

**Submission
No 22**

SUPPORT FOR CHILDREN OF IMPRISONED PARENTS IN NEW SOUTH WALES

Organisation: Office of the Advocate for Children and Young People (ACYP)

Date Received: 5 March 2020

Submission to the Inquiry on Support for Children of Imprisoned Parents in New South Wales

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Summary and Recommendations

Significant numbers of children in NSW experience parental incarceration, exact data is limited but a study in 2001 estimated that 4.3% of all children under 16 in NSW at that time had experienced parental incarceration. Children are impacted from the arrest of their parent, through the period of incarceration and beyond. The trauma of a child being present at an arrest can lead to increased behaviour problems and psychological maladjustment, and even those not present can suffer anxiety from the sudden absence of a parent. Research has demonstrated a wide array of impacts on children during their parent's imprisonment including stigma, psychological impacts, behavioural problems, and impacts on learning. Impacts continue after their parent's incarceration including increases in committing crimes, teen pregnancies and unemployment.

Supports available for children of imprisoned parents include:

- Police procedures to protect children present at an arrest
- The Mothers and Children's Program and facilities which allows children to live with their incarcerated mother
- Supports for children visiting parents including transport assistance, child-friendly facilities for visits, activities and care during visits, and support pre- and post-visiting
- Supports outside the justice context including mentoring and educational/development assistance

Although there are supports available, there are also a number of significant gaps in services and there are areas where current practice and procedures are a barrier to the provision of support. To address these the following recommendations are made:

Recommendation 1: NSW Police should consider reviewing arrest and custody procedures to:

- **Give greater clarity, where a child is present at arrest, on how to determine an appropriate person to place the child with**
- **In all arrests direct police to ask about children and their care arrangements and record this information for later sharing with appropriate services, or where this is not possible for these questions to be asked as part of custody procedures**
- **Direct police to take steps to ensure that alternate care arrangements are in place for children not present at arrest whose care arrangements would be disrupted**

Recommendation 2: The Department of Communities and Justice should conduct research on the impacts of parental arrest, what services are required to alleviate these impacts, and what mechanisms are need to ensure that all children whose parents are arrested have access to these supports. This research should include consultations directly with appropriate children and young people to ensure their voices are captured in any research undertaken.

Recommendation 3: Amend the Bail Act 2013 and the Crimes (Sentencing Procedure) Act 1999 to ensure that the best interests of the children of those subject to remand and custodial sentencing decisions are taken into account in the decision.

Recommendation 4: To support the implementation of the above legislative amendments, child-focused protocols and guidelines on decision-making in relation to remand and sentencing of parents should be developed and made available to professionals working in the adult court system.

Recommendation 5: *The Department of Communities and Justice should investigate ways to improve information sharing to ensure that prisons gather data on the children of those entering custody (both those on remand and sentenced), and that this data is available to services in a form that can enable them to provide support to children of imprisoned parents.*

Recommendation 6: *Corrective Services NSW should continue to run the Mothers and Children's Program at Emu Plains Correctional Centre and ensure it is fully resourced to access supports for the children living with their mothers.*

Recommendation 7: *The Department of Communities and Justice should investigate the feasibility of allowing mothers in the youth justice system to participate in the Mothers and Children's Program without transferring to the adult justice system.*

Recommendation 8: *All children of imprisoned parents should have access to counselling support to discuss their relationship with their incarcerated parent, to work through their experience of how contact would or does affect them, and be supported to express their views on the extent of contact they should have with their incarcerated parent. To the extent determined to be appropriate by the therapist, this support should be independent of their family and carers.*

Recommendation 9: *Investigate the possibility of increasing funding to programs supporting children visiting parents, so that services are available to children visiting in all correction centres and detention centres in NSW. This would involve services to address transport needs, adult supervision needs, provision of age appropriate activities, and other supports to facilitate visits being as beneficial as possible for children. This should also include specific services for Aboriginal children and young people that are designed, managed and delivered by Aboriginal people through Aboriginal owned and controlled organisations.*

Recommendation 10: *Review procedures in all prisons to investigate:*

- *whether there is a need to, and the feasibility of, varying prison visiting hours to facilitate visits by children*
- *the feasibility and appropriateness of allowing children above a certain age to attend visits with carer permission but without adult supervision*
- *the feasibility of providing video call contact with incarcerated parents to all children who experience transport, distance or other barriers to in-person visits*

Recommendation 11: *The Department of Education and Department of Communities and Justice should investigate means of improved information sharing to ensure that relevant persons in schools are made aware of the incarceration of a child's parent. This investigation should also utilise the TFM Human Services Data Set to provide further information on points of opportunity for intervention and support.*

Recommendation 12: *Further research should be funded on the post-release period for children of imprisoned parents, and the supports needed during this time. This research should include consultations directly with appropriate children and young people to ensure their voices are captured in any research undertaken.*

Recommendation 13: In parallel with the above recommended research on post-release support for children of prisoners, service providers with relevant experience should be approached with funding to develop and deliver programs of support for this group. These programs should be evaluated as part of the research, with evaluation including the perspectives of children and young people.

