The infuriating impact of parental alienation (Summer issue of Parental Alienation Survival Guide). posed a challenging question, "Is our society really drowning in no-good, dead-beat parents, or is it manufacturing them?"

It is absolutely justified to home in on horrendous crimes that devastate our communities such as willful neglect, sexual violence, or abuse, and aim to eradicate them through punishment. But how sure are we that we are hunting the right people?

We already know that the epidemic of mass incarceration in America is rife with by-catch: going after true threats to public safety, it captures all who are close by association through poverty, lack of education or opportunity, and yes, through parental alienation.

Unable to recognize parental alienation, the US flawed and biased legal system is misinterpreting the behavior of the victims of this form of violence, and rather than offering them assistance and protection, it is prosecuting them. It is failing to see, let alone call to account, the actual perpetrators while imprisoning those who they have often artfully set up for self-destruction.
To explore this thesis, let’s look at one aspect of the legal system where this occurs: incarceration for failure to pay child support (child support in its own right is a controversial concept, but that’s a topic for another discussion).

Of the 2.2 million people incarcerated in the United States, about half are parents, and at least 1 in 5 has a child support obligation. Up to a year of jail time for “contempt of court” is a standard disciplinary measure of U.S. Family Court, introduced before the turn of the century when American citizens decided that dead-beat dads were bad.

90% of non-custodial parents paying child support are indeed fathers, but that is where the efficacy of this strategy appears to end. There appears to be no evidence to suggest — let alone prove — that this mechanism is working.

In 2010, the federal government issued guidelines that referenced the lack of evidence that incarceration results in more reliable child support payments that families can count on to make ends meet and urged states to pursue alternatives that keep cases out of the courts except as a last ditch option, such as debt management, jobs programs, and alternative dispute resolution programs.

There seems to be broad bipartisan agreement that the child support system is broken.

Why, you might ask?

Firstly, child support is most commonly established on the basis of imputed, not actual income. This doesn’t take unemployment or underemployment rates into account, let alone the devastating impact that parental alienation can have on ones ability to earn a living. According to a 2007 Urban Institute study of child support debt in nine large states, 70% of arrears were owed by people who reported less than $10,000 in annual earnings.

Once behind on child support, the parent faces the wrath of the State, which suspends his or her driver’s license (likely preventing him/her from working), withholding up to 65% of a paycheck, and seizing bank deposits and tax refunds. In at least one state (Tennessee), failure to fully pay child support can result in loss of voting rights.

In failing to see the actual perpetrators, the system is imprisoning those who they have often artfully set up for self-destruction.

According to the most recent federal data from the Office of Child Support and Enforcement (2010), one in eight parents who owe child support – 662,000 people – were incarcerated.

Elizabeth Patterson, the law professor who used to run the South Carolina state department of social services, says that in her experience, “those who have the ability to pay usually respond to other coercive means – seizing assets, revoking a driver’s license – and it is only the poor who will end up in jail because at a hearing, the court simply doesn’t believe they can’t pay.”

Once in prison, the parent may be getting only deeper into debt: as of 2015, 14 states do not grant incarcerated parents the legal right, while in prison, to a reduction in child support payments because they see imprisonment as “voluntary impoverishment.” Federal law prohibits the reduction of child support bills retroactively, so even in the states that deem incarceration as “involuntary” it is still up to each parent to prove that he/she is incarcerated, and to file for the reduction. This feat needs to be accomplished while coming to terms with the sentence and navigating a maze of paperwork from prison, usually with no lawyer, with irregular access to phones, and in many cases with only an eighth- or ninth-grade education.

As a result, many non-custodial parents come out of prison with crippling child support debt. This is not accounting for alimony, penalties, fees and interest, all of which could multiply the debt.

While incarceration terms given solely for failure to pay child support are shorter than illustrated in the figure from The Marshall Project, this figure does illustrate the magnitude and reason for the problem being discussed.
For many, the debt also compounds the guilt of having failed their children; the guilt fanned with every correspondence from the State Child Support office that hunts parents as criminals the moment they fall behind. Thus, after leaving prison, many of these parents end up withdrawing from their children and support networks. This outcome has also been demonstrated as a factor impeding their successful reintegration into the community.

"Research shows that the two most important factors in a former prisoner’s successful reentry into the community are employment and positive relationships with family. Both of these are hindered by the aggressive pursuit of child support arrears: Garnishing 65 percent of a father’s paycheck, so he is tempted to earn cash off the books; suspending his driver’s license so he can’t get to work; sending him bills that are so far beyond his capacity to pay that he keeps his distance from his family."1

Unfortunately, having a criminal conviction and a gap in work history dwindles one’s chances of obtaining the well-paying and stable employment necessary to catch up on the debt, tempting some towards employment in the black market. All of these factors help explain why those who’ve spent time behind bars are likely to end up there again, enter – the US incarceration epidemic. While there are career inmates who prefer the simplicity and predictability of the prison system, this piece is about those parents who strive for productive lives on the “outside”.

