2018

The Cost of the Government's Failure to Protect Children Witnessing Parental Arrest and Detainment

Tiffany Simmons

District of Columbia Department of Corrections

Bahiyyah Muhammad

Howard University, bahiyyah.muhammad@howard.edu

Kasandra Dodd

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/aublr>

Part of the [Law Enforcement and Corrections Commons](#), and the [Legal Ethics and Professional Responsibility Commons](#)

Recommended Citation

Simmons, Tiffany; Muhammad, Bahiyyah; and Dodd, Kasandra "The Cost of the Government's Failure to Protect Children Witnessing Parental Arrest and Detainment," American University Business Law Review, Vol. 7, No. 2 (2018) .

Available at: <https://digitalcommons.wcl.american.edu/aublr/vol7/iss2/1>

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University Business Law Review by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

THE COST OF THE GOVERNMENT'S FAILURE TO PROTECT CHILDREN WITNESSING PARENTAL ARREST AND DETAINMENT

TIFFANY SIMMONS, J.D.,* DR. BAHIIYAH MUHAMMAD, PH.D.** AND
KASANDRA DODD, LICSW***

Abstract

"[T]he majority of police departments have no written protocol delineating officers' responsibility to the children of arrested parents,

* Tiffany Simmons is the Special Assistant to the Deputy Director of the District of Columbia Department of Corrections. In this role, she advises and collaborates with internal departments on issues pertaining to education, training, professional development and career-readiness for agency personnel and all incarcerated persons. She also serves as a Lecturer and Adjunct Professor at both Howard University and American University. Her areas of study are criminology, criminal justice, and law. Her research focuses on the examination of the diaspora of disenfranchised populations and how they relate to societal structures. She has also developed a curriculum related to social justice and global diversity. She has been an educational attorney and child advocate who has prided herself on making a positive impact on her community. Ms. Simmons is a graduate of Texas Southern University, Thurgood Marshall School of Law and she earned her B.A. in political science from Johnson C. Smith University.

** Dr. Bahiyyah M. Muhammad is Assistant Professor at Howard University in the Department of Sociology and Criminology. Her research interests include familial incarceration and the collateral consequences of mass incarceration experienced by minor children and their caregivers. Dr. Muhammad has conducted ethnographic research on children of incarcerated parents since 2004. She is the co-founder of Project Iron Kids, an initiative to empower children of the incarcerated. Her current work explores resiliency among families and children of those under correctional supervision.

*** Kasandra Dodd is a clinical social worker in the Washington, DC metro area. She has 13 years of experience in the child welfare field, specializing in work with adolescents in foster care. She has accrued a wealth of knowledge as a case carrying social worker, diagnostic therapist, Independent Living Specialist and managing supervisor. She has assisted in the development of various older youth initiatives, and policies at the DC Child and Family Services Agency (CFSA). She is the Co-Chair of the DC Taskforce on Human Trafficking. Ms. Dodd is also a member of an interdisciplinary think tank that draws on their individual expertise to resolve issues related to social justice. She received her Bachelors of Social Work from the University of Georgia and her Masters in Social Work from Howard University.

*and those protocols that do exist vary widely in their wording and their implementation. A national survey by the American Bar Association (ABA) Center on Children and the Law found that only one-third of patrol officers will handle a situation different if children are present. . . . The result is that an event that is by its nature traumatic—the forcible removal by armed strangers of the person to whom children naturally look for protection—happens in ways that are virtually guaranteed to exacerbate, rather than mitigate, that trauma.”*¹

I. Introduction	201
II. Special Relationship: Definition, Application and Evolution	203
A. Application to Children of Detained Guardians and Parents: Courts in Favor	204
B. Application to Children of Detained Guardians and Parents: Courts Against	205
C. How Other Circuit Courts Define Special Relationship	206
III. State-Created Danger	207
A. State-Created Danger as Defined by the Circuit Courts ...	207
B. The Most Common Application to Children	208
IV. The Underestimated Consequences and Unforeseen Trauma	209
V. The Voices of the Children	215
A. Sample Description	215
B. The Sample	216
i. Home Life	217
ii. School Life	218
iii. Parental Incarceration	219
iv. Present During Parental Arrest	219
v. Child Problems	220
vi. Risky Behaviors	221
vii. Flashbacks to What They Witnessed	222
viii. Two Sides of the Same Coin	225
ix. Summary	228
VI. Policy Recommendations: The Development of Public Policy and Regulatory Control	229
A. Good Cops: Police Advocate Good Health in Schools	230
B. Notable Departmental Approaches	231
VII. Conclusion	232

1. NELL BERNSTEIN, ALL ALONE IN THE WORLD: CHILDREN OF THE INCARCERATED 9 (2005).

I. INTRODUCTION²

In American society, parents are sent to prison at alarming rates, yet very little research has been conducted on how children and young adults are impacted after witnessing the detainment or arrest of a parent or guardian.³ When young individuals witness such events, they are more likely to display post-traumatic stress symptoms as compared to children whose parents are not arrested.⁴ Accordingly, the International Association of Chiefs of Police (“IACP”), in association with the Department of Justice (“DOJ”), Office of Justice Programs’ Bureau of Justice Assistance (“BJA”), developed a model policy to serve as an important written guidance and resource for law enforcement to develop national guidelines and templates for internal policy to follow in these common situations.⁵ With that in mind, providing written guidance can help to protect children and young adults in situations surrounding detainment and arrest of a parent or guardian.⁶ The goal of this model policy is to address the lack of “most law enforcement [not having] policy, procedures, or specifically address actions that should be taken to reduce and prevent trauma associated with the arrest of a parent [or guardian].”⁷ The IACP acknowledged that this deficiency negatively

2. Part of this Article is included in Tiffany Simmons, et. al., *Kick in the Door, Wavin the Four-Four: Failure to Safeguard Children of Detained and Arrested Parents*, in CONTEMPORARY RESEARCH AND ANALYSIS ON THE CHILDREN OF INCARCERATED PARENTS: INVISIBLE CHILDREN (2018).

3. See, e.g., Bruce Western & Becky Petit, *Collateral Costs: Incarceration’s Effect on Economic Mobility*, PEW CHARITABLE TRS. 4 (2010), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf (estimating that about 2.7 million children have an incarcerated parent and this translates to 1 in every 28 children, which is a stark increase from 25 years ago when it was 1 in every 125 children); see also Lisa H. Thurau, *First Do No Harm: Model Practices for Law Enforcement Agencies When Arresting Parents in the Presence of Children*, OJP DIAGNOSTIC CTR. 10, http://strategiesforyouth.org/sfysite/wp-content/uploads/2012/09/First_Do_No_Harm_Report.pdf (last visited Mar. 3, 2018).

4. See Thurau, *supra* note 3, at 10 (stating that 57% of children are more likely to display post-traumatic stress symptoms than those whose parents were not arrested); see also *id.* at 24 n.41 (reporting that the National Survey of Child and Adolescent Well-Being (“NSCA”) sampled 1,869 children from ages 8 through 18 and noted that there was a 73% greater likelihood of having elevated post-traumatic stress symptoms from those children who witnessed the arrest of a family member and had a recently arrested parent).

5. See *Safeguarding Children of Arrested Parents*, INT’L ASS’N CHIEFS POLICE (Aug. 2014), www.bja.gov/Publications/IACP-SafeguardingChildren.pdf (noting that in addition to the IACP and BJA, other federal, state, local and tribal practitioners and experts in children mental health and child welfare were also involved in this process).

6. See *id.* at 1 (explaining that nearly 50% of responding child welfare agencies did not have written protocols that describe how to minimize trauma that the child may experience).

7. *Id.*

impacts the overall growth and development of children which may then have a spillover effect in the long run.⁸

With recent media attention directed to local law enforcement misconduct, there is an increased need for procedural requirements and protocols.⁹ The legal system in the United States has provided limited guidance on police conduct.¹⁰ However, in *DeShaney v. Winnebago County Department of Social Services*,¹¹ the United States Supreme Court found that the police only hold a duty to safeguard children during the arrest of a parent or guardian when two specific instances exist: (1) a special relationship must be created, and (2) the state created the danger that must have caused the harm to the child.¹²

The purpose of this Article is to explore the failure of law enforcement to safeguard children of detained and arrested parents. It draws upon interviews with children of incarcerated parents who witnessed the arrest and/or detainment of their loved one, as well as interviews with the arrested and/or detained parents. It also provides critical analysis of the laws that have been created to protect and serve these young citizens following the arrest or detainment of their parents or guardians. The strength of the Article rests in its interdisciplinary approach and ability to address failures of the law and those who enforce it.

8. See *id.* (in other words, what children bear witness to during the arrest of a parent or guardian may continue to affect them throughout their adulthood and they can develop immediate and long-term emotional, mental, social, and physical health problems such as sleep disruptions, separation anxiety, irritability, and even more serious disorders or post-traumatic reactions, and these events can lead to later problems with authority figures and law enforcement).

9. See Kenneth Adams et al., *Use of Force by Police: Overview of National and Local Data*, DOJ NAT'L INST. JUST. 1, 2 (Oct. 1999), <https://www.ncjrs.gov/pdffiles1/nij/176330-1.pdf> (stating that the media gives attention to possible instances of police abuse and the use of force).