About ACYP

The Advocate for Children and Young People (ACYP) is an independent statutory appointment overseen by the Parliamentary Joint Committee on Children and Young People. ACYP advocates for and promotes the safety, welfare, well-being and voice of all children and young people in NSW aged 0-24 years, with a focus on the needs of those who are vulnerable or disadvantaged.

Under the *Advocate for Children and Young People Act 2014*, the functions of ACYP include:

- making recommendations to Parliament, and government and non-government agencies on legislation, policies, practices and services that affect children and young people;
- promoting children and young people's participation in activities and decision-making about issues that affect their lives;
- conducting research into children's issues and monitoring children's well-being;
- holding inquiries into important issues relating to children and young people;
- providing information to help children and young people; and
- preparing, in consultation with the Minister responsible for youth, a three-year, whole-of-government Strategic Plan for Children and Young People.

Further information about ACYP's work can be found at: www.acyp.nsw.gov.au.

Introduction

ACYP welcomes the opportunity to provide comments on the NSW Parliamentary Inquiry into Support for Children of Imprisoned Parents. Since the 1960s there has been a growing recognition of the need to support children of imprisoned parents.¹ In the late 1990s the NSW Legislative Council's Standing Committee on Social Issues undertook a similar inquiry to this into the adequacy of policies and services to assist the children of imprisoned parents.² However, as outlined in this submission there are still areas where reform is recommended to support this highly vulnerable group.

This submission, while focussing on the supports needed for children of currently imprisoned parents, also considers the supports and protections that can be put in place prior to, and post, imprisonment.

¹ Catherine Flynn, Tess Bartlett, Paula Fernandez Arias, Phillipa Evans and Alannah Burgess, 'Responding to Children When Their Parents are Incarcerated: Exploring the Responses in Victoria and New South Wales, Australia' (2015) 32 *Law in Context* 4.

² Parliament of New South Wales Legislative Council (1997) *A Report into Children of Imprisoned Parents*, Report Number 12, <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2005/Compiled%20report.pdf>

Support for children of parents in contact with the justice system needs to start at the point of arrest and go through into the post-release period. Assistance during the period of imprisonment is critical, but will be more effective if it is part of a broad system of support that intervenes early and is continued long enough to prevent lasting impacts. In this submission support is considered to include both services for children of imprisoned parents and the policies and procedures that have a protective effect for them.

This submission first presents the scale of the issue by looking at the available data on the numbers of children of imprisoned parents and what research indicates are the impacts of arrest, the impacts of having a parent in prison, and the ongoing impacts on children of prisoners. The submission then outlines the supports available, including protective procedures around arrest, facilities allowing children to live with their incarcerated mother, the supports for children visiting their parents in prison, and supports for children of imprisoned parents outside the justice context. With that information as background, this submission makes recommendations for reforms in the following areas:

- Protective procedures and support at point of parent's arrest
- Protective protocols for remand and sentencing decisions
- Support at point of parent's imprisonment
- Support to live with an imprisoned parent
- Family relationships counselling
- Support to maintain contact with an imprisoned parent
- General wellbeing and education support while parent is imprisoned
- Post-release support

Impacts on Children and Young People

Numbers

While there is a lack of recent and comprehensive data on the number children in NSW with an incarcerated parent, there is enough information to know that the scale of this issue is significant.

The highest imprisonment rates in many countries, including Australia, are amongst individuals of childbearing age.³ Data on 206 prison entrants in NSW in 2015 showed that 37% of prisoners had dependent children before imprisonment.⁴ More recent data from 2018 does not include NSW, but across other Australian jurisdictions data on prison entrants shows a similar proportion (39%).⁵

³ Bell, M. F., Bayliss, D. M., Glauert, R., & Ohan, J. L. (2018). Using linked data to investigate developmental vulnerabilities in children of convicted parents. *Developmental Psychology*, 54(7), 1219–1231. <https://doi.org/10.1037/dev0000521>

⁴ Australian Institute of Health and Welfare 2015. The health of Australia's prisoners 2015. Cat. no. PHE 207. Canberra: AIHW <https://www.aihw.gov.au/reports/prisoners/health-of-australias-prisoners-2015/data#page2>. Note: numbers are drawn from data tables accompanying the report.

