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# Not Ordinarily Relevant? Considering the Defendants' Children at Sentencing\*

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THE UNITED States Sentencing Commission's initial guidelines became effective in November 1987. Chapter 5H of the guidelines sets forth the Commission's initial assessments of a list of offender characteristics. In a series of non-binding, advisory policy statements the Commission declares each specific offender characteristic, other than those related to the defendant's criminal history or role in the offense, "not ordinarily relevant in determining whether a sentence should be outside the guidelines."<sup>1</sup>

Even before judges, prosecutors, and defense attorneys began to apply the guidelines, experience suggested that judges would find each of these characteristics relevant in some of their decisions. It seemed likely that in some cases, consideration of offender characteristics would lead judges to depart from the guidelines. Without further guidance from the Sentencing Commission, Federal judges bear the burden of determining the principles that should govern when and how to consider offender characteristics in sentencing. This article focuses on one offender characteristic, the existence of a defendant's dependent children, as an illustration of the ways in which a flexible sentencing system can address discrete offender characteristics in a principled and consistent manner.

## *A Rationale for Considering the Defendant's Children at Sentencing*

Why should a judge think about the defendant's children at sentencing? Support for explicit consideration of defendants' dependent children in sentencing arises from the purposes and goals of the criminal justice system, from the experience of sentencing judges, and from research on the effects of incarceration on prisoners' children.

First, the purposes of the criminal justice system support explicit consideration of defendants' dependent children in sentencing. Utilitarian notions underlie several of the traditional purposes of sentencing, including deterrence, incapac-

itation, and rehabilitation. The sentencing judge must weigh the cost imposed by a particular sentence against the social benefit the judge expects that sentence to generate. While the judge can never determine accurately the impact of a sentence on "society," in many cases she easily can identify the likely impact of a sentence on an offender's dependents. Thus, the judge weighing the costs and benefits of alternative sanctions must consider and weigh known harms to the family against unknown social benefits before determining what sentence to impose.

A fourth traditional sentencing purpose, that of just punishment, emphasizes consistency in sentencing. If the "same" sentence has an inconsistent impact on two different defendants, then considering the two sentences as equivalent is unjust.

An incarcerative sentence may have a distinctly different impact on a parent than it has on a non-parent. For example, in many states incarceration constitutes a ground for termination of parental rights.<sup>2</sup> A 2-year prison sentence does not equal 2 years in prison accompanied by permanent loss of child custody. Justice requires considering the consequences of a sentence for the defendant's children where they lead to such different effective quantities of punishment.

Second, the experience of sentencing judges demands explicit consideration of the impact of a sentence on the defendant's children. Research indicates that consideration of the consequences of the sentence for the offender and for those in the offender's immediate environment constitutes an integral dimension of judicial thinking about sentencing. Judges' remarks reveal an implicit sentencing rule that can be stated as "Sentence so as not to harm innocent parties."<sup>3</sup> A sentencing system that incorporates such an essential judicial principle will better promote the goal of honesty in sentencing than a system that fails to retain

<sup>1</sup>United States Sentencing Commission, *Guidelines Manual* ch. 5H (1987).

<sup>2</sup>See Ann M. Stanton, *When Mothers Go to Jail* 3 (1980).

<sup>3</sup>Stanton Wheeler, Kenneth Mann, and Austin Sarat, *Sitting in Judgement: The Sentencing of White Collar Offenders* ch. 5 at 47 (1987) (unpublished manuscript available in Yale Law School Library).

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the building blocks of current judicial sentencing practice.

Finally, incarceration of a parent brings with it severe and troubling consequences for the defendant's children. Child development specialists stress the importance of continuity of relationships to children's normal development. Disruptions in continuity can carry consequences ranging from regressed behavior among young children to antisocial, delinquent, or even criminal behavior among older children.<sup>4</sup> Research reveals evidence of such consequences among children of incarcerated parents.<sup>5</sup>

### *Using the Rationale — Sources of Guidance*

The law has not ignored the defendant's parental responsibilities at sentencing. Legal sources, ranging from legislation to case law to judges' anecdotes, demonstrate that current sentencing practice authorizes consideration of the defendant's children in the sentencing process.