10. See generally Ken Wallentine, *Chief's Counsel: Legal Risks of Failing to Care for Children of Arrested Persons*, POLICE CHIEF, <http://www.policechiefmagazine.org/legal-risks-of-failing-to-care-for-children-of-arrested-persons/> (last visited Apr. 16, 2018) (noting that the legislative and executive branches of government are utterly silent on and attempts by the judiciary have resulted in limited and vague rulings with high burdens of proof).

11. 489 U.S. 189, 201 (1989).

12. Compare *id.* at 201 (holding that the state had no duty to the child because they did not cause the danger and their failure to intervene in private citizens affairs did not create the special relationship), and *Pinder v. Johnson*, 54 F.3d 1169, 1175 (4th Cir. 1995) (determining that no special relationship existed as there was no custodial relationship with Pinder because there was no confinement of her liberty that would trigger the duty), with *White v. Rochford*, 592 F.2d 381, 385 (7th Cir. 1979) (ruling that the police were grossly negligent because they knew that without their assistance, the children would be subject to danger).

Section II of this Article defines and discusses the nature of a special relationship because it is critical in understanding the unique consideration afforded to children who happen to be present during the arrest or detainment of their parent or guardian. Section III introduces the concept of the state-created danger and outlines the parameters for which the standard is applied. Section IV provides insight into the emotional and potential psychological effects when children and youth are present when their primary caretaker is arrested and detained and also presents the financial and tax implications of addressing such a problem. Section V details personal accounts of the children present during the arrest and detainment of their parents. The impact of which is illustrated through the presentation of data and statistics. Section VI discusses the development of policies and procedures designed to safeguard children and denotes successful efforts made by local police departments.

II. SPECIAL RELATIONSHIP: DEFINITION, APPLICATION AND EVOLUTION

The *public duty doctrine* holds that the police have no duty to protect the general public from harm absent a “special relationship.”¹³ The public duty doctrine has been widely accepted on both the state and federal levels, with many courts ruling that states are not required to provide police services, but complications arise from the fact that the parameters of what constitutes a special relationship are “hazy and indistinct.”¹⁴ The concept of a special relationship grew out of the policy that the police are required to act under certain circumstances and with regards to children, the duty to act translates into a duty to protect.¹⁵ When a parent or guardian is arrested or booked in the presence of his/her children, the special relationship is created instantly because upon arrest, custody, or any deprivation of liberty of the parent or guardian, the law enforcement officer is now responsible for the well-being

13. See *South v. Maryland*, 59 U.S. 396, 401-03 (1865) (reiterating that the local law enforcement holds no duty to protect individuals, but only a general duty to enforce the laws).

14. See *Gan v. City of New York*, 996 F.2d 522, 534 (1993) (quoting *Gan v. City of New York*, No. 91 Civ. 4644 (MJL), 1992 WL 230188, at *5 (S.D.N.Y. Aug. 28, 1992) (finding that the deceased plaintiff’s estate sued based on the special relationship created after the deceased identified a suspect in an investigation and was entitled to police protection upon threats he received); see also *Reiff v. Philadelphia*, 471 F. Supp. 1262, 1265 (E.D. Pa. 1979) (stating that the plaintiff, who was a minor, had no claim against the defendant because the idea that inadequate police protection is a violation of any constitutional right is not supported by any precedent).

15. See *DeShaney*, 489 U.S. at 201-02 (clarifying that state tort law may require that some “special relations” trigger an affirmative duty to protect, but that the duty does not necessarily transform into a constitutional duty to protect).

of the children.¹⁶

*A. Application to Children of Detained Guardians and Parents:
Courts in Favor*

Several cases have defined the special relationship based on a variety of facts. The pivotal case that defined the concept of “special relationship” when applied to children was *White v. Rochford*.¹⁷ In this case, an uncle was arrested and two nephews who were minors, were in the vehicle and upon arrest, the uncle pleaded with the arresting officers to take the children to the police station or to a phone booth to contact the mother.¹⁸ The children left the vehicle to search for a telephone to contact the mother who was unable to pick them up and, thus, they were left in the cold for hours until a neighbor picked them up.¹⁹ The children sustained trauma and the youngest, at five years old, had to be hospitalized.²⁰ The U.S. Court of Appeals for the Seventh Circuit ruled that the police officers created a “special relationship” with the children from the moment they arrested their uncle and, therefore, the officers had a duty to ensure the children’s safety and were liable for the emotional and physical injuries they sustained.²¹ Furthermore, in *Matheny v. Boatright*,²² Angela Matheny sued Jimmy Boatright, the former sheriff in Jefferson Davis County Georgia, for violating both her and her children’s constitutional rights.²³ Ms. Matheny claimed that her children were deprived of their due process rights by being forced to accompany their mother in the back of the squad car and subsequently to the detention center and, as such these actions were equivalent to “improper seizure of the children.”²⁴ The

16. See *Pinder*, 54 F.3d at 1175 (4th Cir. 1995) (explaining that some type of confinement, such as incarceration, custody, or institutionalization, in order to trigger the affirmative duty).

17. 592 F.2d 381, 383, 385 (7th Cir. 1979).

18. See *id.* at 382 (highlighting that the defendant officers refused to provide any aid and left the children in an abandoned car on a cold and busy highway).

19. See *id.* (explaining that the children had to cross eight lanes of traffic and wander on the freeway at night to find the telephone, that the mother called the police who once again refused to assist, and that the mother had no car to search for and get the children).

20. See *id.* (noting that the five-year-old was hospitalized for a week due to complications from asthma).

21. See *id.* at 383, 385 (observing that the actions of the officers were “grossly negligent,” and they showed “reckless disregard” for the safety of others).

22. 970 F. Supp. 1039 (S.D. Ga. 1997).

23. See *id.* at 1041 (noting that Matheny was arrested for the selling crack, but “[i]n executing the arrest warrant, the police allegedly conducted a search of Matheny’s apartment using a drug-sniffing dog, and then transported Matheny and her three children to a detention facility”).

24. *Id.* at 1043, 1046.

U.S. District Court for the Southern District of Georgia ruled that the police officers acted in accordance with the special relationship created and the children were kept in a safe environment.²⁵ In *Dixon v. City of Selma*,²⁶ a child relied on the due process clause of the Fourteenth Amendment to claim an unlawful separation from her father after his arrest.²⁷ The Alabama Department of Human Resources was given temporary custody of the child so she could be placed with her grandmother.²⁸ The U.S. District Court for the Southern District of Alabama determined the officers “acted reasonably.” The special relationship was maintained as the primary objective of keeping the child safe was achieved.²⁹

*B. Application to Children of Detained Guardians and Parents:
Courts Against*

The first time the Supreme Court addressed the issue of “special relationship” was in *DeShaney*.³⁰ The Court established that “no constitutional obligation [exists on the part of the state officials] to protect those who are in danger of being harmed by third parties, unless that endangered person[s] [are] in the ‘custody’ of the state.”³¹ It appears the standard has become more and more stringent, despite the growing number of incidents of police misconduct.³² *DeShaney* defined the type of actions that triggered the special relationships and subsequently the duty to protect.³³

The abandonment of the child of a detainee was the basis for *Moore v. Marketplace Restaurant, Inc.*³⁴ Five adult patrons were arrested for failing to pay a restaurant bill.³⁵ At the time of her arrest, “Judith Kosmel advised

25. *Id.* at 1044-45.

26. No. 2:10-0478-KD-N, 2011 WL 28681474, at *1 (S.D. Ala. July 11, 2011).

27. *Id.* at *13.

28. *Id.* at *4.

29. *Id.* at *13.

30. 489 U.S. 189 (1989).

31. Abbey M. Marzick, Note, *The Foster Care Ombudsman: Applying an International Concept to Help Prevent Institutional Abuse of America's Foster Youth*, 45 FAM. CT. REV. 506, 509 (2007); *see id.* at 194 (reiterating that *DeShaney* set the standard by which the duty of government agents, including law enforcement, is judged).

32. *See Austin v. Mylander*, 717 So. 2d 1073, 1076 (Fla. Dist. Ct. App. 1998); *see also Cherrington v. Skeeter*, 344 F.3d 631, 647-48 (6th Cir. 2003).

33. *DeShaney*, 489 U.S. at 189 (ruling that the State's knowledge of the danger to petitioner and the State's expressions of willingness to protect petitioner did not establish a “special relationship giving rise to an affirmative constitutional duty to protect”).

34. 754 F.2d 1336 (7th Cir. 1985).

35. *See id.* at 1338, 1340 (listing Chauncey L. Moore, Jr., Hugo P. Kosmel, Jr., Arthur J. Ciolkowski, Andrea R. Ciolkowski, and Judith M. Kosmel as the five adults in attendance at dinner at Marketplace Restaurant, in addition to Kimberlee Kosmel,

the officer that her fifteen-year-old daughter [a minor] was in the camper alone.”³⁶ “The officer gave her the choice of either having the daughter accompany them” and sitting “in the squad car while they were in custody or having her remain in the camper alone.”³⁷ “Judith Kosmel told the officer . . . that either choice was unacceptable; however, she eventually decided to leave her daughter in the camper.”³⁸ Although the daughter “suffered no physical injury . . . she claimed damages for emotional distress as a result of witnessing the arrest and handcuffing of her parents and being left alone in the camper without protection.”³⁹ However, the court determined that the claim was without merit.⁴⁰

C. How Other Circuit Courts Define Special Relationship

Though *DeShaney* is the landmark case defining special relationship, a few other circuit and district courts have refined the meaning.⁴¹ In doing so, these differing interpretations by the different courts highlight the disparities in how police officers and government agents are held liable when accused of egregious constitutional violations.⁴² The U.S. District Court for South Carolina used *Jensen v. Conrad*⁴³ to discuss the factors of a “special relationship.”⁴⁴ These factors are “[w]hether [1] the victim or the perpetrator was in legal custody at the time of the incident, or had been in legal custody

daughter of Judith and a minor child, where they ordered meals which they did not receive, but consumed some items which they did not pay for).