⁵ Ibid

It is important to note that amongst female prisoners, who are more likely to be the primary carer of children, the national data (excluding NSW) shows that 54% had dependent children before incarceration. This means it is likely that also in NSW around 1 in 2 imprisoned women are mothers.

There is a lack of recent reliable data on this, but research on data from 2001 showed that there were around 14,500 children under the age of 16 years in NSW who experienced parental incarceration.⁶ That study also estimated that in 2001, 60,000 children under 16 years in NSW had experienced parental incarceration at some point in their lifetime. This represented 4.3% of all children under 16 in NSW at that time having experienced parental incarceration at some stage in their lives. The study also found that Aboriginal children were much more likely to have experienced parent incarceration, with 20.1% of Aboriginal children under 16 in NSW having had a parent incarcerated at some point.

It is clear that a significant number of children in NSW have experienced having a parent incarcerated. The impact of this starts at their parent's arrest, continues through the period of incarceration, and will have ongoing effects in their adult lives. The research on these impacts is summarised below.

Impact of Arrest

There is a good deal of research, outlined below, on the impacts on children over the time their parent is incarcerated. There is far less research on the impacts of the beginning of this process, when their parent is first arrested. Overseas research has found significant numbers of children are present when their parent is arrested and that this can lead to increased behaviour problems and psychological maladjustment.⁷ Even if the child is not present the sudden absence of a parent is likely to result in anxiety. There is very limited data for Australian contexts of the frequency of children being present at their parent's arrest, and on what the impacts of arrest are.⁸ This is an area that requires further investigation in order to inform what support children will need at this critical point.

Impacts While Parent Imprisoned

The research on children of prisoners shows that there is a significant number of negative impacts that they experience during the period of their parent's incarceration. Briefly, these negative impacts include:

- insecure attachments to their incarcerated parents and to their primary caregivers^{9 10}
- learning disabilities¹¹

⁶ Corben, S. (2008) *NSW Inmate Census*, Sydney: NSW Department of Corrective Services

⁷ D Dallaire and L Wilson, 'The Relation of Exposure to Parental Criminal Activity, Arrest, and Sentencing to Children's Maladjustment' (2010) 19(4) *Journal of Child and Family Studies* 404.

⁸ Flynn, Bartlett, Fernandez Arias, Evans and Burgess (2015) op cit.

⁹ Poehlmann, J, (2005) "Representation of Attachment Relationships in Children of Incarcerated Mothers." *Child Development* 76 (3 p.679–96.

¹⁰ Saunders, V. (2017) Children of prisoners – children's decision making about contact. *Child & Family Social Work*, 22: 63– 72. doi: [10.1111/cfs.12281](https://doi.org/10.1111/cfs.12281).

¹¹ Turney, K., (2014) *Stress Proliferation across Generations? Examining the Relationship between Parental Incarceration and Childhood Health*, *Journal of Health and Social Behavior* 55: 302.

- social stigma and isolation^{12 13 14 15 16 17}
- attention deficit disorder and attention deficit hyperactivity disorder¹⁸
- behavioural or conduct problems^{19 20 21 22}
- developmental vulnerability or delays^{23 24}
- speech or language problems²⁵
- reduction in educational outcomes including greater odds of extended absence from high school and failure to graduate^{26 27 28 29}
- increased financial pressures, and associated problems such as debt, reduced access to services, and problems with maintaining stable housing^{30 31 32 33}
- disruptions to care, living, and schooling arrangements^{34 35 36}
- additional caring responsibilities, such as caring for siblings, facilitating contact between siblings and their incarcerated parents, and caring for their remaining parents³⁷
- premature departure from home³⁸
- substance abuse^{39 40}
- homelessness⁴¹
- a range of psychological and emotional impacts such as depression, grief and loss, anxiety, post traumatic symptoms, irritability, aggression, difficulty sleeping, behavioural regression, social

¹² Flynn, Bartlett, Fernandez Arias, Evans and Burgess (2015) op cit.

¹³ Sack, William, and Seidler (1978) "Should Children Visit Their Parents in Prison?" *Law and Human Behavior* 2 (3): 261–66.

¹⁴ Bell, M. F., Bayliss, D. M., Glauert, R., & Ohan, J. L. (2018). Using linked data to investigate developmental vulnerabilities in children of convicted parents. *Developmental Psychology*, 54(7), 1219–1231. <https://doi.org/10.1037/dev0000521>

¹⁵ McCrickard, R., & Flynn, C. (2016). Responding to Children of Prisoners: The Views of Education Professionals in Victoria. *Children Australia*, 41(1), 39-48. doi:10.1017/cha.2015.15

¹⁶ Vicky Saunders and Erin Barry (2013) *Children with Parents in Prison*, Research to Practice Series 4, Institute of Child Protection Studies.

