Addressing Why:
Developing Principled Rationales for
Family-Based Departures

The importance and impact of family circumstances in the federal sentencing system can be documented with numbers. According to the Sentencing Commission’s official statistics, in fiscal year 2000 alone, nearly 450 downward departures were expressly based on “family ties and responsibilities.” In addition, family considerations surely played some role in many of the over 3000 other downward departures which were granted that year either “pursuant to a plea agreement” or based on “general mitigating circumstances.” Moreover, since the advent of the guidelines, well over a thousand circuit and district court opinions have discussed departures based, in whole or in part, on family circumstances. And these numbers do not reflect the multitude of cases in which family considerations may have directly or indirectly influenced guideline calculations or the setting of a final sentence within an applicable guideline range.

Yet while family circumstances have played a major role in federal sentencing and been the subject of much ink and energy, the most fundamental of issues has escaped serious inquiry. Just why should family circumstances play a role in sentencing? As a matter of initial intuition, it might seem obvious that an offender’s family history and situation is an important factor to consider at sentencing. However, upon deeper probing, it is difficult to provide a principled explanation for exactly why a criminal offender should merit a lesser punishment simply because he or she has a spouse or children or other relatives.

I do not mean to argue or suggest that there are not principled reasons for decreasing an offender’s sentence based on certain family considerations; indeed, in Part II below, I develop various justifications for such a sentencing reduction. However, I do mean to document and lament the failure of those involved with federal sentencing to grapple seriously with fundamental questions of purpose. Because there has not been serious attention given to precisely why family circumstances should lead to a reduced sentence, the departure jurisprudence concerning family circumstances has been “purposeless” and sentencing outcomes have been inconsistent. An immediate priority for the Sentencing Commission and federal courts (and perhaps also Congress) should be to start developing explicit and principled rationales for the reliance on family circumstances as a mitigating factor at sentencing.

I. The Development of a “Purposeless” and Confused Doctrine

Congress, the Sentencing Commission, and the federal courts have all contributed to the doctrines governing the treatment of family circumstances under the guidelines. Unfortunately, none of these actors has set forth a principled foundation for the consideration of family matters at sentencing, nor effectively addressed the issues and concerns surrounding the integration of family circumstances with the guidelines.

A. Congress’s Instructions

Congress’s discussion in the Sentencing Reform Act (SRA) of family circumstances—and, for that matter, its general treatment of offender characteristics—is not a model of clarity. The SRA provides direct instructions only to the Sentencing Commission concerning the consideration of family circumstances at sentencing, and these commands are limited and opaque. Title 18 U.S.C. § 994(d) instructs the Sentencing Commission to account for “family ties and responsibilities” (and various other offender characteristics) in the guidelines “only to the extent that they do have relevance.” The next subsection, 18 U.S.C. § 994(e), further instructs the Commission to assure that the guidelines, “in recommending a term or length of imprisonment, ... reflect the general inappropriateness of considering the ... family ties and responsibilities ... of the defendant.” The SRA also indirectly instructs sentencing judges to consider offender circumstances through a provision that is even more nebulous. Specifically, 18 U.S.C. § 3553(a)(1) calls for sentencing courts to consider, among other factors, “the history and characteristics of the offender.”

These provisions obviously do not chart a clear course for the consideration of family circumstances in guideline sentencing, and thus Congress perhaps should be the first to blame for the guidelines’ problematic family circumstances jurisprudence. Interestingly, however, the legislative history of the SRA suggests that Congress may have had a sound reason for not saying more about family circumstances and other offender characteristics. Sections of the key Senate Report supporting the SRA suggest that Congress intentionally kept its instructions in this area vague so that the Sentencing Commission would have broad authority to evaluate and integrate offender circumstances in its
development of the guidelines. The Senate Report stresses that Congress wanted guideline sentences to reflect “a comprehensive examination of the characteristics of the particular offender,” and asserts that provisions of the SRA were crafted to permit the Sentencing Commission to evaluate [offender characteristics’] relevance, and to give them application in particular situations found to warrant their consideration . . . [so as to] encourage the Sentencing Commission to explore the relevancy to the purposes of sentencing of all kinds of factors, whether they are obviously pertinent or not; to subject those factors to intelligent and dispassionate professional analysis; and on this basis to recommend, with supporting reasons, the fairest and most effective guidelines it can devise.6

