data source informing this chapter is limited to a district in North Karnataka, the Karnataka Devadasis (Prohibition of Dedication) Act, 1982, is referred to. The Act defines dedication as

> performance of any act or ceremony, by whatever name called, by which a woman is dedicated to the service of any deity, idol, object of worship, temple, other religious institutions or places of worship. (p. 2)

In southern parts of India, Renuka, the mother goddess is worshipped in the name of Yellamma or Mariamma. Renuka has been more popular among certain oppressed caste communities. Yellamma is worshipped in states of Maharashtra, Karnataka, and Andhra Pradesh (Jaganathan, 2013). Northern Karnataka has a large numbers of rural home-based and traditional *devadasi* sex workers, popularly known as "temple dancers" (O'Neil et al., 2004, cited in Ramanaik et al., 2014, p. 1199). *Devadasis* of Yellamma become her wives and her priests. They are responsible for her worship and embody her presence. A devotee of Yellamma who fails to make offerings to a *devadasi* or to assist in rituals is believed to risk facing the wrath of Yellamma (Ramberg, 2011). In India, with historical caste-based marginalities intricately linked with structural disadvantage, depressed castes were incorporated into the existing socio-economic framework and assigned a framework that was exploitative and detrimental to them (Jayaram, 1992). The *devadasi* system was a socially acceptable process of sexual violence upon daughters of oppressed caste communities, to meet a gendered patriarchal caste order.

*Devadasis* in Karnataka are from landless or small landholding *dalit* (oppressed caste) families, often from drought-prone areas and dependent on dry land agriculture. Often, families with *devadasis* dedicate their daughters. *Devadasis* remain primarily attached to their natal families throughout their lives. Dedication also ensures continuation of a line of descent in the absence of male heirs. Upon dedication, women are entitled to inherit land, to pass the family name on to their children, and to function as head of the extended family household. After puberty, many of them begin exchanging sex for means of a livelihood (Ramberg, 2011).

In the urban context, data supporting this article's discussion are drawn from the accounts of social workers and my doctoral work wherein women and families were embedded in contexts where acts of trafficking were intrinsically linked with family violence, structural disadvantage, and cycles of violence.

## SOURCES OF DATA

Data on familial violence associated with human trafficking in rural North Karnataka are drawn from a research study conducted by the Tata Institute of Social Sciences (TISS), India, and commissioned by We World Liaison Office. While the *devadasi* tradition has been reported across different parts of the country, the study was conducted in rural parts of a district in North Karnataka as it was expected to inform social work intervention of civil society agencies. The TISS study explored voices of 30 *devadasis* who were dedicated when they were between 7 and 16 years old and were between approximately 23 and 30 years at the time of the study. Women dedicated as *devadasis* spoke retrospectively about the circumstances that led to their dedication. A survey by the Devadasi Rehabilitation Programme (DRP) of Karnataka between the years 2007 and 2008 indicated that there were 9,733 *devadasis* in the district. The TISS (2018) study respondents said that there was no survey undertaken after the year 2008. Goa was also a location for the study, as it was known to be an urban destination area for *devadasis* engaged in commercial sexual exploitation. The study profiled a nongovernment organization's (NGO) intervention strategy to resist dedications and trafficking in Goa.

This article also draws on data from social work undertaken by my students and my doctoral work. Shama, a 15-year-old girl was traded by her mother for commercial sex. She was rescued by the police and housed in a state-run children's home, where my students met her. Another set of student social workers who visited prison happened to engage with Shama's mother who was imprisoned for trafficking her daughter. They found that the mother had been a victim of commercial sex herself. Having left her husband for the abuse he meted out to Shama and her, and with reducing capacity to attract customers with age, she traded Shama for commercial sex hoping that the income would feed into a better life out of violence in the long run, besides meeting immediate survival needs. Case studies of two women who participated in my doctoral work, Kamla and Neela, have also informed this article. They were previously victimized as children and processed by the criminal justice system as offender and victim during different points in their adult life.