¹⁷ Heinecke Thulstrup, S.; Eklund Karlsson, L. Children of Imprisoned Parents and Their Coping Strategies: A Systematic Review. *Societies* 2017, 7, 15.

¹⁸ Turney (2014) op cit.

¹⁹ Ibid.

²⁰ Bell, Bayliss, Glauert, and Ohan (2018) op cit.

²¹ Saunders (2017) op cit.

²² McCrickard and Flynn (2016) op cit.

²³ Turney (2014) op cit.

²⁴ Bell, Bayliss, Glauert, and Ohan (2018) op cit.

²⁵ Turney (2014) op cit.

²⁶ Ibid.

²⁷ Saunders (2017) op cit.

²⁸ McCrickard and Flynn (2016) op cit.

²⁹ Saunders and Barry (2013) op cit.

³⁰ Flynn, Bartlett, Fernandez Arias, Evans and Burgess (2015) op cit.

³¹ Bell, Bayliss, Glauert, and Ohan (2018) op cit.

³² Saunders and Barry (2013) op cit.

³³ Heinecke Thulstrup and Eklund Karlsson (2017) op cit.

³⁴ Bell, Bayliss, Glauert, and Ohan (2018) op cit.

³⁵ Saunders (2017) op cit.

³⁶ Heinecke Thulstrup and Eklund Karlsson (2017) op cit.

³⁷ Saunders and Barry (2013) op cit.

³⁸ McCrickard and Flynn (2016) op cit.

³⁹ Bell, Bayliss, Glauert, and Ohan (2018) op cit.

⁴⁰ McCrickard and Flynn (2016) op cit.

⁴¹ Ibid

difficulties, poor mental health in general and an inability to regulate emotions and behaviours^{42 43}

44 45 46 47 48

Ongoing impacts

In addition to the impacts on children's wellbeing that occur during the time their parent is incarcerated, there is also evidence of ongoing impacts that continue to affect these children as they grow into adulthood. Research has shown that the children of imprisoned parents are more likely to experience negative effects years later, such as being incarcerated themselves.⁴⁹ The research indicates that such later negative impacts are not caused only by other factors that co-occur with criminality in families, such as drug use or disadvantage. Even where the design of the research rules out other factors and looks only at the impact of a parent being incarcerated there are still significant increases in committing crimes, teen pregnancies and unemployment.⁵⁰

Current Support in NSW

Arrest Procedures

The latest available version of the NSW Police Force Handbook outlines procedures for officers who are caring for a child or children as a result of their parent's arrest, including attending to their basic and emotional support needs.⁵¹ Police must make 'all reasonable attempts' to place the child with another parent, relative, guardian or 'other approved person'. In the absence of another carer, police are required to contact the relevant Government Department.

Children Living with their Imprisoned Parent

In NSW the Mothers and Children's Program run by Corrective Services NSW allows children to reside with their incarcerated mother. The program operates out of purpose-built prison nursery

⁴² Sack, William, and Seidler (1978) opcit.

⁴³ Flynn, Bartlett, Fernandez Arias, Evans and Burgess (2015) op cit.

⁴⁴ Bell, Bayliss, Glauert, and Ohan (2018) op cit.

⁴⁵ Arditti, Joyce, and Savla (2015) "Parental Incarceration and Child Trauma Symptoms in Single Caregiver Homes." *Journal of Child and Family Studies* 24 (3) p 551–61.

⁴⁶ Saunders (2017) op cit.

⁴⁷ McCrickard and Flynn (2016) op cit.

⁴⁸ Heinecke Thulstrup and Eklund Karlsson (2017) op cit.

⁴⁹ Farrington, D. P., Barnes, G. and Lambert, S. (1996), 'The concentration of offending in families', *Legal and Criminological Psychology*, 1 (1) p 47–63.

⁵⁰ Dobbie, Will and Grönqvist, Hans and Niknami, Susan and Palme, Marten and Priks, Mikael, The Intergenerational Effects of Parental Incarceration (January 2018). NBER Working Paper No. w24186. Available at SSRN: <https://ssrn.com/abstract=3101990>

⁵¹ NSW Police Force. (2016). NSW Police Force handbook. (Note: Version as at 5 January 2017, accessed at http://web.archive.org/web/20190305092740/https://www.police.nsw.gov.au/_data/assets/pdf_file/0009/197469/NSW_Police_Handbook.pdf)

facilities at the Emu Plains Correctional Centre complex.⁵² Children up to school age are able to live with their mothers on a full-time basis, and children of school age up to 12 years to live with their mothers on an occasional basis, such as weekends and school holidays. The program also provides mothers with education on standards of child care and protection, and support with maintaining family contacts.