36. *Id.* at 1340-41 (noting that plaintiffs were not detained until later that evening at their respective campers).

37. *Id.* at 1340.

38. *See id.* at 1341 (establishing that the camper was equipped with locks and heat).

39. *Id.*

40. *Id.* at 1355.

41. *See also* Milena Shtelmakher, Note, *Police Misconduct and Liability: Applying the State-Created Danger Doctrine to Hold Police Officers Accountable for Responding Inadequately to Domestic-Violence Situations*, 43 LOY. L. REV. 1533, 1544 (2010) (stating that “[b]ecause the dictum [of the Court] provides no clear guidance on the doctrine, circuit courts differ in their applications of it. . . . [T]he Fourth Circuit rejects the doctrine completely while the First Circuit rejects it ‘with some hesitation’” and other circuits tends to lean in favor of the defendant). *See generally id.* at 1537 (reiterating that the extent to which law enforcement are subject to liability for third party danger is dependent on how federal courts interpret *DeShaney*).

42. *See* Matthew D. Barrett, Note, *Failing to Provide Police Protection: Breeding a Viable and Consistent “State-Created” Danger Analysis for Establishing Constitutional Violations Under Section 1983*, 37 VAL. U. L. REV. 177, 178 (2002) (noting that federal courts gave rise to the term “state-created danger” and there is a distinct irregularity in how the federal courts legitimize the theory).

43. 570 F. Supp. 114 (D.S.C. 1983).

44. *See id.* at 132.

prior to the incident. . . . [2] the state ha[d] expressly stated its desire to provide affirmative to a particular class or specific individuals. . . . [and 3] the State knew of the [victim's] plight."⁴⁵ Furthermore, in *Raucci v. Town of Rotterdam*,⁴⁶ the U.S. Court of Appeals for the Second Circuit refined the concept of a "special relationship" when law enforcement fails to act.⁴⁷ It held that the elements of a special relationship are:

1) an assumption by the municipality . . . of an affirmative duty to act on behalf of [a person that is] injured; 2) knowledge . . . that inaction could lead to harm; 3) . . . direct contact between the [police] and the injured [person]; and 4) the [injured person's] justifiable reliance on the [police's] affirmative undertaking.⁴⁸

III. STATE-CREATED DANGER

Regardless of whether a special relationship exists between the arresting officer and the detainee, a duty to protect may still exist if the person has been harmed by a third party and who can prove that the state created the existence of danger.⁴⁹ The state-created danger theory implies that the law enforcement personnel can neither leave an individual in a more dangerous situation, create a previously nonexistent set of dangerous circumstances, nor increase the present danger.⁵⁰ This theory has predominantly been applied to cases involving "motorists and passengers, failure to arrest, and failure to serve orders."⁵¹

A. *State-Created Danger as Defined by the Circuit Courts*

Deshaney opened the door to the state created danger; however, it was brought into the legal vernacular by *D.R. v. Middle Bucks Area Vocational Technical School*.⁵² The Second Circuit views a special relationship and

45. See *Jensen v. Conrad*, 747 F.2d 185, 194 n.11 (4th Cir. 1984).

46. 902 F.2d 1050 (2d Cir. 1990).

47. *Id.* at 1055 (imposing the relationship to only a narrow class of cases, particularly with respect to New York law).

48. *Id.* at 1055-56.

49. See L. Cary Unkelbach, *No Duty to Protect: Two Exceptions*, POLICE CHIEF, <http://www.policechiefmagazine.org/no-duty-to-protect-two-exceptions/> (last visited Mar. 12, 2018) (clarifying that normally there is no constitutional duty to protect a private person from another private person but there are some exceptions).

50. See generally *Legal Doctrine of State-Created Danger and Police Liability*, HG.ORG, <https://www.hg.org/article.asp?id=38300> (last visited Mar. 12, 2018) (providing examples of state created dangers as held in the U.S. Court of Appeals for the Sixth Circuit and other federal circuits).

51. See, e.g., *id.*; see also Unkelbach, *supra* note 49.

52. 972 F.2d 1364, 1368-69 (3d Cir. 1992); see also Lauren Oren, *Safari into the Snake Pit: The State-Created Danger Doctrine*, 13 WM. & MARY BILL RTS. J. 1165,

state-created danger as two separate exceptions and, thus, a plaintiff has two separate causes of action to prove a breach of the duty to protect.⁵³ The U.S. Court of Appeals for the Third Circuit applies a four-prong test when evaluating claims of state-created danger.⁵⁴ The U.S. Courts of Appeal for the Fourth and Fifth Circuits concur that a special relationship must exist to establish the state created danger.⁵⁵

B. The Most Common Application to Children

The more successful factual situations from plaintiffs arguing that the state-created danger doctrine stems from the failure to protect in instances of domestic violence, abandonment of passenger after arresting the driver among others.⁵⁶ The more successful litigants arguing that the state-created danger doctrine has also established the special relationship as a means of proving the breach in the duty of the care. One such case was *Sorichetti v. City of New York*⁵⁷ where, from 1949 to 1975, Josephine and her children suffered physical abuse at the hands of her husband, Frank.⁵⁸ Josephine filed for divorce in September 1975, and Frank destroyed their personal property, but the police refused to arrest him because “he lived there.”⁵⁹ The Family Court issued a protective order, which affirmed that the police had a duty to protect Josephine from Frank and must arrest him if he violated its terms, but the police refused to enforce the order, and subsequently, Dina, the minor child, was severely injured by her father.⁶⁰

1172 n.37 (2005).

53. Erwin Chemerinsky, *The State Created Danger Doctrine*, 23 *TOURO L. REV.* 1, 3-4 (2007).

54. *See Burella v. Philadelphia*, 501 F.3d 134, 147 n.17 (3d Cir. 2007) (noting that the four elements include: (1) the harm caused was foreseeable and direct, (2) the state action shocks the conscience, (3) plaintiff was a foreseeable victim of defendant’s acts, and (4) a state actor affirmatively created the danger to a citizen).

55. Chemerinsky, *supra* note 53.

56. *See, e.g., Oren, supra* note 52, at 1167.

57. 482 N.E.2d 70 (N.Y. 1985).

58. *Id.* at 71-72 (explaining that the couple was married in 1949, and Frank’s physical abuse was often fueled by his drunken binges and, in this case, the abuse was focused on the couple’s youngest daughter Dina).

59. *Id.*

60. *See id.* at 74 n.1 (noting that the order stated that the “presentation of a copy of an order of protection or temporary order of protection or a warrant or a certificate of warrant to any peace officer, acting pursuant to his special duties, or police officer shall constitute authority for him to arrest a person charged with violating the terms of such order of protection or temporary order of protection and bring such person before the court and, otherwise, so far as lies within his power, to aid in securing the protection such order was intended to afford”); *see also id.* at 73 (finding that Lieutenant Leon Granello of the forty-third precinct refused to enforce the protective order and referred to it as

The New York Court of Appeals found that because (1) there was a protective order, (2) the police department had knowledge of Frank Sorichetti's violent history, which was known and verified through their actual dealings with him, the existence of the protective order, and their knowledge of the particular instance in which the infant was placed, (3) they failed to respond to Josephine Sorichetti's pleas for assistance on the day of the assault, and (4) Mrs. Sorichetti had a reasonable expectation of police protection, a special relationship was created between the City and Dina Sorichetti (the minor child) because the factors were satisfied.⁶¹

IV. THE UNDERESTIMATED CONSEQUENCES AND UNFORESEEN TRAUMA

As studies advance around the subject of Post-Traumatic Stress Disorder ("PTSD") and trauma, more attention is being given to how untreated trauma affects children and adults long after the traumatic event has occurred. The effects of trauma can manifest itself mentally, physically, cognitively, emotionally, and at times even socially/culturally. More specifically, mental health clinicians identify how early traumatic experiences can act as a predicate to other life challenges and health issues later in life.

In 1995, Kaiser Permanente and the National Center for Disease Control collaborated in conducting the Adverse Childhood Experience ("ACE") Study.⁶² The purpose of the study was to establish a link between early childhood maltreatment (or trauma) and later problematic health issues in adulthood.⁶³ Although more data is being gathered; the current data from the ACES study show a link between early traumatic experiences and higher instances of problematic physical and mental health concerns in adulthood.⁶⁴

Within the ACES questionnaire the participants are asked at what age they experienced exposure to particular characterized events of maltreatment throughout their childhood.⁶⁵ Two questions in particular on this

"only a piece of paper"); *id.* at 74 (summarizing that on November 9, 1975, Frank attacked the child "with a fork, knife, and screwdriver and had attempted to saw off her leg" and by the time police found her, she was in a coma and her father was passed out with an empty whiskey bottle and a pill bottle in close proximity).