## FAMILIAL VIOLENCE CULTURALLY NORMALISED IN (RURAL) NORTH KARNATAKA THROUGH THE DEVADASI PRACTICE

Twenty-five out of the 30 *devadasis* in the TISS study reported that their mothers and/or grandmothers, elder sisters, or women from extended families were also *devadasis*. All women's families faced extreme economic disadvantage. Their dedication was to seek favor from the goddess or evade negative consequences for the current and future generations. Sometimes dedication followed crises, leading families to believe that the goddess had to be appeased through dedication of a daughter. Other cited reasons for dedications included ensuring that property – however meager – did not shift outside the family in the absence of a male heir, taking over the earning and caretaking role in the absence of a male members' inability to earn, protecting family honor if the girl was proposed to by a man not selected by family, and 'fitting' girls who were less likely to find a spouse at marriageable age due to illness or physical disability into the socially acknowledged devadasi practice. Lack of health systems and facilities to address disability and illness limited adolescent girls' prospects of marriage in communities where child marriage was the norm. Lumika's narrative reflects how intersectionality in gender, economic disadvantage, family property, and religion convened toward her dedication,

> I … used to be sick. Nobody could figure out the reason behind the severe stomach pain … There was no way we could afford any better treatment … People thought that I would die. But I survived … Meanwhile my brother, the only son in the family left home … He never returned … There was nobody else who could take care of the family … Girls cannot remain single. They have to have a man in their life to be complete. That is what people believe and that is the way it was with me. People think that dedication is the best way to retain a girl safely at home … to ensure that there is somebody to take care [of family] … at the same time the property too will remain [with the family]. (TISS, 2018, p. 20)

Most women had not gone through the formal education system or had dropped out of it, and all of them were from oppressed caste communities. Parents were mostly daily wage laborers. Following their dedication, at puberty, they were forced into sex with a man. All women reported that their first partner financed the dedication ceremony and a meal that followed for close relatives and friends. The women said that they were unaware about the amount paid to their family members, or perhaps they chose not to speak about it. Their dedications were performed by older *devadasis* and temple priests who were from socio-economically disadvantaged communities themselves and had often internalized the religious norms of the community. All except one did not resist the dedication as they were too young to understand the implications. One woman managed to stall her dedication with help from a teacher and the police, but she was later taken to another location and dedicated there. She reflected, "Everybody forgot that I had to go back and stay in the same family. Where else could I go." Another reflected on the pain and loss of agency she experienced over customary roles and positions attached to *devadasis*,

> Once the men are satisfied and they go they don't come back to care for us. They come only for our bodies. I cried a lot and begged and pleaded my family not to dedicate me. But my voice

> was unheard … We have to make ourselves available to the men. We have no choice. They may pay us a little for that one night. (TISS, 2018, p. 39)

Most women worked in chilli plantations during the study period. Their earnings were meager. Although the relevance of the *devadasi* practice as perceived by the community had dimmed for women in their adult years, they accepted and abided by it for fear of the goddess' wrath and absence of social support. However, language is sometimes imitated (Goodman, 1986, cited in Reinharz, 1992), cautioning to the possibility of women being influenced by the language of their family and community context. The women and the village elders believed in the irreversibility of the dedication and that no man would marry a *devadasi*.

The TISS study found that even when villagers resisted dedication, they were unsupported by the community. A village council member who attempted to stall a woman's dedication due to her night blindness was questioned about his interference in family matters and challenged to own responsibility of the entire family as an alternative to dedication. Unable to negotiate with the community, he withdrew and the dedication proceeded. Temple priests who resisted dedication of girls argued that religion was misconstrued and misused through the *devadasi* practice. They reported that in their villages, dedication rituals were no longer undertaken by priests but by older *devadasis* and *jogappas* (persons from a transgender community linked with the goddess). They asserted that dedication was not supposed to be linked with sexual exploitation of children and women. Over the years, it had become a precursor for sexual violence. One of them observed,

> There is no benefit for the girl or to her family, [she] is just a breadwinner for a certain time only. When [women dedicated as *devadasis*] become old, nobody will ask about her, and having no work she will force her daughter to continue this business [dedication to *devadasi* system and commercial sexual exploitation]. In this way, it is a trap where they are stuck. This situation is misused by a few village people and heads. (TISS, 2018, p. 30)

Women's social positions and sexual engagements were acceptable in two contexts – marriage and the *devadasi* practice, structured in a way that benefited families, on the one hand, and men's sexual desires, on the other hand. The *devadasi* practice thus continued to receive customary sanction from family and community as it promoted family welfare, protected family property and honor, and helped ward off evil. However, *devadasis* were stigmatized on account of having sex with multiple partners outside marriage, and their children faced stigma on account of not having a father's name.