Where this gets even crazier, though, is that the money the State collects through these methods may never reach the child in question – it is often kept by the government as repayment for welfare received.

This is our child-support collection system at a glance, archaic and failing the very people it aims to help. In case this needs another confirmation: if this system were effective in getting financial resources from non-custodial parents to their children, would 5.2 million people across the U.S. still owe child support?2

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When we overlay parental alienation, the picture grows even more dire because targeted parents don’t always become non-custodial by choice. Furthermore, in a ‘normal’ situation, the custodial parent is likely to be understanding of short-falls, and even ‘tighten the belt’ just to avoid compromising the child(ren)’s relationship with the other parent. However, the alienating parent is more likely to "throw them under the bus" at the first chance of cutting them out of the child(ren)’s lives. Therefore, many alienated parents end up on the punitive side of the law while at the same time being cunningly, forcibly cut off from their child(ren).

We don’t know how many of the parents in our prisons are alienated parents. However, here is what we may be able to infer based on what we know.

• Parental alienation affects approximately 22 million parents in the US. As the number of parents of all ages in America is estimated at 148.8 million, parental alienation appears to affect 14.78%, or roughly 15% of all parents.

• Severe parental alienation appears to be more likely to affect non-custodial parents. With the 662,000 parents incarcerated for non-payment of child support (2010 number), we have a very skewed sample because 100% of them are non-custodial. Still, let’s conservatively assume it boosts our number by only five percentage points, to 20%.

• Severe parental alienation is also more likely to affect parents with minor children, although we do not know by how much. Conservatively, let’s assume that brings our proportion to 25%.

• If an alienated parent is just as likely as any non-custodial parent to end up behind bars for non-payment of child support, then alienated parents might make up 165,500 of our prison population.

But what if alienated parents are more, rather than less, likely to end up in jail for this reason? And what if parental alienation is more common amongst parents of minors than we have assumed? And what if it also disadvantages non-custodial parents more that we have allowed? Any one of
these three factors would mean that more than 165,500 alienated parents have served time when they should have been the ones vindicated.

Is it possible that we have incarcerated hundreds of thousands of parents whose only crime is in loving their children when their ex-partners no longer find it convenient?

Similar analysis can be conducted for charges of domestic violence and child sexual abuse. Both are horrendous violations of human rights that often irreparably change the course of victims’/survivors’ lives, lead to trauma that can affect communities for generations, and undercut all that civil society stands for. Sadly, charges of both have been demonstrated as common tactics of alienating parents against the targeted parents. It may be precisely our unequivocal and shared abhorrence of both that has allowed alienating parents to mock the seriousness of these crimes and repeatedly come out unscathed while those accused are left to crumble under the lies.

Even when the charges do not lead to incarceration, their devastating impact is well illustrated by the dramatic experience of Tonya Craft, a Georgia kindergarten teacher and an alienated mother who was charged in 2008 with twenty-two counts of child sexual abuse. Even though she was cleared of all charges, they are forever on her record, and she could never work as a teacher again. She, like many in similar situations, could press defamation charges, but very few actually do: they focus whatever fight is left in them on clinging to or rebuilding the rubble left of their lives.

Another direction of analysis worthy of our best research efforts is the long-term impact of parental alienation on the children who experience it. A mentally healthy person cannot comprehend why a parent would choose to make their child(ren) believe that they were abandoned, abused or molested by their parent, and yet that is precisely the psychological trauma that alienating parents inflict when they use children to hurt the other parent.

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We know that there is a strong correlation between childhood trauma – including abandonment and abuse – and criminal behaviour. This begs the question: for every year that we fail to protect children from parental alienation, how many of them are we sentencing to a life where trauma undercuts their potential, puts them in harm’s way, or even leads them to prison?

There is no doubt that the unseen epidemic of parental alienation is contributing to the epidemic of mass incarceration in America, punishing millions of people for crimes committed against them. We hope that resources can be dedicated to taking this analysis further, to making it more robust and granulated, because the US Constitution abhors punishment of innocent people, especially when it is a systemic by-product of our collective ignorance.

What should leave us optimistic is that we are successfully confronting this challenge all over the place. A curious lesson can be gleaned from sustainable fisheries practice, where to avoid by-catch, two simple principles are applied:

Alter fishing methods to minimize the chances of catching or hurting creatures that are not targeted.

Actively check for by-catch, treating it for any injuries as needed and releasing it immediately.

As a society, we have a track record of redesigning our systems to avoid perverse outcomes, and we can do it again. Immediately, parental alienation must be recognized as a possible explanation for what appears to be unlawful behavior, and the legal system must grow savvy in qualifying the impact that alienating behaviors can have on parents. Ultimately, as we have done with victims of bullying or sexual assault, we must stop prosecuting victims of parental alienation and start protecting them, all the while shifting a sharp focus onto the perpetrators of this form of domestic violence. Because that is how we eradicate crime.