

**Annotated Bibliography for Federal Non-Capital Sentencing:  
Scientific Research, Expert Views, and Online Resources Relevant to the  
Purposes of Sentencing<sup>1</sup>  
December 2024**

Recent research in criminology and other related social and behavioral sciences provides evidence relevant to the purposes of sentencing<sup>2</sup> and the court's obligation to consider "the nature and circumstances of the offense and the history and characteristics" of your client when imposing a sentence.<sup>3</sup> This publication identifies resources that may be helpful in conducting a mitigation investigation,<sup>4</sup> plea negotiations, and sentencing advocacy. Providing the court with social science and statistical data strengthens individualized mitigation arguments concerning your clients. It also helps undercut incorrect assumptions about: the sentencing guidelines; how to best satisfy the purposes of sentencing, and the relevance and significance of individual characteristics.

This publication is designed to be updated on an annual basis as new relevant research becomes available. A noncapital mitigation listserv is available to receive periodic emails about new research. If you come across a relevant resource, please send it to [Cherrelle\\_Herbert@fd.org](mailto:Cherrelle_Herbert@fd.org) so it can be shared with the Defender community.

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<sup>1</sup> This bibliography is an updated version of *Social Science at Sentencing: An Annotated Bibliography and Fighting Fiction with Fact to Attain Lower Sentences*, previously prepared by members of the Sentencing Resource Counsel Project. This list was originally created by Denise C. Barrett, J.D., M.S.W., Assistant Federal Public Defender, District of Arizona. Most recently, it was updated in December 2024 by AFDPD Cherrelle Herbert, National Sentencing Resource Counsel, District of Arizona, AFDPD Aden Kahssai, District of Nevada, and AFDPD Cristen Thayer, District of Nevada.

<sup>2</sup> "[T]he need for the sentence imposed—(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2).

<sup>3</sup> 18 U.S.C. § 3553(a)(1).

<sup>4</sup> A mitigation investigation gathers information relevant to 18 U.S.C. § 3553(a)(1)–(2). It explains the client's strengths, why the crime was committed, and what will help prevent him or her from committing future crimes. See Denise Barrett, Frank Draper, & Sarah Gannett, *Mitigation*, *Defending a Federal Criminal Case*, <https://mow.fd.org/sites/mow/files/training/sessions/Mitigation%20101/Defending%20a%20Federal%20Criminal%20Case%20Chap%2016%20-%20Mitigation.pdf>. An extensive investigation combined with relevant social and behavioral sciences can substantially improve case outcomes and reduce recidivism.

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## I. Deterrence

### A. General Deterrence

“A 2021 large analysis of 116 studies showed that spending time behind bars either didn’t affect a person’s future crime risk or slightly increased it, compared with people who received a sentence that didn’t involve imprisonment. That finding held true for men and women, young people and adults, people who served time in county jails and those housed in state prisons.” Jamie Santa Cruz, *Rethinking Prison as a Deterrent to Future Crime* (July 2022), <https://daily.jstor.org/rethinking-prison-as-a-deterrent-to-future-crime/>; see also Damon Petrich, et al., *Custodial Sanctions and Reoffending: A Meta-Analytic Review*.” Crime and Justice (2021)

“The certainty of being caught is a vastly more powerful deterrent than the punishment.” National Institute of Justice, *Five Things About Deterrence* (May 2016), <http://www.nij.gov/five-things/pages/deterrence.aspx>. Flyer available here: <https://ncjrs.gov/pdffiles1/nij/247350.pdf>.

“Sending an individual convicted of a crime to prison isn’t a very effective way to deter crime. Prisons are good for punishing criminals and keeping them off the street, but prison sentences (particularly long sentences) are unlikely to deter future crimes. Prisons actually may have the opposite effect. Inmates learn more effective crime strategies from each other, and time spent in prison may desensitize many to the threat of future imprisonment.” *Id.*

“[T]here is little evidence that increases in the length of already long prison sentence yield general deterrent effects that are sufficiently large to justify their social and economic costs.” Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 Crime & Just. 199, 201 (2013).

“[L]engthy prison sentences cannot be justified on a deterrence-based, crime prevention basis.” *Id.* at 202.

“[E]vidence in support of the deterrent effect of various measures of the certainty of punishment is far more convincing and consistent than for the severity of punishment. The evidence in support of certainty’s deterrent effect pertains almost exclusively to apprehension probability. Consequently, the conclusion that certainty, not severity, is the more effective deterrent is more precisely stated as *certainty of apprehension* and not the severity of the legal consequence ensuing from apprehension is the more effective deterrent. Thus, this revised conclusion about the deterrent effect of punishment certainly should not be construed as implying that policies mandating severe legal consequences have been demonstrated to achieve deterrent effects.” *Id.* at 201-202.

“[T]here is generally no significant association between perceptions of punishment levels and the actual levels of punishment that the criminal justice system achieves. This in turn implies that increases in punishment levels do not routinely reduce crime through general deterrence mechanisms, because the fundamental link between actual punishment levels and perceptions of punishment levels appears to be weak to nonexistent. There may be some baseline level of deterrent effect generated by punishment-generating activities of the criminal justice system, but this level is apparently one that does not consistently increase with punishment levels or diminish with decreased punishment levels.” Gary Kleck & J.C. Barnes, *Deterrence and Macro-Level Perceptions of Punishment Risks: Is There a “Collective Wisdom”?* 59 *Crime & Delinq.* 1006, 1031-33 (2013).

“Empirical studies have shown that longer sentences have minimal or no benefit on whether offenders or potential offenders commit crimes. The National Academy of Sciences (NAS) concluded that ‘insufficient evidence exists to justify predicating policy choices on the general assumption that harsher punishments yield measurable deterrent effects.’ NAS pointed out that all leading surveys of the deterrence research have reached the same conclusion: that ‘potential offenders may not accurately perceive, and may vastly underestimate, those risks and punishments’ associated with committing a crime. Some researchers suggest that incarceration has even less of a deterrent effect for violent crimes. Unlike property crimes, which offer a financial incentive and can replace or supplement legal income, violent crimes are often crimes of passion, not premeditated. Therefore, severe terms of incarceration may not affect an offender’s immediate decision to engage in criminal behavior.” Brennan Center for Justice, *What Caused the Crime Decline?* 26 (Feb. 2015),

[https://www.brennancenter.org/sites/default/files/analysis/Crime\\_rate\\_report\\_web.pdf](https://www.brennancenter.org/sites/default/files/analysis/Crime_rate_report_web.pdf).

Economists and social scientists “now agree[] that the effects of certainty and immediacy are much more important than the effects of severity. A substantial literature shows, however, that particularly police deployments can reduce the incidence of crime .....sentencing laws and practices should be substantially recast to reduce the severity of punishment and with that the sizes of the prison population and public spending on imprisonment.” Tonry, Michael, *An Honest Politician's Guide to Deterrence: Certainty, Severity, Celerity, and Parsimony* (June 7, 2017). *Deterrence, Choice, and Crime: Contemporary Perspectives* (Daniel S. Nagin, Francis Cullen & Cheryl Lero Jonson, eds., New York: Routledge, 2018 Forthcoming), <https://ssrn.com/abstract=2981749>.

“Unlike repeat violent offenders, whose incapacitation may protect the public from additional crimes by the offender, criminologists and law enforcement officials testifying before the Commission have noted that retail-level drug traffickers are readily replaced by new drug sellers so long as the demand for a drug remains high. Incapacitating a low-level drug seller prevents little, if any, drug selling; the

crime is simply committed by someone else.” USSC, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* 131 (2004).

“For several categories of offenders, an incapacitation strategy of crime prevention can misfire because most or all of those sent to prison are rapidly replaced in the criminal networks in which they participate. Street-level drug trafficking is the paradigm case. . . . Drug policy research has. . . shown consistently that arrested dealers are quickly replaced by new recruits. Arrests and imprisonments of easily replaceable offenders create illicit ‘opportunities’ for others.” National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 146 (Jeremy Travis et al. eds., 2014), [http://nap.edu/catalog.php?record\\_id=18613](http://nap.edu/catalog.php?record_id=18613). See also *id.* at 88 (“Most drug policy analysts agree that . . . imprisoning individual drug dealers seldom reduces the availability of drugs or the number of traffickers.”).

Zero Tolerance Policy – No Evidence of Deterrence. “Counting all migrants—not just children and families—between 2000 and 2017, the average monthly drop from Mays to Junes at the U.S.-Mexico border was 21.3 percent fewer migrant apprehensions. That’s 5.9 percentage points steeper than June 2018’s 15.4 percent decrease in all migrants. That indicates no deterrent effect at all from zero tolerance.” Adam Isacson, Maureen Meyer & Adeline Hite, *The Zero Tolerance Policy: An Impossible and Inhumane Approach Toward Asylum-Seekers at the Border* 5-6 (July 2018), [www.wola.org/analysis/wola-report-zero-tolerance-policy](http://www.wola.org/analysis/wola-report-zero-tolerance-policy).

Criminal activity seems to be highly responsive to the prospect of arrest and conviction, but less responsive to the prospector severity of imprisonment. This provides support to the idea that the consequences of being arrested and found guilty of a criminal offence include the indirect sanctions imposed by society and not just the punishment meted out by the criminal justice system. Maurice J. G. Bun, et al., *Crime, Deterrence, and Punishment Revisited*, *Empirical Economics* 59, 2303, 2322 (Nov. 2020), <https://link.springer.com/content/pdf/10.1007/s00181-019-01758-6.pdf>

Research shows that incarceration can actually [increase the likelihood of future crimes](#) by [traumatizing people](#) before releasing them back into their communities. If the goal is public safety, punishing people behind bars isn’t the answer because among other reasons, many people are incarcerated due to poverty, homelessness, mental illness, or substance use. Erica Bryant, Vera Institute, *Why Punishing People in Jail and Prison Isn’t Working* (Oct. 24, 2023), <https://www.vera.org/news/why-punishing-people-in-jail-and-prison-isnt-working>.

## B. Specific Deterrence

“[T]here is little evidence of a specific deterrent effect arising from the experience of imprisonment compared with the experience of noncustodial sanctions such as probation. Instead, the evidence suggests that reoffending is either unaffected or increased.” Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 Crime & Just. 199, 201 (2013).

“Research suggests that incarceration does little to change a person’s behavior. National studies (see, e.g., Durose, Cooper, & Snyder, 2014) indicate that 68% of state prisoners are rearrested within 3 years of their release, and 77% are rearrested within 5 years. Of those, nearly half — 45% — are reincarcerated. These high rates of rearrest and reincarceration translate to more victims, racial and ethnic disparities, an escalation of correctional and justice system costs, and a cycle of challenges for those who enter the justice system and struggle to stay out.” National Institute of Corrections, *Myths and Facts: Why Incarceration is Not the Best Way to Keep Communities Safe* 2 (2016), <https://s3.amazonaws.com/static.nicic.gov/Library/032698.pdf>.

“[T]he available evidence points toward a null or a slightly criminogenic effect of imprisonment but has rarely found support for a clear specific deterrent effect.” Ellen Raaijmakers et al., *Exploring the Relationship Between Subjectively Experienced Severity of Imprisonment and Recidivism: A Neglected Element in Testing Deterrence Theory*, 54 J. of Research in Crime and Delinquency 1, 4 (2017).

Cognitive behavioral skill-building is more effective in reducing future criminal behavior than punishment even among persons at high-risk of reoffending. Patricia Clark, Office of Justice Programs, National Institute of Justice, *Preventing Future Crime with Cognitive Behavioral Therapy*, 265 Nat’l Instit. of Just. J 22 (2010).

“To our knowledge, there is no rigorous empirical study of whether, among second-time felons, tougher types of sanctions than what the individuals previously received results in the specific deterrent effect anticipated under contemporary sentencing schemes. Put differently, little evidence exists that a ‘recidivist sentencing premium’ (Roberts 2008:468) reduces recidivism.” Daniel Mears & Joshua Cochran, *Progressively Tougher Sanctioning and Recidivism: Assessing the Effects of Different Types of Sanctions*, J. of Research in Crime & Delinquency 24 (2017).

"[P]robation and intensive probation are more effective than jail or prison, respectively, in reducing offending among first-time felons." *Id.* at 24.

More severe sanctions for those who committed a second crime "appear to be more criminogenic. For example, among individuals whose first felony led to imprisonment, recidivism was lower when, in response to a second felony,



they were sentenced to less severe sanctions . . . regular and intensive probation typically were associated with lower rates of recidivism.” *Id.* at 33.

“Finally, when we turn to individuals who were sentenced to prison for their first felony, we find no support for the deterrence hypothesis. In each matched comparison, individuals who received less severe subsequent sanctions recidivate less than did matched prison inmate groups.” *Id.*

“Respondents whose mothers had served time in prison were significantly more likely to have an adult arrest, conviction, and incarceration, even after controlling for important demographic factors and correlates of criminal behavior.” Conclusions: Maternal incarceration had a substantial effect on the offspring’s involvement in the criminal justice system. These findings bolster contentions regarding the unintended consequences of maternal incarceration that include long-term collateral damage to their children.” Lisa R. Muftic et al., *Impact of Maternal Incarceration on the Criminal Justice Involvement of Adult Offspring: A Research Note*, 53 J. of Research in Crime & Delinquency 93 (2016).

“Using an evidence-based approach, we conclude that there is little evidence that prisons reduce recidivism and at least some evidence to suggest that they have a criminogenic effect. The policy implications of this finding are significant, for it means that beyond crime saved through incapacitation, the use of custodial sanctions may have the unanticipated consequence of making society less safe.” Francis Cullen et al., *Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 Prison J. 48S (2011).

“This analysis suggests, once again, that, in order to achieve optimal deterrence, our legal system should provide for less severe penalties for repeat offenders than for first-time offenders instead of, as it currently does, reserving the least severe penalties for the latter group.” David A. Dana, *Rethinking the Puzzle of Escalating Penalties for Repeat Offenders*, 110 Yale L.J. 733, 738 (2001).

A survey of federal prisoners found that BOP needs to do more to advance the goal of reducing recidivism. Kevin Ring & Molly Gill, *Using Time to Reduce Crime: Federal Prisoner Survey Results Show Ways to Reduce Recidivism*, Families Against Mandatory Minimums (June 2017), [https://www.prisonpolicy.org/scans/famm/Prison-Report\\_May-31\\_Final.pdf](https://www.prisonpolicy.org/scans/famm/Prison-Report_May-31_Final.pdf). Key findings:

“Nearly every prisoner has a job, but the types and availability of jobs vary greatly within and among institutions.” *Id.* at 6. Prisoners work very different hours.” *Id.* at 7.

“Vocational Training (VT) is popular and coveted, but is limited and offered only to prisoners who are close to their release dates.” *Id.* at 8.



“The quality and availability of educational programs differ from prison to prison and sometimes even within the same prison compound.” *Id.* at 9.

“Most educational programs are taught by other prisoners.” *Id.* “Most prisoners surveyed believed that student-taught ACE classes lack rigor and substance and do not help to prepare prisoners for reentry.” *Id.* “Attaining a college degree in federal prison is difficult, if not impossible, for most prisoners.” *Id.* at 10. “Prisoners do not have computer access to complete college or other educational coursework.” *Id.*

“The overwhelming majority of respondents who participated in RDAP found the program beneficial.” *Id.* at 12. “A majority of respondents who participated in non-residential drug treatment programs found the programs beneficial.” *Id.* at 13.

“The vast majority of prisoners would participate in other recidivism-reducing programs if doing so reduced their sentence.” *Id.* at 14. “Most prisoners would participate in recidivism –reducing programs to earn benefits other than a sentence reduction.” *Id.*

“Many prisons offer faith-based programs, and most prisoners who participate find them worthwhile.” *Id.* at 15.

“More than two-thirds of respondents said they had not received mental or behavioral health treatment in federal prison.” *Id.* at 17. “Prisoners had mixed reviews of mental and behavioral health programs in federal prison.” *Id.*

“Too many prisoners are too far from their families to maintain or strengthen these important relationships.” *Id.* at 18.

“Most prisoners are aware that under the Second Chance Act they could get up to 12 months of halfway house time, but expect to get only three to six months.” *Id.* at 20. “A significant number of prisoners have concerns about going to halfway houses.” *Id.*

“The ‘get-tough’ era of punishment led to exponential growth in the rate of incarceration in the United States. Recent reviews of the literature indicate, however, that limited rigorous research exists examining the effect of imprisonment on the likelihood of future offending. As a result, scholars have called for assessment of this relationship, while using methodologies that can better account for selection effects. This study addresses these calls directly by applying regression discontinuity, a methodology well suited to account for selection bias, on a cohort of felony offenders in Florida. Results suggest that prison, as compared to non- incarcerative sanctions, has no appreciable impact on recidivism. Although no differential effects surfaced across race/ethnicity, the analyses indicated that imprisonment exerts a differential effect by gender with the effect being more criminogenic among males than females.” Ojmarrh Mitchell, *Examining Prison Effects on Recidivism: A Regression Discontinuity Approach*, 34 *Justice Quarterly* 571 (Aug. 2016).

Contributing to reduced recidivism “is the quality of an inmate's relationship with his or her mother prior to incarceration, such that inmates who had a higher quality relationship with their mother had significantly reduced odds of recidivating upon release (Hypothesis 3 supported).” Cassandra A. Atkin-Plunk & Gaylene S. Armstrong, *Disentangling the Relationship Between Social Ties, Prison Visitation, and Recidivism*, 45 Crim J. & Behav. 1507, 1520 (Oct. 2018).

"Given the distinct nature of the mother-child relationship, mothers might be more apt to offer direct social and emotional support or play an instrumental role in providing connections that allow for a response to offender structural needs. For the incarcerated offenders with strong maternal bonds, it is possible that they reside with their mothers upon release, as their mothers are willing to welcome them into their home. This can translate into reduced recidivism, as research suggests that secure housing is crucial to successful reentry." *Id.* at 1521 (citations omitted).

“Evidence demonstrates why punishment does not change criminal offending . . . How did we get it so wrong? Why is it that something that is so intuitive and logical has failed to effectively reduce criminal behavior? First, the vast majority of criminal offenders who enter the justice system are disordered. About 60% have at least one mental health problem. Eighty percent have a substance use disorder. Neurodevelopmental and neurocognitive impairments are common. Between fifty and sixty percent of offenders have had at least one traumatic brain injury, and the relationship between poverty, trauma and neurocognitive impairment is well established. Comorbidity is quite common, especially the coincidence of substance use disorders and mental health and neurocognitive problems. The failure to adequately fund public health has resulted in the criminal justice system being the repository for many disordered individuals. Since we do little to address and mitigate these disorders in the justice system, offenders often decompensate. We release them to essentially no safety net in the community. There is nothing about prison or jail that makes one mentally healthy. Incarceration does nothing to address addiction or substance dependence. Punishment does not mitigate neurocognitive impairment or the effects of trauma and exposure to poverty. William Kelly, Ph.D., *Why Punishment Doesn't Reduce Crime*, Psychology Today (April 2018), <https://www.psychologytoday.com/us/blog/crime-and-punishment/201804/why-punishment-doesnt-reduce-crime#:~:text=Punishment%20does%20not%20mitigate%20neurocognitive,Kelly%2C%20Ph>.

“There are four broad intervention modalities with ample studies of their effects for both juveniles and adults and multiple meta-analyses that have attempted to summarize the effects on reoffending rates for juveniles, adults, or both together. These intervention modalities are (a) cognitive behavioral therapy, (b) educational, vocational, and employment programs, (c) drug treatment, and (d) treatment for sex offenders.” Brandon Welsh et al., *Bulletin 6: Changing Lives: Prevention and*

*Intervention to Reduce Serious Offending* (Study Group on the Transitions between Juvenile Delinquency and Adult Crime) (July 2013) (published by DOJ), <https://www.ncjrs.gov/pdffiles1/nij/grants/242936.pdf>.

“Overall, the meta-analyses of interventions with juvenile and adult offenders show a great deal of similarity with regard to effects on reoffending rates. For both groups, sanctions and incarceration appear to have essentially negligible or slightly undesirable effects and therapeutically oriented programs have generally desirable effects.” *Id.* at 29 (sex offenders).

Furthermore, a recent study in the United Kingdom suggests that a number of alternative interventions for young adult offenders (ages 18-24), including restorative justice conferencing, can produce substantial financial savings to society compared to standard criminal justice system practices (Barrow Cadbury Trust, 2009).” *Id.* at 36.

“Young adults comprise a disproportionately high percentage of arrests and prison admissions, and about half of all young adults return to prison within three years following release. At the Office of Justice Programs (OJP), we see the opportunity to reduce future criminal activity — and consequently the number of future victims — by having a justice system that appropriately responds to criminal behavior, helps young adults rebuild their lives, and is not overly reliant on incarceration.” Vincent Schiraldi, Bruce Western, and Kendra Bradner, *Community-Based Responses to Justice-Involved Young Adults* 1 (Sept. 2015), <https://www.ncjrs.gov/pdffiles1/nij/248900.pdf>.

A brief discussing grants given under the Second Chance Act discusses “research that shows that targeting people who have a medium to high risk of reoffending and tailoring services to meet certain needs has the greatest impact on lowering rates of recidivism.” Council of State Governments Justice Center, *Reentry Matters: Strategies and Successes of Second Chance Act Grantees* (Nov. 2018).

“[F]actors that influence a person’s criminal behavior – including characteristics and circumstances such as thinking patterns, substance addictions, or peer groups – also influence their likelihood of reoffending and determine their reentry needs.” *Id.* at 3 (including education and employment, housing, substance addictions and mental illness, and family support).

Reentry programs should also “account for characteristics such as the age, race, ethnicity, gender, or geographic location of a target population.” *Id.* at 12.

A *50-State Report on Public Safety* emphasizes the need to “[p]rovide people on supervision with the resources they need to succeed. Supervision alone is

insufficient to reduce recidivism for people who are at a high risk of reoffending. People also need to participate in treatment and programs that can help reduce recidivism, create pathways to employment, and support stable housing to be successful on supervision.” Council of State Governments Justice Center, <https://50statespublicsafety.us/part-2/strategy-4/>. Four action items are suggested to “provide people on supervision with the resources they need to succeed.” *Id.*

Action item 1: Use programming and treatment that works to reduce recidivism, <https://50statespublicsafety.us/part-2/strategy-4/action-item-1/>

Action Item 2: “Ensure sufficient availability of treatment and programs.... Because individual needs vary substantially, a one-size-fits-all approach to providing treatment and supports is not effective and can be a poor use of critical resources,” <https://50statespublicsafety.us/part-2/strategy-4/action-item-2/>

Action Item 3: Reduce barriers to employment.  
<https://50statespublicsafety.us/part-2/strategy-4/action-item-3/>

Action Item 4: Reduce barriers to housing: “Lack of stable housing complicates reentry for people leaving prisons or jails and can increase the risk of recidivism. Without a stable place to live, people leaving prison or jail have difficulty staying connected to mental health or substance addiction treatment or complying with terms of supervision.”  
<https://50statespublicsafety.us/part-2/strategy-4/action-item-4/>

“Debate persists as to the amount of influence criminal history should have in determining the severity of imposed legal sanction for a criminal offense. One position maintains that the punishment for repeat and first-time offenders convicted for the same type of offense should be similar, whereas an alternative viewpoint argues that the state should sanction repeat offenders more harshly. We contribute to this discourse by investigating whether the amount of weight given to an offender’s prior criminal record in sentencing affects the likelihood of repeat offending. Although initial findings showed that a substantive negative bivariate relationship existed at the county level between the weight-accorded prior criminal record in sentencing and repeat offending, this association disappeared in a more sophisticated nonlinear multilevel analysis. Our findings suggest that sanctioning repeat offenders more harshly than first-time offenders for similar offenses has little effect on attenuating repeat offending once other factors are controlled.” Stewart J. D’Alessio & Lisa Stolzenberg, *Should Repeat Offenders Be Punished More Severely for Their Crimes*, 30 Crim. J. Policy Review 731 (2019).