61. See also *id.* at 72, 75-76 (supplementing further that Mrs. Sorichetti and Dina were entitled to damages totaling \$2,000,000 based on evidence that the police department breached its duty to protect and that breach was the proximate cause of the infant's injuries).

62. See *About the CDC- Kaiser ACE Study*, CDC, <http://www.cdc.gov/violenceprevention/acestudy/about.html> (last visited Feb. 13, 2018).

63. *Id.*

64. *Id.*

65. Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults. The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. PREVENTIVE MED. 245 (1998).

questionnaire specifically inquire whether the child ever witnessed the parent being threatened and if there is a household member in prison.⁶⁶ Per the ACES study, and the research that surrounds it, these experiences are deemed traumatic events.⁶⁷ A child witnessing his/her parent being arrested would fall within this category. In essence, a child witnessing the arrest of parent is more complex than he or she simply being in the room. Depending on how the responding officer interacts with the child during and after the experience, it can be paramount to that child's processing of the event and its potential after effects on the child (whether negative or positive). As one such child details:

My dad was yelling, my mom was yelling, and I was crying. I don't know how they got in the house. I was waked up out my sleep. It was scary. I have night dreams about it all the time. I just wake crying sometimes. Loud noise at night make me scared. So my mom told me to sleep with the TV on so I can stop waking up all the time.⁶⁸

The concept and perception of trauma is subjective, but it is defined as experiences or situations that are emotionally painful and distressing, that overwhelm people's ability to cope, leaving them powerless.⁶⁹ Even before parental incarceration takes place, the arrest of the parent can cause the child to feel shocked, bewildered, and scared.⁷⁰

As mentioned, the outcome measures of the ACES study have been paramount in predicting long term effects of early childhood trauma.⁷¹ More specifically, children exposed to extreme or lasting trauma have a higher rate of developing (as adults) substance abuse issues, high teen pregnancy rates, high levels of anxiety, extreme mental health disorders, developmental delays, improper brain development, engagement in criminal/violent behaviors, and higher rates of various physical ailments.⁷² These factors are

66. *Id.*

67. Thureau, *supra* note 3, at 8.

68. See Bahiyyah Miallah Muhammad, *Exploring the Silence Among Children of Prisoners: A Descriptive Study* (May 2011) (published Ph.D. dissertation, Rutgers University) (on file with author).

69. See *Healing Hurt People*, CTR. FOR NONVIOLENCE & SOC. JUST., www.nonviolenceandsocialjustice.org (last visited Mar. 13, 2018).

70. Joseph Murray et al., *Children's Antisocial Behavior, Mental Health, Drug Use, and Educational Performance After Parental Incarceration: A Systematic Review and Meta-Analysis*, 138 PSYCHOL. BULL. 175, 178 (2012).

71. Jack P. Shonkoff et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, 129 AM. ACAD. PEDIATRICS e232, e237 (2012), <http://pediatrics.aappublications.org/content/pediatrics/129/1/e232.full.pdf> (noting that the association between ACE and unhealthy adult behavior has been well-documented).

72. *Id.* at e237 (noting that toxic stress during the early stages of childhood may cause significant adult ailments or diseases).

typically combined to lead to shorter life spans and an “intergenerational cycle of significant adversity, with its predictable repetition of limited educational achievement and poor health.”⁷³

While a single traumatic event may not significantly affect a child’s development, the likelihood increases with repeated exposure.⁷⁴ For children observing the arrest of a parent, the “convergence between real life events and their worst fears” about injury and the loss of protection, combined with the connection to their parents, provokes a level of overwhelming anxiety about their sense of powerlessness and fear of abandonment.⁷⁵ “The loss of trust and security makes basic interactions with adults an exercise in risk-taking that triggers anxious responses.”⁷⁶

Although stress is a normal response from the body to regulate reactions to various experiences, the toxic stress response occurs when a child experiences strong, frequent, and/or prolonged adversity—such as physical or emotional abuse, chronic neglect, caregiver substance abuse or mental illness, exposure to violence, and/or the accumulated burdens of family economic hardship—without adequate adult support.⁷⁷ This kind of prolonged activation of the stress response systems can disrupt the development of brain architecture and other organ systems, and increase the risk for stress-related disease and cognitive impairment, well into the adult years.⁷⁸

The impact of early trauma and difficulties later in life is so profound that the American Academy of Pediatrics (“AAP”) is recommending that primary care doctors screen babies for social and emotional difficulties that can potentially be early signs of toxic stress and how to intervene.⁷⁹ Toxic stress, identified as one of the most dangerous form of stress responses, correlates with the findings of the ACES. The ACES findings strongly support the concept that altered brain development caused by extreme trauma in turn,

73. *Id.* at e232, e237.

74. Thureau, *supra* note 3, at 8.

75. *See id.*

76. *Id.*

77. Andrew Garner & Jack Shonkoff, *Listening to a Baby’s Brain: Changing the Pediatric Checkup to Reduce Toxic Stress*, HARV. U. CTR. ON DEVELOPING CHILD (May 30, 2013), <http://developingchild.harvard.edu/science/key-concepts/toxic-stress/tackling-toxic-stress/listening-to-a-babys-brain-changing-the-pediatric-checkup-to-reduce-toxic-stress/>.

78. *See* Shonkoff et al., *supra* note 71, at e243 (explaining that adversity and toxic stress disrupt the development of brain architecture and can cause permanent issues related to “linguistic, cognitive, and social-emotional skills”).

79. *See* Garner & Shonkoff, *supra* note 77 (noting that the new screening would help make toxic stress a priority for all pediatricians and aid in reducing future costly and complex medical issues).

causes the maladaptive psychological, physical, behavioral, and developmental concerns that can potentially develop in these children as adults.⁸⁰

The Adults Surviving Child Abuse (“ASCA”) organization report provides insight into the importance of the parental bond and the significance of a child feeling safe and secure. Per ASCA, the life of a child revolves around that of the parent and or primary caregiver. Because the parent/caregiver is the main source of safety, security, love, and understanding, any threat to said relationship can evoke physiological and emotional scars.⁸¹

Arrests often occurs at night or the in the early morning, when people are likely to be home with their families. Postponing handcuffing the parents until the parents were out of children’s sight only occurred in three percent of fathers’ arrests and thirty percent of mothers’ arrests.⁸² Ross Parke and K. Allison Clarke-Stewart brought to light in their scholarly article that one in five children is present at the time of the arrest and witnesses the mother being taken away by authorities.⁸³ “More than half of the children who witness this traumatic event are under 7 years of age and in the sole care of their mother.”⁸⁴ “[Christina] Jose-Keampfner interviewed 30 children who witnessed their mother’s arrest and reported that these children suffered nightmares and flashback to the arrest incident.”⁸⁵

Lisa F. Thureau further points out in her article that “today, there are more parents in prison than at any prior time in American history.”⁸⁶ The primary reasons for parental arrest are, in order of prevalence, domestic violence, drug-related incidents, and property crimes.⁸⁷ In collaboration with the Bureau of Justice Assistance (“BJA”), the IACP began offering trainings to

80. See Shonkoff et al., *supra* note 71, at e236-37 (describing that altered brain development could explain in part the strong association between early adverse experiences and problems in linguistic, cognitive, and social-emotional development).

81. See *Childhood Responses to Threat/Coping Strategies*, BLUE KNOT FOUND., <https://www.blueknot.org.au/Workers-Practitioners/For-Health-Professionals/Resources-for-Health-Professionals/Child-Coping-Strategies> (last visited Mar. 13, 2018).

82. Joseph Murray et al., *Children’s Antisocial Behavior, Mental Health, Drug Use, and Educational Performance After Parental Incarceration: A Systematic Review and Meta-Analysis*, 138 PSYCHOL. BULL. 178 (2012).

83. Ross D. Park et al., *Effects of Parental Incarceration on Young Children*, NAT’L POL’Y CONF. 4 (Dec. 2001), <https://aspe.hhs.gov/system/files/pdf/74981/parke%26stewart.pdf>.

84. *Id.*

85. *Id.*

86. Thureau, *supra* note 3, at 7.

87. *Id.*

law enforcement through the Children of Arrested Parents (“CAP”) project that focuses on providing resources for law enforcement to educate them to become better informed about trauma and ideally improve practices in addressing children with a parent involved in the criminal justice system. It was also through this project that a Model Policy was developed to outline procedures that law enforcement can use to prevent or minimize the potential emotional and psychological harm to children who may witness a parent (or caregiver’s) arrest.⁸⁸ The development of this project and its ensuing Model Policy speaks to the acknowledged need to have police departmental procedures in place to further safeguard children placed in these situations. However, the policy is a model and not one that any state police department is required to use, but rather it is highly encouraged.

As more research is being done on trauma and the effects it has on those exposed to events disturbing to his/her sense of safety, reality, and perception, it is important that service providers, especially those in the role of “protector” fulfill the responsibility bestowed to them. It is also important the federal government and police districts provide police officers with the tools and knowledge to do so.