## TRAFFICKED WOMEN'S ENGAGEMENT IN TRAFFICKING IN (URBAN) LOCATIONS

For researchers and social workers engaging with the criminal justice system, it is not uncommon to find previously victimized women participating in sex trafficking and sexual violence (see Broad, 2015; Iocono, 2014; Menezes, 2016). Cycles of violence associated with structural disadvantage in neighborhood conditions are more salient when paired with cultural norms more tolerant of deviant behaviors and fighting among intimate social groups (Wright & Fagan, 2013). Crime

in disadvantaged neighborhoods "operates in a feedback loop – disadvantage fuels fear, damages social networks, and fosters crime; those ills, in turn, reinforce socioeconomic distress" (Bursik, 1986; Markowitz, Bellair, Liska, & Liu, 2001, cited in Kochel & Gau, 2021, p. 301). Commercial sexual exploitation operates in an industry that is marked with networks of social, economic, and personal exchange, and this also influences the relations between members of the community. For instance, the TISS study found that girls born and brought up in a commercial sex site in urban Goa sold items to customers. They faced stigma in school. The context also impacted relations between the young girls and boys. The boys often lived off the girls' earnings from commercial sex. The (male) youth married girls from their villages. The girls in the commercial sex site were generally not married. They earned for families (TISS, 2018).

In Goa, a president of a women's self-help group recalled how daughters of women exploited for commercial sex were also violated,

> I used to see [young] girls … soliciting customers. I always wondered how their parents could be so heartless to earn from their living. These were the girls in my own neighbourhood, my own daughter's age. My daughter was going to school and these girls were forced to solicit customers. The girls were so small and I would see them standing before men so huge … These were girls whom we had carried when they were babies … I remember putting them to sleep in my arms and here I was seeing them in the arms of a drunk customer … smoking [a] cigarette and puffing it out on the face of these little ones. You know they used to look so different during the day. But towards the evening, they were all set and ready with make-up, beautiful clothes … But for what? To sleep with a man who was so many years older than them; to sleep with a man who was so [old]; a man their father's age. Imagine what would be the condition of a girl … sleeping with so many customers every day … What would happen to [their] bodies? (TISS, 2018, p. 54)

Embedded in organized crime, and thriving on account of poverty and disadvantage, wrongdoings are justified. Fifteen-year-old Shama who was traded by her mother expressed the occasional antagonism toward the latter. However, she also normalized her mother's actions, seeing that there was no visible choice. On one occasion, she rationalized her context,

> She is a mother after all … she was not able to earn enough [through commercial sex] and so she sent me as we needed food … [little sister] needed milk and medicines … She left my father as he beat her and me a lot. She wanted to save me from his beating. One day, he flung me across the room, my hand is [permanently] damaged after that … Help me meet her … She is still my mother. If you meet her, tell her "[Shama] is fine, don't worry. You look after yourself and my baby [sister]. We will soon be together again".

Necessary systems to distance Shama from commercial sex would necessitate that her mother was also socially and economically distanced from commercial sex networks. Shama's mother raised an oft-heard question: "Who is responsible for helping women and children to leave [commercial sex]. Who will help?" Kamla, a participant in my doctoral work was forced and kidnapped into commercial sex during her teens, then became a "voluntary sex worker" and later a pimp. Pimping was not for a better life, but for survival, as she could no longer earn from commercial sex due to her advancing age. Neela, another participant, spoke about attempts to gain favor in the commercial sex industry for protection and growth. Neela was a child bride who left her marital home and children to escape a violent husband and sex that she could not make sense of as a

child. She "voluntarily" drifted into commercial sex, later became manager, then police informer, and finally sought police help to exit commercial sex in order to re-establish ties with her children. She spoke retrospectively about how being a brothel manager helped her earn better, gave her a sense of power over the other trafficked women, and helped increase her freedom (Menezes, 2017).