“Increasing the severity of punishment does little to deter crime..... More severe punishments do not ‘chasten’ individuals convicted of crimes, and prisons may exacerbate recidivism.” Nat’l Instit. of Justice, *Five Things About Deterrence*, <https://nij.gov/five-things/pages/deterrence.aspx>

Extrinsic religiosity decreases risk of reconviction for persons convicted of a sexual offense. “For persons convicted of a nonsexual offense, a one-unit increase in the extrinsic religiosity score was associated with 3.4% higher odds of reconviction ( $p = .016$ ) and a 2.3% higher rate of reoffending ( $p = .019$ ). Conversely, among persons convicted of a sexual offense, an increase in extrinsic religiosity was associated with 8.5% lower odds of reconviction ( $p = .024$ ) and a 5.4% lower rate of reconviction ( $p = .050$ ). Other findings of interest reveal a higher self-responsibility score among persons with a prior sex offense is associated with a higher likelihood of reconviction ( $p = .028$ ) and a higher rate of reoffending ( $p = .017$ ), suggesting that individual problem solving without the support and cooperation of the faith community and God was associated with an increased risk among this group. Given the small sample size for the supplementary analysis, results should be considered conservative and preliminary only. Nevertheless, this adds weight to the argument that external support is critically important for individuals convicted of a sexual offense.” Richard Stansfield et al., *Comparing Recidivism of Sexual and Nonsexual Offenders: The Role of Humanist, Spiritual, and Religious Involvement*, Sexual Abuse 14-16 (2019)

There is a marginal deterrent effect for prosecution, no effect for conviction, and a large escalation effect among incarcerated offenders in intimate partner violence cases. Joel H. Garner, Christopher D. Maxwell, and Jina Lee, *The Specific Deterrent Effects of Criminal Sanctions for Intimate Partner Violence: A Meta-Analysis*, 111 J. Crim. L. & Criminology 227, 254-261 (2021). <https://scholarlycommons.law.northwestern.edu/jclc/vol111/iss1/4/>.

### C. Drug Problems

A comparison of publicly available data from law enforcement, correction and health agencies found “no statistically significant relationship between state drug offender imprisonment rates and three measures of state drug problems: rates of illicit drug use, drug overdose deaths, and drug arrests.” PEW Charitable Trusts, *Letter to the Honorable Chris Christie, The Lack of a Relationship between Drug Imprisonment and Drug Problems* (June 19, 2017), <https://www.pewtrusts.org/~media/assets/2017/06/the-lack-of-a-relationship-between-drug-imprisonment-and-drug-problems.pdf>. See also PEW Charitable Trusts, *More Imprisonment Does Not Reduce State Drug Problems* (Mar. 2018) (Data show no relationship between prison terms and drug misuse), [https://www.pewtrusts.org/~media/assets/2018/03/pspp\\_more\\_imprisonment\\_does\\_not\\_reduce\\_state\\_drug\\_problems.pdf](https://www.pewtrusts.org/~media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf) ; Scott Lindquist, *Barry Law Review Student Article: Addict First, Criminal*

*Second – Addiction Fueled Crimes Should be Ineligible for the Three-Strike Penalty*, 14 Barry L. Rev. 137, 140 (2010)

<https://lawpublications.barry.edu/cgi/viewcontent.cgi?article=1032&context=barrylr> [ev](#) (“incapacitation is successful only in the sense that addicts [...] are forcibly kept off the streets and kept from taking drugs. Incapacitation short of a life sentence only delays the underlying forces of addiction. Addicts are not cured nor deterred by imprisonment. The only solution for addiction is treatment.”).

#### **D. Immigration**

“The analysis presented in this report shows that, contrary to DHS’s premise, there is no evidence to support the conclusion that Operation Streamline succeeded in deterring unauthorized border crossings, nor that it had any effect whatsoever on immigrants’ decisions to come to the United States. Operation Streamline did, however, have serious negative consequences for the federal criminal justice system, as well as for tens of thousands of immigrants.” Michael Corradini et al, *Operation Streamline: No Evidence that Criminal Prosecution Deters Migration* (June 2018), [https://vera-institute.files.svdcdn.com/production/downloads/publications/operation\\_streamline-report.pdf](https://vera-institute.files.svdcdn.com/production/downloads/publications/operation_streamline-report.pdf).

“Punitive border policies do not deter people who are fleeing violence or seeking to reunite with their families, populations making up the vast majority of those facing prosecution. In 2020, NIJC conducted a survey of people facing immigration-related prosecutions and found that more than 80 percent of those interviewed had family members in the U.S. with whom they were trying to reunite. Thirty-three percent were trying to reunite with their children. These findings are consistent with previous studies, including the 2015 Migrant Border Crossing Study discussed above and a 2015 U.S. Sentencing Commission report which determined that nearly 50 percent of people sentenced for unlawful reentry had at least one child living in the U.S.” See Jesse Franzblau, National Immigrant Justice Center, *Five Ways That Immigration Prosecutions are Ineffective and Deadly* (July 19, 2022), <https://immigrantjustice.org/staff/blog/five-ways-immigration-prosecutions-are-ineffective-and-deadly>; see also National Immigrant Justice Center, Report: A Legacy of Injustice: The U.S. Criminalization of Migration (July 20, 2020), <https://immigrantjustice.org/research-items/report-legacy-injustice-us-criminalization-migration>

Research strongly suggests that entry-related prosecutions do not deter future migration; rather, migration to the United States is driven primarily by factors such as the security situation and economic conditions in a migrant’s home country and whether or not a migrant has family in the United States. This is the case with recent migration from Central American countries, which is driven in large part by high levels of violence in El Salvador and Honduras. Shifts in the economies of the United States and Mexico play a large role in migration trends as well. American

Immigration Counsel, *Prosecuting People for Coming to the United States* (Aug. 23, 2021), <https://www.americanimmigrationcouncil.org/research/immigration-prosecutions>

## II. Non-custodial Sentences

“Community corrections has been shown to be effective in reducing future criminal activity by 10 to 30%.” National Institute of Corrections, *Myths and Facts: Why Incarceration is Not the Best Way to Keep Communities Safe* 6 (2016), <https://s3.amazonaws.com/static.nicic.gov/Library/032698.pdf>.

A research study of convicted felons in Florida “found that across most comparisons, tougher sanctioning was consistently and positively associated with recidivism.” Joshua Cochran et al., *Assessing the Effectiveness of Correctional Sanctions*, 30 J. of Quant. Criminology 317, 342 (2013). The report concluded that “community sanctions, including jail, that provide access to the community and links to a variety of potential supports, may be more effective than prison in reducing recidivism because they may better allow both for more punishment and for more rehabilitation.” *Id.* at 343.

Drug courts “are effective in reducing future offending and drug use recidivism for adults, but not for juveniles.” Campbell Collaboration, *Drug Courts: More Effective in Reducing Drug Use and Reoffending in Adults than Juveniles*, <https://www.campbellcollaboration.org/review/drug-courts-effects-on-criminal-offending/>

## III. Increased Rates of Incarceration and the Crime Decline

According to an FBI year-end statistics report on crime, 2023 shows a record drop in murder and declines in most other offenses, leaving the national violent crime rate just above record lows. Brennan Center for Justice, *Violent Crime Is Falling Nationwide — Here’s How We Know* (Sept. 2024), <https://www.brennancenter.org/our-work/analysis-opinion/violent-crime-falling-nationwide-heres-how-we-know>

“Incarceration has been declining in effectiveness as a crime control tactic since before 1980. Since 2000, the effect of increasing incarceration on the crime rate has been essentially zero. Increased incarceration accounted for approximately 6 percent of the reduction in property crime in the 1990s (this could vary statistically from 0 to 12 percent), and accounted for *less than 1 percent* of the decline in property crime this century. Increased incarceration has had no effect on the drop in violent crime in the past 24 years. In fact, large states such as California, Michigan, New Jersey, New York, and Texas have all reduced their prison populations while crime has continued to fall.” Brennan Center for Justice, *What Caused the Crime Decline?* 15 (Feb. 2015), <https://www.brennancenter.org/our-work/research-reports/what-caused-crime-decline>.



“[I]ncreased incarceration had some effect on reducing crime since 1990 – however, far lower than previously thought and becoming almost zero in the 2000s. Other factors that played a role in the crime decline were increased numbers of police officers, deploying data-driven policing techniques such as CompStat, changes in income, decreased alcohol consumption, and an aging population. A review of past research indicated that consumer confidence and inflation also played a role.” *Id.* at 10.

“[C]rime trends are complicated. Surely no one is complaining about the recent decline, but no one fully understands it either. One thing is becoming clear: Increased incarceration’s role was minimal.” Oliver Roeder, *The Prisoner’s Dilemma*, FiveThirtyEight (Feb. 12, 2015), <https://fivethirtyeight.com/features/the-imprisoners-dilemma/>

“[I]t is no longer reasonable to even hypothesize that crime patterns can be explained in terms of punishment policies or imprisonment rates.” Michael Tonry, *Why Crime Rates Are Falling throughout the Western World* 53, 43 Crime & Justice, 2014, Minnesota Legal Studies Research Paper No. 14-41 (Oct. 2014), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2520500](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2520500).

States that reduced their imprisonment rate between 2010 and 2015 saw a greater average decline in their crime rates (14 percent) than states that increased imprisonment during those years (8 percent average crime rate). Pew Charitable Trusts, *State Reforms Reverse Decades of Incarceration Growth* 9 (2017), [https://www.pewtrusts.org/-/media/assets/2017/03/state\\_reforms\\_reverse\\_decades\\_of\\_incarceration\\_growth.pdf](https://www.pewtrusts.org/-/media/assets/2017/03/state_reforms_reverse_decades_of_incarceration_growth.pdf).

The federal system is out of step with most states; most states have worked to reduce reliance on incarceration. “[B]etween 2007 and 2013, many states made research-driven policy changes to control prison growth, reduce recidivism, and contain costs. While the federal imprisonment rate continued to rise during that period, the state rate declined.” Pew Charitable Trusts, *Growth in Federal Prison System Exceeds States’* 1 (Jan. 2015), <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2015/01/growth-in-federal-prison-system-exceeds-states>.

“The latest data, released Jan. 9 by the federal Bureau of Justice Statistics, show that trends in crime and imprisonment continue to be unrelated:

Across the 45 states with crime declines from 2008-16, imprisonment rate changes ranged from a 35 percent decrease to a 14 percent increase.  
35 states cut crime and imprisonment rates simultaneously.  
21 states posted double-digit declines in both rates.

The average crime decline across the 10 states with the greatest declines in

imprisonment was 19 percent, and across the 10 states with the largest imprisonment growth it was 11 percent.” Pew Charitable Trusts, *National Prison Rate Continues to Decline Amid Sentencing, Re-Entry Reforms* 1 (Jan. 2018), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/16/national-prison-rate-continues-to-decline-amid-sentencing-re-entry-reforms>.

A larger and much more powerful explanation “for the drop in crime rates is a ‘drop in interest rates’ and, in particular long-term interest rates.” James Austin & Gregory Squires, *The “Startling” Link Between Low Interest Rates and Low Crime*, *The Crime Report* (Dec. 12, 2016), [http://www.antoniocasella.eu/nume/Austin-Squires\\_6dec16.pdf](http://www.antoniocasella.eu/nume/Austin-Squires_6dec16.pdf).

“Job loss or the expectation of a long spell of unemployment can lead some people to abuse drugs and alcohol, commit theft, burglary, robbery or worse. Social scientists from various disciplines have long reported that when unemployment rates rise in a community a host of social problems are exacerbated.” *Id.*

#### IV. Public Opinion on Sentences

“Most victims of violence want violence prevention, not incarceration. [H]arsh sentences don’t deter violent crime, and many victims understand that incarceration can make people more of a public safety risk. National survey data show that most victims support violence prevention, social investment, and alternatives to incarceration that address the root causes of crime, not more investment in carceral systems that cause more harm. This suggests that they care more about the health and safety of their communities than they do about retribution. Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2024* (Mar. 14, 2024), <https://www.prisonpolicy.org/reports/pie2024.html>. See also Alliance for Safety and Justice, *Crime Survivors Speak 2022: National Survey of Victims’ Views on Safety and Justice 6* (2022), <https://allianceforsafetyandjustice.org/wp-content/uploads/2022/09/Alliance-for-Safety-and-Justice-Crime-Survivors-Speak-September-2022.pdf>

“The Guidelines and congressionally directed ranges are significantly harsher than community sentiment recommends.” Judge James S. Gwin, *Juror Sentiment on Just Punishment: Do the Federal Sentencing Guidelines Reflect Community Values?* 4 *Harv. L. & Pol’y Rev.* 173, 195 (2010).

“A strong majority, even among victims, believes prison is not always the best response to non-violent crime.” Public Opinion Strategies & The Mellman Group, *Public Opinion on Sentencing and Corrections Policy in America 2* (2012), [https://www.pewtrusts.org/-/media/assets/2012/03/30/pew\\_nationalsurveyresearchpaper\\_final.pdf](https://www.pewtrusts.org/-/media/assets/2012/03/30/pew_nationalsurveyresearchpaper_final.pdf).

“A national survey by the Pew Research Center finds that 67% of Americans say that the government should focus more on providing treatment for those who use illegal drugs such as heroin and cocaine. Just 26% think the government’s focus should be on prosecuting users of such hard drugs.” Pew Research Center, *America’s New Drug Policy Landscape* 1 (Apr. 2014), [America’s New Drug Policy Landscape | Pew Research Center](#)

“Crime victims do not want new victims and support rehabilitation, perhaps even more so than the general public.” National Institute of Corrections, *Myths and Facts: Why Incarceration is Not the Best Way to Keep Communities Safe* 8 (2016), <https://s3.amazonaws.com/static.nicic.gov/Library/032698.pdf>.

“A majority of the American public favors alternatives to incarceration. Eighty-seven percent of respondents in one national survey indicated they would be more likely to support alternatives to incarceration for non-violent justice-involved individuals (40% when it comes to a violent crime) if research consistently showed there are ways other than incarceration to reduce the likelihood that they will commit new crimes (National Institute of Corrections [NIC], n.d.). A review of more than 50 public opinion research studies conducted since 2000 demonstrates growing and broad support for alternatives to incarceration, rehabilitation, and treatment (Opportunity Agenda, 2014). Eighty-four percent of respondents from one study support alternatives to prison (such as drug treatment, community service, or probation) for nonviolent offenses (Lake, Gotoff, & Pultorak, 2013).” National Institute of Corrections, *Myths and Facts: Why Incarceration is Not the Best Way to Keep Communities Safe* 8 (2016), <https://s3.amazonaws.com/static.nicic.gov/Library/032698.pdf>.

“Voters Across the Political Spectrum Strongly Support Criminal Justice Reform.” Sixty-nine percent of persons responding to bipartisan polling supported the view that “[t]here are more effective, less expensive alternatives to prison for nonviolent offenders, and expanding those alternatives is the best way to reduce the crime rate.” Seventy-eight percent found it acceptable that “instead of mandatory minimums, judges have the flexibility to determine sentences based on the facts of each case.” Pew Charitable Trusts, *State Reforms Reverse Decades of Incarceration Growth* 11 (2017). <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/03/state-reforms-reverse-decades-of-incarceration-growth>. .

“The most significant finding [of a Robina Institute study] is that in the eyes of the public, older prior convictions carry less weight than more recent priors: the public was less punitive when the prior crime was older. In addition, there was substantial public support for look-back limits on counting prior convictions. Two-thirds of respondents were in favour of a policy that restricted judges from considering old offenses, and of those, three quarters believed the time limit should be set at ten years or less.” Julian Roberts, *Public Attitudes Regarding Look-Back-Limits: Findings from New Robina Institute Research*,

<https://robinainstitute.umn.edu/articles/public-attitudes-regarding-look-back-limits-findings-new-robinainstitute-research>

“Perhaps to the surprise of some, victims overwhelmingly prefer criminal justice approaches that prioritize rehabilitation over punishment and strongly prefer investments in crime prevention and treatment to more spending on prisons and jails.” Alliance for Safety and Justice, *Crime Survivors Speak: The First Ever National Survey of Victim’s Views on Safety and Justice* 4 (2016), <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>

“By a 2 to 1 margin, victims prefer that the criminal justice system focus more on rehabilitating people who commit crimes rather than punishing them.” *Id.* at 5.

“6 in 10 victims prefer shorter prison sentences and more spending on prevention and rehabilitation to prison sentences that keep people incarcerated for as long as possible.” *Id.*

“By a margin of 4 to 1, victims prefer increased investments in drug treatment over more investments in prisons and jails.” *Id.*

“By a margin of 2 to 1, victims prefer increased investments in community supervision, such as probation and parole, over more investments in prisons and jails.” *Id.*

“By a margin of nearly 3 to 1, victims believe that prison makes people more likely to commit crimes than to rehabilitate them.” *Id.*

“By a margin of 7 to 1, victims prefer increased investments in mental health treatment over more investments in prisons and jails.” *Id.*

“By a margin of 10 to 1, victims prefer increased investments in job creation over more investments in prisons and jails.” *Id.*

“Serious doubts about our system of mass incarceration emerge in a nationally representative survey, even in more politically conservative, rural parts of the country. Indeed, in an era of broad speculation about a growing urban-rural divide, there is general consensus between rural America, small cities and major metropolitan areas that our system of criminal justice is not working and communities should focus on priorities other than spending millions on prisons and jails.” Greenberg Quinlan Rosner Research, *The Evolving Landscape of Crime and Incarceration* (Apr. 2018), <https://storage.googleapis.com/vera-web-assets/inline-downloads/iob-poll-results-summary.pdf>

“Americans fundamentally believe our current criminal justice system is

not living up to its promise of producing safer communities. A 67 percent majority agree, ‘building more jails and prisons to keep more people in jail does not reduce crime,’ including 61 percent of rural Americans.” *Id.*

“Nearly half (49 percent) believe, ‘Too many people are in jail for the wrong reasons,’ which represents a fairly stunning indictment of our local justice systems. Doubts about the criminal justice system are articulated most vividly in terms of race and class. A 47 percent plurality disagree with the statement, ‘Local judges are fair to all people, regardless of background,’ including 63 percent of African Americans. A 55 percent majority of all respondents agree with the statement, ‘Our justice system discriminates against poor people.’ This rises to 76 percent of (self-ascribed) ‘lower class’ people and 84 percent of African Americans surveyed.” *Id.* at 3.

72% of persons participating in a national survey believe that “providing rehabilitation services and training so they can re-enter society and be productive citizens” “would do more to prevent people convicted of crimes from committing further offenses once they’re released from prison.” Only 25% believed that “making prison as hard and unpleasant as possible so they are afraid of going back” would do more to prevent recidivism. Benenson Strategy Group, *ACLU National Survey* (Nov. 2017), [https://www.aclu.org/wp-content/uploads/publications/aclu\\_campaign\\_for\\_smart\\_justice\\_polling\\_memo\\_2.pdf](https://www.aclu.org/wp-content/uploads/publications/aclu_campaign_for_smart_justice_polling_memo_2.pdf)

## V. Collateral Consequences

### A. Resources

1. “The Collateral Consequences Resource Center is a non-profit organization established in 2014 to promote public discussion of the collateral consequences of conviction, the legal restrictions and social stigma that burden people with a criminal record long after their court-imposed sentence has been served.” <http://ccresourcecenter.org/>
2. The National Inventory of Collateral Consequences of Conviction is part of the National Reentry Resource Center, a project funded by the U.S. Department of Justice, Bureau of Justice Assistance. <https://niccc.nationalreentryresourcecenter.org/>.

## B. Effects of Incarceration

Collateral consequences, [including]...family separation, unemployment and loss of income, loss of immigration status and deportation, housing, loss of access to public benefits, loss of access to higher education, long-term surveillance, loss of civil rights, etc., compound the damage of an interaction with the legal system. These life-altering consequences position the legal system as a source of perpetual punishment that denies individuals and communities the stability they need to thrive. Sam McCann, *How “Collateral Consequences” Keep People Trapped in the Legal System*, Vera Institute (Nov. 29, 2023), <https://www.vera.org/news/how-collateral-consequences-keep-people-trapped-in-the-legal-system>

“It is well established that the detrimental effects of incarceration extend into many areas of social life (Wakefield and Uggen 2010). Incarceration limits future employment prospects and earnings (Western and Pettit 2005; Western 2006; Pettit 2012), blocks political participation (Manza and Uggen 2006), and can lead to physical and mental health issues for former offenders (Schnittker, Massoglia, and Uggen 2011). These far-reaching effects have led some to characterize incarceration as a criminal credential or absorbing status that results in continuing disadvantage for former prisoners (Pager 2003, 2007). The consequences of incarceration spread beyond the formerly incarcerated as well. Incarceration increases material hardship and familial stress, exacerbates marital instability by straining family ties, and is associated with a variety of adverse outcomes for children (Wildeman and Muller 2012).” Bryan Sykes & Michelle Maroto, *A Wealth of Inequalities: Mass Incarceration, Employment, and Racial Disparities in U.S. Household Wealth*, 1996 to 2011, 2 Russell Sage Foundation J. of Soc. Sciences 129 (2016), <https://www.rsfsjournal.org/content/rsfjss/2/6/129.full.pdf>

Black households with an incarcerated member experience a sharper decline in wealth than white households. *Id.* at 8.

“Post-traumatic stress disorder, or PTSD, has been found by researchers to be more common in male inmates than in the general population. Using data collected from a survey, the researchers found that being incarcerated nearly doubles the risk that a man will suffer from this devastating condition.” Promises Behavioral Health, *Prisoners at Higher Risk for PTSD* (Oct. 2017), <https://www.promisesbehavioralhealth.com/trauma-ptsd/prisoners-higher-risk-ptsd/>

“African American men who had been incarcerated were two times as likely as those who had never been to prison to have PTSD. Thirteen percent of the men with PTSD had been in prison, while less than 8% who had never been incarcerated struggled with the disorder.” *Id.*

“Understanding the connection between PTSD and incarceration is



important for several reasons. Knowing that men in prison are at greater risk for the disorder provides experts and healthcare professionals a chance to intervene, prevent and treat prisoners. PTSD is a devastating and life-changing disorder when left untreated. It is associated with unemployment, suicide, domestic violence, assaults, substance abuse and other mental health issues. However, there are good and effective treatment options for PTSD, and if these treatments can be given to the most vulnerable populations, many people will have better outcomes.” *Id.*

### **C. Homelessness**

“It’s hard to imagine building a successful life without a place to call home, but this basic necessity is often out of reach for formerly incarcerated people. Barriers to employment, combined with explicit discrimination, have created a little-discussed housing crisis. In this report, we provide the first estimate of homelessness among the 5 million formerly incarcerated people living in the United States, finding that formerly incarcerated people are almost 10 times more likely to be homeless than the general public. We break down this data by race, gender, age and other demographics; we also show how many formerly incarcerated people are forced to live in places like hotels or motels, just one step from homelessness itself.” Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, Prison Policy Initiative (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html>.

“People caught in cycles of incarceration and homelessness are not all alike; they have different pathways to those experiences as well as a range of needs. But housing is one special factor that can stabilize multiple aspects of a person’s life at once. Available research strongly suggests that for most people, providing housing quickly, for as long as possible, with few conditions and as much choice and support as possible, is a practical way to improve people’s conditions, making it easier for them to manage other parts of their lives. The impact housing has on quality of life and a person’s relationships, attitudes, and sense of control are also key to reducing a person’s likelihood of arrest and incarceration, use of emergency services, and experience of other life crises.” Brian Nam-Sonenstein, *Seeking Shelter from Mass Incarceration: Fighting Criminalization with Housing First*, Prison Policy Initiative (Sept. 11, 2023), <https://www.prisonpolicy.org/blog/2023/09/11/housing-first/>

### **VI. Monetary Penalties**

“Excessive fees and fines needlessly enmesh poor people in the criminal justice system by spawning arrests, court proceedings, periods of incarceration, and other modes of supervision for those who lack the ability to pay. Criminal justice debt also contributes to mass incarceration by destabilizing people living at the economic margins and by impeding reentry of formerly incarcerated people who face impossible economic burdens, leading to cycles of poverty and imprisonment . . .



And because race intersects with class, with Black and Latino families disproportionately facing poverty, fees and fines that impose special hardships on impoverished individuals and communities will reinforce racially unequal outcomes.” Criminal Justice Policy Program, Harvard Law School, *Confronting Criminal Justice Debt: A Guide for Policy Reform* 1 (2016).