In some jurisdictions, the concept of “social work policing” has developed to address the psychological and emotional needs of those who come to the attention of the criminal justice system.⁸⁹ Law enforcement is often tasked with fulfilling various roles in times of emergencies. They are truly the first responders and have to make quick decisions to ensure the safety of the victim, the perpetrator, any bystanders, and themselves.⁹⁰ These responsibilities often go beyond crime intervention and often involve mediation, crisis interventions, and service identifications.⁹¹ The Association of Police Social Workers (“APSW”) gives police social work its own distinction as a specialization within the mental health field.⁹² “The APSW is a group of mental health professionals dedicated to the development, practice, and enhancement of social services provided within police department settings.”⁹³

88. George Patterson, *Police Social Work a Unique Area of Practice Arising from Law Enforcement Functions*, NAT’L ASS’N SOC. WORKERS (July 2008), <http://www.naswnyc.org/general/custom.asp?page=77> (explaining that “[n]umerous police departments across the country have capitalized on [service related] functions by employing civilian police social workers to assist police officers with the provision of services. . . . [Such as] crisis intervention, mediation, and referrals”).

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *About APSW*, ASS’N POLICE SOC. WORKERS, <http://www.policeworksocialwork.org/>

In Lumberton, North Carolina, the police department developed the Social Work and Police Partnership (“SWAPP”).⁹⁴ This was developed to address victims of domestic violence and assist with providing resources, referrals to other agencies, and substance abuse treatment when warranted.⁹⁵ Police are often called to restore order and address an immediate situation; not provide referrals, monitoring, or follow up.⁹⁶ This is often where the need for human services is warranted and collaboration is necessary. As Charles Dean further explains, “[p]olice work is essentially crisis work. With area wide, twenty-four coverage, only police can provide immediate response and stabilization. But police calls without follow up services are little more than band-aids.”⁹⁷ The common theoretical basis of crisis team models is crisis theory. “Crisis theory postulates that following an extremely stressful life event, individuals are in such a state of disequilibrium and upheaval that they are receptive to intervention and the acquisition of new coping skills.”⁹⁸ For the police to not have the proper support or training to address the needs of victims or bystanders during a crisis is a missed opportunity to reduce the effects of trauma and initiate the healing process. Pillar Five of the *Final Report of the President’s Task Force on 21st Century Policing* focuses on Training and Education.⁹⁹ This Pillar describes the need for improved standards of police training nationally and specifically around crisis

?page_id=44 (last visited Mar. 13, 2018).

94. Charles Dean et al., *Social Work and Police Partnerships: A Summons to the Village Strategies and Effective Practices*, CRIM. JUST. FAC. PUBLICATIONS 6-7 (2000), https://digitalcommons.brockport.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1000&context=crj_facpub.

95. *Id.*

96. *See id.* at 18 (highlighting the nature of policing and why police referrals are not prevalent).

97. *Id.* at 14-15.

98. Jacqueline Corcoran et al., *Perceptions and Utilization of a Police-Social Work Crisis Intervention Approach to Domestic Violence*, 82 FAMILIES SOC’Y J. 393, 394 (2001).

99. *See* Charles Ramsey & Laurie O. Robinson, *Final Report of the President’s Task Force on 21st Century Policing*, DOJ 3-4 (May 2015), <https://ric-zai-inc.com/Publications/cops-p311-pub.pdf> (listing the focus areas as Pillar One: Building Trust and Legitimacy, Pillar Two: Policy and Oversight, Pillar Three: Technology & Social Media, Pillar Four: Community Policing & Crime Reduction, Pillar Five: Training & Education and Pillar Six: Officer Wellness & Safety); *see also* *21st Century Policing Task Force*, INST. FOR COMMUNITY POLICE REL., <http://www.theiacp.org/taskforcereport> (last visited Mar. 13, 2018) (explaining that, “[o]n December 18, 2014, President Barack Obama issued an Executive Order appointing an 11 member task force on 21st century policing to respond to a number of serious incidents between law enforcement and the communities they serve and protect. The President wanted a quick but thorough response that would begin the process of healing and restore community trust”).

intervention.¹⁰⁰ Crisis intervention training is important as it:

[E]quips officers to deal with individuals in crisis or living with mental disabilities, as part of both basic recruit and in-service officer training—as well as instruction in disease of addiction, implicit bias and cultural responsiveness, policing in a democratic society, procedural justice, and effective social interaction and tactical skills.¹⁰¹

The financial cost associated with the trauma that results from the lack of structured protocols or incidents involving police misconduct impact more than just the individuals and personnel involved. Often the monetary burden trickles down to members of the community and government agencies. Qualified immunity and local procedures make it difficult for individuals to sue government agencies even when it is clear that their constitutional rights have been violated.¹⁰² In the event a settlement is reached between the plaintiff and the police department, the proceeds traditionally come from a general fund, with little to no contributions from the violating agency.¹⁰³ As opposed to a corporation, “which will presumably get most of its resources from the products or services that it sells, local governments’ funding comes from multiple sources, including property taxes; sales taxes; income tax; utilities; charges for parking, parks, and other services; fines; interest; and federal and state grants.”¹⁰⁴ This often means less resources are allocated to expenditures for park improvements, public education, and even community welfare.

V. THE VOICES OF THE CHILDREN

A. Sample Description¹⁰⁵

The stories from children and their incarcerated parents in this Article were collected through a qualitative methodological approach, the study aimed to contextualize the narratives of children of incarcerated parents. Interviews were conducted with those most qualified to provide these accounts of children living this experience. To explore the relationship, the study draws from in-depth interviews and observational data conducted in

100. Ramsey & Robinson, *supra* note 99, at 56.

101. *Id.* at 4.

102. See Joanna C. Schwartz, *How Governments Pay: Lawsuits, Budgets, and Police Reform*, 63 UCLA L. REV. 1144, 1152 (2016).

103. See *id.* at 1154, 1156; see also *Moore v. Marketplace Rest., Inc.*, 754 F.2d 1336, 1340 (7th Cir. 1985) (citing commentators who argue that settlements and judgments should be, but are not, paid from law enforcement agencies’ budgets).

104. Schwartz, *supra* note 102, at 1161.

105. See Muhammad, *supra* note 68, at 24-30 (tables below are extracted from the above dissertation within the Methodology section).

2006-2007 of children of incarcerated parents in urban New Jersey communities.

Data for this investigation came from a larger study on the children of incarcerated parents.¹⁰⁶ Children and their families were recruited from five non-profit organizations that provided services to children of incarcerated parents. The criteria for organization selection was threefold: (1) organizations had to offer services/programs to children of prisoners, (2) located in New Jersey, and (3) compiled demographic and background information on the population served. The selected organizations provided the researcher with demographic and background information on the children enrolled in their programs and contact information for parents, guardians, and/or caregivers.

Based on the client data, a master list was compiled of the children being served by each agency. One hundred children were randomly selected across the five sites, twenty children from each organization. Fifty-seven of the one hundred children agreed to participate in the study.

B. The Sample

General demographic information of children is presented below in Table 3.4. This sample includes a total of fifty-seven minor children. The majority of the sample was female (61.4%). Age of children is represented as the current age at the time of interview. The age variable was broken into two developmental stages including pre-adolescence and adolescent years. The average age of children was approximately eleven years (sd= 3.02). Ages ranged between seven thru eighteen years. Twenty-six percent of children were teenagers. Most were Black (77%), followed by Caucasians (14%) and Hispanics (9%).

Table 3.4. Demographics of Children (N=57)

Variables	%	(N)
Gender		
Female	61.4	(35)
Ethnicity		
Black		

106. See *id.* at 18-20 (exploring the experiences and perceptions of young urban children of the incarcerated through semi-structured interviews, collecting data from a sample of 57 child participants, aged 7-18 years, who resided in New Jersey and who were recruited from a local community organization, and consisting of a larger study of interviews with incarcerated parents, caregivers and friends and family of the incarcerated).

	77.2	(44)
Caucasian		
	14.0	(8)
Hispanic		
	8.8	(5)
<hr/>		
Age ¹⁰⁷ Developmental Stage		
7 – 12 years (Child)	73.7	(42)
13-18 years (Adolescent)	26.3	(15)

i. Home Life

All fifty-seven children were residing in New Jersey at the time of the interview, and all lived in one of eight counties. More than half lived within Essex County (56%), followed by Cumberland County (23%). Five percent were living in Monmouth County and four percent lived in Ocean, Union Mercer, and Salem counties. The remaining (2%) lived in Atlantic County. Within Essex, children resided in Newark, East Orange, Orange and Irvington. In Cumberland, kids lived in Millville, Bridgeton and Vineland. The majority of these children resided with grandparents (42%), closely followed by biological mothers (40%). Approximately, nine percent were in the custody of foster caregivers. A few children lived with maternal aunts (5%) and biological fathers (4%). Three quarters had siblings (75%), and (15%) had been separated from their sibling(s) as a result of their parent’s imprisonment. More than half of the children changed residences (68%) as a result of their parent’s incarceration. Although a majority of the children (60%) were not involved with the Division of Youth and Family Services (DYFS). However, this means that twenty-three children (40%) were involved with DYFS.

Table 4.4. Characteristics of Home Life (N=57)

Variables	%	(N)
<hr/>		
Current New Jersey County of Residence		
Essex	56.1	(32)
Cumberland	22.8	(13)
Monmouth	5.3	(3)

¹⁰⁷ *Id.* at 24-25 (noting the mean age for the sample = 10.7 and range is 7–18 years).