The aim of the program is to reduce the impact of incarceration on dependent children.⁵³ By facilitating children to live with their mother in an environment that has been designed to accommodate mothers and children, it gives children the opportunity to have a closer and more normal relationship with their mother than would otherwise be possible. There is limited consultation data with children on the efficacy of this program, however the framework of the program aligns with a child rights approach and anecdotally it appears to be well received. ACYP intends to explore undertaking consultations with people under the age of 24 who are either incarcerated there or who live with a parent who is incarcerated.

Support for Children Visiting their Imprisoned Parent

The not-for-profit organisation SHINE for Kids is the only national charity supporting children with a parent in the criminal justice system.⁵⁴ It runs a number of programs that assist children with visiting a parent in prison, these include:⁵⁵

- Child/Parent Activity Days: Four-hour visits, without other family members present, that are designed to provide an environment that is more “normal” than a standard prison visit. This is in order to make it easier for a child and their parent to build their relationship by allowing the parent to undertake everyday activities with their child, such as making their lunch, feeding them a bottle, creative art and craft or playing ball.
- Children’s Supported Transport Service: Qualified volunteers transport and accompany children to visit their imprisoned parent, or to attend Child/Parent Activity Days.
- Prison Invisits Program: A professional childcare worker, together with trained volunteers, provide activities for children during a visit. This makes visits less upsetting and more enjoyable for children and provide a break not only for the children but also for the parents.
- Child and Family Centres: Child-friendly drop-in centres that provide a supportive space for families before or after visiting prisoners.
- Colourful Dreaming: a program run at Junee Correctional Centre to facilitate Aboriginal fathers in prison and their children to reconnect with each other and with their culture. It involves joint activities such as painting, beadmaking or basketweaving, while telling traditional stories.

⁵² <https://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/custodial-corrections/table-of-correctional-centres/emu-plains.aspx>; Lorana Bartels and Antonette Gaffney (2011) *Good practice in women’s prisons: A literature review*, Australian Institute of Criminology Reports - Technical and Background Paper 41.

⁵³ Corrective Services NSW (2020), Mothers and Children’s Program: Jacaranda Cottages - Prison Nursery Unit Factsheet, 1.

⁵⁴ <https://shineforkids.org.au/>

⁵⁵ <https://shineforkids.org.au/support-for-children-and-families/>

In addition facilities at some correctional centres take into account the needs of children visiting inmates. For example, in 2010 the NSW State Government opened the 'Visits Centre' at the Silverwater Women's Correctional Centre. The centre included a purpose-built area for scheduled visits by family members and friends, two separate contact visit rooms handling up to 35 visitors for 12 inmates, a separate non-contact visit area for up to eight visitors for four inmates, an outdoor children's play area, a mother's feeding/sitting area and nappy changing room.⁵⁶

Supports Outside the Justice Context

SHINE for Kids also runs programs to support children with imprisoned parents outside of visiting, including:⁵⁷

- **Community Mentoring Program:** This program matches a child or young person with a volunteer who is checked, trained and supported to mentor them. They meet on a weekly, fortnightly or monthly basis and undertake activities or outings that are of interest to the mentee. This gives the child or young person a positive relationship with an adult role model.
- **Education Program:** An Education Program Worker and experienced volunteers visit the child's school once a week. In a visit of 45 minutes the child receives one-to-one assistance with home reading, homework and assignments, incomplete class work and areas of their education identified as requiring improvement. The worker also liaises with the school to identify and address any other barrier to the child's education such as behavioural issues, bullying, or any other social concerns. The focus is on developing the child's literacy and numeracy but, also increasing their self-esteem and enhancing their engagement with education and learning.
- **The "My Life Now" website:** This website contains short animated videos with the voices of young people with a parent in jail telling their stories. As part of this, information on support available is also given.

Reforms to Better Support Children of Imprisoned Parents

The impacts summarised previously demonstrate that when a parent is imprisoned an unintended effect can be to punish their children. Therefore it is critical that supports are provided to children of imprisoned parents to protect them from harmful impacts. Although, as outlined above, there are supports available in some cases, there are also a number of significant gaps in support. There are also areas where current practice and procedures are a barrier to the provision of support to children of imprisoned parents. The research on children of prisoners identifies the following key areas for reform:

- Protective procedures and support at point of parent's arrest
- Protective protocols for remand and sentencing decisions
- Support at point of parent's imprisonment
- Support to live with an imprisoned parent

⁵⁶ Bartels and Gaffney (2011) op cit.