“Criminal justice debt, and the elaborate enforcement machinery often used to collect it, can have spiraling consequences for the most economically marginalized individuals. In some instances, enforcement of these obligations has the paradoxical effect of constraining an individual’s ability to earn a living, thus undercutting the person’s ability to pay court costs while ensnaring her and her family in a cycle of poverty and indebtedness.” *Id.* at 5.

“For those who cannot afford it, the accumulation of fines and fees associated with infractions, traffic tickets and criminal convictions can initiate and perpetuate a cycle of poverty. The impartiality, fairness and equality of the justice system are called into question when punishment can be determined by financial status.” National Conference of State Legislatures, Brief: Assessing Fines and Fees in the Criminal Justice System (Jan. 20, 2020), <https://www.ncsl.org/civil-and-criminal-justice/assessing-fines-and-fees-in-the-criminal-justice-system>.

## VII. Age

“Recent neurological research shows that brain development for adolescents continues well into young adulthood, and the decision-making capacity of young adults shares much with the impulsiveness of younger teenagers. Moreover, the transition from childhood to adulthood has slowed in some respects and has become more challenging, particularly for young disadvantaged men. New research on young adult development and historical changes in the transition to adulthood motivate a new, community-based strategy for young adults in the criminal justice system.” Vincent Schiraldi, Bruce Western, and Kendra Bradner, *Community-Based Responses to Justice-Involved Young Adults* 3 (Sept. 2015), <https://www.ojp.gov/pdffiles1/nij/248900.pdf>

“In addition, justice-involved youth and young adults have a higher likelihood of parental incarceration poverty, foster care, substance abuse, mental health needs and learning disabilities, all of which have been linked to impeding psychosocial maturity.<sup>2</sup> Moffitt (2006) linked life-course persistent offending to harsh parenting practices, low IQ, hyperactivity, rejection at school and reinforcement of poor behavior. If young adults have a history of involvement with the juvenile justice system, there is a higher likelihood that they may be developmentally delayed or have untreated mental health needs (Sampson and Laub, 1997.” *Id.* at 4.

“Studies suggest that incarceration worsens these disadvantages, creating additional barriers to educational attainment, stable employment, housing, health care and relationships. The multiple disadvantages that these young people face suggest that correctional programming, both in secure facilities and in the community, must include more robust options than skills training alone. Young adults must also build the prosocial skills to succeed in adult roles — exercising impulse control, emotional self-regulation, and better interpreting others’ intentions — in addition to the technical skills of their work (Chung, Little and Steinberg, 2005).” *Id.* at 8.

“[T]here is a growing recognition that people may not gain full reasoning skills and abilities until they reach age 25 on average.” USSC, *Youthful Offenders in the Federal System, Fiscal Years 2010 to 2015* (2017), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170525\\_youthful-offenders.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170525_youthful-offenders.pdf)

The “Age-Crime Curve”: “It is well established that antisocial and criminal activity increases during adolescence, peaks around age 17 (with the peak somewhat earlier for property than for violent crime), and declines as individuals enter adulthood.” Gary Sweeten et al., *Age and the Explanation of Crime Revisited*, 42 J. Youth & Adolescence 921 (2013).

“Multiple studies show that the vast majority of adolescents who commit anti-social or criminal acts desist from such activity as they mature into adulthood and that only a small percentage—between five percent and ten percent, according to most studies—become chronic offenders.” USSC, *Report of the Tribal Issues Advisory Group* 30 (2016), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/20160606\\_TIAG-Report.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/20160606_TIAG-Report.pdf)

The “age-crime curve” applies across offense type. See Melissa Kearney et al., The Hamilton Project, *Ten Economic Facts about Crime and Incarceration in the United States* 6 (2014) (“55 percent of offenders committing crimes against persons (such as assault and sex offenses) were ages eleven to thirty. For crimes against property (such as larceny-theft and vandalism) and crimes against society (including drug offenses and weapon law violations), 63 percent and 66 percent of offenders, respectively, were individuals in the eleven-to-thirty age group.”), [https://www.brookings.edu/wp-content/uploads/2016/06/v8\\_thp\\_10crimefacts.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/v8_thp_10crimefacts.pdf)

Sexual criminal behavior declines with age. “Among male sex offenders, decreased rates of sexual offending may be a result of reduced sexual drive related to age-related disease and decreases in testosterone (Barbaree & Blanchard, 2008; Hanson, 2002). As well, low self-control and impulsivity are related to risk of sexual and other types of criminal recidivism, and as individuals age, self-control increases and impulsivity decreases (Gottfredson & Hirschi, 1990; Hanson, 2002; Prentky, Knight, Lee, & Cerce, 1995).” Michael Lasher & Robert McGrath,

*Desistance from Sexual and Other Violent Offending Among Child Sexual Abusers*, 20 Crim. Justice & Behav. 1 (2016).

Recidivism rates decline with age. See USSC, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, Ex. 9 (2004), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405\\_Recidivism\\_Criminal\\_History.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405_Recidivism_Criminal_History.pdf)

The Office of the Inspector General reviewed the criminal history of a random sample of aging inmates “who were released from BOP custody between FY 2006 and FY 2010” and found that only 15 percent “were re-arrested for new crimes within 3 years of their release,” and that “the re-arrest of aging inmates within [the] sample generally declined with age. For example, 34 of 181 released inmates (19 percent) age 50 to 54 were re-arrested for a new crime compared to no re-arrests for released inmates age 70 and older.” Office of Inspector General, U.S. Dept. of Justice, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, 39 (May 2015), <https://oig.justice.gov/reports/2015/e1505.pdf>.

“Research shows that many interventions are effective, not all persons follow the trajectory of the aggregate age-crime curve, turning points divert individuals from paths of persistent offending, offenders can be responsive to changes in local life circumstances, and ‘maturing out’ is something that happens across the lifespan for different reasons at different ages. For public policy this is a promising story, as one need not simply wait for age to have its effect, but can pursue strategies to accelerate desistance from crime.” Gary Sweeten et al., *Age and the Explanation of Crime Revisited*, 42 J. Youth & Adolescence 921 (2013).

Factors that may help a person desist from crime include reduced exposure to antisocial peers, stability in home life, less victimization or witnessing violence, meaningful social relationships, community supervision, and improved impulse control. *Id.*

A report by the Office of the Inspector General found that “aging inmates are more costly to incarcerate than their younger counterparts due to increased medical needs. [The OIG] further found that limited institution staff and inadequate staff training affect the BOP’s ability to address the needs of aging inmates. The physical infrastructure of BOP institutions also limits the availability of appropriate housing for aging inmates. Further, the BOP does not provide programming opportunities designed specifically to meet the needs of aging inmates.” Office of Inspector General, U.S. Dept. of Justice, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons* i (May 2015), <https://oig.justice.gov/reports/2015/e1505.pdf>

“[A]ging inmates experience delays receiving medical care.” For example, at one institution the OIG found that “the average wait time for inmates,

including aging inmates, to be seen by an outside medical specialist for cardiology, neurosurgery, pulmonology, and urology to be 114 days.” *Id.* at 18.

“All inmates are expected to perform activities of daily living, including dressing, cleaning their cells, and moving around within the institution. However, staff told [the OIG] that aging inmates often cannot perform these activities on their own because of their medical conditions and staff is not responsible for ensuring inmates can accomplish these activities.” *Id.* at 19.

“[W]hile Social Workers are uniquely qualified to address the release preparation needs of aging inmates, such as aftercare planning and ensuring continuity of medical care, the BOP, which employs over 39,000 people, has only 36 Social Workers nationwide for all of its institutions.” *Id.* at ii.

“Institution staff is not adequately trained to identify the signs of aging, which mistakenly can be viewed as reflecting disciplinary issues rather than a need for medical or mental healthcare.” *Id.* at 22.

“Lower bunks are limited due to the overcrowding of BOP institutions.” *Id.* at

24. “[T]he lack of lower bunks may prevent or delay aging inmates from receiving lower bunks.” *Id.*

“Overcrowding also limits the BOP’s ability to move aging inmates to the institutions that best address their medical needs.” *Id.* at 25.

“There are no programs, and limited activities, specifically designed or appropriate for aging inmates.” *Id.* at 31.

“The BOP does not address the specific release needs of aging inmates.” *Id.* at 35.

“The people who become elderly during incarceration face real stresses .....They’ve typically lost the vast majority of their social network..... Their biological age is typically much higher than their chronological age; they typically look a decade older. They are at greater risk for chronic impairment, for depression and for a sense of hopelessness or a sense of suicidal thinking.” Elderly inmates also have a heightened risk of mental illness. The Crime Report, Katti Gray, *America’s Aging – and Mentally At-Risk—Prisoners* (Nov. 2016),

<http://thecrimereport.org/2016/11/07/americas-aging-and-at-risk-prisoners/>

“Older people in jail can have depression, cognitive impairment, a history of trauma and abuse. And on top of that, they may fear of being victimized because they are older, frailer. For example, we’ve much concern that if [inmates] cannot hear [prison guards’] instructions they may be written up

for violating a rule.” *Id.*

“New research documents significant disparities in the life spans of Americans depending on where they live. And those gaps appear to be widening, according to the research. In counties with the longest life spans, people tended to live about 87 years, while people in places with the shortest life spans typically made it to only about 67, the researchers found. The U.S. counties with the longest life expectancy are communities that are well-off and more highly educated. Counties with the shortest life expectancy tend to have communities that are poorer and less educated.” Rob Stein, *Life Expectancy Can Vary By 20 Years Depending On Where You Live*, <http://www.npr.org/sections/health-shots/2017/05/08/527103885/life-expectancy-can-vary-by-20-years-depending-on-where-you-live> (the site provides an interactive map).

“For the most part, older offenders [50 years or older] showed low base rates of sexual recidivism regardless of the risk band into which they fell.” Terry Nicholaichuk et al., *Age, Actuarial Risk, and Long-Term Recidivism in a National Sample of Sex Offenders*, 26 *Sexual Abuse: A Journal of Research and Treatment* 406 (2014).

This study examined rapists, extrafamilial child molesters, and intrafamilial child molesters (incest). It found “very few recidivists among the sexual offenders released after age 60 (5 of 131 or 3.8%). The older-than-60 recidivists included two extrafamilial child molesters (2 of 45 or 4.4%) and three unclassified offenders (3 of 37 or 8.1%). None of the incest offenders ( $n = 39$ ) or rapists ( $n = 10$ ) released after age 60 recidivated. The oldest recidivist in the sample was released at age 72 and was reconvicted for a sexual offense the following year.” Karl Hanson, *Recidivism and Age: Follow-Up Data from 4,673 Sexual Offenders*, 17 *J. of Interpersonal Violence* 1046, 1054 (2002).

“[A]ge at release was found to be associated with sexual recidivism, with offenders above the age of 50 reoffending at a very low rate.” Looman & Jeffrey Abracen, *Comparison of Measures of Risk for Recidivism in Sexual Offenders*, 25 *J. of Interpersonal Violence* 781, 803 (2010).

“The initial five-year recidivism rate for persons 50 or older at the time of release were significantly lower than those under 50. After 5 years, the risk of recidivism for all individuals was low.”

	Sample Size at Start of Follow-up	Initial 5-Year Recidivism Rate (Years 1-5)		Relative Rate After 5 Years Offense-Free (Years 6-10)		Relative Rate After 10 Years Offense-Free (Years 11-15)	
		%	(n)	Risk Ratio	(n)	Risk Ratio	(n)
Complete sample	7,740	10.1	(4,735)	0.46	(1,847)	0.28	(755)
Risk level (Static-99R scores)							
Low (scores of -3 to -1)	890	2.2	(601)	0.44	(234)	0.78	(88)
Moderate (scores of 0 to 4)	4,858	6.7	(3,081)	0.59	(1,175)	0.36	(496)
High (scores of 5+)	1,992	22.0	(1,053)	0.39	(438)	0.19	(171)
Age at release							
Immature (18 to 30 years)	1,818	13.74	(1,130)	0.46	(524)	0.31	(260)
Young (30 to 50 years)	4,434	10.07	(2,719)	0.44	(1,051)	0.21	(411)
Prime of life (50+ years)	1,488	5.44	(866)	0.52	(272)	0.31	(84)

Karl Hanson et al., *High-Risk Sex Offenders May Not Be High Risk Forever*, 29 J. of Interpersonal Violence 2792, 2797 (2014).

Aging inmates (those over age 55) suffer a “decline in physical and cognitive abilities.” Shawna Wolfe, *Aging in Correctional Facilities: Challenges, Programs, and Service Adaptations*, 7 PURE Insights (2018), <https://core.ac.uk/download/pdf/228830133.pdf>

“Depression, mood disorders, and dementia are common among older inmates.” *Id.* (citation omitted).

“In addition to cognitive changes, many inmates face physical challenges during incarceration. Physiologically, inmates are older than their actual age and may experience significant physical ailments usually associated with much older individuals. Health issues such as hypertension, heart problems, diabetes, emphysema, arthritis, and cancer (Aday, 2005) are common in the older inmate population, are presented earlier than in the general population, and inmates are more likely to experience one or more chronic conditions than their non-incarcerated counterparts in the United States (Williams, et al. 2006).” *Id.*

## VIII. Females

The most recent year for which national data were available, two-thirds of women in prison and 68% of women in jail were diagnosed with a mental health disorder, compared to just over a third (35%) of men in prison and 41% of men in jail. Women are twice as likely as men to be identified as experiencing serious psychological distress, and are three times as likely to be diagnosed with PTSD. Women are also more likely than their male counterparts to be identified as having “serious mental illness.” Council on Criminal Justice, *Women’s Justice: A Preliminary Assessment of Women in the Criminal Justice System* (July 2024), <https://counciloncj.org/womens-justice-a-preliminary-assessment-of-women-in-the-criminal-justice-system/>



Lesbian, gay, and bisexual women are overrepresented in the criminal justice system and are far more likely than their heterosexual counterparts to report sexual victimization during confinement. *Id.*

Women have specific health-related needs that prisons and jails struggle to address, ranging from the provision of menstruation supplies to pregnancy and menopausal care and the treatment of women's higher reported rates of mental health and substance use disorders. *Id.*

An Inspector General 's review of BOP's management of female inmates found that "BOP's Approach to Managing Female Inmates Has Not Been Strategic, Resulting in Weaknesses in Its Ability to Meet Their Specific Needs." Office of Inspector General, U.S. Dept. of Justice, *Review of the Federal Bureau of Prisons' Management of Its Female Inmate Population 11* (2018), <https://oig.justice.gov/reports/2018/e1805.pdf>

It concluded: "BOP has not been strategic in its management of female inmates. At the Central Office level, we found that BOP only recently took initial steps to implement oversight of the Female Offender Manual. We also found that BOP may not have allocated sufficient resources to the Women and Special Populations Branch to fulfill its complete range of responsibilities with regard to female inmates and that it has not ensured that BOP decision makers understand how female inmates' needs differ from those of male inmates. At the institution level, we identified deficiencies in how BOP staffs its trauma treatment program makes staff and inmates aware of its pregnancy programs, distributes feminine hygiene products, and staffs' correctional posts where female inmates are searched. Finally, we found that BOP's conversion of FCI Danbury from a female to a male institution negatively affected female inmates transferred to MDC Brooklyn. For BOP to be fully effective at appropriately managing female inmates, we believe that it must take a holistic approach at the Central Office level to identify and address issues affecting this population." *Id.* at 43.

"Using data from a stratified random sample of all incarcerated women in Oklahoma (N = 334), we explore the relationships between ACEs, PTSD symptomology, and adult IPV utilizing a feminist life course theoretical framework. Results indicate that PTSD symptomology fully mediates the relationship between ACEs and adult IPV, suggesting that PTSD may be central to understanding pathways to adult IPV as well as offending and incarceration for women." Melissa Jones et al., *Childhood Adversity and Intimate Partner Violence in Adulthood: The Mediating Influence of PTSD in a Sample of Women Prisoners*, J. of Interpersonal Violence 1 (2019).

"Childhood abuse may push girls to a life on the street to escape their abusive environment. While on the streets, they may come into contact with other delinquent peers, get involved with criminogenic men, are exposed to drugs, and further victimization (Daly, 1992; Owen, 1998).



Women who develop PTSD symptoms in response to ACEs and subsequent adult IPV may use drugs or act out violently against an abusive intimate partner to try to alleviate symptoms of PTSD as well as cope with adult IPV (Jones et al., 2018b; Salisbury & Van Voorhis, 2009). For example, Jones and colleagues (2018b) found in their study of women prisoners that PTSD symptoms significantly mediated the relationship between adult IPV experiences and reporting heavily illicit drug use.” *Id.* at 19.

## IX. Child Abuse & Neglect

“Child abuse and neglect appear to influence the course of development by altering many elements of biological, cognitive, psychosocial, and behavioral development; in other words, child abuse and neglect ‘get under the skin’ to have a profound and often lasting impact on development. Brain development is affected, as is the ability to make decisions as carefully as one’s peers, or executive functioning; the ability to regulate physiology, behavior, and emotion is impaired; and the trajectory toward more problematic outcomes is impacted.” Institute of Medicine & National Research Council, *New Directions in Child Abuse and Neglect Research* 154-55 (Anne Peterson et al. eds., 2013),

<http://24.97.153.110/files/New%20Directions%20in%20Child%20Abuse%20and%20Neglect%20Research%20Petersen%20et%20al%202014.pdf>

“Psychologically maltreated youth exhibited equivalent or greater baseline levels of behavioral problems, symptoms, and disorders compared with physically or sexually abused youth on most indicators.” Joseph Spinazzola, et al., *Unseen Wounds: The Contribution of Psychological Maltreatment to Child and Adolescent Mental Health and Risk Outcomes*, 6 Psych. Trauma: Theory, Research, Practice, and Policy 1 (2014),

[https://www.researchgate.net/publication/268505997\\_Unseen\\_Wounds\\_The\\_Contribution\\_of\\_Psychological\\_Maltreatment\\_to\\_Child\\_and\\_Adolescent\\_Mental\\_Health\\_and\\_Risk\\_Outcomes](https://www.researchgate.net/publication/268505997_Unseen_Wounds_The_Contribution_of_Psychological_Maltreatment_to_Child_and_Adolescent_Mental_Health_and_Risk_Outcomes).

Psychological maltreatment is a “a repeated pattern of caregiver behavior or a serious incident that transmits to the child that s/he is worthless, flawed, unloved, unwanted, endangered, or only of value in meeting another’s needs.” *Id.* at 19.

“Psychological maltreatment has emerged as a significant predictor of a broad range of negative youth outcomes. Youth with histories of psychological maltreatment exhibit elevated rates of inattention, aggression, noncompliance, hyperactivity, conduct problems and delinquency (Caples & Barrera, 2006; Hart, Brassard, & Karlson, 1996; Manly, Kim, Rogosch, & Cicchetti, 2001). This type of abuse has also been linked to internalizing symptoms, including anxiety, depression, post- traumatic stress disorder, suicidality and low self-esteem (McGee,

et al., 1997; Stone, 1993; Wolfe & McGee, 1994).” Joseph Spinazzola et al., *Unseen Wounds*, American Psychological Ass’n, <https://www.apa.org/monitor/2015/07-08/ce-corner>

“The more children are spanked, the more likely they are to defy their parents and to experience increased anti-social behavior, aggression, mental health problems and cognitive difficulties, according to a new meta-analysis of 50 years of research on spanking by experts at the University of Texas at Austin and the University of Michigan.” Science Daily, *Risks of Harm from Spanking Confirmed by Analysis of 5 Decades of Research*, <https://www.sciencedaily.com/releases/2016/04/160425143106.htm>. See also Elizabeth Gershoff & Andrew Grogan-Kaylor, *Spanking and Child Outcomes: Old Controversies and New Meta-Analyses*, 30 J. of Family Psychology (online publication April 7, 2016), [https://www.researchgate.net/publication/299992592\\_Spanking\\_and\\_Child\\_Outcomes\\_Old\\_Controversies\\_and\\_New\\_Meta-Analyses](https://www.researchgate.net/publication/299992592_Spanking_and_Child_Outcomes_Old_Controversies_and_New_Meta-Analyses).

Physical, sexual, and emotional abuse; risky influences from partners and peers; and poor educational attainment have been linked to arrests, convictions, and incarceration for adults. “Educational attainment predicted a higher likelihood of desistence relative to chronic offending.” Todd Herronkohl et al., *Effects of Child Maltreatment, Cumulative Victimization Experiences, and Proximal Life Stress on Adult Crime and Antisocial Behavior* (2017) (study funded by U.S. DOJ), <https://www.ojp.gov/pdffiles1/nij/grants/250506.pdf>.

## **X. Childhood Bullying**

“[B]eing bullied [by peers] has similar and in some cases worse long-term adverse effects on young adults’ mental health than being maltreated [by adults].” Suzet Lereya, et al., *Adult Mental Health Consequences of Peer Bullying and Maltreatment in Childhood: Two Cohorts in Two Countries*, *Lancet Psychiatry* (Apr. 28, 2015), <https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366%2815%2900165-0/fulltext>

“Individuals who were bullied in childhood were more likely to have poorer physical and psychological health and cognitive functioning at age 50.” Kings College London, *Impact of Childhood Bullying Still Evident After 40 Years*, Science Daily (Apr. 17, 2014), <https://www.kcl.ac.uk/archive/news/ioppn/records/2014/april/impact-of-childhood-bullying-still-evident-after-40-years>

## **XI. Childhood Trauma and Early Life Stress**

Childhood trauma could be mistaken for ADHD. Rebecca Ruiz, *How Childhood Trauma Could Be Mistaken for ADHD*, Atlantic (July 7, 2014),

<https://www.theatlantic.com/health/archive/2014/07/how-childhood-trauma-could-be-mistaken-for-adhd/373328/>.

“Inattentive, hyperactive, and impulsive behavior may in fact mirror the effects of adversity, and many pediatricians, psychiatrists, and psychologists don’t know how – and don’t have time – to tell the difference.” *Id.*

“[C]hronic, toxic stress like poverty, neglect and physical abuse — can have lasting negative impacts. A team of researchers recently showed these kinds of stressors, experienced in early life, might be changing the parts of developing children’s brains responsible for learning, memory and the processing of stress and emotion.” University of Wisconsin-Madison, *Early Life Stress Can Leave Lasting Impacts on the Brain*, Science Daily (June 27, 2014), <https://www.sciencedaily.com/releases/2014/06/140627133107.htm>

Childhood instability (e.g., stress, poor relationships with parents and nurturing adults, unstable routines and home environments, poor access to food, housing, education, health care, and other resources, lack of family and community support) negatively impacts childhood development and undermines outcomes. Gina Adams, et al., Urban Institute, *Stabilizing Children’s Lives: Insights for Research and Action* (Dec. 5, 2016), <https://www.urban.org/urban-wire/stabilizing-childrens-lives-insights-research-and-action>

“Criminal thinking styles were examined as mediational links between different forms of child maltreatment (i.e., sexual abuse, physical abuse, and physical neglect) and adult criminal behaviors in 338 recently adjudicated men. Analyses revealed positive associations between child sexual abuse and sexual offenses as an adult, and between child physical abuse/neglect and endorsing proactive and reactive criminal thinking styles. Mediation analyses showed that associations between overall maltreatment history and adult criminal behaviors were accounted for by general criminal thinking styles and both proactive and reactive criminal thinking. These findings suggest a potential psychological pathway to criminal behavior associated with child maltreatment. Limitations of the study as well as research and clinical implications of the results are discussed.” LE Cuadra et al., *Child Maltreatment and Adult Criminal Behavior: Does Criminal Thinking Explain the Association*, 38 Child Abuse Negl. 1399 (2014).

