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UNIFIED, SAFE, AND WELL: BUILDING LIFE-AFFIRMING SYSTEMS FOR JUSTICE-IMPACTED FAMILIES

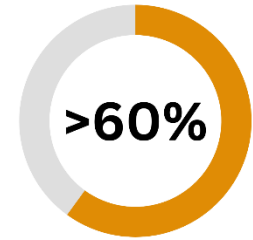
Deanie Anyangwe & Alycia Hardy | September 2023

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Executive Summary

Nearly 40 percent of children in the United States live in households where an adult has faced criminal charges;¹ this rate increases to over 60 percent for Black and Indigenous children, as well as children experiencing poverty. As a result, family separation due to mass criminalization has become a developmental touchstone for the majority of Black, Indigenous, and Latine children. Millions of children across the country routinely experience separation from caregivers as a direct result of racist, punitive policies which are reflected across child welfare, policing, and correctional and immigration systems.



>60%
of Black and Indigenous children live in a household where an adult has been impacted by the criminal legal system

Criminalizing caregivers has numerous consequences for children and other vulnerable family members, including:

- Increased likelihood of financial insecurity and instability.
- Social withdrawal, feelings of isolation, fear, confusion, and negative physical health outcomes.
- Adverse mental health outcomes from increased anxiety, depression, and related trauma.
- Increased contact with child welfare agencies and other family policing systems.

Family separation also happens through “child welfare” agencies, which are closely connected and often supported by law enforcement agencies and the criminal legal system. Child protective services agencies surveil, police, and regulate families in marginalized communities, especially Black and Indigenous families living with low incomes. These families are often subjected to higher levels of scrutiny; according to one estimate, 53 percent of Black children in American will experience a child protective services (CPS) investigation before they turn 18 years old.² This increased level of surveillance does not mean children are safer. It simply means these children are more likely to have their lives disrupted due to false, misleading, and/or biased reports that judge families in poverty more harshly. These impacts are felt by entire communities as people navigate collateral consequences from the disruption in familial and community relationships.

This report analyzes existing policy reforms created to address family separation through incarceration. To reduce the harms of family separation, federal and state actors have instituted interventions such as the Finding Alternatives to Mass Incarceration: Lives Improved by Ending Separations (FAMILIES) Act and the Office of Juvenile Justice Delinquency Prevention’s (OJJDP) Family Based Alternative Justice Grant Program. We conducted in-depth interviews with two programs funded by OJJDP as well as a state-funded alternative sentencing program in Washington County, Oregon. Washtenaw County, Michigan and Lehigh County, Pennsylvania are funded under the OJJDP family-based alternative justice grant, and each received \$750,000 for a period of three years. The Washington County program was implemented as a statewide program and established through legislative action in 2015.

This report contextualizes family separation within its larger historical context; discusses the criminal legal landscape; explains the impacts of family separation on children, families, and communities at large; and reviews existing federal approaches to address family separation. The report also includes our analysis of the three programs mentioned above, outlines challenges and barriers to effective and just implementation, and provides recommendations for harm reduction and transformative systems change

to meaningfully address family separation. Finally, we offer a vision of the future that does not rely on punitive and coercive strategies to address social issues and community needs.

Challenges that we identified across programs include:

- Anti-Black racism in judicial and prosecutorial discretion creates inequities.
- Selection criteria excludes families that are targeted for criminalization.
- Coercive enforcement erodes opportunities to address root causes of violence and precarity.
- Resources available are not effectively meeting the needs of impacted families.
- Programs are not offering adequate supports for children.
- Family policing through child welfare is a state-sanctioned form of violence.

Based on our interviews with program administrators, program managers, and service providers, as well as an extensive scan of policy developments at the federal and state levels, we offer these recommendations for harm reduction and systems transformation to address family separation:

Recommendations for harm reduction include:

- Engaging community members with lived experience in program design.
- Improving data collection practices.
- Providing direct supports for children using a two-generation approach.
- Expanding diversion options for communities.
- Ending dehumanizing surveillance and monitoring practices.
- Strengthening the FAMILIES Act.
- Clearing criminal charges from law enforcement and court systems.
- Providing agency guidance on data privacy protections.

Recommendations for system transformation include:

- Ending family separation and family policing.
- Divesting from all versions of community supervision and investing in community repair by:
 - Offering non-carceral, community-led, social services and re-entry programs.
 - Piloting direct cash benefit programs to systems-impacted families.
 - Eliminating court and program fines, fees, and debt and enacting a carceral debt jubilee.



Background

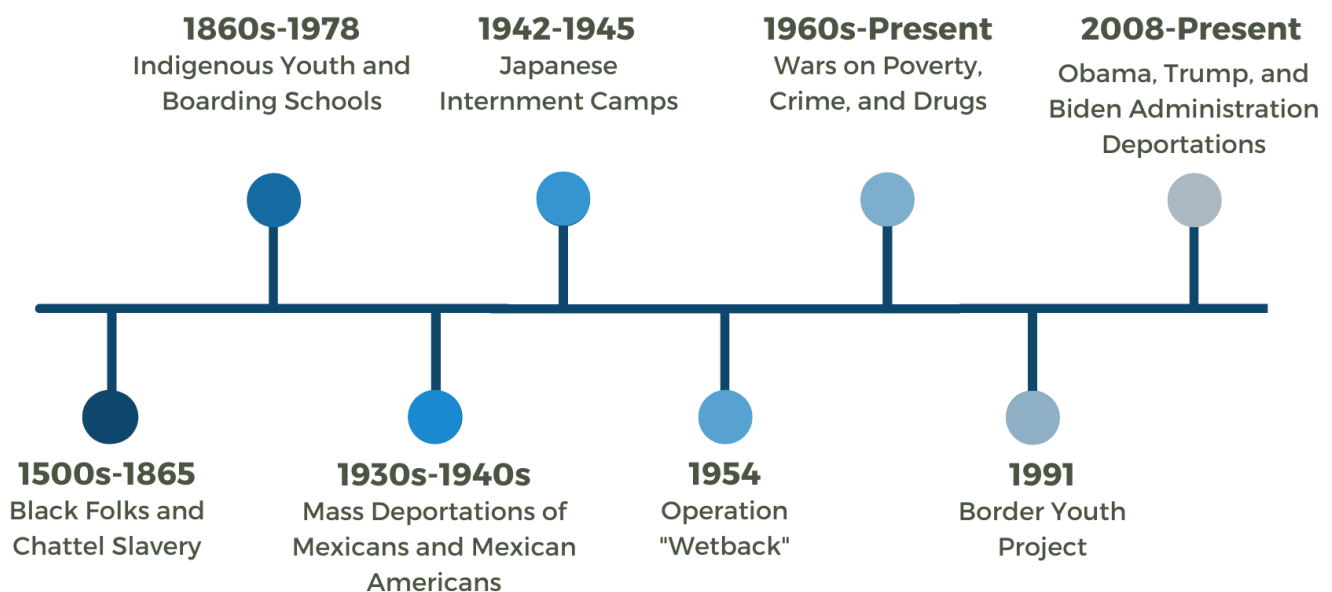
According to a 2010 Pew Charitable Trust report, more than 1.1 million men and 120,000 women incarcerated in jails and prisons in the United States have children under the age of 17, and 2.7 million children nationwide have one or both parents incarcerated.³ As more attention has been paid to the negative consequences of incarceration on families in recent years, different localities have undertaken new efforts to mitigate the impact of the criminal legal systems. Most recently, there have been federal efforts to offer alternatives to incarceration to parents and caregivers. In 2021, the OJJDP began a new grant program titled the Family-Based Alternative Sentencing Program.⁴

In this report, we analyze the landscape for family-based alternative sentencing programs to assess the effectiveness of these programs in meeting their program goals. We specifically focused our analysis on two programs funded by OJJDP's Families Based Alternative Sentencing Program: Lehigh County, PA and Washtenaw County, MI. Additionally, we conducted an in-depth analysis of a state-funded program in Washington County, Oregon with more longevity to get a better sense of how these programs function over time. As we outline what we have learned from the field, we will be drawing particular attention to the challenges and barriers in planning and implementation, the equity and justice-related implications of these programs, and the nuances in how these programs are functioning. In highlighting the challenges with facilitating these programs, we hope to demonstrate the need for alternatives to incarceration that address immediate needs for caregivers and children, minimize the power of the police state, and support program improvements that increase accessibility and utilization by those targeted for criminalization, all while pushing for a shift away from incarceration altogether and working toward keeping families and communities unified, safe, and well. We offer policymakers, practitioners, and advocates considerations and recommendations for non-coercive alternatives to incarceration that support the autonomy, well-being, and safety of children and families.

Family Separation in the United States

Several years of research into children's health and development has taught us that young people need loving, supportive, and consistent adults whom they trust in their lives in order to thrive.⁵

Figure 1: Timeline of U.S. Families Separation Policies



As the African proverb “It takes a village to raise a child” indicates, a collective community is needed to provide safe, healthy environments for children in which they have the security they need to develop, flourish, and realize their hopes and dreams. This knowledge is reflected in the cultural practices of Indigenous communities around the world. Yet in the United States, family separation has become a cultural norm, particularly for Black, Indigenous, and Latine children who routinely experience separation from their parents or primary caregivers as a result of racist public policies and practices.