#### *Legislative Sources*

*The Sentencing Reform Act* - The Commission's own enabling statute and accompanying legislative history imply an expectation that the Com-

<sup>4</sup>See Joseph Goldstein, Anna Freud, and Albert J. Solnit, *Beyond the Best Interests of the Child* 31-34 (1979).

<sup>5</sup>See Clarice Feinman, *Women in the Criminal Justice System* 39 (2d ed. 1986); Pauline Morris, *Prisoners and Their Families* (1965); Ann M. Stanton, *When Mothers Go to Jail* (1980); Baunach, "You Can't Be a Mother and Be in Prison. . . Can You? Impacts of the Mother-Child Separation" in *The Criminal Justice System and Women* 157 (B. Price and N. Sokoloff ed. 1982); Louise Rosenkrantz and Virdia Joshua, "Children of Incarcerated Parents: A Hidden Population" *Children Today*, Jan.-Feb. 1982, at 2; William H. Sack, "Children of Imprisoned Fathers" 40 *Psychiatry* 163 (1977).

<sup>6</sup>See S. Rep. No. 225, 98th Cong., 1st Sess. 52, at 59, 174 (1983) reprinted in 1984 U.S. Code Cong. & Ad. News 3235 [hereinafter cited as *Senate Report*] (each factor may in appropriate case call for use of probation rather than incarceration) (suggesting use of intermittent imprisonment to allow defendant to continue supporting family).

<sup>7</sup>28 U.S.C.A. §994(d) (West Supp. 1988).

<sup>8</sup>*Senate Report*, at 171, n.409 (neutrality requirement does not mandate "blindness" to named factors).

<sup>9</sup>18 U.S.C.A. §3661 (West 1985) (no limit on information concerning defendant's background, character, and conduct that may be considered in determining sentence).

<sup>10</sup>Model Penal Code §7.01(2)(k) (1962).

<sup>11</sup>See Colo. Rev. Stat. §16-11-203(2)(k) (1986); Ill. Rev. Stat. ch. 38, §1005-5-3.1(a)(11) (1981); La. Code Crim. Proc. Ann. art. 894.1(B)(11) (West Supp. 1988); Neb. Rev. Stat. §29-2260(3)(k) (1985); N.D. Cent. Code §12.1-32-04(11) (1985); Ohio Rev. Code Ann. §2951.02(B)(10) (Page 1987); 42 Pa. Cons. Stat. Ann. §9722(11) (Purdon 1982).

mission would find family responsibilities, along with the other enumerated offender characteristics, relevant in sentencing. The Senate Judiciary Committee report on the Act anticipates that offender characteristics will affect sentencing decisions.<sup>6</sup> The Act's neutrality requirement<sup>7</sup> does not prohibit the sort of flexible use of offender characteristics that the Senate Committee envisioned.<sup>8</sup> Section 3661 of the Sentencing Reform Act underscores the statutory commitment to consideration of offender characteristics in sentencing.<sup>9</sup> If the Commission had explored and defined circumstances in which offender characteristics *are* relevant instead of dismissing most offender characteristics as "not ordinarily relevant," it would have established policy that better harmonized with the governing statute.

*The Model Penal Code and State Statutes* - The Model Penal Code provides legislative precedent for considering the defendant's dependents at sentencing. It recommends a statutory provision making the consequences for the dependents a ground weighing against incarceration. The suggested language reads "the imprisonment of the defendant would entail excessive hardship to himself or his dependents."<sup>10</sup> Ten states' criminal codes contain some form of this provision. All make it clear that the factor weighs against imprisonment.<sup>11</sup>

#### *Judicial Practice*

Although the legislative sources authorize *consideration* of dependent children and direct judges to consider the presence of children as a factor weighing *against* incarceration, they do not instruct the judge as to how the weighing should be done or as to how to balance all the factors that may be called into play in a particular decision. To explore how the weighing is done I looked at state case law that has developed around the factor of the offender's dependents and interviewed eight Federal judges to investigate their approaches to sentencing defendants who have dependent children. I then developed a set of principles to inform a judge's consideration of the offender's dependent children in sentencing under the U.S. Sentencing Guidelines. These principles are discussed in the next section.