“Childhood residential mobility is associated with multiple long-term adverse outcomes (violent offending, attempted suicide, substance misuse, and unnatural death). Although frequent residential mobility could be a marker for familial psychosocial difficulties, the elevated risks were observed across the socioeconomic spectrum, and mobility may be intrinsically harmful.” Roger Webb et al., *Adverse Outcomes to Early Middle Age Linked with Childhood Residential Mobility*, 51 Am. J. Prev. Med. 291, 298 (2016), <https://pmc.ncbi.nlm.nih.gov/articles/PMC4982753/>

“Evidence has accumulated that young people in America are witnesses to considerable violence at home and in the community. This study is the first to examine the association between witnessing community violence and criminal behavior in a representative sample of young adults.... The results indicate that recent exposure to violence in the community along with a history of receiving traumatic news, direct victimizations in the community, recent life events, and associations with criminal peers increase the risk for young adult criminal offending.” David Eitle & R. Jay Turner, *The Effects of Witnessing Violence, Traumatic Victimization, and Other Stressful Life Events*, 39 J. of Research in Crime & Delinquency 214 (2002).

“Promoting healthy adolescent brain development for young people in foster care requires special understanding of how the experience of foster care affects a child’s development and how factors such as racism and discrimination compound trauma and chronic stress while limiting access to the opportunities and rewarding experiences adolescents need to thrive.” The Annie Casey Foundation, *The Road to Adulthood, Aligning Child Welfare Practice with Adolescent Brain Development* 12-13 (2017), <http://www.aecf.org/m/resourcedoc/aecf-theroadtoadulthood-2017.pdf>.

“At the same time young people in foster care are poised to take on new challenges, many of them are dealing with the continuing effects of adverse childhood experiences, trauma and ‘ambiguous loss’ The experience of childhood adversity and trauma must be managed throughout life. While young people may have received intervention and support to cope with an issue at one point, the same issue may resurface in a different form as they hit a new stage of development.” *Id.* at 13.

Psychosocial deprivation during childhood, e.g. family neglect, “children left behind by parents who migrated to another country to look for work children who are orphaned or abandoned by their parents and then reared in institutions,” “can lead to a host of both short-and long-term consequences, including perturbations in brain structure and function, changes at cellular and molecular levels, and a plethora of psychological and behavioral impairments.” Charles Nelson et al., *How Early Experience Shapes Human Development: The Case of Psychosocial Deprivation*, Hindawi Neural Plasticity (2019), <https://onlinelibrary.wiley.com/doi/10.1155/2019/1676285>

“Children exposed to institutional care often suffer from ‘structural neglect’ which may include minimum physical resources, unfavorable and unstable staffing patterns, and social-emotionally inadequate caregiver-child interactions. This chapter is devoted to the analysis of the ill effects of early institutional experiences on resident children’s development. Delays in the important areas of physical, hormonal, cognitive, and emotional development are discussed. The evidence for and against the existence of a distinctive set of co-occurring developmental

problems in institutionalized children is weighed and found to not yet convincingly demonstrate a ‘postinstitutional syndrome’. Finally, shared and non-shared features of the institutional environment and specific genetic, temperamental, and physical characteristics of the individual child are examined that might make a crucial difference in whether early institutional rearing leaves irreversible scars. Children exposed to institutional care do not receive the type of nurturing and stimulating environment needed for normal growth and healthy psychological development.

Marinus H. van IJzendoorn et al., *Children in Institutional Care: Delayed Development and Resilience*, *Monographs of the Society for Research in Child Development* (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4130248/>

“This study examined the mediating role of the six Difficulties with Emotion Regulation Scale (DERS) subscales in the relation between adverse childhood experiences (ACEs) and adult psychological distress in a clinical sample of adults receiving psychological treatment at a community-based mental health clinic. In the first part of the study, we found (a) a direct association between childhood adversity and adult psychological distress and (b) the DERS total score mediated this relation. In addition, the DERS subscales differentially mediated this relation. Specifically, the Non acceptance of Emotional Responses, Impulse Control Difficulties, and Lack of Access to Emotion Regulation Strategies significantly affected psychological distress in adulthood. In the second part of the study, the moderating role of the level of exposure to ACEs in the abovementioned relation was analyzed. For individuals with low ACE scores, the relation between ACEs and adult psychological distress was mediated by four of the six DERS subscales (Nonacceptance of Emotional Responses, Difficulty Engaging in Goal-Directed Behavior, Impulse Control Difficulties, and Limited Access to Emotion Regulation Strategies). For individuals with high ACE scores, none of the DERS subscales significantly moderated the relation between ACEs and psychological distress. These findings suggest that how each dimension of emotional regulation contributes to distress among a marginalized urban population is a function of the level of trauma exposure. These data offer an important guidepost for clarifying impeding regulatory difficulties to target for future intervention work.” Sasha Rudenstine et al., *Adverse Childhood Events, Adult Distress, and the Role of Emotion Regulation*, *Traumatology*. Advance online publication (2018), [https://www.researchgate.net/publication/328180575\\_Adverse\\_Childhood\\_Events\\_Adult\\_Distress\\_and\\_the\\_Role\\_of\\_Emotion\\_Regulation](https://www.researchgate.net/publication/328180575_Adverse_Childhood_Events_Adult_Distress_and_the_Role_of_Emotion_Regulation)

The failure of the juvenile justice system to have diversion programs to address trauma may explain a client’s recidivism. “Although research has linked mental health symptoms and prior victimization to recidivism for youth on probation or in detention, little attention has been given to these risk factors for early system-involved youth. We conducted a survival/hazard model to estimate the impact of official records of abuse/neglect, crime victimization, and mental health issues (mood, anxiety, disruptive, and substance use disorders) on recidivism in a sample

of 2,792 youth in a large Midwestern diversion program. Results indicated that youth with official records of abuse/neglect, person crime victimization, and property crime victimization were more likely to recidivate sooner than those without these victimization experiences (hazard ratio: 1.37, 1.42, and 1.52, respectively). Findings from the present study also demonstrated that substance use disorder was the only mental health cluster that predicted quicker time to recidivism. As one of the earliest points of entry into the juvenile justice system, diversion programs are in a unique position to address trauma from multiple types of victimization and adapt diversion programming to be responsive to each juvenile's mental health needs. (PsycINFO Database Record (c) 2018 APA, all rights reserved)." Wylie, Lindsey E., & Rufino, Katrina A., *The Impact of Victimization and Mental Health Symptoms on Recidivism for Early System-Involved Juvenile Offenders*, 42 Law & Human Behavior 558 (2018).

"Gun violence is a serious public health concern .....Childhood DV (domestic violence) and CV (community violence) exposure were both associated with increased gun violence involvement as well as numerous gun violence risk factors . . . Childhood traumatic evince, such as DV and CV, may be important antecedent risk factors for gun violence." Rachel Wamser-Nanney et al., *Childhood Trauma Exposure and Gun Violence Risk Factors Among Victims of Gun Violence*, Psychological Trauma: Theory, Research, Practice, and Policy (2018), <http://psycnet.apa.org/doi/10.1037/tra0000410>.

"Background: Empirical research associated with the Kaiser Permanente and Centers for Disease Control and Prevention Adverse Childhood Experiences (ACE) Study has demonstrated that ACE are associated with a range of negative outcomes in adulthood, including physical and mental health disorders and aggressive behavior.

Methods: Subjects from 4 different offender groups (N = 151) who were referred for treatment at an outpatient clinic in San Diego, CA, subsequent to conviction in criminal court, completed the ACE Questionnaire. Groups (nonsexual child abusers, domestic violence offenders, sexual offenders, and stalkers) were compared on the incidence of ACE, and comparisons were made between the group offenders and a normative sample.

Results: Results indicated that the offender group reported nearly four times as many adverse events in childhood than an adult male normative sample. Eight of ten events were found at significantly higher levels among the criminal population. In addition, convicted sexual offenders and child abusers were more likely to report experiencing sexual abuse in childhood than other offender types.

Conclusions: On the basis of a review of the literature and current findings, criminal behavior can be added to the host of negative outcomes associated with scores on the ACE Questionnaire. Childhood adversity is associated with adult criminality. We suggest that to decrease criminal recidivism, treatment interventions must focus on the effects of early life experiences." James A. Reavis et al., *Adverse Childhood Experiences and Adult Criminality: How Long Must We*



*Live Before We Possess Our Own Lives?*, 17 *Permanent J.* 44 (2013).

“Children who are exposed to traumatic life events are at significant risk for developing serious and long-lasting problems across multiple areas of development. However, children are far more likely to exhibit resilience to childhood trauma when child-serving programs, institutions, and service systems understand the impact of childhood trauma, share common ways to talk and think about trauma, and thoroughly integrate effective practices and policies to address it—an approach often referred to as trauma-informed care.” Jessica Dym Bartlett & Kathryn Steber, *How to Implement Trauma-Informed Care to Build Resilience to Childhood Trauma* (2019), Child Trends, <https://www.childtrends.org/publications/how-to-implement-trauma-informed-care-to-build-resilience-to-childhood-trauma>

Childhood trauma is strongly linked to mental and physical health problems over the lifespan. It negatively impacts brain development, cognitive development, learning, social-emotional development, the ability to develop secure attachments to others, and physical health; it is also associated with a shortened lifespan...A considerable body of research demonstrates that children suffer the most severe, long-lasting, and harmful effects when trauma exposure begins early in life, takes multiple forms, is severe and pervasive, and involves harm by a parent or other primary caregiver—often referred to as complex trauma. *Id.*

Childhood trauma is more likely to lead to post-traumatic stress disorder (PTSD) than trauma that occurs in adulthood. Children exposed to several different forms of trauma are more likely to exhibit PTSD (e.g., anxiety, depression, anger, aggression, dissociation) than children with chronic exposure to a single type of trauma. *Id.*

“Childhood adversity is a common societal problem that plays an important role in shaping risk for mental health problems across the lifespan. My research has used large population-representative samples to estimate the prevalence of exposure to adversity in children. Our findings indicate that about half of all children in the United States will experience some form of adversity by the time they reach adulthood (Green et al., 2010; McLaughlin et al., 2012; McLaughlin et al., 2013). Common forms of adversity include experiences involving harm or threat of harm to the child, such as physical or sexual abuse, domestic violence, or exposure to violence in the community, and experiences that involve deprivation and social disadvantage, such as neglect, the absence or limited availability of a caregiver, poverty and insecure access to food. These types of adverse experiences are common not only in the United States, but in many countries worldwide (Kessler et al., 2010).” Katie McLaughlin, *The Long Shadow of Adverse Childhood Experiences 2*, American Psychological Ass’n (2018).

Children with high levels of exposure to adversity are more than four times



as likely to develop a mental disorder by the time they reach adulthood than children who have not experienced adversity (McLaughlin, et al., 2012).

Adverse childhood experiences are associated not only with risk for mental disorders in childhood, but confer a lasting vulnerability to psychopathology that persists into adulthood (Green, et al., 2010). *Id.*

## **XII. Childhood Psychiatric Issues**

Duke University researchers found that children with mental health problems such as depression, anxiety and/or behavioral problems were six times more likely than those with no psychiatric problems to have difficulties in adulthood. Those later struggles included addiction, early pregnancy, criminal charges, difficulty getting and keeping jobs, education failures and housing instability, the study authors said. Even children with mild or passing episodes of psychiatric problems were at increased risk. William Copeland et al., *Adult Functional Outcomes of Common Childhood Psychiatric Problems: A Prospective, Longitudinal Study*, 72 JAMA Psychiatry 72 (2015).

## **XIII. Environmental Issues**

Environmental chemicals have a significant impact on a child's brain development. "Some chemicals - lead, mercury, and organophosphate pesticides, for example have long been recognized as toxic substances that can have lasting effects on children's neurological health." ESNIA, *What Are We Doing to Our Children's Brains: Environmental Chemicals Are Wreaking Havoc to Last a Lifetime* (2015), <https://ensia.com/features/what-are-we-doing-to-our-childrens-brains>.

### **A. Lead Paint Exposure**

A house or apartment built before 1978 is highly likely to have lead paint. As the Centers for Disease Control acknowledged in 2012, there is "no safe level of lead for a child." Lead paint exposure, even in low levels, increases a child's risk of dropping out of school and becoming involved in the juvenile justice system. Lead paint poisoning can cause "lifelong learning and behavior problems." Coalition to End Childhood Lead Poisoning (CECLP), <http://www.greenandhealthyhomes.org/home-health-hazards/lead>. See Advisory Committee on Childhood Lead Poisoning Prevention of the Centers for Disease Control and Prevention, *Guidelines for Measuring Lead in Blood Using Point of Care Instruments* (2013), <https://stacks.cdc.gov/view/cdc/26446>

"The correlational association of lead with conduct problems, IQ, and ADHD is well established. Goodlad and colleagues concluded from their comprehensive meta-analysis that the association of lead with symptoms of inattention was  $r = .03$  to  $.25$  with a point estimate of  $r = .16$ . This effect holds even at low, previously safe levels. While this is a small statistical effect, small effects have large public health

consequences when exposures are widespread. The effect on ADHD and IQ results in part from lead's disruption of executive functions. While many studies in the literature and the meta-analysis by Goodlad and colleagues assayed lead levels that were higher than are now common among the US population, several studies using varying methodology from 2005 to 2015 confirmed that blood lead level was associated with ADHD even at levels in the 0.5 to 3.0 µg/dL range, after control for many covariates. If there exists a 'safe' level of lead for children, it is below the detection limit of the best mass spectroscopy instruments." Joel Nigg, *Understanding the Link Between Lead Toxicity and ADHD*, Psychiatric Times (Sept. 2016), <https://www.psychiatristimes.com/view/understanding-link-between-lead-toxicity-and-adhd>

"Lead water pipes exposed entire city populations to much higher doses of lead than have previously been studied in relation to crime. Our estimates suggest that cities' use of lead service pipes considerably increased city-level homicide rates." James J. Feigenbaum & Christopher Muller, *Lead Exposure and Violent Crime in the Early Twentieth Century*, 62 *Explorations in Economic History* 51 (2016). See also Brookings Institution, *New Evidence That Lead Exposure Increases Crime* (June 1, 2017) (citing report about extreme lead exposure in Los Angeles County, California).

## **B. Pesticide Exposure (Urban & Rural)**

"From infancy on, the children of the mothers with the highest levels of organophosphates were at the greatest risk for neurodevelopmental problems. That association was present at every stage the researchers checked in on the kids. At 6 months, they were more likely to have poorer reflexes. At 2, they were at higher risk for pervasive developmental disorder, an autism-related condition, like Asperger's, in which children have trouble connecting to others. At 5, they were more likely to be hyperactive and have trouble paying attention. At 7, they scored lower on IQ tests, by an average of seven points—the equivalent of being a half-year behind their peers." Susan Freinkel, *Warning Signs: How Pesticides Harm the Young Brain*, *The Nation* (Mar. 11, 2014), <http://www.thenation.com/article/178804/warning-signs-how-pesticides-harm-young-brain>.

Findings from studies on the effects of organophosphate pesticides on brain development are "very similar to what we learned about lead twenty-five to thirty years ago.' The lead studies found similarly subtle but important brain impacts among kids who weren't visibly sick from exposure. In addition to lower IQs, they were at higher risk for attention and behavioral problems as well as dyslexia. They had a harder time in school and were more likely to drop out. 'Further follow-up showed that at 17 or 18, they were more likely to be in trouble with the law.'" *Id.*

“Results of this study showed that higher prenatal CPF exposure, as measured in umbilical cord blood plasma, was associated with decreases in cognitive functioning on two different WISC-IV indices, in a sample of urban minority children at 7 years of age.” Virginia Rauh et al., *Seven-Year Neurodevelopmental Scores and Prenatal Exposure to Chlorpyrifos, a Common Agricultural Pesticide*, 119 *Envtl. Health Persp.* 1196, 1200 (2011).

*See generally* Environmental Health Perspective, a monthly journal of peer-reviewed research and news published with support from the National Institute of Environmental Health Sciences, National Institutes of Health, <http://ehp.niehs.nih.gov/>; Center for Environmental Research & Children’s Health, <https://cerch.berkeley.edu/publications/directory-publications> (listing Center’s publications by exposure and health effect); Columbia Center for Children’s Environmental Health, <https://www.publichealth.columbia.edu/research/centers/columbia-center-childrens-environmental-health/our-research> (listing Center’s research by exposure and health effect).

### C. Climate Change

“One of the most important issues of our time regarding human health and mental health is the impact of climate change. This situation is, of course, not about a new impending ice age but is clearly about global warming.” David A. Pollack, MD, *Climate Change and Its Impact on Mental Health* 1 (2018), <https://www.psychiatrictimes.com/view/climate-change-and-its-impacts-mental-health>

“Recent studies indicate a significant increase in suicides related directly to temperature increases as well as long-term negative impacts on cognitive functioning from exposure to air pollution. Higher rates of individual and group violence have also been associated with increases in temperature.” *Id.* at 2.

Anxiety and trauma symptoms/syndromes arise from rapid and extreme changes in one’s environment. These include conditions variously described as psychoterratic syndromes, solastalgia, eco-anxiety, and ecological grief. Many clinicians are reporting that their patients are worried about the future with particular emphasis on the geophysical and political environments. We are seeing a myriad of social, cultural, health, and economic consequences of mass migration stimulated, in part, by global environmental disruption. *Id.*

“Women in Latin America and the Caribbean are among the most food insecure people in the world, due in part to the outsized impact climate change has on them.” Teresa Welsh, *Climate Change Contributes to Food Insecurity in Latin American*

Women, <https://www.devex.com/news/climate-change-contributes-to-food-insecurity-in-latin-american-women-93522>.

#### XIV. Family Ties

Fathers who maintain relationships with children are less likely to recidivate. Solangel Maldonado, *Recidivism and Parental Engagement*, 40 Family L. Q. 191 (2006) (“The literature ... suggests that exconvicts who share close relationships with their children are less likely to recidivate than those who do not.”).

“The single best predictor of successful release from prison is whether the former inmate has a family relationship to which he can return. Studies have shown that prisoners who maintain family ties during imprisonment are less likely to violate parole or commit future crimes after their release than prisoners without such ties.” *Id.* at 196-97.

Parents with “less time to serve reported more frequent contact with their children” than those serving longer prison sentences. “About half (47%) of parents who expected to be released within six months reported at least weekly contact with their children, compared to 39% who expected to be released in 12 to 59 months, and 32% in 60 or more months.” Lauren E. Glaze & Laura M. Maruschak, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, *Parents in Prison and Their Minor Children* (2010), <https://bjs.ojp.gov/content/pub/pdf/pptmc.pdf>

The results of one recent study “strongly suggest that the experience of incarceration leads to a substantially higher divorce risk among offenders who are married when they enter prison.” Robert Apel et al., *The Impact of Imprisonment on Marriage and Divorce: A Risk Set Matching Approach*, 26 J. Quant. Crim. 269 (2009).

“In our data, by the fifth year post-release, imprisoned men have a divorce probability that is 56.8% higher than comparable, convicted but non-imprisoned men. In light of our methodological approach, we are inclined to attribute this finding to the causal effect of first-time imprisonment on divorce.” *Id.* at 291.

“Considering the (by now) well-established protective role that marriage plays in the criminal career (in the male criminal career, at least), as well as cross-national expansion in the use of incarceration as the predominant form of crime control, an important social concern is the degree to which widespread use of prison may actually backfire by worsening the life chances of offenders returning to the community after they have paid their debt to society.” *Id.* at 289.

Families are significantly impacted by incarceration. Among the findings of an extensive study are: 1) people with convictions are saddled with copious fees, fines, and debt at the same time that their economic opportunities are diminished, resulting in a lack of economic stability and mobility; 2) many families lose income when a family member is removed from household wage earning and struggle to meet basic needs while paying fees, supporting their loved one financially, and bearing the costs of keeping in touch; 3) women bear the brunt of the costs—both financial and emotional—of their loved one’s incarceration; 4) families incur large sums of debt due to their experience with incarceration; 5) despite their often-limited resources, families are the primary resource for housing, employment, and health needs of their formerly incarcerated loved ones, filling the gaps left by diminishing budgets for reentry services; 6) incarceration damages familial relationships and stability by separating people from their support systems, disrupting continuity of families, and causing lifelong health impacts that impede families from thriving; 7) the stigma, isolation, and trauma associated with incarceration have direct impacts across families and communities. Saneta deVuono-powell et al., *Who Pays, The True Cost of Incarceration on Families*. Oakland, CA: Ella Baker Center, Forward Together, Research Action Design (2015), <https://ellabakercenter.org/wp-content/uploads/2022/09/Who-Pays-exec-summary.pdf>

## XV. Poverty

“Parental socioeconomic disadvantage was, independently from pregnancy and delivery complications, associated with abnormal child neural development during the first 7 years of life.” Chin-Lun Hung, et al., *Socioeconomic Disadvantage and Neural Development from Infancy Through Early Childhood*, 44 Int. J. Epidemiology 1889 (2015). See also National Institute of Health, *Poverty May Slightly Increase Childhood Risk of Neurological Impairment: NIH Study Suggests* (2015), <https://www.nih.gov/news-events/news-releases/poverty-may-slightly-increase-childhood-risk-neurological-impairment-nih-study-suggests>

“Children in the school districts with the highest concentrations of poverty score an average of more than four grade levels below children in the richest districts. (Reliable estimates were not available for Asian-Americans.) Even more sobering, the analysis shows that the largest gaps between white children and their minority classmates emerge in some of the wealthiest communities, such as Berkeley, Calif.; Chapel Hill, N.C.; and Evanston, Ill.” Motoko Rich et al., NY Times, *Money, Race and Success: How Your School District Compares* (2016), <https://www.nytimes.com/interactive/2016/04/29/upshot/money-race-and-success-how-your-school-district-compares.html> (references a Stanford study with an interactive map showing educational attainment by school district and race).

“Young adults living in poverty face high exposure to ‘go throughs’: lived experiences of structural disadvantage and trauma with lasting implications for

educational, economic, and other life outcomes. “Nia West-Ney & Stephanie Flores, CLASP, *Everybody Got Their Go Throughs: Young Adults on the Frontlines of Mental Health* (June 2017), <https://www.clasp.org/wp-content/uploads/2022/01/Everybody-Got-Their-Go-Throughs-Young-Adults-on-the-Frontlines-of-Mental-Health.pdf>

“Young adults who experience psychological distress are more likely to be poor.” *Id.* at 6.

“Substance use is common among [poor] young adults.” *Id.* at 8.

“[T]here is a growing recognition that racism and other forms of toxic stress perpetuated systemically are forms of ongoing trauma that affect the lives of young people of color.” *Id.* at 9.

“Financial strain was particularly salient for young people with a history of contact with the criminal justice system.” *Id.*

“Focus group participants reported a range of traumatic experiences, both recent and throughout their childhoods. Perhaps most prominent in both the urban and rural context was gun violence; however, participants also reported experiences with racism and unresolved community and family trauma at alarming levels.” *Id.* at 10.

“Other ‘traumatic influences’ were ‘gang violence, cultural and socioeconomic sensitivity, bullying, homelessness, parental incarceration, untimely loss of parents and other family members, witnessing a parent’s drug addiction or domestic violence, sexual abuse, and being ‘kicked out’ by parents. Also common in the rural focus groups were descriptions of other forms of violence including physical fights, stabbings, and assaults at school and in the community.” *Id.* at 10-12.

“Focus group participants in both urban and rural settings saw community-based programs as the most effective mental health support they had experienced.” *Id.* at 12.

“One of the poorest and most densely populated countries in the hemisphere (Booth, Wade, & Walker, 2010), El Salvador is home to large numbers of economically disconnected youth who have joined some of the most violent youth gangs in the Americas. Research by the World Bank indicates the percent of youth between the ages of 15 years and 24 who neither work nor study (ni estudian ni trabajan), referred to as “ninis,” is very high in Central American countries. In fact, ninis in El Salvador account for 25% of the population (De Hoyos Navarro, Popova, & Rogers, 2016; Téllez Velasco, 2011). Lack of economic opportunities, poor governance, and chronic violence have contributed to the surge of street gangs in the last 25 years



(Cruz, 2015). Jonathan D. Rosen & Jose Miguel Cruz, *Overcoming Stigma and Discrimination: Challenges for Reinsertion of Gang Members in Developing Countries*, 62 Int'l J. of Offender Therapy and Comparative Criminology 4758, 4761 (2018).

“Discrimination also occurs because of one’s socioeconomic status. Salvadoran gang members come from extremely underprivileged backgrounds. The survey results show that 71.3% of the former and active gang members interviewed reported a monthly family income of less than US\$250, whereas 25.3% of the individuals in the survey had a family monthly household income of US\$251 to 500. Only 3.4% of the gang members surveyed reported a monthly family income of US\$501 or more.” *Id.* at 4765.