The United States has a long history of family separation that can be traced back to the 1500s. This white supremacist project dates back to the era of U.S. history when chattel slavery was legal and Black families were often split up and family members were sold to different slave captors. Under the laws of that time, parents did not have rights to their children or autonomy over themselves, and family members could be sold without notice. Separating Black families led to the loss of culture, intergenerational trauma, disconnection from one’s heritage, and countless other negative outcomes.

Similarly, beginning in the 1860s, Indigenous families were subjected to family separation through the creation of boarding schools designed to force the indoctrination and assimilation of Indigenous children into white American culture while simultaneously destabilizing indigenous communities and stealing the land and natural resources that Indigenous people held sovereignty over. Indigenous children were forcibly removed from their homes and stripped of their cultural and spiritual customs and traditions in an effort to “civilize” them as defined by white supremacy culture. Other examples include the mass deportation of Mexicans and Mexican Americans in the 1930s and 1940s, Japanese internment camps in the 1940s, Operation “Wetback” in 1954, the uptick in the mass incarceration of Black people beginning in the 1970s, the Border Youth Project in 1991, and the Obama-, Trump-, and Biden-era deportations of immigrants.⁶

The often-deliberate separation of families is a result of the family policing system, a term coined by Dorothy Roberts, and more widely known as child welfare.⁷ However, even when family separation occurs unintentionally through the criminal legal and immigration systems, this phenomenon of separating children from their families is reflective of a system that dehumanizes and pathologizes Black and brown communities.

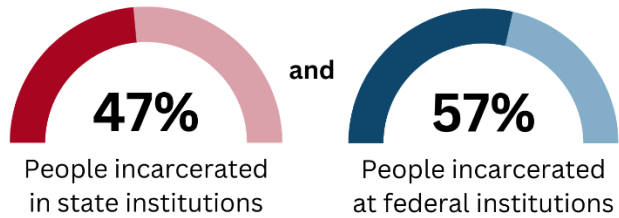
Family Separation Through Incarceration

The United States has the highest recorded incarceration rate in the world, incarcerating 664 people for every 100,000 residents.⁸ Nearly two million people in this country are behind bars at any given time.⁹ The growth in the incarceration rate and its divergence from that of other wealthy nations took off in the 1970s. In 2016, one in 38 adults were under some form of correctional supervision, either incarcerated in prison or jail, or supervised on probation or parole.¹⁰

Mass incarceration in the U.S. particularly affects Black and brown communities. Black communities have long been criminalized through public policies since before this nation gained its independence, and according to incarceration data Black people have consistently been imprisoned at higher rates than white people.¹¹ Mass incarceration has also resulted in the disproportionate imprisonment of Indigenous, Latine, and Asian American people in the United States. Additionally, policies that criminalize Black and brown immigrants, such as the increased collaboration between federal immigration and local law enforcement authorities, facilitates an arrest-to-deportation pipeline that results in the separation of immigrant families

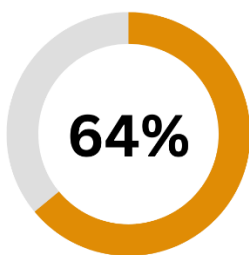
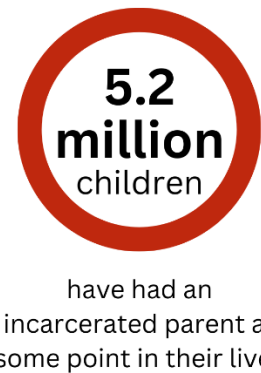
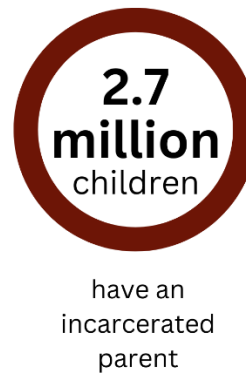
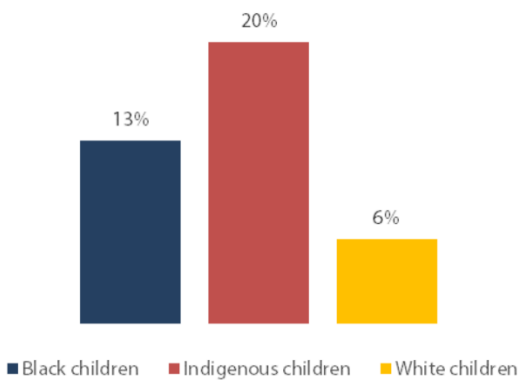
for indefinite periods of time.¹² Collectively, this means that Black and brown families are experiencing the highest burden of family separation via incarceration.

Half of the people incarcerated in the United States carceral system are parents of minors, with reports indicating that 47 percent of people incarcerated in state institutions and 57 percent of people incarcerated at federal institutions reported being parents.¹³ On any given day, 2.7 million children have an incarcerated parent and over 5.2 million children have had an incarcerated parent at some point in their lives.¹⁴ These numbers vary considerably when disaggregated by race. Thirteen percent of Black and 20 percent of Indigenous children will experience parental incarceration during their lives.¹⁵ In comparison, six percent of white children experience parental incarceration at some point in their lives.¹⁶ Research has also shown that 64 percent of adults ages 18 or older have had an incarcerated family member.¹⁷ More specifically, one in five adults have had a parent incarcerated, one in four adults have had a sibling incarcerated, and one in eight have had a child incarcerated.¹⁸



ARE PARENTS

Children Who Will Experience Parental Incarceration During Their Lives



Adults ages 18 or older have had an incarcerated family member



1 in 5 adults have had a parent incarcerated



1 in 4 adults have had a sibling incarcerated



1 in 8 adults have had a child incarcerated

The vast number of cases brought under our system of mass incarceration has led to plea bargaining becoming the preferred method for courts to get through the cases in their dockets: 94 percent of all state and 97 percent of all federal felony convictions occur through plea bargains. This system lacks any standardized processes, fairness, or transparency, and in many instances even subverts the rule of law.¹⁹ As a result of anti-Black racism embedded in the fabric of the criminal legal system, Black and brown people accused of crimes receive disproportionately worse plea offers from prosecutors and the courts. Since roughly the 1970s and the accompanying War on Drugs, prosecutors have lobbied for and been granted increasingly punitive tools to pressure people to take bad plea deals,²⁰ including:²¹

- Pretrial detention to separate people accused of crimes from their families, jobs, and community.
- Mandatory minimums and sentence enhancements that ensure harsher trial penalties.
- Lax discovery rules that relieve prosecutors of the duty to turn over discovery in the case negotiations.
- Little to no transparency requirements, which limits the ability of people accused of crimes, defense lawyers, and the public to scrutinize how the deals are made.
- Supreme Court precedent that allows judges to approve plea deals without ensuring people are not being coerced into entering a guilty plea.
- Underfunding of public defender offices.²²

For parents and caregivers, this has devastating consequences as their lives are determined primarily by power dynamics and leverage with little to no transparency, accountability, or protection.

The impact of mass incarceration is felt by individuals, families, and entire communities as people navigate collateral consequences such as broad-scale economic hardship, increased risk of fatal disease,²³ and dislocated families, alongside disrupted community relationships and marked economic and social risk for young people in communities targeted for criminalization. Moreover, after incarceration, many come home traumatized, ill, and/or alienated from their families and friends. The experience of incarceration often contributes to a downward cycle of economic dependence, social isolation, substance abuse, and other physical and mental health problems that pose challenges to one's ability to contribute to their community upon release.

Impact of Family Separation

The consequences of family separation through incarceration are numerous and often insurmountable. In addition to a **disruption of familial and community relationships**, incarcerating primary caregivers has devastating long- and short-term impacts on children, including

- an increased likelihood of housing instability,
- financial precarity,
- behavioral challenges,
- emotional trauma,
- social withdrawal, and
- poor educational opportunities.

Family separation can also lead to negative mental health outcomes in children, such as increased anxiety, depression, fear, and confusion, as well as poorer physical health outcomes. While most children of incarcerated parents are placed with other family members, some have contact with the foster care system. Notably, at least 80 percent of youth in foster care have serious mental health challenges, almost half have used drugs and alcohol, and 35 percent have substance use disorders.²⁴ Children in the United States foster care system have higher rates of PTSD than adult soldiers who have been to war, and these children diagnosed with PTSD are more likely to abuse several substances.²⁵

Even though the majority of children of incarcerated parents live with other family members, the consequences of being separated from a parent causes lasting damage to children.²⁶ In situations where children are placed in foster care, these young people are more likely to have interactions with law enforcement that can lead to juvenile detention and eventually prison. This is particularly true for Black and Indigenous youth who are consistently targeted by law enforcement for criminalization.



Review of Federal Approaches to Address Family Separation

The deep harm and broad impacts of family separation due to incarceration have been well documented for children and caregivers, including long- and short-term emotional, psychological, and economic harm.²⁷ Proposed federal legislation and grant programs increasingly make efforts to mitigate the harm and impact of family separation due to incarceration.

The Finding Alternatives to Mass Incarceration: Lives Improved by Ending Separations (FAMILIES) Act

The FAMILIES Act was reintroduced in the Senate in July 2021 as S2477.²⁸ Although it has yet to pass into law, this bill's purpose is to "divert certain parents of minor children, expectant parents, and other caregivers from incarceration and into comprehensive programs providing resources, services, and training to those individuals and their families."²⁹ The FAMILIES Act allows federal judges to divert eligible parents and caregivers away from serving time in prison and toward comprehensive services and supports for a period determined by the courts (see Appendix A for more information).