### *Principles to Guide Departures*

#### *Zones for Departures*

The Sentencing Reform Act provides much greater scope for imposition of probation than does the U.S. Sentencing Guidelines. The Act prohibits probation only for those offenses that

carry a maximum term of 20 years or more and for those offenses for which probation has been expressly precluded by statute.<sup>12</sup>

The sentencing table contained in the guidelines manual can be divided roughly into three zones:

- 1) a zone in which both the governing statute and the guidelines authorize an "out" disposition;
- 2) a zone in which the governing statute authorizes an "out" disposition, but the guidelines do not; and
- 3) a zone in which neither the guidelines nor the statute authorizes an "out" disposition.

Appendix A depicts these zones on the sentencing table.<sup>13</sup>

I propose using these zones of the sentencing table to create presumptive dispositions for defendants with dependent children. These presumptive dispositions follow the model recommended by the Canadian Sentencing Commission. There are three possible presumptions: "in," "out," and "qualified out."<sup>14</sup>

The proposed presumptions are assigned to zones as follows:

**Zone 1 - OUT**

**Zone 2 - QUALIFIED OUT**

**Zone 3 - IN**

Zone 1 is an unqualified "out" not because the guidelines require an "out" disposition in that area, but because an "out" disposition does not require a *departure* from the guidelines. The Commission thus acknowledges through the structure of the guidelines that none of the purposes of sentencing mandates incarceration in this area.

Zone 3 is an unqualified "in" because by definition no dispositional discretion is allowed in this area. In Zone 2 the guidelines presumptive "in" becomes a "qualified out." This means that whenever a judge sentences a defendant who has de-

pendent children, the judge should *consider* making a dispositional departure from the guideline-specified sentence.

#### *Principles for Considering the Defendants' Children at Sentencing*

Once the judge identifies the presumptive disposition, she should use the following principles to proceed to closer examination of the circumstances of the case. The principles are organized within an overall framework that first sets underlying structural principles, next provides guidance as to *when* to consider the consequences of sentencing for the children, and then offers guidance as to *how* to consider the children.

#### *Structural Principles*

1) **Respect Section 3553 (a).** This section of the Sentencing Reform Act directs judges to impose sentences that are "sufficient, but not greater than necessary, to comply with the purposes" of sentencing.<sup>15</sup>

2) **Sentence to avoid harm to innocent parties.** It follows from §3553 (a) that to the greatest extent possible, the burden imposed by a sanction should be shaped so as to fall only on the defendant.

3) **Sentence to avoid breaking up families.**

4) **The in/out stage of decision making constitutes the most important point at which to consider the effects of sentencing on the children.**

5) **When imposing an incarcerative sentence, consider the defendant's children when selecting the form of incarcerative sentence and when determining its length.**

#### *When to Consider the Effects of Sentence on the Dependents*

*Assessing the Crime* - The judge should first assess the crime to determine whether or not the consequences of the sentence for the children will enter into the dispositional (in/out) decision. Wheeler describes a three-dimensional sentencing framework that suggests some propositions that apply to this determination. His research revealed that judges consistently thought about *harm*, defined as the consequences of the offense; the *blameworthiness* of the offender, including elements such as role in the crime, reaction to arrest and conviction, motive, and the offender's earlier history; and the *consequence* of the sanction chosen.<sup>16</sup>

In general, if severity on either the harm or blameworthiness dimensions is very high, then the assessment of that dimension will drive the dispositional decision. Considerations of

<sup>12</sup>See 18 U.S.C.A. §3559 (a) (1) (A)-(B), §3561(a) (West Supp. 1988). The statute also prohibits probation in any case where "the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense." *Id.* at §3561 (a) (3).

<sup>13</sup>Since the table is not organized to show maximum statutory terms, it is not possible to determine the exact scope of Zone 2. The appendix shows the outermost possible boundary between Zones 2 and 3 by drawing the line to separate ranges that require a sentence of more than 20 years from those that do not.

<sup>14</sup>See Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach* xxxvi, 309-316 (1987) [hereinafter cited as *Sentencing Reform*] for discussion of operation of presumptive dispositions in the Canadian system.

<sup>15</sup>18 U.S.C.A. §3553 (a) (West Supp. 1988).