⁵⁷ <https://shineforkids.org.au/support-for-children-and-families/>

- Family relationships counselling
- Support to maintain contact with an imprisoned parent
- General wellbeing and education support while parent is imprisoned
- Post-release support

Protective procedures and support at point of parent's arrest

As noted above the NSW Police Force Handbook outlines procedures for officers who are caring for a child as a result of their parent's arrest.⁵⁸ This includes making efforts to place the child with another parent, relative, guardian or 'other approved person'. However, it has been noted that the Handbook does not offer any guidance on who a suitable 'approved person' might be.⁵⁹

In addition, one study involving interviews with Police in NSW indicated a lack of knowledge about required responses to children in arrest situations, despite the NSW Police Force Handbook. Police participants were unaware of formal organisational responsibilities to contribute to the protection of children in situations arising from parental arrest. It is important to note that police responses did show an informal expectation that at arrest, police officers will enquire about children as part of their overall community responsibility.⁶⁰ This is important because even if children are not present at arrest they may be affected by it, for example the risk and anxiety caused by not having an expected caregiver when they return home.

The NSW Police Handbook also directs police to consider whether a child present at arrest requires services that could be provided by another agency, such as counselling. It seems likely that all children present at the arrest of their parent would require some form of support. It also seems likely that many children who had a parent arrested in their absence would also require support. Police procedures should incorporate the need to share information on children of those arrested with other agencies. Given the lack of research on the impacts of having a parent arrested, further research is needed on these impacts and what services are needed to alleviate these impacts.

In considering the above it is important to also take into account the fact that police officers have multiple responsibilities at the point of arrest, such as to arrest the person in a timely and safe manner and to ensure that correct process is followed and evidence obtained. Therefore police officers may benefit from greater clarity in guidance on what is required at point of arrest to ensure the well-being of any children affected. This enables police to have confidence that they have fulfilled their community responsibilities when conducting an arrest. That this is possible is demonstrated by the fact that additional questions to ascertain and respond to the specific circumstances and needs of the person being arrested have already been successfully incorporated into arrest processes. For example, in Victoria, the need to inquire about indigenous status and to contact the Victorian Aboriginal Legal Service if holding an Indigenous person in custody.⁶¹

⁵⁸ NSW Police Force. (2016). NSW Police Force handbook. (Note: Version as at 5 January 2017, accessed at http://web.archive.org/web/20190305092740/https://www.police.nsw.gov.au/data/assets/pdf_file/0009/197469/NSW_Police_Handbook.pdf)

⁵⁹ Flynn, Bartlett, Fernandez Arias, Evans and Burgess (2015) op cit.

⁶⁰ Ibid.

⁶¹ Ibid

Recommendation 1: NSW Police should consider reviewing arrest and custody procedures to:

- **Give greater clarity, where a child is present at arrest, on how to determine an appropriate person to place the child with**
- **In all arrests, direct police to ask about children and their care arrangements and record this information for later sharing with appropriate services, or where this is not possible for these questions to be asked as part of custody procedures**
- **Direct police to take steps to ensure that alternate care arrangements are in place for children not present at arrest whose care arrangements would be disrupted**

Recommendation 2: The Department of Communities and Justice should conduct research on the impacts of parental arrest, what services are required to alleviate these impacts, and what mechanisms are need to ensure that all children whose parents are arrested have access to these supports. This research should include consultations directly with appropriate children and young people to ensure their voices are captured in any research undertaken.

Protective protocols for remand and sentencing decisions

An important mechanism for reducing the impact of parental imprisonment on children is to reduce the extent of parental imprisonment through ensuring that remand and sentencing procedures take into account the needs of the children of those facing potential imprisonment. Internationally it is acknowledged that States should avoid imprisoning parents. For example, under the United Nations Standard Minimum Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), rule 64 states:⁶²

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.

Currently there is insufficient guidance on taking into account the effects of remand or a custodial sentence on a defendant's children. The *Bail Act 2013* does not specifically include this as a consideration, nor does the *Crimes (Sentencing Procedure) Act 1999*. And a study involving interviews with Magistrates indicated that the extent to which hardship to children is incorporated into sentencing decisions varied widely.⁶³ Some Magistrates incorporated this as a core issue for consideration, while others maintained a focus solely on the individual and their crime. It is essential that, in all cases where a decision is made on remand or custodial sentencing, the best interests of the affected children are taken into account and wherever possible bail is granted and non-custodial sentences are imposed.

⁶² United Nations, Standard Minimum Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

⁶³ Flynn, Bartlett, Fernandez Arias, Evans and Burgess (2015) op cit.

Recommendation 3: Amend the Bail Act 2013 and the Crimes (Sentencing Procedure) Act 1999 to ensure that the best interests of the children of those subject to remand and custodial sentencing decision are taken into account in the decision.

Recommendation 4: To support the implementation of the above legislative amendments, child-focused protocols and guidelines on decision-making in relation to remand and sentencing of parents should be developed and made available to professionals working in the adult court system.