These stories tell about fluid positions that women, children, and families hold in terms of vulnerability, power, and influence; while they continue to negotiate their disadvantaged circumstances within oppressive and neglecting social structures. The sex industry in particular offers women, families, and communities with opportunity for survival and economic growth, through their adherence to the norms of its subculture. Herein, women assume an agentive role in pursuing a better economic future for their families (TISS, 2018), when compared to the constraints they would face seeking public support.

## TENSIONS BETWEEN CULTURAL NORMS, SOCIO-ECONOMIC REALITIES, AND LEGISLATION

The Indian Penal Code[2] and the Immoral Traffic Prevention Act, 1956[3] (Nanda, 2014) govern procedure for adult traffickers. Children rescued from commercial sexual exploitation are processed under the Juvenile Justice Care and Protection Act, 2015 (India, 2015). Under the Act, a child means "a person who has not completed eighteen years of age" (India, 2015, p. 3). The Act makes provision

> of support, financial or otherwise, to persons, who have completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the mainstream of the society. (India, 2015, p. 2)

Rehabilitation and social reintegration is considered preferable through family-based care with or without supervision, adoption, or foster care. When children are not placed with families, they are referred to institutional care. In contexts of familial violence involving arrest of the offending caregiver, the child is referred to the child care system for protection if there is no other caregiver. In Shama's case, this would imply that the state had just three years till she turned 18 to address Shama's chronic neglect and abuse. Children like Shama face uncertain futures aggravated due to weak child care support during institutionalization.

The Karnataka Devadasi (Prohibition of Dedication) Act, 1982, penalizes any person

> who, after the commencement of this Act, performs, permits, takes part in, or abets the performance of, any ceremony or act for dedicating a woman as a devadasi or any ceremony or act connected therewith …

The Act further directs the state to make rules "for custody, care, protection, welfare and rehabilitation of devadasis," thus offering a dual response of custodialization, on the one hand, and care, protection, and rehabilitation, on the other hand. The Act directs that if the guilty is found to be a parent or guardian or relative of the dedicated woman, penal provisions are to be stronger. The Devadasi Rehabilitation Project was set up in 1991 by Karnataka State Women's

Development Corporation to eradicate the *devadasi* practice. Awareness programs, support of self-help groups, bank loans, and pensions were to be provided under the program (TISS, 2018). Women not covered in the survey find it difficult to access support. Further, declaration of dedication after the enactment of the law could also invite punitive action against family and community members.

Arrest of family members implies that the girl child could be rendered without family support, face social stigma for accounting her family's arrest, and be referred to state-care facilities that are compromised. Scope for a better life is rarely visible. With enactment of the legislation, the venue for dedications shifted from larger temples to homes of the girls or their relatives. Temple priests apart, *jogatis* (older women who were *devadasis*) also performed dedication rituals. Village council members, creche workers, and village elders held that dedications happened but not as frequently as they did in the past. School authorities denied prevalence of dedications in the recent past, instead dating dedications in their villages to several years ago. However, women from these villages indicated that dedications were not as much in the distant past. The distancing of dedications from the public domain has made it further difficult for authorities to know about the incidence of dedications.

The Prevention of Children from Sexual Offenses Act (POCSO) (2012) penalizes sexual harassment, sexual assault, use of children for pornographic purpose, and abetment of an offense. It calls for mandatory reporting and penalizes failure to do so. During the TISS study, researchers sensed but could not ascertain that women and district administration were conscious about the mandatory reporting clause and hence chose not to reveal prevalence of more recent dedications. A study (Arpan, n.d.) on adult survivors of child sexual abuse suggested that a larger percentage of survivors were against mandatory reporting, as they were wary of the stigma and blame they would face if their abuse was exposed in a "patriarchal," "misogynistic," or "insensitive" society. Further, mandatory reporting without the consent of the child was believed to break faith in the trusted adult and subsequently "breaking of that trust would be seen as mirroring, or continuing, the violation inflicted by the perpetrator" (p. 7).