OJJDP's Family Based Alternative Justice Grant Program

Through OJJDP federal funding, grants of up to \$75,000 for 36 months are allocated to provide training and technical assistance for grantees through the Family-Based Justice Center. As of 2023, the program has completed three rounds of solicitations for grant funding (2021, 2022, and 2023). Grants are awarded to state or local governments, for-profit or non-profit organizations, Native American Tribal organizations or governments, small businesses, or private, public, or state institutions for higher learning. The goal of the Family-Based Alternative Sentencing Program is to "establish new and enhance existing family-based alternative sentencing programs for parents/primary caregivers in the criminal justice system to improve child, parent, and family outcomes."³⁰ The OJJDP grant announcement notes that programs are expected to "increase family preservation, improve parental attachment, increase healthy child development, prevent children from entering the foster care system, improve parenting skills, reduce the likelihood of future involvement in the criminal justice system, and reduce the financial impact on the criminal justice and/or child welfare systems."³¹ Applications must meet the minimum requirements and are evaluated by peer reviewers based on how the proposed project or program addresses the following criteria:

- Applicant understands the program/issue to be addressed.
- Applicant presents an adequate proposal that includes goals, objectives, timelines, milestones, and deliverables.
- Applicant has the administrative and technical capacity to successfully accomplish the goals and objectives.
- Applicant understands the performance data reporting requirements and the plan for collecting required data.
- Applicant's budget is complete, cost-effective, and allowable (e.g., reasonable, allocable, and necessary for project activities).

Required reports grantees are expected to submit include quarterly financial reports, semi-annual performance reports, and final financial and performance reports. Future awards and fund drawdowns may be withheld if reports are delinquent.

We reviewed two programs currently funded under OJJDP and a similar family-based alternative sentencing (FBAS) program in Washington County, to assess how such programs can be further improved to reduce harm and avoid duplicating the inequities imbedded in the criminal legal system. We also provide recommendations and guidelines that move toward a more transformative system that ends family separation due to incarceration.

Research and Data Methods

CLASP used a mixed methods research approach to gather primary and secondary sources of information. These sources included interviews, government reports, legislative and statutory analyses, an environmental scan of existing programs, literature reviews, and programmatic and administrative data. This qualitative analysis relied primarily on interviews from two grantee counties awarded under the OJJDP family-based alternative justice grant program (Lehigh County, Pennsylvania and Washtenaw County, Michigan) and one from a state pilot program in Washington County, Oregon. All three sites provided qualitative data through interviews conducted via Zoom and/or official program reports that detailed program design, eligibility criteria, available services and resources, cross-agency coordination, consequences for program violation, and services for children and families.

In advance of identifying and selecting the sites included in this report, we conducted an environmental scan of proposed and existing programs and legislation from across the country based on the programs identified by the Family-Based Justice Center.³² From this scan, we contacted six sites to request interviews, successfully scheduling and subsequently completing four interviews across three sites as detailed in Appendix B. We developed an interview guide to create a uniform set of questions to be used across sites with follow-up and clarifying questions posed as needed. The interview questions were centered on the following themes:

- Decision-making authority and program coordination.
- Funding structures and sources.
- Monitoring, supervision, and surveillance.
- Rehabilitation approaches and incarceration alternatives.
- Program selection criteria and considerations.
- Program goals and desired outcomes.
- Consequences for program violations.

Program Analysis

Family-Based Alternative Sentencing Program: Washtenaw County, Michigan

Washtenaw County received an OJJDP grant of \$750,000 in FY2022. The Washtenaw County trial court served as the primary grantee to develop and implement a community-based, family-centered alternative to incarceration program within 36 months (3 years). The Family-Based Alternative Sentencing (FBAS) program's priority populations are parents and caregivers between 12 and 25 years old, and it expects to serve 60 young parents and caregivers annually. Participants are referred to the program from either private or public defense counsel; a judge must approve the request and submit it to the county prosecutor's office. If the prosecutor deems this program appropriate for the person charged, a final determination is made at the earliest court date. Final eligibility is then determined with consideration to current charges, criminal history, substance dependency, mental health, disability status, educational background, immigration status, housing instability, and the circumstances that led to the arrest. Those charged with crimes considered to pose a risk to children or public safety, including homicide, sexual/physical assault, or armed robbery, are not eligible for this program.

The primary service provider is Corner Health Center (The Corner), which handles case management, supports health-related needs, and offers physical, mental, and behavioral services. Each participant receives a distinct, individualized service plan spanning one year based on clinical and needs assessments. In addition, the program works with a variety of community-based partners to support education services, mentoring, therapy, and a food pantry. There was no clear indication that individuals with direct lived experience were engaged in designing and implementing this program.

Family Alternative Sentencing Team: Lehigh County, Pennsylvania

Lehigh County received an OJJDP grant of \$750,000 in FY 2021 to create a multidisciplinary diversion program within 36 months emphasizing pre-sentencing alternatives. The primary grantee for the program is the Lehigh County Office of Children and Youth Services (CYS) with program and management support through the Family Alternative Sentencing Team (FAST). In addition to CYS, FAST is comprised of the District Attorney's Office (DA), Office of the Public Defenders, Department of Corrections, the adult and juvenile probation offices, the county jail, and two community-based partners: Pinebrook Family Answers and the Salvation Army. Parents are the priority population for the program, and 11 families have participated since FAST was implemented in June 2022. Participants enter the program through referrals from agency partners like the DA or a private attorney, with the DA making the final determination on program eligibility. There is a general preference for participants charged with low-level, non-violent crimes, and restrictions around charges involving sex crimes or children. For most participants, this was their first offense. Many of the charges were related to domestic violence, which led to FAST shifting programming and services to address the specific needs related to these offenses, including through a batterer's intervention programming. Full family participation is not required but encouraged, and all family members are eligible to receive services.

Pinebrook Family Answers is the primary service provider in FAST, and the Salvation Army is a supporting community-based partner that provides clinical-based services. Pinebrook establishes evidence-based programs using needs and risks assessments to determine appropriate services and the Salvation Army provides trauma assessments and mental/behavioral health counseling. Both organizations offer classes and family-oriented services. There was no clear indication that any community members or individuals with direct lived experiences were included in the design and implementation of this program.

Family Sentencing Alternative Pilot: Washington County, Oregon

Washington County has fully implemented the Family Sentencing Alternative Pilot (FSAP), which was first implemented in 2016 through state funding with \$2,235,237 allocated for 2021-2023. The priority population for the program is primary parents facing prison sentences; 73 parents have been served since the program began, with 141 children diverted from non-relative foster care since 2021. Admission originates from referrals through the justice reinvest program and the participant's attorney. These referrals are examined by the DA's office and then sent to the FSAP program supervisor who works with community corrections agencies to determine eligibility. Most enrollees are women, so the most common assessment utilized is the Women's Risk Needs Assessment. Those with a history of violent offenses, sexual offenses, or gang affiliation are unable to participate.

This program is headed by several state agencies, including state and local attorney offices, the Oregon Department of Human Services (DHS), Oregon Department of Corrections (DOC), the Washington County Probation and Parole Office (PO), and the Washington County Community Corrections. Currently, there are no community-based organizations directly connected to the services provided. After being deemed eligible, the Washington County Probation and Parole Division begins case management, accounting for the needs established in the assessment, to make an individualized case for each participant. Each admittee must commit to not working for the first six months of the program and to be under 12 months of intensive supervision, undergoing required services and support.

Table 1. Power, Supervision, Violations, & Sentencing

Program Site	Washtenaw County, MI	Lehigh County, PA	Washington County, OR
Power Dynamics	How is power distributed among the partners in deciding admission and inclusion into this program?	The prosecutor and judge hold most of the power	<p>The DA’s office holds most of the power</p> <ul style="list-style-type: none"> ➤ One judge in the county holds most of the power ➤ The DA, probation officer, and other corrections agencies conduct evaluations and report on participant progress to the judge, including violations. The judge, DHS, DA, PO, and DOC collectively support eligibility determinations.
Monitoring, Surveillance, & Supervision	How is supervision conducted through this program?	Intensive case management and treatment	<ul style="list-style-type: none"> ➤ Supervision conducted by Pretrial Services ➤ Case management and additional supervision, including through home visits ➤ Meetings with Parole Officer, mentor, and mental health counselor ➤ Drug screening/GPS monitoring ➤ Outpatient substance abuse treatment, parenting classes, and formal involvement with DHS via child welfare
Monitoring, Surveillance, & Supervision	Was there an iteration of this program considered with no surveillance component?	No	<p>No</p> <p>No</p> <p>No</p>

Program Site	Washtenaw County, MI	Lehigh County, PA	Washington County, OR	
Consequences & Violations	<p>What happens in the event of program violations or new charges?</p>	<ul style="list-style-type: none"> ➤ Removed from the program ➤ Prosecutor moves forward with original charges 	<ul style="list-style-type: none"> ➤ Removal from the program ➤ Potential jail time 	<ul style="list-style-type: none"> ➤ Possible revocation of program participation/probation status ➤ Possible reinstatement of charges ➤ Temporary confinement or “clean time” ➤ Possible transfer to another program with increased supervision or increasing supervision within this program
Assessments, Data Sharing & Privacy	<p>What kind of assessments are conducted to assess the needs of participants?</p>	<ul style="list-style-type: none"> ➤ Physical Health ➤ Mental ➤ Behavior 	<ul style="list-style-type: none"> ➤ Trauma screenings ➤ Family relations/Health assessments ➤ Risk/needs assessments 	<ul style="list-style-type: none"> ➤ Women’s risk needs assessment ➤ Mental health intake Evaluation
Sentencing	<p>How does successful participation in this program impact sentencing?</p>	<ul style="list-style-type: none"> ➤ The Prosecutor’s Office files a <i>nolle prosequi</i>, and decline to move forward with the case ➤ The judge dismisses all charges 	<ul style="list-style-type: none"> ➤ Generally, no jail time ➤ Could mean charges are dropped completely, reduced, or some level of community service 	<ul style="list-style-type: none"> ➤ Probation for a maximum of six years of supervision ➤ If necessary criteria is met at the halfway point, probation ends early