Support at point of parent's imprisonment

Research indicates that the effects of having a parent imprisoned can be substantially reduced if the children have certainty around their care and living arrangements. A study in Victoria showed that, for adolescent children whose mothers were imprisoned, the immediate impact was minimised when the children had a supportive carer, knew where they would be living for the duration of the imprisonment and were aware of their mother's location and when they could visit.⁶⁴ This indicates a need for strong communication linkages between prisons and agencies that can facilitate certainty of care arrangements and support children by providing information on their parent's location and on visiting.⁶⁵ Previous research indicates that information on children could be collected by detention centres in a way that is more useful to outside agencies.⁶⁶

Recommendation 5: The Department of Communities and Justice should investigate ways to improve information sharing to ensure that prisons gather data on the children of those entering custody (both those on remand and sentenced), and that this data is available to services in a form that can enable them to provide support to children of imprisoned parents.

Support to live with an imprisoned parent

It is critical that the best interests of the child must be the primary factor in determining whether a child should live with their incarcerated parent. In some cases this will be the most beneficial option for the child, and in these circumstances the following should be present:⁶⁷

- appropriately designed and maintained facilities, including family-friendly playground and visitors' areas
- procedures to ensure that the child's preferences regarding living with their parent are considered and that they participate in the decision making, in accordance with the age and maturity of the child
- provision of childcare for women with resident children to enable them to undertake education, employment and treatment programs
- prison staff with appropriate security checks and training, including training in child rights

⁶⁴ Catherine Flynn (2013) Mothers Facing Imprisonment: Arranging Care for Their Adolescent Children, *Women & Criminal Justice*, 23:1, 43-62, DOI: [10.1080/08974454.2013.743372](https://doi.org/10.1080/08974454.2013.743372)

⁶⁵ Flynn, Bartlett, Fernandez Arias, Evans and Burgess (2015) op cit.

⁶⁶ Ibid

⁶⁷ Bartels and Gaffney (2011) op cit.

- procedures and services are in place to meet children's needs in emotional health and development, food and nutrition, education, play and development, safety and security, and possessions

Recommendation 6: Corrective Services NSW should continue to run the Mothers and Children's Program at Emu Plains Correctional Centre and ensure it is fully resourced to access supports for the children living with their mothers.

Currently there is no equivalent of the Mothers and Children's Program for parents in the youth justice system. This means that children of mothers who are under 18 and have committed a crime do not have the option to reside with their mother even where this would be the most beneficial option.

Recommendation 7: The Department of Communities and Justice should investigate the feasibility of allowing mothers in the youth justice system to participate in the Mothers and Children's Program without transferring to the adult justice system.

Family relationships counselling

Research on the benefits to children of having contact with imprisoned parents has had mixed results.⁶⁸ This is an indication that there are potentially both beneficial and detrimental impacts of contact with an imprisoned parents, and that these impacts will be different for each child – and may change over time. Thus the decision on the extent of contact to have with an imprisoned parent is complex. This is a decision where the input of children is particularly critical.

In all matters affecting them, the views of children should be heard and given due weight in accordance with their age and maturity. In the case of contact with a parent, their insights into the emotional impacts of contact must be a key part of the decision, and so children should be involved in the decision-making to the maximum extent possible. Due to the complex and emotionally charged nature of decisions about contact, children are likely to need support to consider the decision outside of their family.

A study interviewing children in the ACT indicated that there was little or no support available outside families to help children make decisions about contact with their incarcerated parents. No specific service to assist with this exists in NSW, although it is possible that support on this is given as part of other services accessed, such as assistance with visiting parents. However, in support not focused on this important decision there may be a risk of assuming that contact with the incarcerated parent should occur, or that a particular level of contact should occur.

Recommendation 8: All children of imprisoned parents should have access to counselling support to discuss their relationship with their incarcerated parent, to work through their experience of how contact would or does affect them, and be supported to express their views on the extent of contact they should have with their incarcerated parent. To the extent determined to be appropriate by the therapist, this support should be independent of their family and carers.

⁶⁸ Saunders (2017) op cit.

Support to maintain contact with an imprisoned parent

Children who do wish to have contact with their incarcerated parent frequently require support to do so. There are a range of potential barriers to having contact which include:

- Lack of support from their other parent to facilitate visits^{69 70}
- The requirement that visiting children must be accompanied by an adult (especially where the other parent does not support contact)^{71 72}
- Visiting times interfering with school hours or otherwise problematic^{73 74}
- The visit made unpleasant by the lack of age-appropriate activities⁷⁵
- The visit made confronting or traumatic by the lack of physical contact^{76 77}
- Lack of public transport or other means of getting to the prison^{78 79 80}
- Financial barriers to regular visitation⁸¹

As outlined previously, the organisation SHINE for Kids delivers services to overcome such barriers. However, the organisation is only funded to operate for some prisons in NSW, and it is clear that services cannot meet demand. For example, the SHINE for Kids Annual Report 2018-2019 notes that the organisation supported 7,148 children nation-wide.⁸² As discussed above, the most recent data shows that there are at least 14,000 children of prisoners in NSW alone.