B. The Sentencing Commission’s Work
Congress’s limited instructions on family circumstances (and other offender characteristics) ultimately shifted responsibility to the Sentencing Commission. The SRA’s sparse discussion of offender characteristics entailed that the Commission was to largely determine the role and treatment of family circumstances (and other offender characteristics) within the guidelines.7 Unfortunately, the Sentencing Commission’s work in this area has been no more illuminating than Congress’s efforts. The Sentencing Commission executed Congress’s statutory directives on family considerations by promulgating § 5H1.6, a policy statement which states simply:

Family ties and responsibilities . . . are not ordinarily relevant in determining whether a sentence should be outside the guidelines.8

Disconcertingly, the Sentencing Commission has never provided a general explanation for how or why it chose this approach to the consideration of family circumstances within the guidelines. Certain Commission documents and Commissioners have suggested that § 5H1.6 was designed to track Congress’s instruction in 28 U.S.C. § 994(e) that family ties and responsibilities are to be considered “generally inappropriate” in making imprisonment determinations.9 Yet these same sources have also recognized that the key provisions of the SRA could be read to support some other approach to these sorts of offender characteristics.10

Perhaps even more consequentially, the Commission has never elaborated upon its directive that family circumstances are “not ordinarily relevant” as a limitation on departures only when family circumstances are “ordinary.” That is, all the circuit Courts of Appeals have concluded that family circumstances are permissible grounds for a departure if and only if such circumstances are “unusual” or “extraordinary.”11 Consequently, the central issue in nearly all the district and circuit court cases addressing family circumstances has been whether and when family circumstances go beyond the “ordinary” and qualify as “extraordinary” so as to permit a departure.

As many commentators have noted, courts’ assessments of what qualifies as “extraordinary” family circumstances have varied tremendously.12 For a few district and circuit courts, being the primary or sole provider for children seems enough to make a defendant’s situation “extraordinary.”13 In most instances, however, courts have concluded that primary or even sole parenting responsibilities are insufficient to permit a departure.14 Similarly, a few courts have considered providing support to an ill parent or family member to be “extraordinary,”15 but many others have held that such a circumstance is not sufficient to qualify for a departure.16
Though lamentable simply for its lack of consistency, there is a more fundamental problem with this case law: in all the dickering over what circumstances merit the label “extraordinary,” courts have failed to seriously explore why a defendant’s family situation should (or should not) result in a sentence below the applicable guidelines sentencing range. Thousands of judges have debated in thousands of cases whether particular defendants’ family circumstances should be deemed “extraordinary” or merely “ordinary.” Yet this massive body of case law has lacked any significant discussion of the normative justifications for considering family circumstances—whether extraordinary or simply ordinary—as a basis for reducing a sentence under the guidelines. In this sense, the departure jurisprudence of family circumstances is “purposeless”: courts have been analyzing departures claims by focusing solely on what family circumstances should be deemed “extraordinary” without expressly considering whether reduced sentences based on such circumstances actually serve the purposes of punishment set forth in the SRA. It is thus unsurprising to discover inconsistent sentencing outcomes; courts are sure to reach different judgments as to what sorts of family dynamics should garner the label “extraordinary” and lead to departures if they are operating without an articulated or defined justification for family-based sentencing reductions.

What little discussion there has been in the case law concerning the foundation for family departures has left much to be desired. In the often-cited case of United States v. Johnson, the Second Circuit did set forth an explicit, though brief, justification for its approval of a family-based departure. The Johnson Court stated that “[t]he rationale for a downward departure here is not that Johnson’s family circumstances decrease her culpability, but that we are reluctant to wreak extraordinary destruction on dependents who rely solely on the defendant for their upbringing.” The Second Circuit thus suggested that the defendant did not personally deserve a reduced sentence because of her family situation, but should receive a downward departure nonetheless because a reduced sentence would lessen the harm to third parties (in this case, Johnson’s children). Following the Johnson court’s lead, this notion of reducing harm to family members—what I will call the “third-party harm” justification for a departure based on family circumstances—has been echoed expressly or implicitly by many courts and commentators as a proper foundation for a family-based departure under the guidelines.