Table 2. Program Resources and Post-Program Supports

Program Site	Washtenaw County, MI	Lehigh County, PA	Washington County, OR	
Resources	<p>What resources are provided or what services are participants directly or indirectly connected with?</p>	<ul style="list-style-type: none"> ➤ Behavioral health ➤ STD/HIV testing ➤ Vaccination/physicals ➤ Mentorship programs ➤ Educational/vocational courses ➤ Substance use treatment 	<ul style="list-style-type: none"> ➤ Parenting classes ➤ SNAP/TANF ➤ Mental health services ➤ Employment/rental assistance ➤ Alcohol/substance use counseling 	<ul style="list-style-type: none"> ➤ Clean/sober housing placement ➤ Rental assistance ➤ SNAP/TANF ➤ Child care ➤ Transportation stipends ➤ State health insurance/medical care ➤ Drug/alcohol treatment ➤ Cell phone bill payments
	<p>What barriers exist that make accessing resources a challenge?</p>	<p>None identified</p>	<p>Waitlists</p>	<ul style="list-style-type: none"> ➤ Limited transportation ➤ Waitlists
	<p>What resources exist for children?</p>	<p>Participants served from ages 12-25</p>	<ul style="list-style-type: none"> ➤ No direct services offered ➤ Mental health resources/mental health services ➤ Community events collecting toys, clothes, shoes, and school supplies 	<p>Counseling is the only direct service offered Indirect resources of gift cards, movie tickets, and community events like Christmas toy drives</p>
Post-Program Support	<p>What types of supports exist for participants once they have fulfilled their program?</p>	<p>Not applicable</p>	<ul style="list-style-type: none"> ➤ 3–6-month follow-ups ➤ Referrals, resources, and other supports 	<p>Not applicable</p>

Challenges and Barriers

Our conversations with program administrators from each program highlighted some key challenges and barriers to effectively administering these programs in ways that promote the preservation of families. Common threads include:



Anti-Black racism in judicial and prosecutorial discretion creates inequities.



Selection criteria exclude families that are targeted for criminalization.



Coercive enforcement erodes opportunities to address root causes of violence and precarity.



Resources available are not effectively meeting the needs of the needs of impacted families.



Programs are not offering adequate supports for children.



Family policing through child welfare is a state-sanctioned form of violence.



Anti-Black racism in judicial and prosecutorial discretion creates inequities.

Judicial and prosecutorial discretion are major challenges to equitable administration of FBAS programs. Prosecutors hold a particularly outsized role in the criminal legal process with discretionary decision-making power over charging and plea bargains. Their recommendations also can anchor courtroom discussions about pretrial detention, bail amounts, and sentencing. Research shows that racial bias affects how prosecutors exercise their discretion in cases involving Black people.

Each program acknowledged the unbalanced power of the **prosecutors as gatekeepers** into this program, and evidence tells us that **biased decision-making by prosecutors** negatively impacts Black and brown people.³³ Many of the diversion programs in Washtenaw County demonstrate inequities along racial lines and exclude Black people in particular. In 2012, the Vera Institute of Justice conducted a review of 34 studies on the impact of prosecutorial decision in sentencing disparities and found that a large number of studies concluded that Black and brown people are more likely to be prosecuted, held in pretrial detention, and receive other harsh treatment than white people.³⁴ A 2013 study found that **federal prosecutors are more likely to charge Black people** than similarly situated white people with offenses that carry higher mandatory minimum sentences.³⁵ In view of this reality, it is clear that anti-Black racism shows up consistently in prosecuting practices in the court system.

PROSECUTION REMAINS A SYSTEMIC COMPONENT OF THE CRIMINAL PUNISHMENT SYSTEM, A DEATH-MAKING SYSTEM OF RACIALIZED SOCIAL CONTROL THAT CANNOT BE PROGRESSIVE, NO MATTER THE PERSONAL POLITICS OF THE INDIVIDUAL PERSON IN OFFICE. - BEYOND CRIMINAL COURTS

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Each of these programs rely on the support from the prosecutor’s office as well as the courts to administer these programs. Because of the power that prosecutors hold, many people have organized to elect prosecutors believed to be more progressive. But while this strategy changes who is in power, it does not change the power structure itself. Prosecution remains a systemic component of the criminal punishment system, a death-making system of racialized social control that cannot be progressive, no matter the personal politics of the individual person in office. As such, the strategy of electing prosecutors with different ideological views does not diminish prosecutorial power, even if individual prosecutors choose not to use their power to charge or jail someone. Their successor, after all, could make the opposite choice. Ultimately, relying on benevolent actors does not minimize the power and discretion that prosecutors hold overall.³⁶



Selection criteria exclude families that are targeted for criminalization.

Exclusion of “Violent Offenders”

One significant drawback of diversion programs is exclusive selection criteria. Stipulations placed on these programs often make them more inaccessible to people who have committed offenses considered “violent” or “serious.” Each program expressed either a preference or a requirement that all charges be considered “low-level” and “non-violent” and in some cases expressed a preference for people with shorter criminal histories who are on their first or second offense. Certain programs also saw early indicators of inequities in access to these alternatives as indicated by demographics regarding race and income level indicators, such as job titles and the ability to hire private attorneys. One major issue with this distinction is the level of subjectivity that in a racialized social structure will reflect anti-Black racism.

The distinction between “violent” and “non-violent” is often inconsistent and widely misused. In Lehigh County, partners described a preference for charges considered “low-level” and “non-violent,” yet several of the participants they are supporting have been charged with domestic violence-related crimes. Because the Washington County program is funded through the state via the Oregon Department of Corrections, that department had a great deal of negotiating power in determining eligibility qualifications. This meant that, from the outset, people charged with violent crimes were ineligible to participate. In Washtenaw County, there is a state ordinance that prohibits the participation of people accused of committing “violent” crimes, resulting in the exclusion of many Black people. In some states, criminalized acts that do not involve any physical harm such as burglary, purse-snatching, and stealing drugs are considered violent crimes and can result in long prison sentences.

The perceived risk posed by those who have committed violent crimes is measured by the type of offense committed, rather than a person’s individual circumstances. This reinforces assumptions about the inability of people who commit violent or sexual crimes to safely re-enter, and re-engage with, their communities, thereby necessitating lengthy prison sentences and other forms of punishment and exclusion. Existing data does not support the policy choice of incarcerating people with violent charges for the sake of public safety, as people with violent offenses are among the least likely to be re-arrested.³⁷

Gang Affiliation

Additionally, some of these programs exclude participation from those believed to be affiliated with gangs. However, localities often use arbitrary and racialized criteria to determine gang affiliation, varying from apparel, scars, tattoos, and hand signs to living in a “known gang location” and having relationships with “known gang members.”³⁸ Significantly, commission of any crime is often not among the criteria. This is problematic because Black and brown youth are typically surveilled more intensely for gang activity, despite the fact that, based on 2012 data, the majority of gang members in the United States are actually white, and law enforcement agencies have opted to not officially recognize the majority of white groups that are by definition gangs as such.³⁹



Coercive enforcement erodes opportunities to address root causes of violence and precarity.

The reliance on punitive and coercive strategies to “rehabilitate” caregivers who engage in “deviant” behaviors reinforces dehumanizing narratives of racial inferiority that maintain racial hierarchies

Rather than address the root causes of violence and precarity, these programs continue a pattern of pathologizing and infantilizing people by presuming that parents and caregivers are incapable of managing their own lives and supporting their families without intensive supervision. This presumption relies on an overemphasis of personal responsibility and leads to behaviors that are often a result of surviving poverty or managing mental health being criminalized. As such, these programs offer individual-level interventions for social issues that have structural roots.

Another challenge with these programs is that social supports are only accessible after parents and primary caregivers come in contact with the criminal legal system. Interactions with law enforcement pose a major threat to the safety and wellness of children, families, and communities at large, yet these same entities are responsible for intervening when people are experiencing a crisis.





Resources available are not effectively meeting the needs of impacted families.

Inadequate Program Funding

Each of the three programs have plans to provide a variety of services and referrals at little to no cost to participants. However, the waitlists to access many of these resources pose challenges to adequately supporting the needs of each family. This reflects an inadequacy in funding services that support the well-being of families. Washington County's program initially included a house for clients and their children, but costs were too high to sustain this aspect of the program.

Service Mismatch

A major issue with the programs we evaluated was that the resources offered did not always reflect the needs as indicated by community members. For example, from the perspective of those involved with government agencies and service providers, more classes, counseling, and mentoring can be seen as helpful ways to increase the likelihood of program success and reduce recidivism. However, partners with lived experience have named that the sheer number of services can be overwhelming and disruptive, especially if those services are mandated and not responsive to participants' needs. When programs are seen as more burdensome than helpful and conflict with other important priorities, caregivers may miss required classes, group therapy sessions, or other case management support. Eventually, this could lead to technical violations, revocation of program participation, and incarceration. Participants' disengagement could then be interpreted as a lack of interest instead of the natural outcome of misaligned services, because of the limited perspective through which these actions are interpreted.