“Furthermore, not only are Salvadoran gang members from low-income neighborhoods, but they do not have educational skills. Research shows the linkages between lack of education and the cycle of poverty, often referred to as the poverty trap (Sachs et al., 2004). According to the survey, 41.6% of the gang members in this study had a middle school education, whereas 35.2% had a primary school education. Gang members, who are often drawn to the gang because of lack of economic opportunities— among other factors—will continue to face levels of discrimination because they do not possess the necessary education to compete in many jobs in the formal sector.” *Id.* at 4766.

“Emerging science indicates the inherent stress of living in poverty has the capacity to negatively impact the decision-making processes involved in problem-solving, goal-setting, and goal attainment. The prefrontal cortex of the brain – the area of the brain that is associated with many of the analytic processes necessary to solve problems, set goals, and optimally execute chosen strategies – works in tandem with the limbic system, which processes and triggers emotional reactions to environmental stimuli.” Elisabeth Babcock, *Using Brain Science to Design New Pathways Out of Poverty* 5 (2014), <https://s3.amazonaws.com/empathy-website/pdf/Research-UsingBrainScienceDesignPathwaysPoverty-0114.pdf>

## **XVI. Mentally Ill Incarcerated Individuals**

“In addition to their often untreated illness, mentally ill prisoners are more likely than other prisoners to incur disciplinary infractions and suffer punishment as a result, and they are also more likely to be victimized, including sexual victimization, in the course of their confinement.” National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 223 (Jeremy Travis et al. eds., 2014), [http://nap.edu/catalog.php?record\\_id=18613](http://nap.edu/catalog.php?record_id=18613), citing numerous studies. *See also* Bureau of Justice Statistics, Department of Justice, *Prison Rape Elimination Act of 2003-PREA Data Collection Activities, 2013* 2 (June 2013) (“Inmates with a history of mental health problems reported higher rates of sexual victimization than other inmates in 2011–12.”).

“Among state and federal prison inmates, an estimated 6.3% of those identified with serious psychological distress reported that they were sexually victimized by another inmate. In comparison, among prisoners with no indication of mental illness, 0.7% reported being victimized by another inmate.” Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12* (May 2013), <https://bjs.ojp.gov/content/pub/pdf/svpjri1112.pdf>

“[P]ersons with mental disabilities who are behind bars are at heightened risk of physical mistreatment by staff.” Human Rights Watch, *Callous and Cruel: Use of Force against Inmates with Mental Disabilities in US Jails and Prisons 2* (May 2015). “There are no national statistics on the prevalence of staff use of force against inmates in general, or inmates with mental disabilities in particular, in the more than 5,100 jails and prisons in the United States. Experts we consulted for this report said that force is used disproportionately against prisoners with mental illness.” *Id.* at 44.

“Detained juvenile offenders are hospitalized for very different reasons than the general adolescent population. Mental illness, often with comorbid substance abuse, requiring long inpatient stays, represents the major cause for hospitalization. These findings underscore the urgent need for effective, well-coordinated mental health services for youth before, during, and after detention.” “In addition, hospitalized detained youth were disproportionately black and from larger metropolitan counties.” Arash Anoshiravani, et al., *Mental Illness Drives Hospitalizations for Detained California Youth*, 57 J. of Adolescent Health 455, 457 (2015), [http://www.jahonline.org/article/S1054-139X\(15\)00222-0/pdf](http://www.jahonline.org/article/S1054-139X(15)00222-0/pdf).

“The Bureau of Prisons set higher standards for psychiatric care. But instead of helping more inmates, the agency dropped thousands from its caseload, data shows.” The Marshall Project, *Treatment Denied: The Mental Health Crisis in Federal Prisons* (2018), <https://www.themarshallproject.org/2018/11/21/treatment-denied-the-mental-health-crisis-in-federal-prisons>

## **XVII. Medical Needs of Incarcerated Individuals**

The Office of Inspector General found that “recruitment of medical professionals is one of the BOP’s greatest challenges and staffing shortages limit inmate access to medical care, result in an increased need to send inmates outside the institution for medical care, and contribute to increases in medical costs.” U.S. Dept. of Justice, Office of the Inspector General, *Review of the Federal Bureau of Prisons’ Medical Staffing Challenges* i (2016), <https://oig.justice.gov/reports/2016/e1602.pdf>

## **XVIII. Criminal Cognition**

“Three studies demonstrate that strong implicit self-criminal cognitive associations are linked to criminal behavior, even after controlling for the roles of explicit self-criminal cognition and criminal-related demographics. This research suggests that criminal cognition outside of conscious awareness or conscious control may be a cognitive marker for criminal behavior. Furthermore, it challenges the law and criminal justice policy and practice assumption that offenders know and control the causes of their behavior, thus suggesting that implicit social cognition should be considered in public discussions about criminal justice reform.” Luis M. Rivera and Bonita M. Veysey, *Implicit Self-Criminal Cognition and Its Relation to Criminal Behavior*, *Law and Human Behavior* (2018) (implicit social cognition describes a cognitive process that occurs outside of conscious awareness or control).

“In the case of justice-involved individuals, a self-affirmation can be operationalized by providing them with as many opportunities to build, strengthen, and maintain values and characteristics unrelated to criminality.” For example, Rivera and Veysey (2015) suggest that enhancing relationships with important others such as friends, parents, siblings, and children may be one important value for justice-involved individuals to focus on when seeking a successful transformation. If self-affirmation strategies are incorporated into community and correctional programs, they have the potential to attenuate implicit self-criminal cognition and help increase the chances of a successful transformation to a prosocial citizen.” *Id.* at 10.

## **XIX. Traumatic Brain Injury**

People who suffer from TBI may be more likely to recidivate sooner than those without TBI. “[R]ecent biological theories have shown disruptions in key areas of the brain posthead injury are responsible for impulse control, the regulation of emotions, and planning and judgment. TBI can lead to disruptions in executive functioning such as impulse control affecting levels of self-control, which is a consistent predictor of antisocial behavior and crime, or attachments that restrain individuals from engaging in criminal behavior), neither of which were measured in the present study. It is also possible that those with TBI become involved in the criminal justice system, not directly because of their TBI but because their social background and TBI serve as barriers to prosocial activities with family and friends. This may lead to difficulties finding sufficient employment or may lead them to self-medicate with alcohol and drugs. On reentering the community, many inmates are ill-prepared for life outside an institution and too often return to disorganized, high-crime neighborhoods lacking supports for housing, employment, social activities, and mental health and substance abuse treatment where they resume antisocial behavior patterns.” Bradley Ray & Nicholas Richardson, *Traumatic Brain Injury and Recidivism Among Returning Inmates*, 44 *Crim. J. & Behav.* 472, 482 (2017) (citations omitted). This study highlights the need for

screening for TBI and placing the person in a treatment program that can address individual needs. *Id.* at 483.

“[R]esearch indicates that criminal defendants are at very high risk for traumatic brain injuries that pre-date the instant offense and more likely than the general population to sustain traumatic brain injuries.” Stacey Wood & Bhushan Agharkar, *Traumatic Brain Injury in Criminal Litigation*, 84 UMKC Law R. 411, 413 (2015). “Individuals with a history of TBI are more likely to demonstrate impairment on measures of attention, processing speed, working memory, episodic memory, and tasks of executive functioning. These individuals are also more likely to show disinhibition, apathy, poor judgment, and limited insight into their disorder.” *Id.* at 415.

## **XX. Executive Functioning**

Deficits in executive functioning and emotion regulation increase vulnerability toward engaging in aggressive behavior. These abilities “may be valuable targets for interventions aiming to reduce aggressive behaviors.” Sarah Holley, et al., *The Relationship Between Emotion Regulation, Executive Functioning, and Aggressive Behaviors*, 32 J. of Interpersonal Violence 1692 (2017).

## **XXI. Psychological Implications of Unemployment**

A study of the influence of unemployment on personality changes found that “unemployed men and women experienced significant patterns of change in their mean-levels of agreeableness, conscientiousness, and openness, whereas re-employed individuals experienced limited change. The results indicate that unemployment has wider psychological implications than previously thought.” Christopher Boyce et al., *Personality Change Following Unemployment*, 100 J. of Applied Psychology 991 (2015), <https://www.apa.org/pubs/journals/releases/apl-a0038647.pdf>

## **XXII. Psychological Implications of Aggressive Policing**

“Living in a neighborhood with aggressive policing may affect one’s mental health, especially for men who are the primary targets of police stops. While the neighborhood stop rate exhibits inconsistent associations with psychological distress, neighborhood-level frisk and use of force proportions are linked to higher levels of non-specific psychological distress and more severe feelings of nervousness, effort, and worthlessness in aggressively surveilled neighborhoods than do women. Male residents are affected by the escalation of stop-and-frisk policing in a neighborhood. Living in a context of aggressive policing is an important risk factor for men’s mental health.” Abigail A. Sewell et al., *Living Under Surveillance: Gender, Psychological Distress, and Stop-question-and-frisk policing in New York City*, 159 Social Science & Medicine 159 (2016).

“Participants who reported more police contact also reported more trauma and anxiety symptoms, associations tied to how many stops they reported, the intrusiveness of the encounters, and their perceptions of police fairness...The intensity of respondent experiences and their associated health risks raise serious concerns, suggesting a need to reevaluate officer interactions with the public. Less invasive tactics are needed for suspects who may display mental health symptoms and to reduce any psychological harms to individuals stopped.” Amanda Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104. *Amer. J. of Public Health* 2321 (2014).

“Police killings of unarmed black Americans have adverse effects on mental health among black American adults in the general population. Programmes should be implemented to decrease the frequency of police killings and to mitigate adverse mental health effects within communities when such killings do occur.” Jacob Bar et al., *Police Killings and Their Spillover Effects on the Mental Health of Black Americans: A Population-based, Quasi-experimental Study*, 392 *The Lancet* 302 (2018), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)31130-9/abstract](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31130-9/abstract)

### XXIII. Neighborhoods

“[P]oor children who grow up in some cities and towns have sharply better odds of escaping poverty than similar poor children elsewhere.” David Leonhardt, et al., *The Importance of Place: An Atlas of Upward Mobility Shows Paths Out of Poverty*, N.Y. Times The Upshot (May 3, 2015), <https://www.nytimes.com/2015/05/04/upshot/an-atlas-of-upward-mobility-shows-paths-out-of-poverty.html>

An interactive feature allows you to focus on specific counties. *The Best and Worst Places to Grow Up: How Your Area Compares*, N.Y. Times, The Upshot (May 4, 2015), <https://www.nytimes.com/interactive/2015/05/03/upshot/the-best-and-worst-places-to-grow-up-how-your-area-compares.html>

“[N]eighborhoods matter for children’s long-term outcomes.” Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County-Level Estimates* (May 2015), <https://academic.oup.com/qje/article/133/3/1107/4850660>

“Where children grow up affects their outcomes in adulthood in proportion to the time they spend in the place.... Our results highlight that it is exposure during childhood that appears to matter most, up to the early twenties – and that at least 50% of the variation in intergenerational mobility across the U.S. reflects the causal effects of childhood exposure.” *Id.* More information is available here: <http://www.equality-of-opportunity.org>.

Data on neighborhoods is available at a number of different websites. Your local community may have specific data that is helpful to show the community in which your client lives or grew up in. *See e.g.*, [bniajfi.org](http://bniajfi.org) (information on Baltimore neighborhoods); [neighborhoodindicators.org](http://neighborhoodindicators.org) (lists 32 partners in major cities with information on specific neighborhoods); <http://www.datacenterresearch.org/> (information on Southeast Louisiana neighborhoods), <https://factfinder.census.gov> (includes census data by city, town, or zip code, including information about education, income, poverty, racial demographics, housing, and employment); <https://catalog.data.gov/organization>.

The Dep't of Medicine at the Univ. of Wisconsin has a website that ranks "neighborhoods by socioeconomic status disadvantage in a region of interest (e.g. at the state or national level). It includes factors for the theoretical domains of income, education, employment, and housing quality." A full address can be entered on the website to show how it ranks.  
<https://www.neighborhoodatlas.medicine.wisc.edu/mapping>.

#### **XXIV. Impact of Incarceration on Children, Families, and Societies**

"It is not the case that [incarcerated parents] were already disengaged from their children's lives. For example, in 2007, approximately half of parents in state prisons were the primary provider of financial support for their children—and nearly had lived with their children—prior to incarceration." Melissa Kearney et al., The Hamilton Project, *Ten Economic Facts about Crime and Incarceration in the United States* 14 (2014), [https://www.brookings.edu/wp-content/uploads/2016/06/v8\\_thp\\_10crimefacts.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/v8_thp_10crimefacts.pdf).

Children with incarcerated fathers are at risk for diminished learning capability and employment prospects into adulthood. "The best evidence produced thus far links paternal incarceration to childhood mental health and behavioral problems, problems that are strongly linked to difficulty in school, trouble finding work, and becoming involved in crime. Paternal incarceration increases behavioral problems by one third to one half a standard deviation and is global in nature, influencing both externalizing behaviors and internalizing behaviors in roughly equal measure.... Using conservative estimates and a variety of stringent modeling strategies, we show that the influence of mass incarceration has increased racial disparities in externalizing problems by up to 26% and in internalizing problems by up to 45%." Sara Wakefield & Christopher Wildeman, *Mass Imprisonment and Racial Disparities in Childhood Behavioral Problems*, 10 *Criminology & Pub. Pol'y* 793, 806 (2011).



A blog posting summarizes other information by Sara Wakefield & Christopher Wildeman, *Children of the Prison Boom: Mass Incarceration and the Future of American Inequality* (2013):

“Wakefield and Wildeman write that the five-fold increase in children with incarcerated parents that has occurred since 1980 has largely been fueled by locking up nonviolent offenders who tend to have family ties and histories of employment.”

“‘In most instances,’ Wakefield and Wildeman state, ‘the removal of a parent makes a bad situation worse.’”

“[C]hildren whose fathers have been incarcerated fare worse than similar children whose fathers have not been locked up. For instance, they have higher rates of problems with mental health and behavior.”

“[C]hildren with incarcerated parents are also more likely than similar children to end up homeless. Wakefield and Wildeman conclude that the black-white gap in childhood homelessness would have been 26 percent to 65 percent smaller had mass imprisonment never occurred.”

“[C]hildren of incarcerated fathers are more likely to die before the age of 1. ‘According to our estimates,’ the authors write, ‘the effects of parental incarceration on children’s risk of infant mortality are comparable to the effects of maternal smoking on this risk.’”

“‘The prison is not the place to solve problems that have very little to do with crime,’ Wakefield and Wildeman conclude. ‘[W]e do not therefore suggest that putting parenting programs in prison is the way to improve the lives of children with incarcerated parents.... Prisons are as ill-equipped to facilitate quality family functioning as they are at tackling serious mental illness or drug addiction.’”

Holly Kurtz, *Parental Incarceration Has Worsened Disparities Between Black, White Children*, *Education Week* (Apr. 18, 2014), <https://www.edweek.org/leadership/parental-incarceration-has-worsened-disparities-between-black-white-children/2014/04> .

“Children of incarcerated parents are more likely to experience financial hardship, residential instability, changes in caregiver arrangements, and trauma associated with the loss of a loved one, all of which may translate into short- and long-term mental and physical health issues, poor academic performance and achievement, substance abuse, and delinquency.” Akiva M. Liberman & Jocelyn Fontaine, Urban Institute, *Reducing Harms to Boys and Young Men of Color from Criminal Justice*

*System Involvement* 10 (Feb. 2015),

<https://www.urban.org/sites/default/files/publication/39551/2000095-Reducing-Harms-to-Boys-and-Young-Men-of-Color-from-Criminal-Justice-System-Involvement.pdf>.

“[P]arental incarceration leads to an array of cognitive and noncognitive outcomes known to affect children’s performance in school, and ... our criminal justice system makes an important contribution to the racial achievement gap.” Leila Morsy & Richard Rothstein, Economic Policy Institute, *Mass Incarceration and Children’s Outcomes: Criminal Justice Policy is Education Policy* (2016).

“[P]arental incarceration is consistently associated with adolescent delinquency” and is “strongly associated with aggressive behavior in both childhood and adolescence.” Raymond Swisher & Unique R. Shaw-Smith, *Paternal Incarceration and Adolescent Well-Being: Life Course Contingencies and Other Moderators*, 104 J. Crim. L. & Criminology 929, 956 (2014).

“Incarceration breaks up families, the building blocks of our communities and nation. It creates an unstable environment for kids that can have lasting effects on their development and well-being. These challenges can reverberate and multiply in their often low-income neighborhoods, especially if they live in a community where a significant number of residents, particularly men, are in or returning from jail or prison. And different obstacles emerge once parents are released and try to assume their roles as caregivers, employees and neighbors.” The Annie E. Casey Foundation, *A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families, and Communities* 1(2016),

<https://assets.aecf.org/m/resourcedoc/aecf-asharedsentence-2016.pdf>.

“This article presents research on the consequences of mass imprisonment for childhood inequality. I investigate average and race-specific effects of paternal and maternal incarceration on the risk of child homelessness, using data from the Fragile Families and Child Wellbeing Study. The results suggest that (1) recent paternal but not maternal incarceration substantially increases the risk of child homelessness, (2) effects are concentrated among African American children, and (3) increases in familial economic hardship and decreases in access to institutional support explain some of the relationship. Taken together, the findings indicate the prison boom was likely a key driver of the growing racial disparities in child homelessness, increasing black-white inequality in this risk by 65 percent since the 1970s. When coupled with the other effects of mass imprisonment on childhood inequality, these results suggest that the prison boom will likely lead to far greater black-white inequality in civic and political participation, as the children of the prison boom come of age.” Christopher Wildeman, *Parental Incarceration, Child Homelessness, and the Invisible Consequences of Mass Imprisonment* (2017) (citing to abstract),

<https://pdfs.semanticscholar.org/8fb3/325c477f4b8666ff55f9eb5e85e5125dbe75.pdf>.

“Children with incarcerated parents are nearly three times as likely to experience health conditions such as depression and anxiety. They are also more likely to have speech and other cognitive delays. These increased risks contribute to an intergenerational cycle of poverty, since any of these problems make it harder for children to succeed in school, which in turn may prevent them from graduating and/or finding a job that pays enough to support their own families—reinforcing hunger across generations.” Marylsa Gamblin, *Mass Incarceration: A Major Cause of Hunger*, 35 Briefing Paper, Bread for the World Institute (Feb. 2018), <https://www.bread.org/sites/default/files/downloads/briefing-paper-mass-incarceration-february-2018.pdf>.

“This report asks and answers the question, what is mass incarceration doing to millions of women who have loved ones behind bars? \*\* Our research concludes that mass incarceration is (1) a direct cause of significant to extreme psychological distress and trauma, and (2) a serious obstacle to the financial health and economic agency of women with incarcerated loved ones.” Gina Clayton et al., *Because She’s Powerful: The Political Isolation and Resistance of Women with Incarcerated Loved Ones*, Essie Justice Group (2018), [https://www.becauseshespowerful.org/wp-content/uploads/2018/05/Essie-Justice-Group\\_Because-Shes-Powerful-Report.pdf](https://www.becauseshespowerful.org/wp-content/uploads/2018/05/Essie-Justice-Group_Because-Shes-Powerful-Report.pdf).

A University of California-Irvine study “found significant health problems, including behavioral issues, in children of incarcerated parents and also that, for some types of health outcomes, parental incarceration can be more detrimental to a child’s well-being than divorce or the death of a parent.” Am. Sociological Ass’n, *Parental Incarceration Can Be Worse for a Child than Divorce or Death of a Parent*, Science Daily (Aug. 16, 2014), <https://www.sciencedaily.com/releases/2014/08/140816204411.htm>.

“Not only is parental criminal justice involvement experienced by millions of children, but also it can lead to negative outcomes. A growing body of research indicates that *children often experience trauma, family disruption, and loss of their primary caregiver* as a result of parental incarceration. Approximately 40 percent of children of an incarcerated parent lose a resident parent, and 20 percent of children lose their primary caregiver. As a result, they are at a heightened risk for foster care placement and permanent separation from family members. In addition, they are more likely to live in a household facing economic strain, to experience financial hardship, and to be at risk of homelessness. Losing a parent to incarceration can be particularly traumatic to a child. The children are at risk of a variety of emotional and behavioral problems, such as mental health problems, major depression, and attention disorders. Children of incarcerated parents may also have below-average academic performance and are more likely to fail or drop out of school. They may also face stigma and shame in school. Further, parental incarceration has been shown to be a risk factor for antisocial and delinquent behavior, poor mental health, drug use, school failure, unemployment, and criminal activity.” Bryce Peterson, et.al. *Children of Incarcerated Parents Framework Document: Promising*

*Practices, Challenges, and Recommendations for the Field*, Urban Institute (June 2015) (citations omitted) (emphasis original), <https://www.urban.org/sites/default/files/publication/53721/2000256-Children-of-Incarcerated-Parents-Framework-Document.pdf>.

“OBJECTIVES: We examined whether residence in neighborhoods with high levels of incarceration is associated with psychiatric morbidity among nonincarcerated community members. METHODS: We linked zip code-linked information on neighborhood prison admissions rates to individual-level data on mental health from the Detroit Neighborhood Health Study (2008-2012), a prospective probability sample of predominantly Black individuals. RESULTS: Controlling for individual- and neighborhood-level risk factors, individuals living in neighborhoods with high prison admission rates were more likely to meet criteria for a current (odds ratio [OR] = 2.9; 95% confidence interval [CI] = 1.7, 5.5) and lifetime (OR = 2.5; 95% CI = 1.4, 4.6) major depressive disorder across the 3 waves of follow-up as well as current (OR = 2.1; 95% CI = 1.0, 4.2) and lifetime (OR = 2.3; 95% CI = 1.2, 4.5) generalized anxiety disorder than were individuals living in neighborhoods with low prison admission rates. These relationships between neighborhood-level incarceration and mental health were comparable for individuals with and without a personal history of incarceration. CONCLUSIONS: Incarceration may exert collateral damage on the mental health of individuals living in high-incarceration neighborhoods, suggesting that the public mental health impact of mass incarceration extends beyond those who are incarcerated.” ML Hatezebuehler, et al., *The Collateral Damage of Mass Incarceration: Risk of Psychiatric Morbidity Among Nonincarcerated Residents of High-Incarceration Neighborhoods*, 105 Am. J. Public Health 138 (Jan. 2015) <https://pmc.ncbi.nlm.nih.gov/articles/PMC4265900/pdf/AJPH.2014.302184.pdf>.

“In this nationally representative study of young adults, we found a consistent association between the incarceration of a mother or father and suboptimal health care use and unhealthy behaviors. Our findings suggest a history of MI (mother incarceration) or FI (father incarceration) is independently associated with activities detrimental to health, including higher levels of ED (emergency department) use, obesogenic behaviors, substance use, and other high-risk behaviors. Adverse health care use patterns and more health-harming behaviors may ultimately contribute to poor health outcomes throughout the life course for young adults with a history of PI (parental incarceration).” Nia Heard-Garris et al., *Health Care Use and Health Behaviors Among Young Adults with History of Parental Incarceration*, 142 Pediatrics 1, 5 (Aug. 2018),

<https://www.cmhnetwork.org/wp-content/uploads/2018/09/Health-Care-Use-and-Health-Behaviors-Among-Young-Adults-With-History-of-Parental-Incarceration.pdf>.

“The fact that parental incarceration has become a common event in the life course of many children is troubling. Using structural equation modeling, the present study investigates how immigrant generational status [and] family socioeconomic background interact with parental incarceration to influence status attainment for Hispanic young adults. Three indicators of status attainment in young adulthood are used as outcome variables—educational attainment, wage and job quality. Results indicate that parental incarceration has a strong and negative influence on all three indicators of attained status. Most importantly, we found that parental incarceration mediates influence of immigrant generational status and family socioeconomic background on status attainment of Hispanic young adults.” Igor Ryabov, *Parental Incarceration and Social Status Attainment of Hispanic Young Adults*, *Crime & Delinquency* 1 (2019).