While carceral intervention is sought as *the* form of justice, it is crucial to acknowledge the past of perpetrators who, in this case, are part of the victims' current and future filial bonds. As Whittier (2016) observed, carceral responses may strengthen state control but without having much actual effect on child sexual abuse. Thus, overcoming polarities that are played out politically, conceptually, and emotionally are core to a responsive response, for the aftermath of violence is littered with examples of how binary thinking disbars understanding between the harmed and the harmful (Gadd, 2015).

## BREAKING CYCLES OF VIOLENCE THROUGH COMMUNITY PARTICIPATION

The TISS study (2018) suggested that community participation and social development play a crucial role in resisting and breaking cycles of violence. In locations where the *devadasi* practice was resisted in Karnataka, three processes were key to its resistance – fear of law, altered meanings of dedications held by temple

priests and village (male) youth, and girls' education. Priests reflected that they earlier conducted dedications out of priestly duties, when they were extremely young themselves and did not understand the implications. They later believed that dedication was a cause and function of crime, poverty, and vested interests. Further, they believed that dedication brought disrepute to the community's image. Girls' education altered the demographic profile and image of the village. People's definitions of development were now linked with resisting the *devadasi* practice and promoting girls' education.

In Goa, commercial sex networks were organized with active participation of the youth. An NGO viewed the sex industry as a market, with the youth and other disadvantaged groups supporting it. It mobilized youth to resist dedications and commercial sex by focusing on youth development programs and a carefully planned rehabilitation program for youth and women exiting commercial sex. Social workers engaged with community members between 17 years and 35 years through sports, indoor games, exposure visits, and night classes, thereby creating a platform for further dialogue with them. In order to demonstrate that the commercial sex market could be broken, youth who earlier earned from commercial sex were engaged in conversations with personnel from the armed forces, police, and local law enforcement authorities to explore alternative earning possibilities and altered lifestyles. The police viewed this initiative from the lens of crime prevention. Helping youth visualize alternatives was accompanied with discussion on acceptable and non-acceptable behaviors (for example, physical violence, stealing, or exploiting girls). However, youth's resistance to commercial sex was not appreciated by their own mothers and other trafficking agents. A former member of a youth club reflected on those challenging times,

> We too were … part of everything [commercial sexual exploitation and dedication] that was going on. But when we realised the impact of our actions we were willing to take a stand and fight to stop it. What impacted us most was the effect it was having on our own people, our own club members. There was nobody in our locality who was not afraid [of the brothel managers], particularly [one of them] … because she was so powerful. She had a lot of influence with the police and the local politicians. When we started fighting against this system, we faced a lot of opposition and threats because people's earnings were hit … the policeman's [bribes], the politicians' benefits … But we went ahead because we realised what was happening with us and how important it was for all of us to change all of this. Many of us were threatened […] All of us felt bad seeing the condition of those [young] girls soliciting customers. They were children who grew up with us, classmates who studied with us. It was Sir [founder of the NGO] who got us to think and see things differently … We are proud of what we did. We don't think there [were] any more dedications … Everybody knows and is afraid of being caught and put in the jail. (TISS, 2018, p. 54)

Well-planned crime prevention strategies not only prevent crime and victimization but also promote community safety and contribute to sustainable development thereby enhancing the quality of life of citizens and reducing the costs associated with the formal criminal justice system as well as other social costs that result from crime (Economic and Social Council Resolution 2002/2013). The police have a crucial role to play in addressing crime prevention and child protection. Community policing entails establishing working partnerships between police and communities to reduce crime and enhance security (Moore, 1992). It

is people centered and more about providing services to community members from a partnership perspective (Lamin & Teboh, 2016). The prevailing emphasis on professional law enforcement has failed to control or prevent crime and has fostered an unhealthy separation between the police and the communities they serve (Moore, 1992).