Exclusion of Program Participants from Decision-Making and Leadership

Because these programs were not created with leadership and guidance from impacted people, it is likely that those most targeted for criminalization will be excluded from the services, and that the resources provided are misaligned with the needs of system-impacted families. For example, because of the priorities of the Lehigh County district attorney's office and its understanding of family unification, several program participants have domestic violence charges. However, this program was not created to offer support for people with a history of domestic violence, therefore illustrating a mismatch between needs and services.



Programs are not offering adequate supports for children.

Repairing the harm children experience due to caregiver involvement in the criminal legal system will require additional direct services for children. Each of the programs interviewed as well as the FAMILIES Act legislation focuses on the role of the caregiver and the harms caused by their removal. And while prison diversion in conjunction with directly addressing the economic, health, and counseling needs of parents and caregivers certainly adds more stability in children's lives, it does not directly support children and therefore cannot adequately support families. Diverting parents from prison alone is not enough to support family unification. To genuinely do this, there must be an emphasis on two-generation policy designs that simultaneously address the needs of children and their caregivers.⁴⁰

To begin addressing the psychological, social-emotional, and other harms caused by Adverse Childhood Experiences (ACEs), children need access to mental health and other direct supports. Having a parent that is incarcerated or returning after incarceration is considered an ACE, as is placement in the foster care system.⁴¹ ACEs deeply impact children's immediate and long-term well-being as is seen in outcomes

related to physical and mental health, employment, educational attainment, interactions with the criminal legal system, etc.⁴²

When services are not available to address the rippling effects of family separation, programs often shift to only providing supplemental indirect resources. These resources include backpack and toy drives, community activities and events, and funds or gift cards for parent-child activities. Backpack and toy drives are often community events that are open to children and families beyond those connected to these programs and offer broad support for children and families. In addition, certain programs provide parents with gift cards, movie tickets, or other access to events and activities, but sometimes these resources are directly connected with parent participation and behavior. Programs must not treat these resources as incentives contingent on parent behavior as this will ultimately cause harm to the child. There is a real concern of this practice leading to unintended consequences of disrupting the stability of parent/caregiver relationships with children. While these supplemental resources are helpful, they are one-time or very short-term supports and do not address the core supports necessary to address children's needs.

Child care, after school care, and summer care are starting points for direct services for children.

Child care, after school care, and summer care are critical, necessary assistance for caregivers and children. Access to these forms of care supports family economic stability and creates stable, safe out-of-home environments for children to learn and grow. This care is essential for FBAS program participants as they work to meet program requirements, including attending classes and counseling, as well as when they attend work, school, or job training or pursue other opportunities to support economic stability and well-being. Yet families can face incredible difficulty in finding the appropriate types of care that can meet their full range of needs. For example, families who work non-traditional hours or have sporadic work schedules may need care that is open overnight or on the weekends or that has extended hours—and finding this type of care can be especially difficult.

When families do find care, it can be quite expensive. A 2019 analysis from the Center for American Progress found that families with middle incomes spent an average of 14 percent of their annual income on child care and families with low incomes spent up to 35 percent of their annual income.⁴³ These exorbitant costs are a direct result of a system reliant on payments from families and low provider wages to uphold a fractured, privatized system instead of significant and purposeful government investments that support a public system.⁴⁴ This lack of access to child care, after school care, and summer care can also cause families to have adverse interactions with the child welfare system. When parents cannot find or afford adequate and reliable care options, they may miss work, thereby driving them further into poverty and reducing their ability to provide for their children's basic needs—the definition of neglect. When not working is simply not an option, parents may be forced to leave their children in unsafe conditions, potentially leading to interactions with the child welfare and/or criminal legal system. Moreover, the racism and white supremacy that permeates the child welfare system and the criminal legal system, when compounded with economic inequity, means Black and brown families are generally more likely to experience poverty, lack access to child care, and interact with the criminal legal system.^{45 46}

Along with helping caregivers access other public assistance benefits, the programs we interviewed noted helping families apply for state-subsidized child care. **Supporting families in applying for a child care subsidy, such as those funded through the Child Care and Development Block Grant (CCDBG), is the first step in helping families afford child care, before and after care, or summer care.** Unfortunately, state programs that help parents afford care are in dire need of additional federal and state investments and often can only serve a fraction of eligible children. In 2019, only 16 percent of all children who were federally eligible to receive a child care subsidy actually received it.⁴⁷ Simply supporting caregivers in applying for child care subsidies is not enough, especially when state eligibility policies can create barriers to access by rendering families ineligible. For example, a program requiring that parents not work for an extended period as they adjust to the program can conflict with state requirements that caregivers must be working or attending job training to be eligible. This is especially concerning given that job seeking, or mental health and substance use counseling may not be considered eligible activities. States can also implement child support cooperation agreements where parents must establish paternity or provide a child support order.⁴⁸ Programs must consider state child care eligibility requirements when helping parents apply for child care assistance and the limited funding available, which could mean parents are denied access or placed on a waitlist and no child care is provided. If parents can access child care through the support of the program, there must be intentional effort to ensure these children receive trauma-informed care from a provider that can meet children’s diverse needs.





Keeping families together: supporting children’s healing and family well-being.

Preventing family separation is the best way to prevent harm to children. Barring that, children and parents need support during reunification through alternatives to incarceration programs. How and what types of direct services to provide children, other than individual interventions such as one-on-one counseling or therapy, was a noted challenge for diversion programs. While these types of direct services can be incredibly helpful, the burden of healing and improving well-being is placed on children and families and is reliant on access to individual-level interventions to address systemic and policy failures. Across the interviewed programs, even when services are available, they may not always be accessible due to long waiting lists. **Connecting children and families directly to state systems such as the Children’s Health Insurance Program and Medicaid is essential to supporting children’s health and family well-being.** This two-generation approach would mean programs support children and caregivers applying for and navigating state health insurance programs so families can have their physical, mental, and behavioral health needs addressed. This navigation would also help reduce stress and bureaucratic burdens on families, such navigating multiple agencies and excessive paperwork, so they can quickly understand and access the range of services needed. ⁴⁹

Mental health services for children and youth should be aligned with key strategies for youth mental health care, including trauma-informed care, positive youth development, youth friendliness, authentic youth engagement, cultural responsiveness, and disability awareness. ⁵⁰ Young people often prefer to receive support from trusted peers whom they can relate to and mutually support their mental health needs. ⁵¹ The types of mental health services offered must include peer-to-peer support for children as well as family therapy. Peer-to-peer support allows children and youth to receive mental health support from other young people who share the experience of parental incarceration. ⁵² These groups can also supplement support from clinical professionals.

Accessing family therapy creates an opportunity for collective healing to address overall well-being within families as well as increase the stability of parent/caregiver and child relationships. In 2021 California recognized the importance of access to family therapy services by updating and clarifying their Medicaid policy guidance regarding how to qualify for these services. The guidance clarified the range of eligible criteria for family therapy services and included separation from a parent/guardian due to incarceration or immigration.

Family alternatives to incarceration programs should not try to build their own mental health system. Instead, they should work to build cross-sector partnerships to support youth mental health. Such an approach would require partnerships between and inclusion of state health agency and public mental health system partners on FBAS implementation and program management teams. These partnerships would support state-level policy changes that align with program goals and family access to services through a systemic approach. In addition to supporting policy reforms, establishing these partnerships would include cross-training staff, sharing and streamlining data, finding new ways to use data to develop more comprehensive goals, and identifying systemic policy solutions to address inherent barriers.⁵³ **One state policy to help address access to comprehensive state services is through the Affordable Care Act's (ACA) expansion on presumptive eligibility (PE) for Medicaid, or allowing immediate access to Medicaid services while full eligibility is determined.** The ACA expansion allowed states to extend PE to all populations, and as of 2020 nine states extended PE to parents. However, based on varying familial structures and varying definitions of “caregiver” connected to programs, extending PE to broader populations beyond parents is ideal.⁵⁴

A major goal of ending family separation is to reduce and prevent harms to children resulting from caregivers’ incarceration. To fully support this preventative/reduction approach families must have access to resources and services that address their broader systemic needs, including their physical, mental, and behavioral health. Programs should include additional considerations on how they will support and provide services for children that are culturally affirming, linguistically appropriate, and trauma-informed, and which work toward fully addressing children’s healing and overall family well-being.



Family policing through child welfare is a state-sanctioned form of violence.

Child welfare agencies are central to program design.

The programs analyzed were designed to incorporate cross-agency coordination of services to provide multiple levels of oversight and help ease the burden participants face in gaining access to the available resources under those and adjacent agencies. Due to the nature of programs that focus on parents and caregivers of children, child welfare agencies are central to their design, implementation, and oversight. These agencies have a unique role in FBAS programs and more broadly, straddle the line between enforcing protective policies that support the health, safety, and well-being of children and enforcing punitive policies that can result in child removal, lost custody, or imprisonment for parents. These punitive policies can result in the very family separation that alternative sentencing programs have been created to reduce, creating an inherent conflict in their role in and connection to diversion programs. This conflict is rooted in the child welfare system’s history of being a powerful apparatus of state policing that far too often functions to regulate poor and working-class families—especially those that are Black, Latine, and Indigenous—by wielding the threat of child removal.

Family separation through child welfare.