“Where children are born can affect their chances for a strong start in life. Babies need good health, strong families, and positive early learning experiences to foster their healthy brain development and help them realize their full potential. “State of Babies.org”, *available at* <https://stateofbabies.org> (online resource about state and national level child trends, which are relevant to client’s upbringing and impact of parental incarceration).

“Incarceration removes individuals from their families and their communities, increasing the potential for disrupted relationships, community fragmentation, and burden on service systems.” Dana DeHart et al., *The Pill Line Is Longer Than the Chow Line: The Impact of Incarceration on Prisoners and Their Families*, 98 *Prison J.* 188 (2018).

“Incarceration removes individuals from their families and their communities, increasing potential for disrupted parent–child and familial relationships, community fragmentation, and increased burden on governmental systems such as social services, mental health, schools, and juvenile justice.” *Id.*

“One of the key ways families were impacted by incarceration involved communication. This included not only decreases in quantity of communication and experiences of family conflict but also prisoners and family members holding back information in their conversations to protect one another from distress. A second major area of impact involved mental health, particularly increased stress felt by both family members and prisoners. Often, this stress was perceived as a contributor to other mental health problems such as substance abuse and depression, as well as to

physical health problems such as high blood pressure. The mental health of children in the household, including children of inmates as well as inmates' younger siblings, was also a significant concern. Incarceration also had a notable effect on family finances, including loss of income from the inmate as well as requiring a new financial head of household. Prison expenditures, including food, clothing, phone calls, and medical expenses, presented financial strain for prisoners and their family members. Beyond all of these stressors, prisoners and their families perceived little support from friends and communities, although churches were described as providing some emotional, instrumental, and material support for families." *Id.* at 207.

"Respondents whose mothers had served time in prison were significantly more likely to have an adult arrest, conviction, and incarceration, even after controlling for important demographic factors and correlates of criminal behavior.... Conclusions: Maternal incarceration had a substantial effect on the offspring's adult involvement in the criminal justice system. These findings bolster contentions regarding the unintended consequences of maternal incarceration that include long-term collateral damage to their children." Lisa R. Muftic et al., *Impact of Maternal Incarceration on the Criminal Justice Involvement of Adult Offspring: A Research Note*, 53 J. of Research in Crime & Delinquency 93 (2016).

## **XXV. Post-Traumatic Stress Disorder**

"Persons involved in the criminal justice system and those with mental disorders are at significantly higher risk of trauma exposure and development of Posttraumatic Stress Disorder (PTSD) compared with the general population. The high rates of trauma exposure among individuals involved in the criminal justice system suggest that PTSD may be an important risk factor for justice-system involvement and criminal recidivism." This is true for women, veterans, and others who either experience or witnessed violent acts. The results of this study, in combination with other research, "provide compelling evidence that PTSD deserves attention in developing interventions to reduce justice system involvement of persons with mental disorders." Naomi Sadeh & Dale McNeil, *Posttraumatic Stress Disorder Increases Risk of Criminal Recidivism Among Justice-Involved Persons with Mental Disorders*, 42 Crim. Just. & Behav. 573, 574, 583 (2015).

The National Center for Post-Traumatic Stress Disorder has a publication on how community violence causes PTSD symptoms in children and adolescents. David Foy & Carole Goguen, *Community Violence-Related PTSD in Children and Adolescents*, 9 PTSD Research Quarterly (1998),

[https://www.ptsd.va.gov/publications/ptsd\\_rq.asp](https://www.ptsd.va.gov/publications/ptsd_rq.asp).

"Childhood adversity is among the most potent risk factors for developing mood and anxiety disorders later in life." Anne Albrecht et al., *Neurobiological Consequences of Juvenile Stress: A GABAergic Perspective on Risk and Resilience*, 74 Neuroscience and Biobehavioral Reviews 21 (2017),



<https://www.sciencedirect.com/science/article/abs/pii/S0149763416305735?via%3Dihub>.

“There are elevated rates of trauma exposure, posttraumatic stress symptoms, and greater conditional risk of posttraumatic stress disorder among Latinx relative to other racial/ethnic groups. Such trauma-related health disparities serve to exacerbate or maintain acculturative and other types of stress among the Latinx population .....Overall, the current findings suggest that anxiety sensitivity may be a heretofore underrecognized individual difference factor that is related to more severe acculturative stress among trauma-exposed Latinx young adults.” Michael Zvolensky et al., *Anxiety Sensitivity and Acculturative Stress Among Trauma Exposed Latinx Young Adults*, 24 Cultural Diversity and Ethnic Minority Psychology 470 (2018).

“Prisoners are subject to various forms of trauma. Just being imprisoned is an extremely traumatic event for many prisoners, which may be responsible for precipitating PTSD following their release from detention. Other factors are interwoven into the pathogenesis of this condition, including the many risk factors that underlie the behavioral and thought patterns of many criminals. These include childhood traumas such as extreme poverty, child abuse by their parents or caregivers, experiences of neglect, physical and sexual abuse, as well as other forms of mistreatment.” Liji Thomas, *Prisoner Post Traumatic Stress* (2018), <https://www.news-medical.net/health/Prisoner-Post-Traumatic-Stress.aspx>.

## XXVI. Racial Disparity

“[N]ot only does segregation concentrate social and environmental toxins as well as poverty and other social problems, but the two types of factors can potentially amplify each other. It is not just the independent effects of lead or the independent effects of concentrated poverty that affect individual and community stress; it is their combination that makes both of them more toxic. It is the synergy between these exposures to social and environmental toxins that amplifies or widens racial health inequities.” Darla Thompson et al., *Framing the Dialogue on Race and Ethnicity to Advance Health Equity: Proceedings of a Workshop* (2016 ), <http://www.nap.edu/23576>.

“Black men tend to be stereotyped as threatening and, as a result, may be disproportionately targeted by police even when unarmed. Here, we found evidence that biased perceptions of young Black men’s physical size may play a role in this process. The results of 7 studies showed that people have a bias to perceive young Black men as bigger (taller, heavier, more muscular) and more physically threatening (stronger, more capable of harm) than young White men. Both bottom-up cues of racial prototypicality and top-down information about race supported these misperceptions. Furthermore, this racial bias persisted even among a target sample from whom upper-body strength was controlled (suggesting that racial

differences in formidability judgments are a product of bias rather than accuracy). Biased formidability judgments in turn promoted participants' justifications of hypothetical use of force against Black suspects of crime. Thus, perceivers appear to integrate multiple pieces of information to ultimately conclude that young Black men are more physically threatening than young White men, believing that they must therefore be controlled using more aggressive measures." J Wilson et al., *Racial Bias in Judgments of Physical Size and Formidability: From Size to Threat.*, J. of Personality and Social Psychology (2017), <http://dx.doi.org/10.1037/pspi0000092>.

"Contrary to popular stereotypes of African Americans, prevalence of drug-use disorders such as cocaine and hallucinogen or PCP was lowest among African Americans, followed by Hispanics, then non-Hispanic Whites. For example, nonHispanic Whites had more than 30 times the odds of having cocaine-use disorder than African Americans. These racial/ethnic differences persisted even after we controlled for the additional time that African Americans spend in correctional facilities, where access to substances is restricted. Our findings add to the growing debate about how the 'War on Drugs' has disproportionately affected African American youths and young adults." Leah Welty et al., *Health Disparities in Drug-and Alcohol-Use Disorders: A 12-Year Longitudinal Study of Youths After Detention*, 106 American J. of Public Health (2016), <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2015.303032>.

"The United States criminal justice system is the largest in the world. At yearend 2015, over 6.7 million individuals were under some form of correctional control in the United States, including 2.2 million incarcerated in federal, state, or local prisons and jails. The U.S. is a world leader in its rate of incarceration, dwarfing the rate of nearly every other nation." The Sentencing Project, *Report of the Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance: Regarding Racial Disparities in the U.S. Crim. Justice System* (Mar. 2018), <https://www.sentencingproject.org/app/uploads/2022/08/UN-Report-on-Racial-Disparities.pdf>.

"Such broad statistics mask the racial disparity that pervades the U.S. criminal justice system, and for African Americans in particular. African Americans are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, and they are more likely to experience lengthy prison sentences. African-American adults are 5.9 times as likely to be incarcerated than whites and Hispanics are 3.1 times as likely. As of 2001, one of every three black boys born in that year could expect to go to prison in his lifetime, as could one of every six Latinos—compared to one of every seventeen white boys. Racial and ethnic disparities among women are less substantial than among men but remain prevalent." *Id.*

“The source of such disparities is deeper and more systemic than explicit racial discrimination. The United States in effect operates two distinct criminal justice systems: one for wealthy people and another for poor people and people of color. The wealthy can access a vigorous adversary system replete with constitutional protections for defendants. Yet the experiences of poor and minority defendants within the criminal justice system often differ substantially from that model due to a number of factors, each of which contributes to the overrepresentation of such individuals in the system.” *Id.*

“[A]mong resilient persons the pernicious effect of short-term unemployment on psychological distress is significantly greater for blacks. Our findings, based on data from the recession that began in 2001, allow us to infer that the Great Recession had a more intense adverse mental health effect on members of the black community. Our results imply that policymakers should consider both the monetary and psychological costs of unemployment, as well as their racial implications, when formulating policy to address the effects of economic downturns.” Timothy Diette et al., *Race, Unemployment, and Mental Health in the USA: What Can We Infer About the Psychological Cost of the Great Recession Across Racial Groups?* *J of Economics, Race, and Policy* (2018), <https://link.springer.com/article/10.1007/s41996-018-0012-x> (published online).

“African Americans who experience a high degree of perceived stress in response to experiences with racial discrimination may be at greater risk for problem drinking than their peers with less perceived stress.” Isha Metzger et al., *African-American Emerging Adults’ Experiences with Racial Discrimination and Drinking Habits: The Moderating Roles of Perceived Stress*, 24 *Cultural Diversity and Ethnic Minority Psychology* 489 (2018).

## XXVII. School-to-Prison Pipeline

“Sixty years after the *Brown* decision, de facto segregation persists because of a complex web of factors rooted in our nation’s long history of discrimination. But segregation is only one of the issues faced by students of color. Increasingly, minority children are drawn into the so-called school-to-prison pipeline – the phenomenon in which draconian disciplinary policies force students out of the educational system and into the criminal justice system.” Dennis Parker, *Segregation 2.0: America’s School-to-Prison Pipeline*, MSNBC (May 17, 2014), <http://www.msnbc.com/msnbc/brown-v-board-students-criminalized>. See also New York Civil Liberties Union, *A, B, C, D, STPP: How School Discipline Feeds the School-to-Prison Pipeline* (2013), <http://www.nyclu.org/publications/report-b-c-d-stpp-how-school-discipline-feeds-school-prison-pipeline-2013>.

“Black students are suspended and expelled at a rate three times greater than white students. On average, 5% of white students are suspended, compared to 16% of black students. American Indian and Native-Alaskan students are also

disproportionately suspended and expelled, representing less than 1% of the student population but 2% of out-of-school suspensions and 3% of expulsions.” U.S. Dep’t of Educ. Office for Civil Rights, *Civil Rights Data Collection, Data Snapshot: School Discipline* 1 (Mar. 2014), [https://civilrightsdata.ed.gov/assets/downloads/2011-12\\_CRDC-School-Discipline-Snapshot.pdf](https://civilrightsdata.ed.gov/assets/downloads/2011-12_CRDC-School-Discipline-Snapshot.pdf).

Disproportionately high suspension rates for students of color begin as early as preschool. “Black children represent 18% of preschool enrollment, but 48% of preschool children receiving more than one out-of-school suspension; in comparison, white students represent 43% of preschool enrollment but 26% of preschool children receiving more than one out of school suspension.” *Id.*

“Black students represent 16% of student enrollment, 27% of students referred to law enforcement, and 31% of students subjected to a school-related arrest. In comparison, white students represent 51% of students enrolled, 41% of referrals to law enforcement, and 39% of those subjected to school-related arrests.” *Id.* at 6.

“When controlling for campus and individual student characteristics, the data revealed that a student who was suspended or expelled for a discretionary violation was nearly three times as likely to be in contact with the juvenile justice system the following year.” Tony Fabelo et al., Council for State Governments Justice Center & Public Policy Research Institute, *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement* xii (2011), <https://csgjusticecenter.org/publications/breaking-schools-rules/>.

“Black, Latino, American Indian and Native-Alaskan students attend schools with higher concentrations of first-year teachers at a higher rate (3 to 4%) than white students (1%).” U.S. Dep’t of Educ. Office for Civil Rights, *Civil Rights Data Collection, Data Snapshot: Teacher Equity* 1 (Mar. 2014), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/crdc-teacher-equity-snapshot.pdf>.

For data on education indicators, searchable by city and state, see Annie E. Casey Foundation, Kids Count Data Center, <http://datacenter.kidscount.org/data#USA/2/8/10,11,12,13,14,15>.

“[T]here is evidence that the presence of school resource officers increases arrests and court referrals for low-level issues that would otherwise have been handled informally by schools.” Akiva M. Liberman & Jocelyn Fontaine, Urban Institute, *Reducing Harms to Boys and Young Men of Color from Criminal Justice System Involvement* 10 (Feb. 2015), <https://www.urban.org/sites/default/files/publication/39551/2000095-Reducing->

[Harms-to-Boys-and-Young-Men-of-Color-from-Criminal-Justice-System-Involvement.pdf](#) (citing C. Na and D.C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, J. Qtly. 30 (2013)). See also Libby Nelson & Dara Lind, *The School-to-Prison Pipeline, Explained*, Vox (Feb. 24, 2015), <http://www.vox.com/2015/2/24/8101289/school-discipline-race>.

Although the rate of youth committed to juvenile facilities fell by 47 percent between 2001 and 2013, racial and ethnic disparities grew nationally, but not in all states. The Sentencing Project, *Racial Disparities in Youth Commitments and Arrests* (2016), <https://www.sentencingproject.org/reports/racial-disparities-in-youth-commitments-and-arrests/>.

“Black students, boys, and students with disabilities were disproportionately disciplined (e.g., suspensions and expulsions) in K-12 public schools, according to GAO’s analysis of Department of Education (Education) national civil rights data for school year 2013-14, the most recent available. These disparities were widespread and persisted regardless of the type of disciplinary action, level of school poverty, or type of public school attended. For example, Black students accounted for 15.5 percent of all public school students, but represented about 39 percent of students suspended from school—an overrepresentation of about 23 percentage points.” U.S. Gov’t Accountability Office, *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities* 12 (March 2018), <https://www.gao.gov/assets/700/690828.pdf>.

“Research has shown that students who are suspended from school lose important instructional time, are less likely to graduate on time, and are more likely to repeat a grade, drop out of school, and become involved in the juvenile justice system. The effects of certain discipline events, such as dropping out, can linger throughout an individual’s lifetime and lead to individual and societal costs.” *Id.* at 1.

“The issue of who gets disciplined and why is complex. Studies we reviewed suggest that implicit bias—stereotypes or unconscious associations about people—on the part of teachers and staff may cause them to judge students’ behaviors differently based on the students’ race and sex.” *Id.* at 4.

“Students with disabilities represented approximately 12 percent of all public school students, and accounted for nearly 25 percent or more of students referred to law enforcement, arrested for a school-related incident, or suspended from school (an overrepresentation of roughly 15.5 percentage points for referrals to law enforcement and school-related arrests, and 13 percentage points for out-of-school suspensions). Further, our analysis of discipline for students with disabilities by both race and sex showed that Black students with disabilities and boys with disabilities were



disproportionately disciplined across all six actions.” *Id.* at 16.

The regression model GAO used “showed that increases in the percentage of low-income students in a school were generally associated with significantly higher rates for each of the six disciplinary actions GAO reviewed (in-school and out-of-school suspensions, referrals to law enforcement, expulsions, corporal punishment, and school related arrests).” *Id.* at 18.

“Black students in the United States are subject to disciplinary action at rates much higher than their white counterparts. These disciplinary actions put students at higher risk for negative life outcomes, including involvement in the criminal justice system. Using federal data covering over 32 million students at nearly 96,000 schools, our research demonstrates that the disciplinary gap between black and white students across five types of disciplinary actions is associated with county-level rates of racial bias. Our work emphasizes the need for policy targeting racial disparities in education and psychological bias.” Travis Riddle and Stacey Sinclair, *Racial Disparities in School-based Disciplinary Actions Are Associated with County-level Rates of Racial Bias*, Nat’l Academy of Sciences (April 2019), <https://www.pnas.org/content/116/17/8255>.

## **XXVIII. Mental and Substance Use Disorders**

The National Institute of Drug Abuse has supported research on drug abuse treatment for persons involved in the criminal justice system. “[I]t is a matter of public health and safety to make drug abuse treatment a key component of the criminal justice system. Indeed, addressing the treatment needs of substance abusing offenders is critical to reducing overall crime and other drug-related societal burdens, such as lost job productivity and family disintegration.” Nat’l Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide* 9 (2014) [https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice\\_0.pdf](https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf).

“Mental and substance use disorders are prevalent among the most highly stigmatized health conditions in the United States.” National Academies of Sciences, Engineering, and Medicine, *Ending Discrimination Against People with Mental and Substance Use Disorders: The Evidence for Stigma Change* 17 (2016), <https://nap.nationalacademies.org/catalog/23442/ending-discrimination-against-people-with-mental-and-substance-use-disorders>.

“Mental illness and a history of substance misuse remain barriers to full participation in society in areas as basic as education, housing, and employment.” *Id.* at 18.



“People with mental and substance use disorders are overrepresented in the criminal justice system, which is both a consequence and a source of stigma.” *Id.* at 5.

“Mental illness, drug addiction, neighborhood poverty, and school dropouts are factors that increase the risk of involvement with the criminal justice system. Blacks and Hispanics are disproportionately affected by disparities in the system, from arrest through parole release, which have a substantial cumulative effect on their rates of incarceration.” *Id.* at 27.

“[I]nstitutional policies that treat substance use disorders primarily as a criminal issue (e.g., the U.S. war on drugs) rather than a health concern have promoted a stigmatizing environment that excludes and marginalizes people with substance use disorders. Antidrug messages and harsh criminal sentences for drug use appear to label people with these disorders as unwanted by society). Thus the social processes designed to control substance misuse may actually promote its continuation by increasing shame and deepen the public and structural stigmatization of this population.” *Id.* at 48.

“Adverse childhood experiences, such as abuse and neglect, but also single parenthood and divorce as well as parental substance abuse increase the risk of substance abuse in adulthood. These risk factors often accumulate in children that enter the child welfare system.” Annika von Borczyskowski et al., *Alcohol and Drug Abuse Among Adults Who Grew Up in Substitute Care – Findings from a Swedish National Cohort Study*, 35 *Children and Youth Services Review* 1954 (2013) <https://www.sciencedirect.com/science/article/pii/S0190740913003125?via%3Dihub>.

Research shows an association between adverse childhood experiences and lifetime mental and substance use disorders among those age 50+. Choi, et.al., *Association of Adverse Experiences with Lifetime Mental and Substance Use Disorders Among Men and Women Aged 50+ Years*, 29 *Int'l Psychogeriatrics* 359 (2017).

“Previous research shows strong correlations between adverse childhood experiences (ACE) and later life health. The current study examines the relationship between ACEs and substance use among older adults living in public housing. Results show that about one-third of participants had four or more ACEs, and ACE score predicted likelihood of substance use history. Over half of older adults with four or more ACEs experienced substance abuse in their lifetime compared to one out of ten older adults with less than four ACEs.” Larkin, et.al., *Adverse Childhood Experiences and Substance Use History Among Vulnerable Older Adults Living in Public Housing*, 60 *J. of Gerontological Social Work* 428 (Aug. 2017).

“A growing literature documents deleterious consequences of incarceration for mental health. Although salient, incarceration is only one form of criminal justice contact and, accordingly, focusing on incarceration may mask the extent to which the criminal justice system influences mental health. Using insights from the stress process paradigm, along with nationally representative data from the National Longitudinal Survey of Youth 1997, we examine criminal justice contact—defined as arrest, conviction, and incarceration—and mental health. First, fixed-effects models, which adjust for stable unobserved and time-varying observed characteristics, show that arrest is deleteriously associated with mental health, and arrest accounts for nearly half of the association between incarceration and poor mental health, although certain types of incarceration appear more consequential than others. Second, the associations are similar across race and ethnicity; this, combined with racial/ethnic disparities in contact, indicates that criminal justice interactions exacerbate minority health inequalities. Third, the associations between criminal justice contact, especially arrest and incarceration, and mental health are particularly large among respondents residing in contextually disadvantaged areas during adolescence. Taken together, the results suggest that the consequences of criminal justice contact for mental health have a far greater reach than previously considered.” Naomi F. Sugie & Kristin Turney, *Beyond Incarceration: Criminal Justice Contact and Mental Health*, 82 *Amer. Sociological Review* 719 (2017)

[http://users.soc.umn.edu/~uggen/Sugie\\_Turney\\_ASR\\_17.pdf](http://users.soc.umn.edu/~uggen/Sugie_Turney_ASR_17.pdf).

A person has a reduced mental capacity even if he or she understands right from wrong, but mental health impacted decision-making. “Adult psychopaths have deficits in emotional processing and inhibitory control, engage in morally inappropriate behavior, and generally fail to distinguish moral from conventional violations.” Maaike Cima et al., *Psychopaths Know Right from Wrong but Don’t Care*, SCAN 59 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2840845/pdf/nsp051.pdf>.

“The effect of mental illness on a person who is committing or has committed a crime manifests itself in several forms. A lack of self-control has been proposed as the primary cause for criminal behavior (Gottfredson and Hirschi 1990; Buker 2011; Ronel 2011), and when an individual is experiencing an episode of mental illness they are less likely to be able to appropriately control their behavior. It is also true that many people commit crimes in an inappropriate attempt to manage emotions that are less well regulated or managed in the midst of the experience of symptoms of the mental illness.” Major County Sheriffs of America, *Sheriffs Addressing the Mental Health Crisis in the Community and in the Jails*, Wash. D.C.: Office of Community Oriented Policing Services 7 (2019), <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0869-pub.pdf>.

“There is both anecdotal and research evidence that the number of people with mental illnesses being contacted by law enforcement and subsequently

becoming involved in the criminal justice system is growing (Fellner 2014; James and Glaze 2006; Reuland and Margolis 2003). The increased contact with law enforcement and continual involvement with the criminal justice system creates problems for the individuals being arrested and incarcerated.” *Id.* at 1.

The Clinical Outcomes in Routine Evaluation (CORE-10) has a 10 question screening measure to determine a client’s mental health needs. <https://www.coresystemtrust.org.uk/wp-content/uploads/2020/07/CORE-10-English.pdf>. The instructions for scoring are available online, <https://sheffield.wp.catalyse.uk.com/wp-content/uploads/sites/2/2014/10/CORE-10-Scoring-instructions.pdf>.

“Behavioral disorders, especially ADHD, can make a background for methamphetamine dependence tendency. ADHD treatments may prevent this disposition towards methamphetamine dependence.” Vahid Farnia et al., *Prevalence of Childhood Attention-Deficit/Hyperactivity Disorder (ADHD) in Methamphetamine Dependence: A Descriptive Study*, Iranian J. of Psychiatry & Behavioral Sciences (2018), <https://brieflands.com/articles/ijpbs-61329.pdf>.

“The ability to divert an individual with mental illness away from jail and into a more appropriate assessment or treatment setting is critical to reducing the penetration of people with mental illness into the criminal justice system.” DOJ, Community Oriented Policing Practices, *Sheriffs Addressing the Mental Health Crisis in the Community and in the Jails* 57 (2018), <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0869-pub.pdf>.

“All jurisdictions should consider establishing specialty noncriminal courts (e.g., drug courts or mental health courts) The results of this review indicate that these specialty courts are effective in diverting those with mental illness away from incarceration and into more appropriate treatment settings.” *Id.*

## **XXIX. Violence and Mental Health**

“People with treated mental illness are at no higher risk for committing violence than the general population and are at higher risk for being the victims of violence. Scandinavian studies have indicated that treatment of mental illness can reduce violence risk 15-fold (Nielssen and Large, 2010).” National Academies of Sciences, *Engineering, and Medicine, Violence and Mental Health: Opportunities for Prevention and Intervention: Proceedings of a Workshop* 6 (2018), <https://www.nap.edu/catalog/24916/violence-and-mental-health-opportunities-for-prevention-and-early-detection>.