Ocean	3.5	(2)
Union	3.5	(2)
Mercer	3.5	(2)
Salem	3.5	(2)
Atlantic	1.8	(1)
<hr/>		
Current Caregiver		
Biological Mother	40.4	(23)
Maternal Grandmother	26.3	(15)
Paternal Grandmother	15.8	(9)
Foster Care	8.8	(5)
Maternal Aunt	5.3	(3)
Biological Father	3.5	(2)
<hr/>		
Siblings		
Yes	75.4	(43)
No	24.6	(14)
<hr/>		
Change in Residence as Result of Parents Incarceration		
Yes	68.4	(39)
No	31.6	(18)
<hr/>		
Involvement with Division of Youth and Family Services		
Yes	40.4	(23)
No	59.6	(34)
<hr/>		

ii. School Life

Thirty-nine percent of children had to change schools because of parental imprisonment. A quarter (26%) of the kids were enrolled in special education classes at their respective schools. Two-thirds (67%) of the

sample told peers about their parent's imprisonment.

Table 4.5. Characteristics of School Life (N=57)

Variables	%	(N)
Change in School as Result of Parents Incarceration		
Yes	38.6	(22)
No	61.4	(35)
Special Education Involvement		
Yes	26.3	(15)
No	73.7	(42)
Disclosed Parents Incarceration to Peers		
Yes	66.7	(38)
No	33.3	(19)

iii. Parental Incarceration

The number of children experiencing maternal incarceration (47%) was slightly higher than those children experiencing paternal incarceration (44%). Nine percent of children had experiences resulting from both parents being incarcerated. In terms of an ongoing relationship with incarcerated parents, 63% of children maintained contact. The majority of the sample (67%) was made aware of their parent's incarceration; leaving 33%unaware of their parent's whereabouts. Nearly all of the children (84%) desired lifelong relations with their incarcerated parent; another 14% did not and the remaining child claimed to be unsure.

iv. Present During Parental Arrest

Forty-three percent of the children in the sample witnessed the arrest of their parent; the majority (56%) did not.

Table 4.6. Characteristics of Parental Interaction (N=57)

Variables	%	(N)
Incarcerated Parent		
Mother	47.4	(27)
Father		

	43.9	(25)
Both Parents	8.8	(5)
<hr/>		
Desires Lifelong Relations with Parent		
Yes	84.3	(48)
No	14.0	(8)
Unsure	1.8	(1)
<hr/>		
Contact with Incarcerated Parent		
Yes	63.2	(36)
No	36.8	(21)
<hr/>		
Knowledge of Parents Incarceration		
Yes	66.7	(38)
No	33.3	(19)
<hr/>		

Table 4.7. Child Present During Arrest of Parent (N=57)

Variables	%	(N)
<hr/>		
Witnessed Parents Arrest		
Yes	43.9	(25)
No	56.1	(32)
<hr/>		

v. Child Problems

Approximately two-thirds of participants reported behavioral and emotional problems, while only 19% reported experiencing psychological problems. Children considered having psychological problems answered ‘yes’ to the dichotomous question asked during their interview. Psychological problems revolved around emotional trauma. Child responses included in this category included not being able to sleep at night, being easily startled, and having persistent negative emotions. In other words, children with psychological problems identified not being able to get images and feeling out of their heads. Of all child problems explored (psychological, emotional, and behavioral), the sample majority reported both emotional (66.7%) and behavioral problems (66.7%).

Table 4.8. Characteristics of Child Problems (N=57)

Variables	%	(N)
Psychological		
Yes	19.3	(11)
No	80.7	(46)
Emotional		
Yes	66.7	(38)
No	33.3	(19)
Behavioral		
Yes	66.7	(38)
No	33.3	(19)

vi. Risky Behaviors

This section only includes adolescent children (aged 13-18). Fifteen respondents (26%) of the sample children were teenagers at the time of interview. In terms of risky behaviors, all of the children (100%) self-reported having sex, drinking alcohol and/or using drugs. The majority of children disclosed their risky behaviors pertaining to alcohol use, followed by drug use and sexual intercourse.

All fifteen teenagers interviewed reported alcohol use during their parent's incarceration. Eleven teenagers reported drug use and six children reported having unprotected sexual intercourse. Forty percent of the sample reported involvement with one risky behavior; 33% of children had experiences with two risky behaviors; and 13% were involved in all three risky behaviors.

Table 4.9. Characteristics of Child Risky Behaviors among Teenagers (N=15)

Variables	%	(N)
Sexual Intercourse		
Yes	40.0	(6)
No	60.0	(9)
Drug Use		
Yes	73.3	(11)
No		

	26.7	(4)
Alcohol Use		
Yes	100.0	(15)
No	0	(0)

vii. Flashbacks to What They Witnessed

Jammie remembered the day his father was arrested as if it was yesterday, although it was five years ago. He was ten years old when police officers, who he refers to as the “popo,”¹⁰⁸ took his father into custody. Jammie is now fifteen years old. During the interview session Jammie’s voice began to tremble as he verbally walked me through the incident.

Jammie:

It was a sunny day and me and daddy and grandmommy were getting ready to eat breakfast. My grandmommy said that we should go to the store to get bread and milk to complete the meal. I ran to my room and put my t-shirt on and was ready to go. Me and my dad walked to the store and we were talking and laughing the whole way. The store was only three blocks away from our home, so it took a short time to get there. We got the milk and bread in no time and were on our way back home. Then popo came out of nowhere. I don’t know where they came from. I didn’t even see them coming. It happened so fast. They drove the cop car up on the sidewalk right in front of us and jumped out the car. I was confused and I think my dad was too. They grabbed him and shoved him into the side of the car. They were smiling the entire time. My dad dropped the milk and bread and I ran to pick it up. They never looked at me or said anything to me. I watched them being ruff with him the whole time. They put cuffs on him and threw him into the back of the cop car. As soon as they had jumped out of the car they jumped back into the car and drove off. I never got to say bye. I didn’t get no chance to ask no questions or answer no questions. I never got to talk. I wanted to say something. I don’t know what I would say. But I wanted to say something to my dad, to them, to someone, you know. I thought I was invisible for a second cause they never even looked my way. They wanted my dad and didn’t think anything about me. His son who stood there helpless watching them abuse him. I walked home and thought about it the whole way. I told my grandmommy what happened and we both cried. That was the last time I spent quality time with my dad. The worst day of my life. A day I can’t

108. All interview subject names have been altered to maintain confidentiality. The interview with Jammie took place in New Jersey in 2006. This was an in-person interview that took place at Jammie’s home.

never forget even though I try many times.¹⁰⁹

Similar to Jammie, many of the children who witnessed the arrest of their parent could remember everything that happened during the arrest. They described that day with the same emotion that they mentioned holding throughout the arrest. Johnay was seven years old when she was interviewed at her paternal grandmother's home, where she had lived since her mother and father have been in prison. Johnay was different from many of the children in the sample because she witnessed the arrest of both of her parents and carries those memories in her heart every day.

Johnay:

My father went in prison first. Him and my mom lived here too, before they went in prison. They stayed in the basement and I was upstairs. My room is there. They came in the house at night. I was sleep but woke up when I heard my mom yelling and screaming loud. I was scared. I ran out my bed and saw granny in the hall and dad on the floor and mom standing there. The police was on top of dad and had his hands on his back. It look like it hurt. My dad was yelling, my mom was yelling, and I was crying. I don't know how they got in the house. I was waked up out my sleep. It was scary. I have night dreams about it all the time. I just wake crying sometimes. Loud noise at night make me scared. So my mom told me sleep wit the TV on so I can stop waking up all the time. When mommy got in prison it was worse. The police knocked on the door and I opened it. They just started running in. I called for my mom cause she was home and in the basement like all the time. My granny was out. They ran all over the house and my mom was running to the back to go out the door. I was going wit her cause I would be home alone. They grabbed her and she hit them. They hit her in the face and she was bleeding. Then another cop came to her and she spit on him. He hit her too. I ran to my room. Too much to watch. I heard them leave and close the door. I never came out my room. I feel asleep. My granny came in my room and woke me. I was thinking I was dreaming. I wasn't. I had to tell my granny what happened. It was hard to say. It was hard to see. It hard now to say again. I have night dreams and keeping the TV on don't work no more. I'm crazy over it. My granny is too. I don't know why the police took my parents. I don't know why they ain't take them at the same time? Why they wait and come back for my mommy? They ain't hit my dad in the face? And they came when my granny was home when he went in prison? They took my mom with just me in the house? I'm crazy over it. Its stuck in my heart now. I think when I get an adult they gone come for me?¹¹⁰

109. *Id.*

110. Interview with Johnay. This in-person interview took place in New Jersey in 2006. Johnay was interviewed in her home inside her bedroom. This interview lasted

During her interview Day-Day talked about what she saw the day her mother was arrested. Day-Day is a fourteen-year-old who lived with her maternal grandmother while her mother was incarcerated.