In very narrow circumstances, family separations can be necessary to remove children from violent and abusive environments. Yet child welfare agency involvement often exacerbates the harms children face, especially when children are placed in the foster care system. During child welfare investigations, caseworkers may inspect every corner of the home, interrogate family members about intimate details of their lives, strip-search children to look for evidence, and collect confidential information from schools, health care providers, and social service programs. If caseworkers detect a problem like drug use, inadequate medical care, or insecure housing, they will coerce families into an onerous regimen of supervision that rarely addresses their needs. These harms can be further exacerbated for Black and Indigenous American children who are removed from their parent's care at greater rates.⁵⁵ The overrepresentation of these children and families in the child welfare and foster care systems reflect the overrepresentation of Black and brown people in the criminal legal system, a direct result of deeply rooted racism and white supremacy. In fact, *The New Republic* reports that more than 50 percent of all Black children will at some point be involved in a child welfare case, compared to less than 30 percent of white children.⁵⁶ Black children have also long been grossly overrepresented in the national foster care population: although they were only 14 percent of children in the United States in 2021, they made up 22 percent of children in foster care.⁵⁷

The criminal legal and child welfare systems are inextricably linked because interactions with one system can lead to interactions with the other.⁵⁸ An anonymous call; unproven suspicion of drug use; an accidental fall resulting in an emergency room visit; or increased observations from mandated court reporters, such as those who work with parents accessing public assistance, can lead to a family being investigated by a child welfare agency and/or the arrest of a parent or caregiver. These forms of family policing are deeply harmful. The overlaps and intersections of the criminal legal system and the child welfare systems call into question how agencies connected to either can justifiably work to end family separation when they are tasked to specifically do this in service of promoting safety and accountability.⁵⁹

Criminalizing poverty and race.

Child welfare workers often punish families for being poor. When children are faced with unsafe living conditions, child welfare agencies are tasked with removing them from their caregivers. Most child welfare cases are classified as neglect; and while neglect can be defined as not providing adequate supervision for a child, it can also be defined as providing inadequate food, housing, clothing, or medical care, all of which are connected to a family's economic stability.⁶⁰ Scholars such as Khiara Bridges have demonstrated that the current child welfare system is based on a view of poverty as an ethical shortcoming, and that it fails to acknowledge the systemic structures of poverty that impact Black and brown communities.⁶¹ Bridges makes the case that this perspective creates a child welfare system focused on addressing what it sees as individual moral failings through chaotic and emotionally tumultuous family separations, rather than addressing the underlying structural barriers that create challenges to childrearing.⁶² Analyses conducted by Human Rights Watch found a correlation between poverty rates and the frequency of investigations from child welfare agencies.⁶³ Research from the Child Welfare League of America found that nearly 75 percent of child welfare maltreatment cases were classified as neglect.⁶⁴

The broad definition of neglect and how it can be used to criminalize poverty as well as the deep and inextricable link between economic inequity and systemic racism results in Black and brown families being more likely to be investigated by child welfare agencies and have their children removed.⁶⁵ Families with low incomes, who often access public assistance programs to support their needs, are also subjected to increased surveillance by court-mandated reporters when families seek and receive public assistance benefits. At times, these investigations and charges can lead to criminal charges for parents or, in the case of a diversion program, could result in a probation violation when families are doing their best to survive poverty.

Acknowledging the disproportionate harms Black and brown communities and families with low incomes face in the criminal legal system, especially relating to family separation, is important to undoing those harms through diversion programs. However, in the process of designing programs and establishing agency coordination there must also be consideration for the harm families face due to the involvement of child welfare agencies.



Decentering child welfare agencies.

A major challenge and barrier of FBAS programs is the central role of child welfare agencies in program design, implementation, and management. Central to this challenge, as detailed earlier, is the conflicting nature of child welfare agencies being responsible for child removal while also being central to a program designed to end family separation. Programs must consider how to limit or remove child welfare agencies' involvement in diversion programs to avoid further compounding the harms and inequities inherent in the child welfare system for children and caregivers.

Another consideration is reducing and eventually eliminating these agencies' direct involvement with parents, especially those who do not already have an open case. Programs should also consider the role of mandatory court reporters; supervision that involves children's interactions with parents, such as home visits; and other forms of monitoring that emphasize parenting instead of access to resources that support family economic stability and growth and reduce the trauma of poverty. Research from the University of Chicago shows that poverty is one of the greatest predictors of a family's interaction with the child welfare system, as seen through most investigations being rooted in a lack of access to basic needs.⁶⁶

In the diversion programs that we reviewed, child welfare agencies engaged families in a punitive manner, such as tying financial support and access to supplemental resources like gift cards to parent behavior. In other instances, parenting classes, mentoring, and groups were used to emphasize improving individual parenting skills without additional emphasis on addressing systemic barriers to concrete resources. With income as a key indicator of the involvement of child welfare systems in families' lives', the emphasis on individual parenting skills to support children and families perpetuates family policing by critiquing individuals rather than addressing systemic economic and racial inequities.

Diversion programs such as these are not a departure from the wars on crime, drugs, and poverty. In fact, while remaining unified with their families and in their communities is often seen as a better alternative for parents and primary caregivers than incarceration, the conditions imposed such as long supervision terms, numerous and burdensome requirements, and constant surveillance via mechanisms like electronic monitoring and mandated drug testing can result in violations that may lead to jail time, court fines, and court fees. With the lingering threat of incarceration and family separation, these programs rely on compliance as a measure of success rather than healing, rehabilitation, and restoration. Rather than contending with and minimizing the power of police, prisons, and courts, diversion programs largely further entrench carceral entities in the management of crises.

Recommendations for Harm Reduction

Program administrators can...

Engage community members with lived experience in program design.

"Nothing for us, without us" - Michael Masutha, 1993

No policy should be decided without the full and direct participation of members of the group(s) affected by that policy. Policies and programs should be designed with those most proximate to the issue: in this case, people who have been targeted for criminalization, including Black and brown, disabled, poor, homeless, queer and/or trans people who have been in contact with the criminal legal system. People with lived experience have the most intimate knowledge of these issues as well as creative solutions to these problems. Centering their voices and leadership is essential to designing programs that effectively meet community needs.

A key consideration for strengthening diversion programs and ensuring they truly meet the range of needs that children and caregivers have is by involving them in designing those programs from the planning stage through the evaluation process. Doing this requires trust-building, transparency, and shifting power away from government agencies. This can look like:

- Granting community members decision-making authority throughout the program design process;
- Addressing barriers to engagement such as transportation vouchers, child care service, and food; and
- Compensating people appropriately for their time and expertise.⁶⁷

The "family-based alternative justice program grant application through OJJDP includes objectives that expect programs to include family-supportive cross-system coordination and community collaborations that include justice-involved parents/caregivers".⁶⁸ Overwhelmingly however, the programs we analyzed relied on those who lack firsthand or direct experiences of families impacted by incarceration to design, implement, manage, and evaluate diversion programs. Shifting power and decision-making toward those who have the direct experience to evaluate and improve programs as well as the lives of those participating in and connected to programs is a key consideration. When the program design lacks this input, it can result in resources and services that are misaligned with the true needs of caregivers in that specific community.⁶⁹ Engaging communities is also a way to help ensure programs are culturally relevant and affirming, linguistically appropriate, and employ outreach and communication strategies that resonate with communities.

Improve data collection practices.

Where possible, program data should be disaggregated by race, ethnicity, gender, income status, disability status, caregiver status, and primary language, and analyzed with an intersectional approach using cross tabulation.^{70 71}

Additional data that programs may consider collecting include:

- Applications received, accepted, and rejected and reasons for rejection.
- Program completion and the length of time for completion.
- Cases, sentences, and probation agreements including any modifications.
- Program violations and dismissals.

- Program revocations.
- Children involved in foster care at any point during the diversion process, including length of time.
- Days that impacted children were absent from school.
- Child welfare cases opened prior to program participation and those opened or closed during program participation.
- Access to public assistance programs and waitlists for access.
- Pregnant people enrolled in the program and any specialized services they received.

Engaging community members through collaborative development and implementation of community-driven program metrics to define goals and conduct evaluations is necessary to broaden the scope of program success beyond recidivism. These perspectives are critical to truly measure and evaluate program impacts. This involves careful consideration of what qualitative and quantitative data are collected and how they're used to continuously improve and strengthen programs. Diversion program data can be hyper-focused on recidivism, an important measurement of whether someone reoffends. For example, qualitative data to further explore why participants do or do not re-offend is important to understand how to better support those who re-offend. In addition, expanding measurements of program success to include reducing poverty or substance use are also important metrics that can be more clearly defined by directly impacted people. Programs should also consider who or what is being centered and who benefits when determining what data are collected, what outcomes are valued, and who has access to that data.



Provide direct supports for children using a two-generation approach.

The current structure of the programs we analyzed relies on a trickle-down approach of supporting parents and caregivers so they can better support children. This approach can have the unintended consequence of inflicting further harm by delaying supports for children or making them conditional on how a parent progresses through the program. A two-generation approach is necessary to incorporate policies and program resources that directly, individually, and collectively address children and caregiver needs. For example, parents must attend a specific number of classes, mentoring and case management meetings, and group therapy sessions and fulfill other requirements, in addition to working. However, their children are not guaranteed access to child care, after school care, or summer programs where they can be in safe, affirming, and healthy environments. While caregivers were supported in applying for financial assistance to access such care, it was not enough since child care was not guaranteed due to long waitlists and limited state resources. In addition to the need for robust long- and short-term federal and state funding for child care and other public benefits programs, state agencies must also work to shift policy. One such policy shift could be that children who are directly affected by these programs, as well as children of incarcerated or recently released caregivers, are included as a priority group for state and federal agencies. This could allow these children to be served first or be guaranteed access to public benefits programs, helping to directly address their needs and broader family needs.⁷²

Two-generation approaches must go beyond government interventions and be family-centered and designed, and the bulk of services and resources should be aligned with community-based supports that reduce interactions with mandated government reporters.⁷³ This also creates an opportunity to remove the fear of family policing and government oversight so families can freely express need without the risk of punitive responses from government agencies.