Calling for attention to responsive responses from the criminal justice system, this discussion advances Hussemann et al. (2018) propositions on three alternative models of justice to address human trafficking – procedural justice, restorative justice, and transitional justice. Experiencing procedural justice involves an individual's perceptions that justice processes are respectful, and that individuals are able to participate in the decisions made in their case. Restorative justice entails that justice outcomes including convictions and imprisonment may not always serve the interest of survivors, individuals accused of crimes, and their communities. Survivor-defined responses, including the ability for those impacted by the crime to confront the accused and for the accused to apologize, are more likely to lead to healing than are traditional prosecution processes and outcomes. Transitional justice involves larger community efforts to respond to crime and promote peace and a sense of justice. It includes reparations and social services to persons affected by crime and larger community education and advocacy efforts. Aligning transitional justice with prospective justice, Webber (2012) suggests that the latter is forward-looking,

> […] often in transitions, parties pursue a broader form of justice. They are concerned not simply with repairing past events but rather with changing their society for the future, reconstructing it on different – and, ideally, more just – foundations. Indeed, that tends to be the very essence of the transitions. The parties seek of arrange relations within the society so that each party is treated appropriately from here on. When they do so, they are engaged in prospective – forward-looking justice. (p. 103)

Prospective justice constitutes a reckoning with the past, pursued not primarily to correct a transaction but rather to adjust the parties' relations so that their interactions now take place on a sound foundation. The wrongs of the past shape the parties' relations in a way that is regrettable, damaging, unjust. Agents of justice intervene to confront that past so that the parties' relations might be placed on an appropriate footing (Webber, 2012).

Drawing from its data sources and Hussemann et al.'s (2018) position, this chapter contends that anti-trafficking efforts would benefit from incorporating the heterogeneous contexts of trafficking, by positioning community corrections, restorative and transitional justice, and social justice in the administration of criminal and victim justice. Community corrections may be considered in lieu of or comprising part of the criminal justice response of custodialization and incarceration. The Center on Sentencing and Corrections, Vera Institute of Justice (2013) observed that keeping individuals in the community and offering supervision, and intervention and services that are responsive to the risk and needs to prevent re-offending, can facilitate public safety. Vuong, Hartney, Krisberg, and Marchionna (2010, cited in Center on Sentencing and Corrections, Vera Institute of Justice, 2013) further observed that defendants and offenders who are not incarcerated have the opportunity to remain with families and participate

in programs within the natural context of their lives, without the unnatural setting of a prison.

While arguing for treating the offending family along with the child, the contentions made in this article do not indicate that victims *must* be reunited with the offending family. In an earlier writing (Menezes, 2019), I echoed the voices of women exploited for commercial sex to assert that many of them were met with failure or inadequacy of social institutions of family and community. However, when family and children visualize futures together and when trajectories indicate cycles of violence emerging from disadvantage, separation of the offender and the victim alone is inadequate.

As Zehr (1990, cited in Sivasubramanian, 2012) pointed out, in restorative justice, crime is recognized fundamentally as a violation of people and relationships, rather than as a violation in crime. It would involve restoring two essential parties – the women and girls trafficked for sex, and disadvantaged persons and families through a process of participation, where the parties (as Huang, Braithwaite, Tsutomi, Hosioi, & Braithwaite, 2012, puts it) "have an opportunity to discuss their needs: who was hurt by the crime, and what might be done to repair that harm and address those needs" (p. 295).

Finally, the principles of social justice would entail addressing vulnerabilities of persons before they are trafficked and after, as well as vulnerabilities of persons and families supporting trafficking. From case files of trafficked persons, Schwarz et al. (2019) observed that many trafficked persons were earlier identified as vulnerable to exploitation prior to their trafficking, and they were identified as "at risk" to exploitation. This "missed window of opportunity to identify and assist trafficked persons" (Schwarz et al., 2019, p. 128) needs to be addressed so as to prevent people's drift into commercial sex – whether as offender and/or victim. Broad (2015) also suggested that a more responsive approach to female traffickers would acknowledge their previous victimization, show greater understanding of the power dynamics between co-defendants, and would need to be supported by policy conversant of intersections between economic and sexual exploitation, gender inequality, and global inequalities. Institutionalized practice and binary perceptions act as barriers in including perpetrators' experiences of victimization and the wider inequalities that support pathways into trafficking.