But this third-party harm justification for family-based departures articulated by the Johnson court and others suffers from one fundamental problem: the SRA does not clearly authorize judges to decrease sentences based on third-party family harms. The instructions of 18 U.S.C. § 3553(a) concerning the “[f]actors to be considered in imposing a sentence” are focused almost exclusively on the crime and the defendant: § 3553(a)(1) speaks of considering “the nature and circumstance of the offense and the defendant,” while § 3553(a)(2) codifies the traditional purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—with terminology that principally references the defendant and his or her crime. The only third parties expressly mentioned in 18 U.S.C. § 3553(a) are other defendants and crime victims, as § 3553(a)(6) instructs sentencing judges to consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct,” and § 3553(a)(7) instructs sentencing judges to consider “the need to provide restitution to any victims of the offense.”

Perhaps an argument for relying on third-party family harms to justify a downward departure might be fashioned from the first sentence of 18 U.S.C. § 3553(a), which instructs a sentencing judge to impose “a sentence sufficient, but not greater than necessary, to comply with the [SRA’s] purposes” of sentencing, together with the key departure language of 18 U.S.C. § 3553(b), which authorizes a downward departure when a court finds a “mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described [by the guidelines].” Taken together, one might claim that potential third-party family harms can constitute a “mitigating circumstance” which permits a sentence below the guideline range as long as the traditional purposes of sentencing will still be satisfied by the final sentence. Yet, at a theoretical level, it seems hard to shoehorn the concept of third-party family harms into the general term “mitigating circumstance,” because mitigating denotatively suggests something less blameworthy about the offense or the offender, rather than the effect on other persons. Moreover, at a doctrinal level, sentencing courts have not explained in particular cases just how or why certain family considerations qualify as a “mitigating circumstance . . . that should result” in a reduced sentence or just how or why the sentence imposed after a departure is “sufficient . . . to comply with the [traditional] purposes” of sentencing. If the broad language of portions of 18 U.S.C. § 3553(a) & (b) are to serve as the statutory basis for family-based departures, sentencing courts (and the Sentencing Commission) should be much more explicit concerning their reliance on these provisions and concerning their reasoning in particular cases.

In sum, the jurisprudence of family circumstances fashioned by the courts has lacked a clear direction and a solid foundation. Giving the term “extraordinary family circumstances” a talismanic significance, courts’
efforts to differentiate ordinary and extraordinary family structures have been theoretically vacuous and have produced inconsistent sentencing outcomes in individual cases. And while a few courts and commentators have stressed the social costs of family disruption to justify reduced sentences based on the potential harm to a defendant’s family (particularly on a defendant’s children), it is difficult to find a provision of the SRA which expressly authorizes sentencing judges to be concerned with such third-party harms. Indeed, those commentators who urge the Sentencing Commission and federal judges to rely on third-party family harms as the basis for a departure may be directing their advocacy to the wrong audience; it seems that Congress would need to amend or expand provisions of the SRA before sentencing judges should feel broad authority to directly incorporate third-party family harms into sentencing calculations. As currently written, 18 U.S.C. § 3553(a) seems to instruct judges to focus only upon the offense and the defendant in an effort to craft purposeful and proportionate sentences.

II. The Possibilities for and Means to an Improved Jurisprudence

The disarray in the family circumstances case law is hardly surprising given that it is built upon a shaky and uncertain foundation. However, a sounder jurisprudence is not only conceivable, but eminently possible if courts, the Commission and Congress all work toward developing explicit and principled rationales for a reliance on family circumstances as a mitigating factor at sentencing.

The fact that no express provision of the SRA clearly authorizes consideration of third-party family harms does not mean that family considerations are irrelevant at sentencing or illegitimate under the SRA. For starters, as noted above, sentencing courts (and even the Sentencing Commission) might rely on the broad language of 18 U.S.C. § 3553(b) to contend in certain cases that particular family concerns qualify as a “mitigating circumstance . . . that should result” in a reduced sentence. Given the SRA’s express interest in purposeful and proportionate sentences, however, sentencing courts (and the Commission) must make explicit in particular cases just how a defendant granted a departure based on third-party family harms is still receiving a sentence which (1) is “sufficient . . . to comply with the [SRA’s] purposes” of sentencing as required by § 3553(a), and also (2) seeks “to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct” as required by § 3553(a)(6).