Legislative and judicial actors can...

Expand program eligibility to reflect racial equity.

To address inequities in access to these programs, it is important to develop expansive selection criteria and program structures. It is imperative to design programs with and for people with both “non-violent” and “violent” offenses. The discretion of prosecutors often relegates Black people to more severe charges as Blackness is likened to criminality in a criminal legal context with foundations built on anti-Black racism. Prosecutors are more likely to charge Black and brown people with crimes that carry heavier sentences than white people.⁷⁴

Expanding diversion options for communities requires that programs take into account the fact that Black and brown people are disproportionately charged with more severe crimes. Programs should be accessible to those residing in the neighborhoods with the highest rates of criminal legal contact with Black and brown people. FBAS services should specifically support caregivers accused of high-level misdemeanor and felony offenses, even when there is an identifiable person(s) harmed. As part of this effort, funding access to proper legal counsel for program participants to support navigation of the systems and understand their full range of options is crucial. If the goal is to protect and support children and families, then providing restorative and transformative, non-carceral approaches to addressing harm should be integrated in diversion options, and focusing on these caregivers is essential to disrupting mass incarceration.

Beyond expanding access to people accused of “violent” offenses and in addition to expansive definitions of caregivers, we must also ensure that diversion programs for families are accessible to different formations of families, including queer and trans families, families with mixed documentation status, and disabled families. Programs should be comprehensive and account for a variety of needs for different formations and definitions of family. These programs must be disentangled from oversight from carceral entities, including but not limited to the criminal legal and child welfare systems, as both systems pose threats to the safety and well-being of children and families. With queer and trans people under vicious attack from state and local courts and legislatures across the nation, and undocumented folks constantly under the threat of detention or deportation, the safety and preservation of all families must be prioritized as we work to decrease surveillance and criminalization.

End dehumanizing surveillance and monitoring practices.

We learned that some programs continue to use practices such as geolocation tracking, electronic monitoring, and mandatory drug testing, all of which denigrate the dignity of people and pose financial burdens. Evidence suggests that these technologies expand the footprint of law enforcement within Black and brown communities and burden relationships among families, peers, and other affirming social relationships.⁷⁵ When the financial burden of this monitoring is shouldered by individuals, that contributes to “post-conviction poverty” and related patterns of economic insecurity for systems-impacted individuals and their families. States should thereby suspend the use of these technologies altogether.

Mandatory drug testing violates people’s right to privacy in a number of ways. These requirements subject participants to humiliation by invading their privacy routinely or randomly, and as a whole are not always an effective means for screening out drug impairment. Moreover, regardless of whether substance use is recreational or addiction-related, there should be no circumstance where one is relegated to jail or prison time for substance use. Cases of addiction should be responded to with compassion and managed as a health condition rather than as grounds for criminalization. Individuals should be given the option to determine what care options are most appropriate for themselves and their families.

Strengthen the FAMILIES Act.

The FAMILIES Act offers opportunities to keep families together. However, as it currently stands, this legislation requires some bolstering to have the desired impact. Specific ways in which this legislation can be improved include:

- Moving the administration of programs under the FAMILIES Act to the jurisdiction of the Department of Health and Human Services (HHS) with a limited role for the Department of Justice (DOJ) outside of what is necessary to coordinate with prosecutors and courts.
- Expanding the definition of “significant caregiver responsibility” language in the bill to explicitly include caring for family members with disabilities (diagnosed or otherwise), as well as siblings and other family caregiving responsibilities that people may formally or informally have.
- Remove eligibility restrictions around risk of harm and instead offer options for restorative practices to support adequate conflict management and reduce propensity for harm.
- Remove eligibility restrictions that consider prior criminal histories.
- Create a pathway for community-based organizations to facilitate and have decision-making power within programs and policies.

- Create explicit provisions for youth-specific resources that reflect their self-identified needs, including but not limited to educational support, workforce activities, non-carceral mental health support, access to basic material needs, and financial literacy.

Utilize existing system tools to clear criminal charges and/or prevent charges altogether.

The adjournment in contemplation of dismissal (ACD) allows for the full dismissal of all misdemeanor or felony charges after a period of time as long as the person accused of a criminal act is not rearrested during the adjourned period. An ACD, which completely wipes the individual's record clean, is not an admission of guilt. The arrest and prosecution are determined to be void, and people accused of crimes are restored to their status prior to arrest and prosecution. This is important because the initial arrest and proceeding will have no impact on any future job or educational possibilities, as it does not show up on a person's criminal record. Moreover, because there is no conviction, people accused of crimes are not placed on probation, and can still sue for false arrest, false imprisonment, and use of excessive force by the police if desired.

Prosecutors can also elect to develop decline to prosecute policies for caregivers. Given that our current criminal legal system wages war on people experiencing trauma, poverty, anti-Black racism, mental health issues, and substance use disorders, prosecutors should consider using the authority and flexibility that comes with that role to provide pathways for caregivers to be disentangled from the system altogether.

Pairing these options with optional holistic wrap-around supports for participants can offer a less coercive alternative that removes the longstanding looming threat of family separation via incarceration.

The Office of Juvenile Justice and Delinquency Prevention can...

Provide agency guidance on data privacy protections.

Federal policymakers should issue guidance clarifying the civil and privacy rights obligations of federal grant recipients. As part of this guidance, policymakers should articulate a set of "prohibited uses" for FBAS-related funding. Prohibited uses should include activities that present an unacceptable level of risk for systemic civil and human rights violations for caregivers that come in contact with the criminal legal system. Among these prohibited uses should be interagency data-sharing agreements with law enforcement entities, among others, particularly around private health information or data collected about children that can be used to justify further surveillance or criminalization. These privacy protections should center transparency with program participants and must clearly communicate what data are collected, how data is used, and the frequency and process of collection.

Recommendations for System Transformation

End family separation and family policing.

Our goal is to protect children from harm by promoting family unification and keeping children out of foster care. To accomplish this, systems must end family separation altogether. This means that alternative sentencing programs should avoid contact with family policing systems such as child welfare among other institutions with the power to separate children from their families. Even one child subjected to state-sanctioned family separation is completely unacceptable.

As we consider how to shift power from the family policing apparatus, upEND Movement offers us a framework to achieve this outcome. Policies that we advocate for should consider the following outcomes:

- Reducing the reach of the family policing system.
- Promoting healing for children, families and/or communities.
- Reducing the prospect of harm caused by family policing.
- Promoting child, family, and/or community autonomy.
- Diminishing the legitimacy of the family policing system.
- Increasing access to direct supports.
- Reducing the power of the family policing system.
- Promoting a society where the need for family policing is obsolete.

Divest from all versions of community supervision and invest in community repair.

Community repair advocates for removing corrections and law enforcement from the re-entry process altogether. This policy approach recognizes that to meaningfully address mass supervision and incarceration we must invest public and private dollars into supports that meet basic needs such as employment, housing, and health care. This framework goes further by insisting that the state must address present harms and redress the multigenerational harms of mass supervision on families and communities impacted by the criminal legal system. We operationalize this by offering non-carceral, community-led social services and diversion programs; piloting direct cash benefit programs to systems-impacted families; and eliminating court and program fine, fees, and debt and enacting a carceral debt jubilee.

Offering non-carceral, community-led, social services and diversion programs.

Funding streams should be shifted from the DOJ and other state-level carceral agencies toward agencies and organizations with an explicit human services focus. These programs should be under the jurisdiction of entities that are familiar and adequately prepared to support the needs of system-impacted families effectively. Moreover, these programs should be run by folks who have abolitionist visions and the ability to effectively reimagine what it looks like to support people who have been in contact with the criminal legal system. We must contend with the fact that the DOJ is violent in and of itself. Therefore, it is inconceivable that the DOJ would have the capacity to support a truly restorative and non-punitive alternative sentencing program. As such, it is imperative that funds from this grant program be shifted to another government agency, such as the HHS, with an explicit exclusion of child welfare. In doing so, we must also be careful not to reconstruct carceral elements of these programs under new funding streams. Rather than mandating participation through intensive case

management, families should be given the option to utilize services as needed per their own determination. Restrictive elements of these programs should be removed so that people are allowed to opt in or out of services such as parenting classes.

Relatedly, successfully running these programs requires deep relationship building with communities to adequately address needs that arise. Oftentimes, it is community organizations, not government agencies, that hold such relationships. In developing, implementing, and evaluating these programs, community-based organizations should have more power and authority on how these programs are structured and administered. These organizations are better able to connect people to the resources that they need, including but not limited to affordable housing, food assistance programs, workforce and career support, health care, and disability benefits. Integrating services with other federal programs that support families and justice-involved people such as Reentry Employment Opportunities, Medicaid 1115 waivers, Pell grants, and SNAP benefits are tangible offerings that community-based organizations are well slated to provide. That said, expanding the capacity of community-based organization by providing adequate funding to support this work and growing the workforce of entities that currently support caregivers is crucial to ensure that these organizations can effectively and sustainably support the needs of community members. In that same vein, to avoid disrupting these relationships that community organizations hold with members of community, it is imperative that data collected not be shared with agency partners tied to the criminal legal system. Moreover, there should not be violent consequences such as incarceration and family separation due to failures to “comply” with programmatic support.