A framework for intervention developed in TISS study (see Fig. 1) was further deliberated upon to suggest a few pointers for conceptualizing intervention to prevent familial and community-supported sexual violence.

## CONCLUSION

The rescue of victim and arrest of offender paradigm – while holding relevance in criminal jurisprudence – fails to address chronic and acute grievances of the perpetrators. It leads to dichotomizing agency, consent, and oppression in victim–offender binaries. Social and familial problems are aggravated when detention and punishment become stand-alone intentions rather than mediating processes located amid a social justice landscape. Familial sex trafficking emerging from

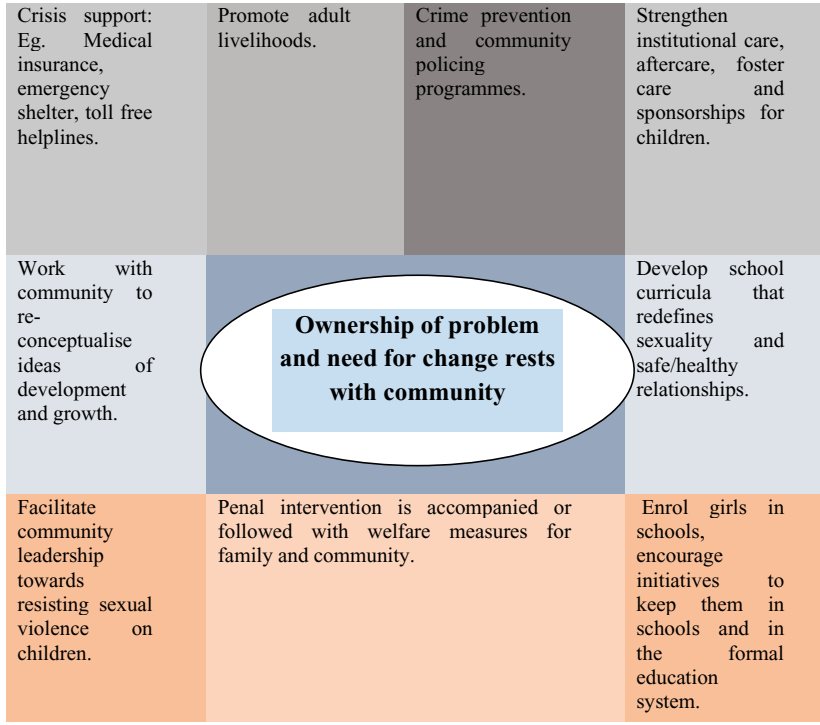


*Fig. 1.* Working Conceptualization for Intervention. *Source*: Adapted from TISS (2018).

distress and caste inequalities needs to be addressed differently. While legal mandates continue, it needs to be closely accompanied with development programs. Breaking of subcultures of crime and violence in contexts of disadvantage necessitates addressing structural disadvantage. The absence of this places the onus of responsibility for change on the hurting family and/or community, taking away responsibility of the state and its civil society in addressing violence, and leads the criminal justice system and civil society organizations to continuously confront with often asked questions by the "trafficker": "Where were you when we were trafficked?" and "Where were you when we were in distress?"

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## NOTES

1. Through legislations like Madras Devadasis Prevention and Dedication Bill, 1938; The Andhra Pradesh Devadasis (Prohibition of Dedication) Act, 1988; The Maharashtra Devadasi Protection and Rehabilitation Act, 2005; and The The Karnataka Devadasis (Prohibition of Dedication) Act, 1982.

2. 370. Trafficking of person.
370A. Exploitation of a trafficked person.
371. Habitual dealing in slaves.
372. Selling minor for purposes of prostitution, etc.
373. Buying minor for purposes of prostitution, etc.

3. Penalizes keeping a brothel or allowing premises to be used as a brothel, living on the earnings of prostitution, procuring, taking, inducing a person for purpose of prostitution, detaining a person in premises where prostitution is carried on, and soliciting for prostitution in the vicinity of public places. The Act also provides for rescue and protection of persons engaged in prostitution. Penal sanctions on the accused are increased when children are trafficked.

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