<sup>16</sup>See Wheeler, Mann, and Sarat, *supra* note 3, ch. 5 at 47.

consequence in such situations probably will not enter into the decision or will be outweighed by consideration of the other dimensions.

For instance, in *State v. Chapman*<sup>17</sup> the appellate court refused to overturn a 3-year prison sentence for a woman with three young daughters. The court designated the "astoundingly large" amount stolen from the defendant's employer as the "overriding factor."<sup>18</sup> The acknowledged hardship to the defendant's family could not outweigh the need for deterrence called into play by the seriousness of the crime.

If neither the harm nor the blameworthiness dimension is particularly severe, then no single dimension will drive the dispositional decision, and assessment of consequences for the defendant's children should be considered and weighed in making the dispositional decision.

Another general proposition that emerges from the interviews suggests that when specific deterrence has been achieved, the judge will give great weight to considerations of consequence in choosing the sanction. One judge described the case of a single mother who embezzled from the bank that employed her. The judge commented that she was bright, a good parent, and had a future ahead of her. Her conviction fulfilled the need for specific deterrence, since it would prevent her from being hired by a bank again. The judge sentenced her to probation.

In addition to these general propositions, the following principle, specifically related to dependency, can be gleaned from judicial practice:

**6) When the defendant has committed the crime to satisfy pressing family needs, consider consequences in making the dispositional decision.** Need motive underlying a crime tends to establish mitigated blameworthiness. Incarcerating the defendant in such cases will usually impose a further harm on a troubled family that needs support. For instance, one judge described the case of a bank teller who embezzled because she needed additional money to care for a child who had leukemia. The judge realized that dealing with such an illness is a "very expensive proposition." He saw no societal interest to be served by incarcerating the defendant.

<sup>17</sup>490 So. 2d 697 (La. Ct. App. 1986).

<sup>18</sup>*Id.* at 699.

<sup>19</sup>341 N.W.2d 574 (Minn. Ct. App. 1983).

<sup>20</sup>See *supra* p. 3 and note 2.

<sup>21</sup>See *supra* p. 4 and note 4.

*Assessing the Defendant's Prior Record* - The guidelines give great weight to the defendant's prior criminal record. This proposal does not require elimination of this factor. In some cases a lengthy record will weigh against considering consequences for the children in determining disposition. A long record may relate to the sincerity of the defendant's own claim of concern for the children. A judge might legitimately wonder why parents who care for their children would subject themselves repeatedly to the risk of court-imposed separation from the children. For instance, in *State v. Sherwood*<sup>19</sup> the court expressed this exact concern and refused to grant a dispositional departure from the Minnesota Sentencing Guidelines for a mother of six minor children.

*Assessing the Type of Consequence Involved* - Once the judge has determined that consideration of consequences *should* enter into the dispositional decision, the judge must then consider the type of consequence implicated by the defendant's situation. The underlying structural principle counsels the judge to avoid breaking up the defendant's family. Nevertheless, the consequences of the dispositional decision for the children cover a wide range, and different sorts of consequence may carry different weights. The following principles guide the process of identifying and weighing the consequences of disposition for the defendant's children.

**7) Sentence to avoid depriving children of parental care.** One judge articulated a rationale for this principle. He feels that to deprive a child of a parent is a serious action that imposes costs not only on the child, but on society as well. One form of the eventual social cost is the destructive behavior that takes place later in the child's life as an indirect result of having been separated from the parent.

This principle covers a range of possible deprivations. When a judge incarcerates a parent, the children may live with the remaining parent, may stay temporarily with relatives or friends, or may stay in a foster placement. In some cases incarceration of a defendant may later form grounds for termination of the defendant's parental rights.<sup>20</sup> Thus, the judge should be aware that what appears to be a temporary forced separation may in fact become permanent.

Any separation of child from parent potentially carries serious consequences for the children.<sup>21</sup> However, the consequences probably become progressively more serious as the circumstances move across the range set out above. Thus, where incarceration will result in a foster placement of

the defendant's children, that circumstance should weigh heavily *against* incarceration. Judges also should be wary of underestimating the consequences of incarcerating a parent when relatives or friends are willing to care for the children. Judges often feel reassured to know that such arrangements exist. However, the research on the effects of incarceration on offenders' children belies the stability of these care arrangements.<sup>22</sup>

**8) Value care provided by fathers as highly as care provided by mothers.** Some judges interviewed stressed their *special* regard for maternal care in their sentencing decisions. Research confirms the judges' comments.<sup>23</sup>

Such special regard for maternal care may reflect stereotypes more than it does reality. Sack's research,<sup>24</sup> for instance, highlighted the harm that resulted to children deprived of *paternal* care because of incarceration.