Piloting direct cash benefit programs to systems-impacted families.

States should expand upon models like the Center for Employment Opportunities’ Returning Citizen Stimulus, which offered an average of \$2,750 of direct cash transfers to over 10,000 individuals returning from prison during the COVID-19 pandemic for a period of up to 3 months.⁷⁶ Funding was conditioned upon participation in employment-related activities such as resume writing. An evaluation of the program found that most participants described using their funding to access transportation, housing, food, clothing, medical care, and other basic needs for themselves and their families. The evaluation also revealed that nearly two-thirds of participants achieved employment-related milestones. State policymakers should consider developing publicly financed models that build upon the Returning Citizens Stimulus, addressing the needs of both systems-impacted individuals and their families.⁷⁷ These efforts should also explore policy opportunities to address the multigenerational consequences of community supervision, especially for children with systems-impacted caregivers.

Eliminating court and program fines, fees, and debt and enacting a carceral debt jubilee.

Court-imposed legal financial obligations (LFOs) drive economic insecurity for systems-impacted communities.⁷⁸ Outstanding court debt is a barrier to obtaining state identification such as driver’s licenses and ID cards that are prerequisites for employment and housing opportunities. Outstanding LFOs also complicate voting rights restoration in many states, a practice that leaves nearly 1 in 16 Black voters disenfranchised nationwide.⁷⁹ In some states, paying off court debt is a condition of parole. As a result, the inability to pay LFOs may be treated as a technical violation, leading to cycles of wealth-based incarceration. State and local court debt collection schemes have come under legal

scrutiny, with advocates arguing that many of these systems are in tension with constitutional due process principles articulated in cases such as *Bearden v. Georgia*. Historically, reforms to these practices have focused on improving fairness in debt collection practices by implementing more robust procedural safeguards, offering income-driven repayment plans, and promoting community service alternatives, among other approaches. However, these efforts do not reach far enough.

As opposed to improving predatory collection schemes, LFOs, including fines, fees, and debt related to program costs, should be eliminated. Funding for state and local sentencing alternative programs should include provisions to ensure that the financial burden associated with program costs are not placed on program participants. LFOs do not support successful re-entry outcomes, nor do they improve public safety or expand public investments into systems-impacted communities.⁸⁰ Instead, LFOs extract wealth from systems-impacted communities to fund the criminal legal system.⁸¹ Given these considerations, lawmakers should pursue legislative reforms that end the imposition of LFOs as conditions of community supervision. Furthermore, policymakers should pursue universal carceral debt relief programs for individuals under community supervision. As previously mentioned, movement groups representing people living in poverty have organized carceral debt jubilees—the periodic, unconditional forgiveness of outstanding LFOs for systems-impacted individuals.⁸² Lawmakers and policymakers can turn to those civil society-led efforts to model effective policy reforms at scale.



Conclusion: A Future Without Family Separation

Criminal courts separate families daily, confine people to cages, depress wages, and inflict long-lasting emotional trauma that has intergenerational impacts.⁸³ For this reason, we have to dismantle the entire prison industrial complex, which includes courts, pre-trial supervision, probation, parole, and diversion programs.⁸⁴ At the same time, we must reimagine and create new ways to prevent and interrupt violence, investigate and adjudicate conflict and harm, and invite space for accountability and transformation.⁸⁵ Many procedural reforms promoted to eliminate discrimination and create more fairness in courts simply prop up a system that is designed to surveil, police, criminalize, and punish.⁸⁶ Instead, we should continue to center the visions of those most proximate to these issues and look to alternatives that reduce the funding, power, and legitimacy, of the criminal legal system.⁸⁷ The work of dismantling criminal courts altogether is inextricably linked to fights to divest from policing and punishment and invest in community safety.⁸⁸

We understand that policing is a form of state-sanctioned violence and that all forms of confinement and imprisonment are disabling and sites for insurmountable human rights violations. If we're going to keep families unified, safe, and well, access to services cannot happen at the point of contact with the criminal legal system. We must shift from relying on police altogether to respond to crises due to the consequences that result from being arrested and charged with a criminal offense. As we build a society that creates the conditions for everyone to flourish, we must also continue the work of reimagining ways to evaluate and adjudicate harm, violence, and abuse outside of systems of surveillance, policing, punishment, and exile. Building these systems is the only way to permanently end the harms of family separation.

Acknowledgements

The authors would like to thank the following CLASP staff: Clarence Okoh, senior policy counsel; Nia West-Bey, youth team director; Stephanie Schmit, child care and early education director; Timothy McLendon, intern; Wendy Cervantes, immigration and immigrant families director; Suma Setty, senior policy analyst; and Hannah Liu, research assistant for their editorial review. The authors would also like to thank our New Deal for Youth affiliates for their review. Special thanks to Sivan Sherriffe, CLASP communications associate, for the report design. Lastly, the authors would like to thank the program administrators in Lehigh, Washtenaw, and Washington counties for sharing the information on their alternative sentencing programs that made this report possible.

Appendices

Appendix A: FAMILIES Act Overview

While it has yet to be passed, the Finding Alternatives to Mass Incarceration: Lives Improved by Ending Separation (FAMILIES) Act of 2021 serves as a federal model to alternatives to incarceration that centers family unification. To support these purposes, a mix of federal, state, and local agencies as well as non-profit organizations will establish collaborations to provide access to local-level services that have been identified as appropriate to meet individual needs. The programs and services outlined in the bill include:⁸⁹

- Education, both general educational development (GED) and post-secondary courses;
- Job-seeking activities, employment counseling, and subsidized jobs programs;
- Parenting classes and two-generation model programs to support children and parents;
- Substance misuse and mental health treatments;
- Health care services and enrollment in health insurance programs, housing assistance, and other public assistance programs; and
- Family therapy and counseling services.⁹⁰

Judges and the courts consider factors such as caregiving responsibilities for a family member, history of justice involvement, family safety, and a description of how imprisonment would impact the family of the accused.⁹¹ The courts can enter a pre-judgement sentence requiring, without entering a judgment of conviction, participation in comprehensive community supervision programs and services. During the pre-judgement sentence term, individuals can be granted early discharge, timely discharge, or revocation of participation. An eligible individual is defined as someone who is:

- A parent of a minor child;
- Pregnant;
- A caregiver for a minor child or other minor relative;
- A caregiver for an individual with disabilities;
- A caregiver for an elderly family member; or
- The spouse or dating partner of an individual who is a parent of a minor child or is pregnant.

Appendix B: Research Methods and Limitations

Researchers conducted four interviews across three sites, as detailed in the table below. Once each interview was completed, the information was analyzed and coded using a set of themes and subthemes.⁹² The identified themes were then used to develop a set of aligned considerations and recommendations. These were developed to identify ways that FBAS legislation, programs, and policies can reduce and/or eliminate existing carceral structures, harms, trauma, and inequities both broadly and specifically related to family separation.

Table 3. Catalog of Interviews

Site Name	Interviewed Agency and Length of Initial Interview	Length of Follow Up Interview
Family Alternative Sentencing Team - Lehigh County, PA	Pinebrook Family Answers, 60 minutes	N/A
Family Alternative Sentencing Team – Lehigh County, PA	Office of Children and Youth Services, 60 minutes	N/A
Family Sentencing Alternative Pilot – Washington County, OR	Oregon Department of Corrections, 60 minutes	30 minutes
Family Based Alternative Sentencing Program – Washtenaw County, MI	Washtenaw County Trial Court, 60 minutes	N/A

CLASP encountered several challenges that resulted in limited quantitative and qualitative program data gathering and required shifts in the research and analysis approach. In addition to limited response from outreach across a total of six sites, CLASP was unable to conduct interviews with the multiple agencies, offices, and organizations connected to the selected sites. Except for Lehigh County, PA, interviews could only be scheduled and confirmed with individuals directly connected with the criminal legal system, as noted in Table 1. In addition, CLASP did not have the opportunity to interview current or former program participants from any of the sites. These limitations made it difficult to provide considerations and recommendations from the perspective of program participants and their families. Instead, the information gathered was solely sourced from interviews with those managing and administering program services.

There were also constraints due to the limited availability of quantitative data across program sites. CLASP requested data to support deeper analyses of the programs and impacts on children. However, the Washtenaw County program was still in the planning stage and had not yet begun implementation, Lehigh County did not provide any data, and Washington County mostly provided state-level data. Originally, CLASP requested qualitative and quantitative program data disaggregated by race, gender, and income level when possible and related to:

- Applications received, accepted, and rejected.
- Program completion.
- Cases, sentences, and probation agreements including modifications.
- Program violations and dismissals.
- Children involved in foster care at any point during the diversion process.
- Access to public assistance programs.
- Pregnant people enrolled in the program and any specialized services they received.

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⁸⁹ Federal agencies detailed in the bill include: the U.S. Attorney General, The U.S. Sentencing Commission, Administration of the United States Courts, U.S. Department of Health and Human Services, U.S. Office of Probation and Pretrial Services.

⁹⁰ Subchapter E §3590B of July 27, 2021, "FAMILIES Program (b) Contents," <https://www.congress.gov/117/bills/s2477/BILLS-117s2477is.pdf>.

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