Moreover, it is critical to recognize and appreciate that family circumstances may be relevant sentencing considerations not because of potential harm to third parties, but because of the direct impact upon the culpability or future dangerousness of the defendant. That is, in some specific cases, family circumstances may directly influence “the nature and circumstance of the offense and the history and characteristics of the defendant” in ways that should (indeed, must) be considered at sentencing if a judge is to successfully craft a purposeful and proportionate sentence. Consequently, arguments can be made in some specific factual contexts that a particular defendant’s family circumstances do justify a reduced sentence because those circumstances impact the offense and the defendant in ways that directly implicate the purposes of sentencing articulated in 18 U.S.C. § 3553(a)(2).

Consider, for example, a dutiful son who commits bank fraud to fund a necessary medical caretaker for his aged mother. Because this defendant’s motive to provide for his mother makes him less culpable than a defendant who commits the same fraud to finance unneeded luxuries, a court might reasonably conclude that the dutiful son’s “family circumstances” call for a lesser sentence due to the SRA’s concern “to provide just punishment for the offense.” Similarly, consider the depressingly common scenario of a young mother involved at the periphery of a drug transaction, whose involvement was at the behest of (or perhaps because of the abuse by) a husband or boyfriend, and was driven principally by a desire to maintain a family unit. Again, it is quite possible for a sentencing judge to conclude that, as compared to other drug offenders whose crimes lack these family dynamics, this young mother’s “family circumstances” entail that she merits a lesser sentence in accord with the SRA’s concern “to provide just punishment for the offense.”

Taking a slightly different route to the same kind of conclusion, consider a devoted single father who violates criminal copyright statutes, only to discover upon being caught the real possibility of permanently losing the custody of his children. With the prospect of losing custody itself providing a significant deterrent to any future wrongdoing, a court might conclude for this father that, because of his “family circumstances,” a sentence below the otherwise applicable guideline range would suffice “to afford adequate deterrence” and “to protect the public from further crimes of the defendant” as required by the SRA. Relatedly, as some commentators have previously noted, incarceration for some parents may lead not just to a loss of custody but also to the termination of parental rights; the overall impact of a sentence for these parents may be uniquely severe as compared to non-parents and thus may call for an adjustment in the length of the sentence needed “to provide just punishment for the offense.”

In sum, as these examples are meant to demonstrate, judges working to craft purposeful and proportionate guideline sentences (as required by § 3553(a) of the SRA) may in specific cases have a sound basis for
considering family ties and responsibilities for reasons other than potential third-party family harms. That is, beyond concerns relating to the past condition and future well-being of the defendant’s family members, concerns relating to the past culpability and future dangerousness of the defendant may make family circumstances an important consideration in guideline sentencing. Unfortunately, the Commission’s instructions in § 5H1.6 concerning the treatment of “family ties and responsibilities” neither provided the Commission’s own perspective on how family matters can effectuate the purposes of punishments adumbrated in § 3553(a) of the SRA, nor did it significantly assist courts in exploring this fundamental question. Instead, the Commission utilized broad and summary language in § 5H1.6, which in turn left courts to debate the ephemeral distinctions between “ordinary” versus “extraordinary” family situations, and produced a confused and inconsistent family circumstances jurisprudence.

III. Conclusion: An Agenda for Reform

The foregoing review of the potential relevance and significance of family circumstances under the SRA highlights that the fundamental issue is not (and should not be) a concern with some elusive distinction between family situations that are ordinary or extraordinary. Rather the relevance and significance of family circumstances stems from the fundamental purposes of sentencing that the SRA was designed to foster and further. The departure jurisprudence of family circumstances is purposeless and inconsistent because courts, led astray by the unhelpful and unthoughtful language of § 5H1.6, are asking the wrong basic questions: their inquiry should not be centered on what sorts of family circumstance are extraordinary, but rather on why certain family circumstances may be pertinent to their efforts to craft purposeful and proportionate sentences under the guidelines.