Day-Day:

It was crazy. I was walking home from school with my girls and when I got to my block I saw mad cop cars all over the place. I was wondering what was going on. I never thought they was on the block cause something that happen in my house. When I reached my house I saw like four cops on the porch and more in the cop cars. They had yellow tape up all around my porch so I couldn't get in the front door. I went to the back door and came through the basement. I wish I never did that. In the basement I saw blood on the floor. A lot of blood. I saw a chair. I saw a belt. The belt had blood on it. I almost threw up. I just stood there looking and then I ran right back out the back door. When I got outside my neighbor was out there and she called me to her. I was in shock. I wanted to know what went down. What happened in the basement? Whose blood was that? Yo, I was all jacked up at that point. I was walking into my neighbor house when I saw the cops bringing my moms out the front of the house. We caught eye contact. We stared at each other the whole time. It was like slow motion. It was so crazy. I wanted to say something. I wanted to yell something. I wanted to do so much. I wanted to know so much. They put my mom in the back of the car and they turned the sirens on and drove down the block. Everybody was outside looking and when the car rode down the block everyone saw my mom in the back seat with her head down. I was so embarrassed. I was so sad. I was fucked up. I'm still fucked up.¹¹¹

Children such as Jammie, Johnay, and Day-Day, who witnessed the arrest of a parent, found it hard to forget that day.¹¹² These children had many questions about what took place during the arrests, but never received any answers. This seemed to leave them with unresolved emotions. The children carried their personal experiences throughout the entirety of their youthful lives.¹¹³ Prior studies that have relied on interviews with parents, caregivers, and other individuals have failed to capture the personal experiences and point of view of the children. This study moves the field forward by allowing the voices of children to be heard. Without their input, we are left unaware

approximately 60 minutes.

111. Interview with Day-Day. This in-person interview took place in New Jersey in 2006. Day-Day was interviewed in her home inside her bedroom. This interview lasted approximately 40 minutes.

112. Interview with Jammie, Johnay, and Day-Day. All of these interviews were face-to-face and took place at the subject's place of residence. These interviews took place in New Jersey between 2006 and 2007.

113. *Id.*

of what they see and how they perceive what they see. These children did not describe a typical arrest that one may see on television or read about in a newspaper.¹¹⁴ They describe what they perceived as abuse, disrespect, and a life-changing scenario.¹¹⁵ The children who witnessed the arrest felt invisible, silent and useless.¹¹⁶ They wanted to speak out. Not knowing what they would or should say, but wanting to have a voice in what was happening to their parent. All three of these children mentioned that the interview session was the first time that they talked about what they saw since it occurred.¹¹⁷ They all spoke of a sense of relief that they experienced from talking about what occurred and how they felt as a result.¹¹⁸

viii. Two Sides of the Same Coin

“I Want to Be an Officer”: Positive Attitudes Toward the Police

Many of the younger children in the sample held positive attitudes toward the police. This is significant because most children in this study are between the ages of seven and ten. Children who held positive attitudes toward the police had the following to say:

Godoe (Male, 7 years old, incarcerated father): “I think the police are good. My dad did something bad. I want to be just like the police. They keep everyone safe.”¹¹⁹

Pooh (Male, 7 years old, incarcerated mother): “They doing they job to clean up the streets. I want to be one.”¹²⁰

Quannie ¹²¹(Male, 7 years old, incarcerated mother): “They have nice cares. I love their sirens. I want to be a cop so I can drive that car and help people.”

*Nay-Nay*¹²² (Female, 7 years old, incarcerated father): “They keep us safe. I want to keep people safe too. I want to be a girl cop.”

Tay (Female, 7 years old, incarcerated father): “The police help people.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. Interview with Godoe. This face-to-face interview took place at the subject’s place of residence in New Jersey in 2006.

120. Interview with Pooh. This face-to-face interview took place at the subject’s place of residence in New Jersey in 2006.

121. Interview with Quannie. This face-to-face interview took place at the subject’s place of residence in New Jersey in 2006.

122. Interview with Nay-Nay. This face-to-face interview took place at the subject’s place of residence in New Jersey in 2006.

My uncle is the police. I want to be a police too.”¹²³

Other children who held positive attitudes toward the police felt that police officers are doing their job by helping people, keeping their communities safe, and acting nice. Although the children did not elaborate much on their positive feelings, they had the following to say:

Jill (Male, 7 years old, incarcerated father):

I like them because they are nice, and my dad is locked up and my little sister dad. They are nice because they lock bad people up who hit women. I don't listen to bad people that hit women or listen to women that hits men. I like my mommy because my mommy did not hit him. My dad hit her a lot. The cops did good to take him to locked up.¹²⁴

Jilly is happy that the police took his father to prison, especially because he was abusive to his mother. Jilly feels satisfied that the police did their job. Other children also felt that the police are doing their job by taking bad people away:

Pooda (Male, 7 years old, incarcerated father): “They get the bad people.”¹²⁵

Leeah (Female, 10 years old, incarcerated mother): “I know that they are nice and if I'm in trouble I can call 911 and they will help me.”¹²⁶

Greg (Male, 11 years old, incarcerated father): “I don't think nothing about the police. They good.”¹²⁷

Pablo (Male, 11 years old, incarcerated father): “The police I saw outside were acting nice.”¹²⁸

All these young children had positive things to say about the police. The majority of these responses are comprised of the attitudes of young male children.

“I Hate the Popo”: Negative Attitudes toward Police

Most children in the sample did not witness the arrest of their parent, yet approximately thirty percent of the children held negative attitudes toward the police. Many of the children disclosed hatred, lack of respect, mistrust,

123. Interview with Tay. This face-to-face interview took place at the subject's place of residence in New Jersey in 2007.

124. Interview with Jill. This face-to-face interview took place at the subject's place of residence in New Jersey in 2007.

125. Interview with Pooda. This face-to-face interview took place at the subject's place of residence in New Jersey in 2007.

126. Interview with Leeah. This face-to-face interview took place at the subject's place of residence in New Jersey in 2007.

127. Interview with Greg. This face-to-face interview took place at the subject's place of residence in New Jersey in 2007.

128. Interview with Pablo. This face-to-face interview took place at the subject's place of residence in New Jersey in 2007.

and anger toward the police. For example, Nahna, a sixteen year old female, experiencing maternal incarceration, disclosed the following information when asked about her feelings and attitude toward the police:

Nahna:

I don't like them at all. Cause you have black cops that really be sitting there like really trying to pick with you just to get on your last nerve, or just to see you get mad and curse them out, just so you could get locked up. They do everything in their power to just mess with somebody. So like I don't like them at all. I just don't see no purpose for them on earth. To me, East Orange police don't do their job anyway. You still have crack heads on the street, you still have people who steal cars, people that break into people house, rapist. You still have everything. They don't do nothing. I just don't like them. They came in my grandmother's house. My mom told us how everything was going to happen and an hour or two later the police came asking for my mother. She gave everyone their hugs and kisses and they took her. They wasn't rough with her because she participated. I think that's the reason why they wasn't rough with her. I don't like them at all. When they took my mother that made me hate them more. You should talk to my ex-boyfriend he used to stay getting locked up, but over some dumb junk like fighting, just little stuff like that. They would take him to jail and out him in the car and everything. He is worse than me in hating the police. I really can't stand them. A lot of people I know feel the same way or worse. It's just sad how no one respects them. They don't respect themselves.¹²⁹

Little Bit, is another female teenager who holds similar attitudes toward the police as Nahna. Little Bit mentioned, "I never liked the cops. They are all crooked."¹³⁰ Another child discusses her lack of respect towards the police because of what was said to her after her father was arrested:

Nikki: "They are dumb. When they locked my dad up that day—they told me to have a nice day. I have no respect for the police. I never did. They took my dad and didn't tell me anything—but to have a nice day. How is that possible?"¹³¹

Ebby, a thirteen-year-old female, whose father is incarcerated held negative attitudes toward police because she feels they do not do their job:

Ebby: "The police don't help. When you call them to come out to help you they take a really long time to come. They don't care. If you were in

129. Interview with Nahna. This face-to-face interview took place at the subject's place of residence in New Jersey in 2006.

130. Interview with Little Bit. This face-to-face interview took place at the subject's place of residence in New Jersey in 2006.

131. Interview with Nikki. This face-to-face interview took place at the subject's place of residence in New Jersey in 2006.

danger you could be dead by the time they come.”¹³²

Relly, a younger child, held anger and negative feeling toward the police because they took his father away from him. Relly mentioned:

Relly: “The cops are dumb and stupid cause they took my father away from me. I feel angry, mad, and sad. I feel like punching them. The police did not help me at all—they hurt me.”¹³³

ix. Summary

The children of the incarcerated have a lot to say about their experiences, perceptions, and feelings. In dealing with attitudes toward the police, some children hold positive attitudes while others hold negative attitudes. Data from the exploratory face-to-face interviews strongly suggests that most of the children’s perceptions of police officers are not directly associated with their parent’s imprisonment, but are nonetheless exacerbated by said incarceration. Negative attitudes toward the police were the most common feelings reported, which in many cases may handicap the child from having respect for officers in their school and communities. Those children who held positive attitudes toward the police tended to be much younger than those who held negative attitudes toward the police.

Although some children held negative attitudes toward the police because they witnessed the arrest of their parent or felt that the police were the cause of their parent’s imprisonment, the majority did not witness the arrest of their parent and identified that they held negative attitudes toward the police prior to their parent’s incarceration. According to Bernstein:

The trauma children experience when a parent is arrested may set the tone for their subsequent relationship with the criminal justice system. A natural desire to protect oneself and defend one’s family evolves into a hatred for the police, and authority generally—a rage that can make it difficult for a child to grow up to respect the law or trust its representatives.¹³⁴

This study identifies that the hatred that children hold for police occurs prior to the arrest and, therefore, it may not be directly connected the arrest of their parent.