“Violence associated with a diagnosed serious mental illness is more likely to be self-directed than directed at others, even if one includes family and friends. Ninety percent of the approximately 38,000 suicides each year in the United States involve mental illness, while less than 5 percent of the approximately 14,000 homicides each year involve mental illness (CDC, 2005).” *Id.*

### **XXX. Autism Spectrum Disorder**

“Many justice-involved individuals with ASD (Autism Spectrum Disorder) may remain undiagnosed or even misdiagnosed for years.” Isabella Michna et al., *Correctional Management and Treatment of Autism Spectrum Disorder*, 44 J. Am. Acad. Psychiatry Law 253 (2016). “ASD has a range of associated deficits that vary widely across this population, including: difficulty in reading emotions on the faces of others, nonverbal communication, social interactions, and motor coordination; a tendency to state what they think without regard for social consequences; idiosyncratic interests; literal interpretation of language; and an ability to be honest to the point of offending others. Behaviors such as aggression may emerge consequent to misreading another’s intentions or confusion regarding why their behavior or comment is received negatively.” *Id.* at 254.

“Clinicians and custody staff in correctional settings without knowledge of ASD may misunderstand presenting behaviors as intentional misbehavior. Given their cognitive and emotional social challenges, individuals with ASD may have an increased likelihood of confrontations with others and may be particularly vulnerable to bullying and exploitation and, consequently, more likely to be socially isolated than other prisoners. Jail and prison settings expose the individual to harm and risk where the individual with ASD is not fully able to understand the situation” *Id.* at 255.

“Individuals with ASD become involved in the CJS without recognizing they have committed an offense (Debbaudt, 2004).” Melanie Clark Mogavero, *Autism, Sexual Offending, and the Criminal Justice System*, 7 J. of Intellectual Disabilities and Offending Behavior 116, 120 (2016).

“While prosecutors and judges “have heard it all before” when it comes to people “excusing” misbehavior, including the possession of child pornography, the unique features predominant in AS, together with the backdrop of hysteria, sentiment, and fervor concerning child pornography, create a “perfect storm” in which AS individuals and their families are engulfed. This unique diagnosis calls upon prosecutors and courts to draw distinctions between dangerous and non-dangerous offenders and between those who may access offending depictions because they need to as opposed those who simply do not know better. Generally, the AS individual should not be charged at all, it is totally unnecessary. If they are charged every effort should be expended to avoid civil disabilities or incarceration, and to

insure treatment suitable to the AS diagnosis.” Mark Mahoney, Esq., *Asperger’s Syndrome and the Criminal Law: The Special Case of Child Pornography* 1, 69 (2009) (extensive discussion and citations relevant to defending persons with Asperger’s Syndrome who have been charged with child pornography), <https://www.harringtonmahoney.com/content/Publications/AspergersSyndromeandtheCriminalLawv26.pdf>.

The Asperger/Autism Network, *Principles for Prosecutors Considering Child Pornography Charges Against Persons with Asperger’s Syndrome*, <https://www.aane.org/principles-for-prosecutors>, recommends that prosecutors should be encouraged to consider a variety of principles when considering prosecuting a person who suffers from Asperger’s Syndrome:

1. Young persons with Asperger's Syndrome (AS), despite average or higher intelligence and academic performance, have the social and emotional skills of children well below their own chronological age, and well below the minimum age for criminal prosecution in federal and state courts. AS individuals are neurologically impaired in their ability to appreciate the social/moral/legal unacceptability of their conduct or to intuit why the conduct is unacceptable; these are capabilities which state legislators and Congress presumed to inhere in the general population to whom the criminal laws apply.
2. In an interrogation setting the AS individuals may appear deceptive because of deficits in communication skills, such as the inability to make normal eye contact. At the same time, they may in fact be over compliant with suggestions made by police officers. AS impairs the ability of offenders to respond with expressions of remorse to which prosecutors and judges typically look for reassurance in considering alternate dispositions of criminal matters.
3. AS is not a condition related to any sexual paraphilia (e.g. pedophilia) and is not a precursor thereto. Usually, little more than giving explicit instructions is needed to prevent recurrence of the behavior. As persons with AS age, they may become better adapted and may present different behaviors than in their youth.
4. Prosecutors should take AS into account in determining whether to target, prosecute or seek a conviction in an apparent case of possession of child pornography.
5. Persons with AS experience lifelong difficulties. Young persons with AS are not able to live independently and need to live with their families –

their parents and siblings. Therefore, the sex offender registration and residency restrictions arising from a child pornography conviction would have a cumulative and disastrous effect in these cases, and on more uninvolved person, than in other cases involving neuro-typical adults.

6. Prosecutors should be encouraged to defer criminal prosecution in cases involving young first offenders with AS who have no history of directly offending against children, or having produced or distributed child pornography, no clinical indications of pedophilia (other than accessing child pornography), nor history of prior offenses involving child pornography.
7. Prosecutors should encourage therapeutic intervention in cases of suspected child pornography use by such individuals and utilize probationary periods and deferred prosecutions to monitor compliance before considering actual prosecutions in such cases.
8. The Department of Justice and state prosecutors should keep data on the incidence of criminal investigations involving persons with AS and the way such cases are resolved.
9. Expert AS resources should be sought out in local communities to assist law enforcement officers and prosecutors in understanding AS and evaluating the appropriateness of such cases for prosecution.”

### **XXXI. Depressive Symptoms**

Depression or depressive symptoms associated with other disorders may be associated with violent behavior. A Swedish study of persons with a history of depression and criminal records found that “[t]hose in the depressed group were approximately 3 times more likely than the general population to commit violent crimes, such as homicide, attempted homicide, aggravated assault, or robbery.” Menahem Krakowski & Karen Nolan, *Depressive Symptoms Associated with Aggression*, Psychiatric Times (Feb. 27, 2017) <https://www.psychiatrictimes.com/view/depressive-symptoms-associated-aggression>.

### **XXXII. Fetal Alcohol Syndrome**

Fetal Alcohol Syndrome, which results from having a mother drink alcohol while pregnant, is associated with many behavioral malfunctions, including “[t]rouble getting along with others”; “[p]oor social skills”; “[t]rouble adapting to change or switching from one task to another”; “[p]roblems with behavior and impulse control”; “[p]roblems staying on task”; “[d]ifficulty planning or walking toward a goal.” Julie Och, U.S. Probation Office, *Fetal Alcohol Spectrum Disorders and*



*Crime*, XLI News & Views 4 (March 14, 2016). Among the recommendations for helping persons with FASD who have been convicted of a crime is to “provide alternatives to prison such as halfway houses, group home treatment centers, or home confinement.” *Id.*

### **XXXIII. Persons Charged with Immigration Offenses**

The U.S. Dep’t of State Issues Travel Advisories for places in countries that may have an unstable government, civil war, ongoing intense crime or violence, or frequent terrorist attacks. Such information may help explain why a person has chosen to enter the United States rather than remain in an unsafe environment. <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html>.

Research shows that immigrants have significantly lower rates of criminality than native-born citizens and may have contributed to the historic crime-drop of the last 20 years. The Sentencing Project, *Immigration and Public Safety* (2017) <https://www.sentencingproject.org/app/uploads/2022/10/Immigration-and-Public-Safety.pdf>.

A survey of 1100 recently deported migrants in Mexico conducted between 2009 and 2012 shows that prosecution and punishment has no deterrent effect and can result in severe consequences: “[D]eterrence by arrest, incarceration, and removal is largely ineffective.” Jeremy Slack et al., *In Harm’s Way: Family Separation, Immigration Enforcement Programs and Security on the US-Mexico Border*, 3 J. on Migration & Human Security 109, 114 (2015). “The separation of women from male family or friends with whom they are traveling places them at increased risk of theft, violence, and abuse.” *Id.* at 119. “[P]eople who consider the United State their homes are willing to endure hardships at the border, discrimination in the United States, and the harsh penalties of an increasingly criminalized immigration system.” *Id.* at 124.

“Deterrence by arrest and removal is largely ineffective . . . Deterrence is a linchpin of U.S. border enforcement policy, but it has substantial limitations. Its effect is difficult to measure and it has limited impact compared to the multitude of factors that influence the decision to migrate such as family and economic need.” Jeremy Slack et al., *In The Shadow of the Wall: Family Separation, Immigration Enforcement and Security* 15 (2013), Center for Latin American Studies: Univ. of Ariz.

Key Points from an International Society for Traumatic Stress Studies Briefing Paper:

1. “Adult and child refugees and asylum-seekers evidence elevated rates of psychological disorders including posttraumatic stress disorder (PTSD) and depression.

2. Exposure to traumatic events and daily stressors contribute substantially to psychopathology in refugees and asylum-seekers.
3. Trauma-focused interventions have the strongest evidence base to reduce PTSD symptoms in adult and child refugees and asylum-seekers.
4. Culture impacts on conceptualization, expression and treatment of psychological distress in refugees and asylum-seekers.
5. There exist numerous logistical, cultural and situational barriers to accessing treatment for psychological disorders for refugees and asylum-seekers.
6. There is promising evidence regarding scalable interventions for refugees and asylum-seekers that overcome barriers to accessing treatment for psychological symptoms, however these require further evaluation.”

Angela Nickerson et al., Int’l Society for Traumatic Stress Studies, *Trauma and Mental Health in Forcibly Displaced Populations 2* (2017), [https://www.southwales.ac.uk/media/university-of-south-wales/site-assets/documents/news-/2023/07-july/Displaced-Populations-Briefing-Paper\\_Final.pdf](https://www.southwales.ac.uk/media/university-of-south-wales/site-assets/documents/news-/2023/07-july/Displaced-Populations-Briefing-Paper_Final.pdf).

A group of psychologists and health experts “investigated the association between perceived ethnic discrimination with psychological well-being and life satisfaction among a community sample of unauthorized Hispanic immigrants in the United States..... Results: Discrimination negatively predicted psychological well-being and life satisfaction, and ethnic/racial group identity centrality moderated these relationships. High ethnic/racial group identity centrality reduced the association of discrimination with psychological well-being and life satisfaction. Ethnic/racial identity centrality lent psychological protection for those who reported higher levels of discrimination. Conclusion: Ethnic discrimination is a salient stressor for unauthorized Hispanic immigrants. Yet high ethnic/racial group identity centrality may protect these individuals from the negative effects of discrimination by providing a sense of belonging, acceptance, and social support in the face of rejection.” Cory L. Cobb et al., *Perceived Discrimination and Well-Being Among Unauthorized Hispanic Immigrants: The Moderating Role of Ethnic/Racial Group Identity Centrality*, American Psychological Association (2018).

#### **XXXIV. Persons Charged with Sex Offenses**

“For offenders convicted of child pornography offenses, having an official record of contact sexual behavior were generally not associated with significantly higher recidivism rates. The general rearrest rates for child pornography offenders with contact sexual records (15 percent) was nearly the same as child pornography offenders without any records of contact sexual offending (13 percent) .....Last, in

a somewhat surprising finding, this research shows that child pornography offenders with backgrounds of contact sexual offending exhibit only slightly higher risk characteristics and recidivism rates compared to child pornography offenders with no records of contact sexual offending. This finding is at odds with some studies showing offenders who commit child pornography and contact crimes having significantly higher risk levels and recidivism rates compared to child pornography- only offenders (Babchishin et al., 2015). It is interesting to note, however, that the USSC also found similar rates of general recidivism between child pornography offenders with and without histories of criminally sexual dangerous behavior (USSC, 2012).” Thomas Cohen \* Michelle Spidell, *How Dangerous Are They? An Analysis of Sex Offenders Under Federal Post-Conviction Supervision*, 80 Federal Probation J. 28, 30-31 (Sept. 2016), <https://www.uscourts.gov/file/22732/download>.

A study of persons convicted of child sexual abuse and who desisted from further crimes, found that “individuals who desisted from reoffending did more than address their sexual offense-related needs; they appeared to achieve some degree of lifestyle stability and this highlights the importance of social reintegration among this population.” Michael Lasher & Robert McGrath, *Desistance from Sexual and Other Violent Offending Among Child Sexual Abusers*, 20 Crim. Justice & Behav. 1 (2016).

“The research indicates that treatment in the community is more effective than treatment in institutions. Although there may be obstacles to changing existing exclusionary policies, evidence demonstrates that sex offenders, both adolescent and adult, can be treated successfully in community settings.” Bitna Kim et al., *Sex Offender Recidivism Revisited: Review of Recent Meta-analyses on the Effects of Sex Offender Treatment*, 17 Trauma, Violence, and Abuse 1, 11 (2016).

“This literature scoping review compared recidivism rates of moderate- and high-risk sexual offenders who received cognitive-behavioral therapy (CBT) oriented treatments. Ten empirical studies from 2001 to 2014 were selected for review that met the following criteria: (a) Treatment program included a CBT-based intervention with a comparative intervention; (b) participants included adult, male, moderate- and high-risk sexual offenders only; and (c) follow-up data for up to 12 months. Data were analyzed using a summative metric for recidivism rate comparisons (N = 3,073 for CBT and N = 3,588, for comparison approaches). Sexual offense recidivism rates varied from 0.6% to 21.8% (with CBT) and from 4.5% to 32.3% (with comparison intervention). The within-sample median rate of violent recidivism with a history of sexual offense was 21.1% (with CBT) versus 32.6% (comparison). Sexual offenders had general felonies (within-sample) median recidivism rate of 27.05% (with CBT) versus 51.05% (comparison). The evidence supports the conclusion that CBT in its various forms is an efficacious treatment modality to prevent offense recidivism by sexual offenders.” Elias Mpofu et al., *Cognitive-Behavioral Therapy Efficacy for Reducing Recidivism Rates of Moderate-*

*and High-Risk Sexual Offenders: A Scoping Systematic Literature Review*, Int'l J of Offender Therapy and Comparative Criminology (Apr. 2016).

“The current meta-analysis compared the characteristics of online child pornography-only offenders, typical (offline) sex offenders against children, and offenders with both child pornography and contact sex offences against children (mixed). Based on 30 unique samples (comparison ns ranging from 98 to 2,702), the meta-analysis found key differences between groups. Offenders who committed contact sex offences were more likely to have access to children than those with only child pornography offences. In contrast, offenders who used the internet to commit sexual offences had greater access to the internet than those with contact sex offenders. Differences between the groups, however, were not limited to differential opportunities. Sex offenders against children and mixed offenders were found to score higher on indicators of antisociality than online child pornography offenders (CPOs). CPOs were also more likely to have psychological barriers to sexual offending than sex offenders against children and mixed offenders (e.g., greater victim empathy). Mixed offenders were found to be the most pedophilic, even more than CPOs. The findings suggest that offenders who restricted their offending behavior to online child pornography offences were different from mixed offenders and offline sex offenders against children, and that mixed offenders were a particularly high risk group.” Kelly M. Babchishin et al., *Online Child Pornography Offenders are Different: A Meta-analysis of the Characteristics of Online and Offline Sex Offenders Against Children*, 44 Archives of Sexual Behavior 45 (Jan. 2015).

“This study examined the association of social anxiety, loneliness, and problematic Internet use (PIU) with the online solicitation of minors. Within a convenience sample of adult Internet users from Germany, Finland, and Sweden (N = 2,828), we compared the responses of participants who had not interacted sexually with strangers online (n = 2,049) with participants who sexually interacted with unknown adults online (n = 642), and both groups with adults who sexually solicited unknown minors online (n = 137). Online sexual interaction with adults was associated with higher levels of social anxiety, loneliness, and PIU compared with not sexually interacting with strangers online. Sexually soliciting minors online was associated with higher levels of social anxiety, loneliness, and PIU compared with sexually interacting with adults and not sexually interacting with strangers at all. Interestingly, compared with those with adult contacts, loneliness was specifically pronounced for participants who solicited children, whereas social anxiety and PIU were pronounced for participants soliciting adolescents. These findings suggest that social anxiety, loneliness, and PIU may be among the motivators for using the Internet to solicit individuals of different age groups for sexual purposes. These factors emerged as specifically relevant for adults who sexually solicited minors and who reported greater impairments compared with adults who sexually interacted with adults. These characteristics may thus be important to consider for assessment and treatment procedures for individuals

soliciting minors online.” Anja Schulz et al., *Social Anxiety and Loneliness in Adults Who Solicit Minors Online*, 29 J. of Sexual Abuse 519 (2017).

“Most risk factors among contact sex offenders broadly fall into two risk dimensions: antisociality (reflecting personality traits, attitudes and beliefs, and behaviors that underlie general criminality) and atypical sexuality (reflecting paraphilic sexual interests, excessive sexual preoccupation, and other extreme or unusual aspects of sexuality). Seto (2008, 2013) proposed that atypical sexual interests represent potential motivations for sexual offending, including child pornography offending, whereas antisociality represents potential facilitators of acting on these motivations (see also Pullman, Stephens, & Seto, in press).” Michael Seto & Angela Eke, *Predicting Recidivism Among Adult Male Child Pornography Offenders: Development of the Child Pornography Offender Risk Tool*, 39 Law & Human Behav. 416, 417 (2015).

“While better quality evidence is required on the question of child sex offender recidivism, the existing research literature indicates that some subgroups of child sex offenders have higher rates of recidivism than others. For example, those who offend against children in their own families have access to only a small number of children, thereby limiting opportunities for recidivism to occur. The competing claims outlined at the opening of this section—ie. that all child sex offenders will reoffend/that there is a low recidivism rate among child sex offenders—may not be as mutually exclusive as they appear. The research literature indicates that among a subset of child sex offenders—those who target male victims outside of their family—reoffending in the long term is likely and far more likely than for child sex offenders who target female and/or family member victims.” Kelly Richards, *Misperceptions About Child Sex Offenders*, 429 Trends & Issues in Crime and Criminal Justice (Sept. 2011), <https://aic.gov.au/publications/tandi/tandi429>.

Rob Butters, a social worker and former probation officer, has emphasized the point that “treatment works a lot better than incarceration” for sex offenders. Dennis Romboy, *Social Work Expert Disagrees with Federal Law Enforcers about Sex Offender Treatment*, *Deseret News* (Dec. 15, 2018), <https://www.deseret.com/2018/12/15/20661290/social-work-expert-disagrees-with-federal-law-enforcers-about-sex-offender-treatment/>.

“Research clearly supports the application of an approach in which treatment intensity varies on the basis of the risk for recidivism posed by offenders, with treatment being more effective when it is applied to higher risk cases, when it targets known dynamic risk factors for recidivism, and when it is responsive to the characteristics of individual offenders. Research further demonstrates that targeting specific known risk factors using cognitive-behavioral methods, is most effective in reducing recidivism among sexual offenders.” Pamela Yates, *Treatment of Sexual Offenders: Research, Best Practices, and Emerging Models*, 8 Int’l J. of Behavioral Consultation and Therapy 89, 94 (2013).

Polygraphs are not deemed a reliable method for examining a person during treatment for a sex offense. See Douglas Maloney, *Lies, Damn Lies, and Polygraphs: The Problematic Role of Polygraphs in Postconviction Sex Offender Treatment* (PCSOT), 84 Temp. L. Rev. 903 (2012) (citing multiple studies about the reliability of polygraphs).

Community corrections should focus on multiple checkpoints to help individuals released from prison: social reintegration, community reentry, status maintenance (adhering to conditions of supervision), and statutory compliance (registration, notification, and residency restrictions) rather than concentrate on risk management (e.g. home visits, electronic monitoring and incapacitation). Roger L. Schaefer, *Understanding Sex Offender Community Supervision: A Mixed Methods Approach*, *Int'l J. of Offender Therapy & Comparative Criminology* 1-28 (2018).

“First, offender programs, regardless of the clinical philosophy (e.g., psychodynamic, cognitive behavioral), must address the importance of social/community reintegration. Offenders’ inability to develop or maintain social support during the transitional period between prison and community impact their efforts toward desistance. Second, programs and those who work with sex offender in the community must recognize how the sex offender label impacts the personal safety of the offenders. The narratives analyzed here documented incidences of threats of physical violence as well as insecure and unstable housing. Third, programs need to emphasize the realities of the supervision process by educating offenders about adhering to supervision condition and statutory requirements in therapeutic rather than disciplinary manner. Finally, programs need to provide a therapeutic space where offenders can ‘make good’ and redefine themselves within a social context that both accounts for and moves beyond their criminality. As started by Schaefer (2014), when working with sex offenders in the community, CCOs, clinicians, and program providers can serve as a social pathway for reintegration by empowering offenders to reconcile their pasts and redefine themselves void of the stigma associated with their past criminality.” *Id.* at 24 (citations omitted).

“There are many misconceptions about sexual offenses, sexual offense victims, and sex offenders in our society. Much has been learned about these behaviors and populations in the past decade and this information is being used to develop more effective criminal justice interventions throughout the country. This document serves to inform citizens, policy makers, and practitioners about sex offenders and their victims, addressing the facts that underlie common assumptions both true and false in this rapidly evolving field.” *Myths & Facts About Sex Offenders*, Center for Sex Offender Management, U.S. DOJ (2000).

Examples:

“Myth: ‘Most sex offenders reoffend.’ – Fact: ‘Reconviction data suggest that this is not the case. Further, reoffense rates vary among different types of sex



offenders and are related to specific characteristics of the offender and the offense.” *Id.*

“Myth: ‘Children who are sexually assaulted will sexually assault others when they grow up.’ – Fact: ‘Most sex offenders were not sexually assaulted as children and most children who are sexually assaulted do not sexually assault others.’” *Id.*

“Myth: ‘Treatment for sex offenders is ineffective.’ – Fact: ‘Treatment programs can contribute to community safety because those who attend and cooperate with program conditions are less likely to re-offend than those who reject intervention.’” *Id.*

“Myth: ‘The cost of treating and managing sex offenders in the community is too high—they belong behind bars.’ – Fact: ‘One year of intensive supervision and treatment in the community can range in cost between \$5,000 and \$15,000 per offender, depending on treatment modality. The average cost for incarcerating an offender is significantly higher, approximately \$22,000 per year, excluding treatment costs.’” *Id.*

A 2010 Commission survey of judges revealed that 69% of district judges believed that the guideline range for receipt of child pornography is too high and 70% believed that the range for possession of child pornography is too high. USSC, *Results of Survey of United States District Judges January 2010 through March 2010* (2010), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608\\_Judge\\_Survey.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608_Judge_Survey.pdf).

“Social science studies considering the correlation between viewing child pornography and contact sexual offenses against children are not consistent, though there is much evidence that only a subset of offenders who use child pornography also sexually offend against children. To support this, researchers conducting comprehensive reviews of empirical literature often conclude there is little evidence of any direct impact of viewing child pornography on the commission of contact sexual offenses. Indeed, the rates of contact offending by child pornographers are relatively low. Research also shows that recidivism for child molesters is also low, though higher than it is for child pornography-only offenders. A study of over 200 individuals suspected of viewing child pornography online found only 0.8% of the sample was investigated for child sexual abuse in a six-year follow-up period. Similarly, none of the seventy-three internet child pornography offenders in a London study committed a new contact sex offense, while 2% of the 117 members of the child molester group did in an eight-month follow-up. In a sample of registered sex offenders in Canada, offenders with only child pornography offenses in their criminal history were least likely to recidivate with a contact sexual offense (1.3%) at an average two-and-a-half-year follow-up than those child pornographers

with a prior criminal nonsexual offense (2.0%). The child pornography offenders with a prior history of contact sexual offenses were most likely to sexually reoffend (9.2%). In general, the literature supports the view that while child molesters may possess child pornography, those that possess child pornography are generally not likely to engage in contact offenses against children. Instead, child molesters are merely a small subset of child pornographers.” Melissa Hamilton, *The Efficacy of Severe Child Pornography Sentencing: Empirical Validity or Political Rhetoric?*, 22 Stan. L. & Policy Rev. 545, 579–80 (2011) (citations omitted).