**9) When the children have special needs that demand the defendant's attention and care, sentence so that the defendant can continue to meet those needs.** Occasionally a judge must sentence someone who has a seriously ill child, or a child with extraordinary emotional or mental problems. Such circumstances establish that an exceptional degree of hardship for the children is likely to result from incarceration of the parent. The judge generally should not incarcerate in such cases. If the judge finds that incarceration is necessary, she should endeavor to fashion a sanction that will allow maximum opportunity for the defendant to continue meeting the child's needs.

**10) Sentence to avoid jeopardizing a family's means of financial support.** One judge suggested that the important question is whether or not the family will "fall apart" if deprived of financial support that the defendant had provided. Thus, this principle need not be

called into play when the judge is faced with a wealthy defendant or a family whose finances will not be destroyed by incarceration of the defendant. This principle recognizes that loss of financial support in a poor or disadvantaged family can destroy the family and have serious consequences for the children. This principle does not apply when the proceeds of the crime constituted the source of support for the family.<sup>25</sup>

#### *How to Consider the Effects of Sentence on the Dependents*

The judge who has embarked upon consideration of the defendant's parental responsibilities needs principles that define how those responsibilities should be viewed and what impact they should have upon the choice of sanction. The following principles offer assistance in evaluating the merit of a defendant's claim for consideration and in assessing the available types of sanctions.

*Assessing the Parent-Child Relationship* - "Good" families receive greater consideration from judges than do "bad" families. The following principles are designed to aid in the identification of families that deserve the judge's consideration.

**11) Define "family" expansively.** Judges may tend to define a "family" based on their own experience or on the stereotypical nuclear family. Such a definition may be too narrow when looking at families from diverse classes, races, or cultures. For instance, an anthropologist who has studied family networks in the inner city points out that "officially" absent fathers may in fact play a significant caregiving and support role for their children. A psychiatrist suggests defining a family in terms of the functions it performs for its members rather than in terms of its particular configuration.<sup>26</sup>

**12) Refrain from questioning defendants' parenting skills in the absence of concrete evidence.** The interviews revealed that many judges who consider the impact of their sentences on offenders' dependents evaluate the parent-child relationship at least as an implicit part of their decision making process. Such evaluations present problems, because Federal judges are neither social workers, family court judges, nor state agents empowered to evaluate family environments. In the absence of experience and the absence of the informational and evaluative resources that a family court routinely accesses, Federal judges are likely to rely on their subjective views about what constitutes a "good" parent or a "good" family.

This principle seeks to avoid introduction of

<sup>22</sup>See, e.g., Stanton, *supra* note 5, at 39, 120; Rosenkrantz and Joshua, *supra* note 5, at 3.

<sup>23</sup>See Kathleen Daly, "Discrimination in the Criminal Courts: Family, Gender, and the Problem of Equal Treatment" 66 *Soc. Forces* 152, 163-65 (1987) (sentencing study of New York lower criminal court showed mothers received greater consideration than fathers at sentencing).

<sup>24</sup>See, Sack, *supra* note 5.

<sup>25</sup>See *State v. Wilkinson*, 483 So. 2d 245 (La. Ct. App. 1986) (3-year sentence for woman with 1 1/2-year old child, defendant "apparently" had sold marijuana to support family).

<sup>26</sup>Comments by Mercer Sullivan and Dr. Richard Dudley at the New York City Bar Association Criminal Justice Retreat, Dec. 1, 1989.

judicial bias into the assessment of the family. The judge must have evidence that a family situation is "bad" for the children before deciding that the family does not merit preservation. Examples of adequate evidence might include conviction for an offense that physically harmed the dependents, recent state court adjudications of neglect, or a history of state involvement with the care of the children (i.e., previous foster care placements). A prior criminal record should *not* cause a judge to question the defendant's parenting skills.