It was not found that children hate the police because of their desire to protect themselves or their families; rather it comes from the inability of the police to protect the children and their families. Furthermore, these children mentioned that they never liked the police because they do not do their jobs,

132. Interview with Ebby. This face-to-face interview took place at the subject’s place of residence in New Jersey in 2006.

133. Interview with Relly.

134. BERNSTEIN, *supra* note 2, at 12.

and the children mistrust the police and their actions. In fact, those children who held positive attitudes toward the police desired to protect society and keep the streets safe.

VI. POLICY RECOMMENDATIONS: THE DEVELOPMENT OF PUBLIC POLICY AND REGULATORY CONTROL

“Children need to know that their lives and well-being are critically important to our society [and they] need to know that their safety is a priority.”¹³⁵ In the early 1990s, this sentiment was already being discussed in many local law enforcement agencies.¹³⁶ Many states established initiatives and fund studies that led to recommended regulations, but few took formal legislative action.¹³⁷

In 1991, the Yale Child Study Center and the New Haven Connecticut Department of Police Service formed a partnership that would change policing in America for decades to come.¹³⁸ The Child Development – Community Policing (“CD-CP”) program was developed to “address the psychological impact of the chronic exposure to violence on children and families.”¹³⁹ This model requires social workers from child-servicing agencies to go with police officers to particular incidents.¹⁴⁰ Mental health practitioners serve as an additional source of support.¹⁴¹ To date, fifteen other cities have adopted the CD-CP model.¹⁴² Among them are Baltimore, Maryland; Charlotte, North Carolina; Providence, Rhode Island; and Rochester, New York.¹⁴³ Although not initially dedicated to the trauma of

135. See generally *Breaking the Cycle of Violence: Recommendations to Improve Criminal Justice Responses to Child Victims and Witnesses*, DOJ OFF. FOR VICTIMS CRIME (June 1999), <http://www.ovc.gov/publications/factshts/monograph.htm>.

136. See, e.g., INST. OF MED. & NAT’L RESEARCH COUNCIL, *NEW DIRECTIONS IN CHILD ABUSE AND NEGLECT RESEARCH* 360-62 (2014).

137. See *id.* at 349-50 (stating that regulations and protocols are “typical” and providing example of state legislative action).

138. See Yvonne Humenay Roberts et al., *Children Exposed to the Arrest of a Family Member: Associations with Mental Health*, 23 J. CHILD & FAM. STUD. 214, 214-24 (Feb. 1, 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4016966/>; see also *The Childhood Violent Trauma Center*, Yale Sch. Med., <https://medicine.yale.edu/childstudy/communitypartnerships/cvtc/> (last visited Mar. 15, 2018).

139. Steven Marans and Miriam Berkman, *Child Development–Community Policing: Partnership in a Climate of Violence*, OFF. JUV. JUST. AND DELINQUENCY PREVENTION: JUV. JUST. BULL. 1 (Mar. 1997), <https://www.ncjrs.gov/pdffiles/164380.pdf>.

140. Thureau, *supra* note 3, at 12.

141. *Id.*

142. See Julie Bosland & Michael Karpman, *The State of City Leadership for Children and Families*, NAT’L LEAGUE CITIES 1, 63 (2009), http://www.nlc.org/sites/default/files/state-city-leadership-rpt-sep09_0.pdf.

143. See, e.g., *id.* (noting that other cities that have adapted New Haven’s Child

children witnessing the arrest or detainment of a parent, the CD-CP model has evolved to include this particular area of focus.¹⁴⁴

In 2015, DOJ published *The President's Task Force on 21st Century Policing Implementation Guidebook in October 2015*.¹⁴⁵ “This implementation guide offers a crucial blueprint for elected officials, law enforcement officers, and community leaders alike as they work to put important policies and reforms into practice across the country.”¹⁴⁶ The Guidebook was created in response to requests from participating members of the task force on how the recommendations could be properly implemented.¹⁴⁷ Among the suggestions are ways in which the local government, law enforcements, and communities can take an active role in “changing the culture of policing” in America.¹⁴⁸

A. *Good Cops: Police Advocate Good Health in Schools*

Approximately forty-five percent of children in this sample study held positive attitudes toward police officers. Half of these children described the police as being good. They mentioned that the officers come to their schools on career day with their canines and talk to the children about taking care of their teeth and staying healthy. Risa, a nine year old female, whose father was incarcerated at the time of her interview, mentioned:

Cops are good. They keep us safe and healthy. They come to our school and tell us not to eat candy. They come into our class and talk to us. Then we go outside and they let us go inside their cars and hear the sirens. Two officers come to the class. We get to ask them questions. They come every year and I like when they come. They come to make sure that we are not eating a lot of candy. That we are staying safe and healthy. I am going to third grade. They have been coming to my school since I was in pre-K. Sometimes new cops come to the class. All of them are nice.¹⁴⁹

Development-Community Policing Partnership are Bridgeport, Conn.; Chelsea, Mass.; Clearwater, Fla.; Framingham, Mass.; Guilford, Conn.; Madison, Conn.; Nashville, Tenn.; Raleigh, N.C.; Sitka, Alaska; Stamford, Conn.; Zuni, N.M.).

144. Thureau, *supra* note 3, at 12.

145. See generally *The President's Task Force on 21st Century Policing Implementation Guide: Moving from Recommendations to Action*, OFF. COMMUNITY ORIENTED POLICING SERVICES (2015), <https://ric-zai-inc.com/Publications/cops-p341-pub.pdf>.

146. Press Release, DOJ Community Oriented Policing Services, Department of Justice Announces New Guidebook on 21st Century Policing (Oct. 27, 2015), <http://www.cops.usdoj.gov/Default.asp?Item=2828>.

147. See Thureau, *supra* note 3, at 5-7.

148. *Id.*

149. Interview with Risa. This in-person interview took place in 2007 in New Jersey.

Risa's seven-year-old sister Nay-Nay, also feels that cops are good. She describes the police during her interview as being cool:

Cops are cool all the time. They keep us safe and away from bad stuff. They like dogs and the dogs they have are cool too. The dogs they bring to school to show us are smart. They help them catch the bad guys. They bring us goodies to school, so after they finish talking to us they give us treats. The treats make us happy and they good for us. I like cops. They use dogs to catch bad people. They give the teacher treats too. The whole class smile when they come to our school. I like cops because they are cool to us. All my friends like them and their dog.¹⁵⁰

Another child, Michael, a ten-year-old male whose father is incarcerated, also spoke positively about police officers visiting his school and how he looks forward to their visit every year:

The officers that come in are so good. They keep your attention when they talk. They always come with treats. They care about what we think about them. They want us all to know what it is really like being an officer. They say that sometimes they get a bad name cause of their job. They talk about way people feel confused about them. They ask us all the good and bad stuff we hear about them, then they tell us the truth about it. They smile and shake all our hands and let us play with the dog before they pass out treats. They let us get more if any is left over."¹⁵¹

Beth, a nine-year-old female whose father is incarcerated, holds similar feelings toward the police that came to talk in her class. She talked briefly about how effective these presentations actually are:

I remember everything they tell us and I tell my friends who don't go to my school. I share stuff about the officers with my mom too. She sometimes asks me questions. She didn't have officers come to her class when she was in school. But that was a long time ago anyway.¹⁵²

The children that hold positive attitudes toward the police talk about the officers that come to their schools and some talk about their desires of wanting to be a police officer when they grow up. It is clear from this evidence that the personal experiences of each child shapes their attitudes towards the police.

B. Notable Departmental Approaches

Responding to Children of Arrested Caregivers Together ("REACT") is

The subject was interviewed at their place of residence at the time.

150. Interview with Nay-Nay.

151. Interview with Michael.

152. Interview with Beth.

an expanded version of the CD-CP model.¹⁵³ REACT was adopted by the police departments in Manchester and Waterbury Connecticut.¹⁵⁴ “The REACT model seeks to integrate services to children earlier in the process and the most critical time for children’s recovery.”¹⁵⁵ This is achieved by providing training and available resources to law enforcement personnel and by identifying “high-risk” youth early and, thereby decreasing the need for more “significant and costly interventions.”¹⁵⁶ It is important to note that two full-time child protective workers are housed within these departments.¹⁵⁷ This increases access to services and continues the interagency aspect.

The Fresno Police Department created a Children Exposed to Domestic Violence (“CEDV”) team to reduce the trauma children experience during incidents of domestic violence and to mitigate the distress associated with parental arrest.¹⁵⁸ The team is comprised of a detective, a domestic violence advocate, and a child protective services worker.¹⁵⁹ The CEDV team is unique in that the team follows-up after the incidents to continue the connection with the victims and their families, which aids in the prevention of additional crimes.¹⁶⁰

VII. CONCLUSION

All in all, the calls for action are being answered, but at a staggeringly slow pace. There are countless studies, reports, and initiatives that have been generated over the course of the last three decades. Yet there are no legislative requisites in place to safeguard this class of children. Law enforcement requires complete enforcement of the law. The state is truly creating a danger by failing to implement statutory procedures that provide guidance to the men and women who have sworn to protect the communities which they serve. Children are the most vulnerable members of these communities.

153. See Thureau, *supra* note 3, at 18-19.

154. *Id.* at 18.

155. *Id.*

156. *Id.*

157. *Id.* at 19.

158. *Id.*

159. *Id.*

160. *Id.* at 20.