A report from U.S. Probation concludes: “Among the sex offense types, those offenders under supervision for SORNA or sexual assault were arrested or revoked at the highest rates, while those under supervision for child pornography offenses had lower recidivism rates. For offenders convicted of child pornography offenses, having an official record of contact sexual behavior was generally not associated with significantly higher recidivism rates. The general rearrest rates for child pornography offenders with contact sexual records (15 percent) was nearly the same as child pornography offenders without any records of contact sexual offending (13 percent).” Thomas H. Cohen & Michelle C. Spidell, *How Dangerous Are They? An Analysis of Sex Offenders Under Federal Post-Conviction Supervision*, 80 Fed. Probation 21, 27 (September 2016).

A study of individuals involved in possession of child pornography found that “only 1% were known to have committed a past hands-on sex offense, and only 1% were charged with subsequent hands-on sex offense in the 6-year follow-up. The consumption of child pornography alone does not seem to represent a risk factor for committing hands-on sex offenses in the present sample – at least not in those subjects without prior convictions for hands-on sex offenses.” Jerome Endrass et al., *The Consumption of Internet Child Pornography and Violent and Sex Offending*, BMC Psychiatry (July 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2716325/pdf/1471-244X-9-43.pdf>.

“A study by a team that included both the leading scholar of internet sexual offending, and the primary developer of the Static 99R, found that just 25 of 1,247 online child pornography offenders committed a contact sexual offense after release. They concluded that ‘online offenders rarely go on to commit detected contact sexual offenses.’ These results are repeated in study after study in American, as well as in foreign, populations. A 2014 study of federal possession offenders by researchers at the Federal Bureau of Prisons concluded that efforts to reduce their re-offense rates with therapy may not be cost-effective, because the ‘overall re-offense base rate of CP offenders’ was so low it was difficult to reduce it further. A leading authority on internet sexual offending, who has an ongoing research program to devise a tool to predict reoffending in this group, explained in submissions to the U.S. Sentencing Commission that first-time possession offenders with no other criminal conviction have a particularly low risk of sexual recidivism. The Government's claim that a

heightened propensity to re-offend justifies the provisions at issue here is problematic as a general matter, for all the reasons set forth in prior sections. But it is particularly troublesome with respect to possession offenders, who constitute a majority of those affected by this claim.” *Brief of Social Science and Law Scholars as Amici Curia in Support of Respondent, United States v. Haymond*, 2019 WL 5410760, No. 17-1672 (Jan. 25, 2019) (citing research).

A study comparing child pornography(CP) and child contact (CC) sex offenders found “significant differences on demographic and criminal history variables, with CP offenders demonstrating a lower frequency of prior criminal offending and substance abuse, and higher rates of pre-incarceration employment and level of education. Rates of recidivism were significantly different between the two groups, with CP offenders showing lower rates of re-offense for most measures of recidivism. When controlling for background characteristics and the timing of the event, CC offenders were at much greater risk for having an arrest for a new crime or a non- sexual violent crime than CP offenders.” Erik Faust et al., *Child Pornography Possessors and Child Contact Sex Offenders: A Multilevel Comparison of Demographic Characteristics and Rates of Recidivism*, 27 Sexual Abuse: A J. of Research and Treatment 460 (2014).

“People with disabilities are particularly vulnerable to injustices in the criminal justice system. Rules and laws that work for the majority of the population blatantly fail people with I/DD (Intellectual/Developmental Disability), creating a new kind of victim.” The Arc’s National Center on Criminal Justice and Disability (NCCJD), *Sex Offenders with Intellectual/Developmental Disabilities* 1, 25 (Washington, D.C.: The Arc, 2015).

“Criminal justice professionals must: Proactively examine fact patterns of sex offense cases involving people with I/DD; Strongly consider the role disability plays in these types of offenses; Find alternatives to incarceration and sex offender registries for people with I/DD when appropriate; Increase education and prevention work, thereby reducing initial offenses and recidivism.” *Id.* at 25.

#### **XXXV. Restorative Justice**

“Evidence from the general literature indicates that restorative justice programs can have an impact on offender recidivism that ranges from a two to eight per cent reduction in recidivism. Thus, it is worth considering restorative justice approaches in the development of criminal justice policies.” *Restorative Justice and Recidivism*, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/jstc-rcdvs/jstc-rcdvs-eng.pdf>.

“RJs delivered in the manner tested by the ten eligible tests in this review appear likely to reduce future detected crimes among the kinds of offenders who are

willing to consent to RJCs, and whose victims are also willing to consent. Among the kinds of cases in which both offenders and victims are willing to meet, RJCs seem likely to reduce future crime. Victims' satisfaction with the handling of their cases is consistently higher for victims assigned to RJCs than for victims whose cases were assigned to normal criminal justice processing." Heather Strang, et.al., *Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction* (Nov. 2013), [https://www.researchgate.net/publication/345197501\\_Restorative\\_Justice\\_Conferencing\\_RJC\\_Using\\_Face-to-Face\\_Meetings\\_of\\_Offenders\\_and\\_Victims\\_Effects\\_on\\_Offender\\_Recidivism\\_and\\_Victim\\_Satisfaction\\_A\\_Systematic\\_Review](https://www.researchgate.net/publication/345197501_Restorative_Justice_Conferencing_RJC_Using_Face-to-Face_Meetings_of_Offenders_and_Victims_Effects_on_Offender_Recidivism_and_Victim_Satisfaction_A_Systematic_Review).

#### XXXVI. United States Sentencing Commission

USSC, 2023 *Sourcebook of Federal Sentencing Statistics*, <https://www.ussc.gov/research/sourcebook-2023>.

Archive of Earlier Sourcebooks, <http://www.ussc.gov/research/sourcebook/archive>.

USSC, Interactive Sourcebook of Federal Sentencing Statistics, [https://ida.ussc.gov/analytics/saw.dll?Dashboard&PortalPath=%2Fshared%2FIDA%2F\\_portal%2FIDA%20Dashboards](https://ida.ussc.gov/analytics/saw.dll?Dashboard&PortalPath=%2Fshared%2FIDA%2F_portal%2FIDA%20Dashboards).

Data Reports by Guideline, <https://www.ussc.gov/research/data-reports/guideline>.

USSC, *Quick Facts*, <http://www.ussc.gov/research/quick-facts>.

##### 1. Immigration

- a. Illegal Reentry (July 2024)
- b. Alien Smuggling (July 2024)

##### 2. Economic Crime

- a. Health Care Fraud (August 2024)
- b. Government Benefits Fraud (August 2024)
- c. Credit Card and Other Financial Instrument Fraud (August 2024)
- d. Mortgage Fraud (August 2022)
- e. Securities & Investment Fraud (September 2024)
- f. Theft, Property Destruction, & Fraud (August 2024)
- g. Tax Fraud (August 2024)

- h. Copyright & Trademark Infringement (August 2022)
  - i. Counterfeiting (August 2024)
  - j. Bribery (August 2024)
  - k. Money Laundering (August 2024)
  - l. Aggravated Identity Theft (August 2024)
3. Individual Characteristics
- a. Individuals in the Federal Bureau of Prisons (May 2024)
  - b. Career Offenders (May 2024)
  - c. Native Americans in the Federal Offender Population (July 2018)
  - d. Federally Sentenced Women (September 2024)
  - e. Non-U.S. Citizens (July 2024)
4. Firearms
- a. Section 924(c) (June 2024)
  - b. Section 922(g) (June 2024)
5. Drugs
- a. Drug Trafficking (May 2024)
  - b. Powder Cocaine Trafficking (May 2024)
  - c. Crack Cocaine Trafficking (June 2024)
  - d. Marijuana Trafficking (June 2024)
  - e. Methamphetamine Trafficking (May 2024)
  - f. Heroin Trafficking (July 2024)
  - g. Oxycodone Trafficking (June 2024)
  - h. Fentanyl Trafficking (May 2024)
  - i. Fentanyl Analogue Trafficking (May 2024)
6. Sentencing Issues
- a. Mandatory Minimum Penalties (September 2024)
7. Other Chapter Two Offenses
- a. Robbery (September 2024)
  - b. National Defense (September 2024)

- c. Escape (September 2024)
- d. Sentenced Organizations (September 2024)
- 8. Archives of other Quick Facts on Drugs, Immigration, Economic Crimes, Firearms, Offender Groups, Robbery, Mandatory Minimum Penalties, National Defense, <https://www.ussc.gov/research/quick-facts/quick-facts-archives>.

Data Reports on Federal Sentencing Practices by geography, guideline quarter, prison impact, retroactivity <http://www.ussc.gov/topic/data-reports>.

Research Reports, <http://www.ussc.gov/topic/research-reports>, including (many more are available on the Commission's website):

- 1. Methamphetamine Trafficking Offenses in the Federal Criminal Justice System (June 2024)
- 2. Weighing the Impact of Simple Possession of Marijuana (January 2023)
- 3. 2023 Demographic Differences in Federal Sentencing (2023)
- 4. Length of Incarceration and Recidivism (2022)
- 5. The Influence of the Guidelines on Federal Sentencing (December 2020)

Reports to the Congress, <http://www.ussc.gov/research/reports-congress>, including:

- 1. Career Offender Enhancements (July 2016)
- 2. Mandatory Minimum Penalties in the Federal Criminal Justice System (Oct. 2011)
- 3. Federal Child Pornography Offenses (Dec. 2012)

USSC, *Results of Survey of United States District Judges January 2010 through March 2010* (June 2010), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608\\_Judge\\_Survey.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608_Judge_Survey.pdf).

USSC, *Results of 2014 Survey of United States District Judges: Modification and Revocation of Probation and Supervised Release* (Feb. 2015), <https://www.ussc.gov/research/research-reports/results-survey-united-states-district-judges-modification-and-revocation-probation-and-supervised>.

Other publications on multiple topics, <https://www.ussc.gov/research/topical-index>.



[publications](#).

## XXXVII. Online Resources

### A. Multiple Topics

1. America's Health Rankings – <https://www.americashealthrankings.org> (provides information on a state-by-state basis of physical, mental, and social well-being, including specific senior and health of women and children reports)
2. Bureau of Justice Statistics - <https://bjs.ojp.gov/> (contains data on a multitude of topics related to the criminal justice system)
3. Congressional Research Service - <http://www.loc.gov/crsinfo> (provides policy and legal analysis to Congress)
4. CrimeSolutions.gov - <https://crimesolutions.ojp.gov/> (provides research on programs and practices that work, don't work, or are promising in addressing criminal activity)
5. Developing Mitigation Evidence - <https://moe.fd.org/resources/developing-mitigation-evidence> (provides information about “identifying, understanding, and persuasively presenting all mitigating evidence and advocating for the lowest possible sentence”)
6. FBI: Uniform Crime Reporting - <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr> (provides crime statistics throughout the nation)
7. Journalist's Resource - Harvard Kennedy School - <https://journalistsresource.org> (lists research articles on many different topics, including criminal justice, immigration, education, economy, sex offenses)
8. Justice Center, The Council of State Governments: Collaborative Approaches to Public Safety - <https://csgjusticecenter.org/publications/> (includes publications from numerous non-profit and government sources on a wide variety of topics related to criminal justice)
9. Justice Policy Institute –<https://justicepolicy.org/> (research on criminal justice, drug policy, fiscal policy, juvenile justice, social investments, racial disparities)
10. National Academies Press - <https://nap.nationalacademies.org/> (includes research on behavioral and social sciences, education, and health)
11. National Academies of Sciences, Engineering, Medicine: Division of Behavioral and Social Sciences and Education -

- <https://www.nationalacademies.org/dbasse/division-of-behavioral-and-social-sciences-and-education> (provides evidence- based information on social and behavioral sciences; searchable and subscription based)
12. National Criminal Justice Reference Service - <https://www.ncjrs.gov> (offers justice and drug-related information on crime, victim assistance, and public safety)
  13. Office of Justice Programs, National Institute of Justice - <https://nij.ojp.gov/> (topics include corrections, courts, crime and prevention, drugs and crime, forensic sciences, law enforcement, tribal crime and justice, victims and victimization)
  14. Oxford Research Encyclopedia of Criminology and Criminal Justice, <http://criminology.oxfordre.com> (includes free access to publications from experts on a wide variety of criminal justice topics)
  15. Prison Policy Initiative, <https://www.prisonpolicy.org> (maintains a database of empirical criminal justice research available online; conducts research related to harm of mass criminalization)
  16. Research Gate, <https://www.researchgate.net> (contains scientific research on a number of topics with articles that can sometimes be downloaded or requested from the author)
  17. The Sentencing Project, [www.sentencingproject.org](http://www.sentencingproject.org) (criminal justice policy analysis; focus on over-incarceration and alternative sentencing)
  18. Science Daily, <https://www.sciencedaily.com/> (health and physical science, technology, environmental science, social science and education,
  19. Urban Institute, <https://www.urban.org/> (economic and social policy research)
  20. Vera Institute of Justice. <https://www.vera.org> (research and information on securing equal justice, ending mass incarceration, and strengthening families and communities)
  21. 2-1-1 – [www.211.org](http://www.211.org) (provides resources and assistance on a variety of topics relevant to establishing community stability, including food, housing, employment, health care, and counseling)

## **B. Autism**

1. National Autism Association, <https://nationalautismassociation.org/>
2. Autism Society, <https://autismsociety.org/>

3. Autism Speaks – Autism Treatment Network,  
<https://www.autismspeaks.org/taxonomy/term/2751>

### **C. Bias**

1. Kirwan Institute for the Study of Race and Ethnicity -  
<http://kirwaninstitute.osu.edu> (research on housing, education, jobs, transportation, health, and criminal justice aimed at racially equitable policy)

### **D. Child Development**

1. Center on the Developing Child, Harvard University -  
<http://developingchild.harvard.edu> (scientific research on early childhood, including toxic stress, resilience, brain architecture, executive function and self-regulation, early childhood mental health, lifelong health, neglect).
2. Child Welfare League of America - <https://www.cwla.org> (child welfare organization that focuses on policies, programs and practices related to child maltreatment and foster care)
3. The Annie E. Casey Foundation - <http://www.aecf.org> (publishes data on state trends in child well-being, economic well-being, education, health, family, and community)
4. Child Trends - <https://www.childtrends.org> (conducts research on child maltreatment/child welfare, early childhood, education, families and parenting, health, poverty and inequality, race equity, social and emotional development, teen pregnancy/reproductive health, and youth development)

### **E. Collateral Consequences**

1. The Collateral Consequences Resource Center - <http://ccresourcecenter.org> (provides news and commentary about collateral consequences of conviction)
  2. The National Inventory of Collateral Consequences of Conviction-  
<https://niccc.nationalreentryresourcecenter.org/> (sheds light on invisible punishment)

### **F. Drug Dosage and Potency**

1. 5 Tips to Safely Dose and Enjoy Cannabis Edibles,  
[www.leafly.com/news/cannabis-101/5-tips-to-safely-dose-and-enjoy-cannabis-edibles](http://www.leafly.com/news/cannabis-101/5-tips-to-safely-dose-and-enjoy-cannabis-edibles).
2. The Vaults of Erowid, <https://www.erowid.org/splash.php> ((provides

information about psychoactive plants, chemicals, pharmaceuticals, and related issues – e.g., potency, common dosage, usage rates).

### **G. Substance Abuse**

1. Drugrehab.org - <https://www.drugrehab.org/find-a-rehab-center/> (lists local rehabilitation centers; the site also has other resources related to drug addiction).
2. SAMHSA, Behavioral Health Treatment Services Locator - <https://findtreatment.samhsa.gov/> (information for people seeking treatment for substance abuse/addiction and/or mental health problems)
3. RehabCenter.net - <https://www.rehabcenter.net/> (directory of drug and alcohol rehab centers located throughout the U.S.)
4. Rehabs.com, An American Addictions Centers Resource - <https://www.rehabs.com/> (extensive list of rehab centers and info on how to choose the right rehab)
5. Drugabuse.com, An American Addiction Centers Resource - <https://drugabuse.com/> (includes information on drug effects, signs of drug abuse, and links to other resources)
6. FreeRehabCenters.org - <https://www.freerehabcenters.org/> (lists free and affordable state rehab centers)
7. Nat'l Ass'n of Addiction Treatment Providers - <https://www.naatp.org/> (an organization that focuses on “leadership, advocacy, training and member support services to ensure the availability and highest quality of addiction treatment”).
8. Nat'l Council on Alcohol and Drug Dependence - <https://ncaddnational.org/> (a health organization focusing on alcoholism and drug addiction, including the consequences “of alcohol and other drugs on individuals, families, and communities).
9. DrugRehab.com - <https://www.drugrehab.com/> (information on various types of drug addiction and treatment)
10. American Addiction Centers - <https://americanaddictioncenters.org/> (treatment and focus on “how factors such as your lifestyle, environment, health, and co-occurring mental health disorders may play

a part in your addiction involving drugs or alcohol”).

## **H. Economic Prosperity**

1. The Urban Institute measures the strength of cities and their chance to give residents a chance to improve the quality of their life - <https://apps.urban.org/features/inclusion/?topic=map> (ranking 274 cities on economic, racial, and overall inclusion; “[e]conomically healthy cities tend to be more inclusive than economically distressed cities”).
2. Center for American Progress - <https://www.americanprogress.org/data-view/poverty-data/poverty-data-map-tool/> (contains state and congressional district data on affordable housing, assets and savings, children living apart from parents, child poverty, disconnected youth, gender wage gap, health insurance coverage, high school graduation, higher education attainment, hunger and food insecurity, income inequality ratio).
3. FRED - <https://fred.stlouisfed.org/categories/27281> (provides substantial state, county, and other regional data on economic issues – e.g., unemployment rate, minimum wage, housing prices, estimated percentage of people in poverty, income inequality, education levels, premature death rates)
4. National Low Income Housing Coalition - <https://nlihc.org/> (data on housing costs and shortage of affordable housing for the lowest income renters)
5. Debt in America: An Interactive Map, <https://apps.urban.org/features/debt-interactive-map> (provides information on how debt affects people across the United States with an interactive map to look at state or county information)
6. Nine Charts about Wealth Inequality in America, <https://apps.urban.org/features/wealth-inequality-charts/> (“nine charts illustrate how income inequality, earnings gaps, homeownership rates, retirement savings, student loan debt, and lopsided asset-building subsidies have contributed to these growing wealth disparities”)

## **I. Immigration**

1. Immigration Advocates Network, <https://www.immigrationadvocates.org/> (provides access to immigration legal resources and lists local organizations that help with immigration matters)

### **J. Life Expectancy**

1. Life Expectancy Can Vary by 20 years Based on Where in the U.S. You Live, <http://time.com/4770631/longevity-map> (an interactive map of life expectancy that tracks mortality rates by location)
2. Institute for Health Metrics and Evaluation, <http://www.healthdata.org/> (reports life expectancy for different countries)

### **K. Medical Issues**

1. Institute for Health Metrics and Evaluation, <http://www.healthdata.org/> (reports on major medical issues and disabilities in various countries)
2. Medscape - <http://www.medscape.com> (medical news)
3. PubMed.gov - <https://www.ncbi.nlm.nih.gov/pubmed> (searchable database with over 27 million citations to articles in scientific and medical journals, including links to full text articles; good for reaching mental health and medical information)
4. U.S. National Library of Medicine – <https://medlineplus.gov> (information on health, wellness, disorders, and conditions; prescription drugs)

### **L. Mental Health**

1. Psychiatric Times - <http://www.psychiatrictimes.com/> (free subscription to obtain information on developments in psychiatry)
2. International Society for Traumatic Stress Studies - <https://istss.org/> (information on assessing and treating trauma and the scope and consequences of traumatic exposure)
3. National Alliance on Mental Illness- <https://www.nami.org> (information on signs of mental illness, mental health conditions, statistical data on prevalence of mental illness among various populations, treatment, and research)
4. PTSD: National Center for PTSD - <https://www.ptsd.va.gov/index.asp> (research and education on trauma and PTSD)
5. National Center on Criminal Justice & Disability - <https://www.thearc.org/NCCJD> (provides training for criminal justice professionals on the challenges people with intellectual and developmental disabilities face in the criminal justice system; contains state specific data on



resources, laws affecting people with I/DD, and other relevant information on people with I/DD).

6. American Association on Intellectual and Developmental Disabilities- <https://aaidd.org> (“AAIDD promotes progressive policies, sound research, effective practices, and universal human rights for people with intellectual and developmental disabilities.”).
7. American Psychological Association - <http://www.apa.org> (tips for choosing a psychotherapist; numerous publications regarding addictions, ADHD, aging, anxiety, children, depression, emotional health, ethics, intelligence, parenting, race, sexuality, stress, therapy, trauma, and workplace issues).
8. Center for Autism & Related Disorders - <https://centerforautism.com/> (research and resources to help understand autism and treatment options).
9. SAMHSA, Behavioral Health Treatment Services Locator, <https://findtreatment.samhsa.gov/> (information for people seeking treatment for substance abuse/addiction and/or mental health problems)
10. Mental Health America - <https://www.mentalhealthamerica.net/> (mental health screening tools, treatment resources)
11. National Mental Health Consumers; Self Help Clearinghouse - <https://www.mhselfhelp.org/> (self-help and advocacy resources)
12. National Council for Behavioral Health - <https://www.thenationalcouncil.org/> (includes a center for consulting and training among a multitude of mental health topics)
13. Psychology Today - <https://www.psychologytoday.com/us> (includes a list of therapists throughout the U.S.)
14. Depression and Bipolar Support Alliance - <https://www.dbsalliance.org/> (covers education, wellness, and support for depression and bipolar disorder)
15. Anxiety and Depression Association of America - <https://adaa.org/> (includes information on anxiety and depression, including co-occurring disorders; has screening tools for several disorders; and lists treatment resources)
16. Sidran Institute: Traumatic Stress Education & Advocacy)- <https://www.sidran.org/> (“help people understand, manage, and treat trauma and dissociation)

### **M. Parental and Family Incarceration**

1. Rutgers University, The National Resource Center on Children and Families of the Incarcerated, <https://nrccfi.camden.rutgers.edu> (this site is a general resource for those working with families impacted by incarceration)

### **N. Sex Offenses**

1. Sex Offenders with Autism Spectrum Disorder - <https://www.youtube.com/watch?v=x1CSqZDzhIA> (webinar conducted by the National Center on Criminal Justice)
2. Association for the Treatment of Sexual Abusers - <https://www.atsa.com/> (“ATSA promotes sound research, effective evidence-based practice, informed public policy, and collaborative community strategies that lead to the effective assessment, treatment, and management of individuals who have sexually abused or are at risk to abuse; provides information across the country.”)
3. Asperger/Autism Network - <https://aane.org/>
4. American Association of Sexuality Educators Counselors and Therapists, <https://www.aasect.org/>
5. American Board of Sexology, <https://americanboardofsexology.org/>
6. Society for Sex Therapy & Research, <https://sstarnet.org/>

### **O. Traumatic Brain Injury**

1. National Institute of Neurological Disorders and Stroke, <https://www.ninds.nih.gov/>
2. Brain Injury Association of America, <https://www.biausa.org/>
3. American Speech-Language Hearing Association, <https://www.asha.org/?srsltid=AfmBOorDMIRST2vwMm5NwA0f1gk6iviI92b5iC0OK1r4bdmZKivsCJYM>
4. Criminal Thinking Therapy Resource Site - [criminalthinking.net](http://criminalthinking.net) (includes a list of articles and websites relevant to cognitive-behavioral therapy as a treatment approach for criminal thinking).

### **P. Veterans Treatment and Support**

1. Veterans Justice Outreach, Re-entry Programs and Veterans Treatment

Court - <https://8thandi.usmc-mccs.org/news/veterans-justice-outreach-re-entry-programs-and-veterans-treatment-court> (“Works to avoid the unnecessary criminalization of mental illness and extended incarceration among Veterans by ensuring that eligible, justice-involved Veterans have timely access to Veterans Health Administration (VHA) services.”). A veteran’s justice outreach specialist can be found at <https://www.va.gov/homeless/vjo.asp#contacts>

2. The Soldiers Project - <https://www.thesoldiersproject.org> (provides “a safety net of psychological services for military service members and their loved ones, and to educate the general public on how the psychological consequences of war affect both those who serve and their loved one at home.”)
3. U.S. Dept. of Veterans Affairs - <https://www.va.gov/> (information on obtaining veterans records, benefits and health care, trauma, research on criminal activity, and other info relevant to veterans)