**13) When the defendant committed the crime in the presence of the children, the parent-child relationship may deserve less consideration than in other cases.** One judge distinguished those cases in which the defendant's criminal activity took place outside the home from those cases in which children witnessed their parents' criminal activities or in which the crime had some impact on their daily lives. For example, he described a case in which two parents ran a "drug factory" from their apartment. The judge felt that the mother was not a good parent and that the setting was "not a good situation" for the children. Instead of placing the mother on probation, the judge incarcerated both parents.

This principle accepts the judge's underlying premise that direct exposure to crime is bad for a child. Thus, the defendant who conducted drug deals from the home would receive less consideration than the defendant who robbed, who embezzled, or who somehow separated the criminal from the parental sphere.

*Assessing the Sincerity of the Defendant's Claim -*

**14) Carefully scrutinize circumstances in which the defendant may be invoking parental responsibilities as a ploy to obtain leniency.** There are two sorts of circumstances in which assessment problems seem particularly likely to arise.

Whenever the defendant argues that incarceration will jeopardize the family's financial support, the judge will want to know whether or not the defendant in fact supports the family. A defendant who does not actually provide the support claimed does not deserve credit for providing it.

Sometimes a defendant's life circumstances will have changed between the time of commission of

the crime and the time of sentencing. Defendants may have married and have had children during the intervening period. Defendants may be pregnant at the time of sentencing.

What should the judge do if the defendant "acquired" dependents in order to obtain leniency? It seems unfair to penalize the children because of their parents' questionable motives, yet it seems unfair to "reward" the parents for opportunistic behavior. If the court is *convinced* that the defendant acquired family responsibilities as a ploy, then concern for the consequences of sentencing upon the dependents should carry much less weight than it ordinarily might. Perhaps the judge should only give weight to the severest forms of consequence in such situations (e.g., foster placement of the children).

*Assessing Incarcerative Options -* Once the judge has decided upon a disposition, she must choose an appropriate sanction. When imposing an incarcerative sanction, the judge *must* decide upon the length and *can* decide upon the form that the sentence will take. Consideration of the impact of the sentence upon the dependents may affect both of these decisions.

**15) When selecting an incarcerative sentence, choose that sanction which best allows for maintenance of the parent-child relationship.** Judges should take advantage of existing options regarding the forms of incarcerative sentences and should shape them to take account of parents' needs.

For example, a parent who cares for children could serve a sentence intermittently from 9-5 on weekdays. Prison work release programs can be defined to allow regularly scheduled release time to care for children. Spouse co-defendants can serve their sentences consecutively. Perhaps service of a single parent's sentence could be postponed until the child started school or grew old enough to bear a period of separation from the parent. Finally, a judge can search out those situations in which children can reside with their parents during the parent's confinement.<sup>27</sup>

**16) Consider the "child's sense of time" when determining the length of an incarcerative sentence.** Child development specialists observe that children experience time differently than adults.<sup>28</sup> Children have different tolerance levels for periods of separation from their parents at different stages in their lives. The younger the children, the shorter the period of separation they can bear. A judge can legitimately consider such limits in determining the length of an incarcerative sentence.

**17) When incarcerating a parent, ensure**

<sup>27</sup>Prisons generally do not allow such arrangements. See James Boudouris, *Prisons and Kids: Programs for Inmate Parents* 7-8 (1985). However, some halfway houses accept parents and their children.

<sup>28</sup>See, e.g., Goldstein, Freud, and Solnit, *supra* note 4, at 40-42.



that care arrangements for the children have been made. Most of the judges commented that they follow this principle. They rely on their probation officers to inform them as to the existence of care arrangements. Since the need for care flows from the judge's sentencing decision, it seems appropriate for the judge to involve herself in ensuring that care exists.

*Assessing Non-Incarcerative Options -*

18) **When structuring non-incarcerative sentences, consider the burden the sanction imposes upon the family.** When judges choose non-incarcerative sentences to achieve the benefits provided by keeping a family together, they should structure the sentences so those benefits can indeed be achieved. For instance, mechanisms exist to tailor fines to the defendant's means.<sup>29</sup>

*Conclusion*

The framework proposed here offers a principled way to address defendants' parental responsibilities at sentencing. Far from creating chaos, it provides a structure for reasoned individualization of sentences. Just as exploration of sentencing practice regarding consideration of dependent children revealed a wealth of detailed legal principles, examination of the law on other offender characteristics might uncover equally thoughtful sentencing principles. Given that possibility, implementing my proposal for consideration of defendants' children within the U.S. sentencing guidelines could point the way to a richer, stronger guidelines system.