Consequently, the fundamental first step toward reforming the jurisprudence of family-based departures is for courts to recognize the inappropriateness of their preoccupation with an illusory distinction between ordinary and extraordinary family circumstances. The ink and energy now wasted by courts haggling over this unintelligible legal standard should be directed toward thoroughly exploring, in an explicit and purposeful manner, just how family circumstances in particular cases may have an impact on the culpability or dangerousness of the defendant and how a departure can be granted based on third-party family harms without undermining the SRA’s interest in purposeful and proportionate sentences.

Because courts’ unwise preoccupation with “extraordinariness” stems from the Sentencing Commission’s unexplained edict in § 5H1.6 that family ties and responsibilities are “not ordinarily relevant,” the Commission should play a major role in reforming the family circumstances jurisprudence. To ensure that courts strike out in a new and improved direction, the Commission must clearly instruct courts that their departure decision-making should principally focus on how family circumstances may have an impact on the culpability or dangerousness of the defendant. In addition, the Commission must recognize and exercise its unique and critical ability to provide leadership concerning the relevance and significance of third-party family harms at sentencing. As an expert administrative body—which has not only a special opportunity, but a special statutory mandate, to consider and assess social science data and broader social policy concerns—the Commission should examine closely claims about the social costs of family disruption to develop express principles concerning whether and when reduced sentences may be permitted under the guidelines based on the potential harm to a defendant’s family.

Last but not least, because potential third-party family harms are an inevitable feature in much sentencing decision-making, this may be an area in which Congressional guidance is needed. As developed above, any decision by courts or the Sentencing Commission to rely on third-party family harms as the basis for departures would fit somewhat uneasily with the current provisions of the SRA. Because a review of the literature makes quite compelling the social policy reasons for being concerned with third-party family harms at sentencing, Congress should be directly urged to amend or expand provisions of the SRA to clearly authorize sentencing judges and the Sentencing Commission to consider such harms.

By taking these relatively simple steps, Congress, the Sentencing Commission and the federal courts can ensure that the consideration of family circumstances at sentencing has a solid foundation and evolves with a clear direction. A jurisprudence that is explicit and purposeful regarding the justifications for a family-based sentencing reduction would, much better than the current jurisprudence, effectuate the SRA’s overriding interest in thoughtful and principled federal sentencing.

Notes
2 Id.
4 As I and others have developed elsewhere, the problem of “purposeless” federal sentencing under the guidelines is not unique to family-based departures, see Douglas A. Berman, Balanced and Purposeful Departures: Fixing a Jurisprudence


6 See U.S. Sentencing Comm’n, SPECIAL REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 25 (1991) (suggesting that judges may consider and rely upon family ties in setting sentences within guideline ranges); see also Frank O. Bowman, The Quality of Mercy Must Be Restrained, and Other Lessons in Learning to Love the Federal Sentencing Guidelines, 1996 Wis. L. Rev. 679, 712–13 (noting that the Guidelines’ sentencing ranges allow “twenty-five percent of the sentence [to] rest on the sentencing judge’s . . . assessment of individualized factors”).

7 See Wald, supra note 3, at 137 (noting that the “Commission does not tell how it arrived at [its § 5H1.6] conclusion or begin to define the contours of ‘ordinarily’”); see also Kramer, supra note 7, at 128 (noting the questions that surround the Commission’s treatment of offender character-istics and the failure of the Commission to “resolve such complex issues”).


9 These same general criticisms can also be levelled against the Sentencing Commission’s treatment of a range of other offender characteristics. As with “family ties and responsibilities,” the Commission in a series of Chapter 5 policy statements decreed without elaboration that factors such as age, education and public services were “not ordinarily relevant” to a departure determination. See, e.g., U.S.S.G. §§ 5H1.1, 5H1.2, 5H1.11.

10 See, e.g., United States v. Johnson, 964 F.2d 124, 128–30 (2d Cir. 1992); United States v. Mogel, 956 F.2d 1555, 1565 (11th Cir. 1992); United States v. Pen, 930 F.2d 1486, 1494 (10th Cir. 1991); United States v. Big Crow, 898 F.2d 1326, 1331–32 (8th Cir. 1990); see also Alan Ellis & Samuel A. Shummon, Let Judges Be Judges! Post-Koon Downward Departures, Part 7: Family Ties and Responsibilities, CRIMINAL JUSTICE, Summer 1999, at 48 (noting that “all circuits have recognized that the presence of family circumstances to an unusual, special, or extraordinary degree” can be the basis for a departure and citing cases).


