

## TALKING POINTS ABOUT TRAUMA FOR ATTORNEYS IN CASES WHEN A PARENT IS INCARCERATED

Set forth below is a list of key talking points for use in oral argument or briefs to encourage courts to recognize the trauma caused to children when they are separated from a parent due to incarceration. Lawyers can use this research to encourage visitation with an incarcerated parent and to promote placement with family when a parent is incarcerated.

- A. Several cases, relying on social science research and expert testimony, acknowledge the way children's physical and mental health are seriously damaged by separation from primary caretakers. See e.g. Ms. L. v. U.S. Immigration & Customs Enforcement, 310 F.Supp.2d 1133, 1147 (S.D. Cal. 2018); In re Egypt E., 327 Conn. 506 (Conn. Sup. Ct. 2018); Nolasco v. U.S. Immigration & Customs Enforcement, 319 F.Supp. 3d 491, 503 (D.D.C. 2018); Nicholson v. Scoppetta, 344 F.3d 154 (2<sup>nd</sup> Cir. 2003).
- B. Parental incarceration is one important cause of family separation, and one of the Adverse Childhood Experiences (ACES) linked with poor physical and mental health outcomes for children.<sup>1</sup> It counts toward a child's ACES score the same way as traumatic experiences like physical abuse, domestic violence, or parental substance abuse. The number of children impacted by parental incarceration has skyrocketed in the last 30 years.<sup>2</sup>
- C. There is strong evidence that children impacted by parental incarceration are at greater risk for later mental health problems, school challenges, and juvenile justice involvement. *See A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families, and Communities*, ANNIE E CASEY FOUNDATION POLICY REPORT 3 (2016).<sup>3</sup>
- D. There is growing evidence that allowing contact between children and parents who are incarcerated can mitigate the harms of separation. *See A Shared Sentence* at 9; Ross D. Parke & K. Allison Clarke-Stewart, *Effects of Parental Incarceration on Young Children*, 7-9 (2001).<sup>4</sup>
- E. Child welfare responses and criminal sentencing policy have not caught up with this research, and may exacerbate the trauma children experience. *See Brent Pattison, Mama Tried: Shifting Thinking (and Practice) in Child Welfare Cases when a Parent is Incarcerated*, 27 Amer. J. Gender, Soc. Pol'y & the Law 495 (2019); Tamar Lerer, *Sentencing the Family: Recognizing the Needs of Dependent Children in the Administration of the Criminal Justice System*, 9 Nw J. L. & Soc. Pol'y 24, 30 (2013).

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<sup>1</sup> <https://www.ncjfcj.org/sites/default/files/Finding%20Your%20ACE%20Score.pdf>.

<sup>2</sup> In 1985, one out of 125 children were impacted by parental incarceration. Now the rate is one in 28. <https://nrccfi.camden.rutgers.edu/files/nrccfi-fact-sheet-2014.pdf>.

<sup>3</sup> <https://www.aecf.org/resources/a-shared-sentence/>.

<sup>4</sup> <https://aspe.hhs.gov/basic-report/effects-parental-incarceration-young-children>.