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<sup>29</sup>See *Sentencing Reform*, *supra* note 14, at 377 for a description of the Swedish day-fine system, designed to equalize the impact of fines.

APPENDIX A - ZONES FOR DEPARTURES

Sentencing Table

Criminal History Category

Offense Level	I 0 or 1	II 2 or 3	III 4, 5, 6	IV 7, 8, 9	V 10, 11, 12	VI 13 or more
Zone 1	1	0 - 1	0 - 2	0 - 3	0 - 4	0 - 6
	2	0 - 2	0 - 3	0 - 4	0 - 5	1 - 7
	3	0 - 3	0 - 4	0 - 5	0 - 6	2 - 8
	4	0 - 4	0 - 5	0 - 6	2 - 8	4 - 10
	5	0 - 5	0 - 6	1 - 7	4 - 10	6 - 12
	6	0 - 6	1 - 7	2 - 8	6 - 12	9 - 15
	7	1 - 7	2 - 8	4 - 10	8 - 14	12 - 18
	8	2 - 8	4 - 10	6 - 12	10 - 16	15 - 21
	9	4 - 10	6 - 12	8 - 14	12 - 18	18 - 24
	10	6 - 12	8 - 14	10 - 16	15 - 21	21 - 27
	11	8 - 14	10 - 16	12 - 18	18 - 24	24 - 30
	12	10 - 16	12 - 18	15 - 21	21 - 27	27 - 33
	13	12 - 18	15 - 21	18 - 24	24 - 30	30 - 37
	14	15 - 21	18 - 24	21 - 27	27 - 33	33 - 41
	15	18 - 24	21 - 27	24 - 30	30 - 37	37 - 46
	16	21 - 27	24 - 30	27 - 33	33 - 41	41 - 51
	Zone 2	17	24 - 30	27 - 33	30 - 37	37 - 46
18		27 - 33	30 - 37	33 - 41	41 - 51	51 - 63
19		30 - 37	33 - 41	37 - 46	46 - 57	57 - 71
20		33 - 41	37 - 46	41 - 51	51 - 63	63 - 78
21		37 - 46	41 - 51	46 - 57	57 - 71	70 - 87
22		41 - 51	46 - 57	51 - 63	63 - 78	77 - 96
23		46 - 57	51 - 63	57 - 71	70 - 87	84 - 105
24		51 - 63	57 - 71	63 - 78	77 - 96	92 - 115
25		57 - 71	63 - 78	70 - 87	84 - 105	100 - 125
26		63 - 78	70 - 87	78 - 97	92 - 115	110 - 137
27		70 - 87	78 - 97	87 - 108	100 - 125	120 - 150
28		78 - 97	87 - 108	97 - 121	110 - 137	130 - 162
29		87 - 108	97 - 121	108 - 135	121 - 151	140 - 175
30		97 - 121	108 - 135	121 - 151	135 - 168	151 - 188
31		108 - 135	121 - 151	135 - 168	151 - 188	168 - 210
32		121 - 151	135 - 168	151 - 188	168 - 210	188 - 235
33		135 - 168	151 - 188	168 - 210	188 - 235	210 - 262
34		151 - 188	168 - 210	188 - 235	210 - 262	235 - 293
35		168 - 210	188 - 235	210 - 262	235 - 293	262 - 327
36		188 - 235	210 - 262	235 - 293	262 - 327	292 - 365
37		210 - 262	235 - 293	262 - 327	292 - 365	324 - 405
38		235 - 293	262 - 327	292 - 365	324 - 405	360 - life
39	262 - 327	292 - 365	324 - 405	360 - life	360 - life	
40	292 - 365	324 - 405	360 - life	360 - life	360 - life	
Zone 3	41	324 - 405	360 - life	360 - life	360 - life	360 - life
	42	360 - life	360 - life	360 - life	360 - life	360 - life
	43	life	life	life	life	life