See Wald, supra note 3, at 138 (lamenting that departure decision-making in this context turns simply on “Talmudic definitions of what is ‘ordinary’ and ‘extraordinary’”); United States v. Thompson, 74 F. Supp. 2d 69, 74–76 (D. Mass 1999) (highlighting that case law on family-based departures fails to effectively expound upon the “ordinary/extraordinary standard”).

Nagel & Johnson, supra note 9, at 202–03 (noting that emphasis on what qualifies as extraordinary “has tended to distract judges from the more important task of evaluating whether the applicable guidelines in a given case furthers the underlying purposes of guideline sentencing”); cf. Julian Able Cook, Jr., Gender and Sentencing: Family Responsibility and Dependent Relationship Factors, 8 FED. SENT. REP. 145, 145 (1995) (complaining that departure jurisprudence concerning family circumstances does not effectively allow for normative considerations of culpability and crime control).

For a much fuller and more general discussion of the roots of a purposeless jurisprudence of departures, see generally Berman, supra note 4.


See Nagel & Johnson, supra note 9, at 206–09 (suggesting that reduced sentences based on third-party family harms would “not serve the principal purposes of sentencing articulated in the Sentencing Reform Act”).

Moreover, as the Seventh Circuit recently noted in United States v. Wright, 218 F.3d 812 (7th Cir. 2000), concerns about third-party harm would really only justify a family-based departure that reduces an otherwise short sentence to probation so that an offender can continue to care for family dependents; it provides no justification for simply making an extended prison term somewhat shorter. See id. at 815–16 (reversing departure based on defendant’s care for her son while explaining that “taking a few years off a long sentence is worthless to children and costly to the program of proportionate punishment under the guidelines”).


See 18 U.S.C. § 3553(a)(2) (providing that sentences should be crafted “(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner”) (emphasis added).

The Supreme Court’s decision in Koon v. United States, 518 U.S. 81 (1996), could be cited in support of such a claim, since the Koon Court concluded that potential departure factors did not have to advance one of the goals of sentencing set forth in § 3553(a)(2) of the SRA as “long as the overall sentence is ‘sufficient, but not greater than necessary, to comply’ with these goals.” Koon, 518 U.S. at 108. But cf. Berman, supra note 4, at 92–96 (criticizing this portion of the Koon decision).

See, e.g., Raeder, supra note 23, at 953–60, Ellingstad, supra note 23, at 980–81, Bush, supra note 23, at 195; Wald, supra note 3, at 138; see also additional sources cited supra note 23.


See Myrna Raeder, The Forgotten Offender: The Effect of the Sentencing Guidelines and Mandatory Minimums on Women and Their Children, 8 FED. SENT. REP. 157, 158–61 (1995) (suggesting that such facts may be at the core of a significant percentage of cases involving female offenders); see also Mary-Chistine Sungaila, Taking the Gendered Realities of Female Offenders into Account: Downward Departures for Coercion and Duress, 8 FED. SENT. REP. 169, 170–71 (1995) (discussing specific cases).


See Bush, supra note 23, at 194 (suggesting that the impact on parental rights and opportunities “lead[... to]... different effective quantities of punishment”); see also Tyson, supra note 13, at 604 (urging sentencing judges to consider impact of sentences on parental rights); cf. Nagel & Johnson, supra note 9, at 203–05 (discussing critically the notion that incarcerating parents creates a “double punishment” that should be considered in guideline sentencing). See generally Nora V. Demleitner, Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences, 11 STAN. L. & POL’Y REV. 153 (1999) (urging greater attention at sentencing to the often severe collateral consequences that can flow from criminal convictions).

Indeed, as I have argued at length elsewhere, given the SRA’s avowed interest in developing principled and purposeful sentencing law and its requirement that judges consider the traditional purposes of punishment in each case, normative considerations about culpability and crime control should be the centerpiece of departure jurisprudence, not only for family circumstances, but for all potential departure factors. See generally Berman, supra note 4.

See 28 U.S.C. § 991(b)(1)C) (requiring the Sentencing Commission to establish policies that “reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process”).

See generally sources cited supra note 23.