A disproportionate number of the children of prisoners are Aboriginal. As noted previously Aboriginal children are more than four times as likely to have experienced parental incarceration.⁸³ Consultations with Aboriginal children and young people have shown that it is important that services for them are designed, managed and delivered by Aboriginal people through Aboriginal owned and controlled organisations.⁸⁴

Recommendation 9: Investigate the possibility of increasing funding to programs supporting children visiting parents, so that services are available to children visiting in all correction centres and detention centres in NSW. This would involve services to address transport needs, adult supervision needs, provision of age appropriate activities, and other supports to

⁶⁹ Bell, Bayliss, Glauert, and Ohan (2018) op cit.

⁷⁰ Saunders and Barry (2013) op cit.

⁷¹ Saunders (2017) op cit.

⁷² Saunders and Barry (2013) op cit.

⁷³ Saunders (2017) op cit.

⁷⁴ Saunders and Barry (2013) op cit.

⁷⁵ Saunders (2017) op cit.

⁷⁶ Ibid.

⁷⁷ Crammer, Goff, Peterson and Sandstrom (2017) "Parent-Child Visiting Practices in Prisons and Jails: A Synthesis of Research and Practice" Urban Institute.

⁷⁸ Saunders (2017) op cit.

⁷⁹ Bell, Bayliss, Glauert, and Ohan (2018) op cit.

⁸⁰ Saunders and Barry (2013) op cit.

⁸¹ Bell, Bayliss, Glauert, and Ohan (2018) op cit.

⁸² SHINE for Kids (2019) *2018-2019 Annual Review*, https://shineforkids.org.au/wp-content/uploads/SHINE_ANNUAL-REVIEW-2019-web.pdf

⁸³ Corben (2008) op cit.

⁸⁴ ACYP (2019) *What Aboriginal children and young people have to say*, <https://www.acyp.nsw.gov.au/aboriginal-consultations-report-2019>.

facilitate visits being as beneficial as possible for children. This should also include specific services for Aboriginal children and young people that are designed, managed and delivered by Aboriginal people through Aboriginal owned and controlled organisations.

Recommendation 10: Review procedures in all prisons to investigate:

- **whether there is a need to, and the feasibility of, varying prison visiting hours to facilitate visits by children**
- **the feasibility and appropriateness of allowing children above a certain age to attend visits with carer permission but without adult supervision**
- **the feasibility of providing video call contact with incarcerated parents to all children who experience transport, distance or other barriers to in-person visits**

General wellbeing and education support while parent is imprisoned

Given the impacts on learning, behaviour and mental well-being of having a parent incarcerated, there is a clear need for support services for children of prisoners. This support needs to be targeted to the specific needs of this group. Although children of prisoners may come to the attention of general welfare services, aspects of the impacts of parental imprisonment, such as the stigma and the uncertainty around length of parental separation, are particular to their circumstances.⁸⁵

Since schools are one of the few services who remain 'with' families during imprisonment, and the learning and conduct impacts are of particular significance to schools, it is logical to provide support in a school context. As described previously, SHINE for Kids operates an education program that provides support in schools. Although, as with their visiting support services, not all children who need this support will have access to it. In addition, consultations with children of imprisoned parents have highlighted the need for extra support and to create more understanding and flexible environments for learning.⁸⁶ Research indicates that the provision of information to teachers about parental incarceration is important as it allows them to be more understanding about any resulting behaviour or learning problems and to provide support.^{87 88 89} As mentioned previously, better information sharing from prisons when parents are incarcerated is needed. However, this does raise issues of confidentiality, and so systems of communicating this information would need to be carefully designed to restrict the information only to those within a school who needed to know, such as the classroom teacher, school counsellor and principal.

Recommendation 11: The Department of Education and Department of Communities and Justice should investigate means of improved information sharing to ensure that relevant persons in schools are made aware of the incarceration of a child's parent. This investigation should also utilise the TFM Human Services Data Set to provide further information on points of opportunity for intervention and support.

⁸⁵ Cunningham, A., (2001) 'Forgotten families – the impacts of imprisonment' Families of prisoners - Journal article - Australian Institute of Family Studies (AIFS).

⁸⁶ Saunders and Barry (2013) op cit.

⁸⁷ Ibid.

⁸⁸ Saunders (2017) op cit.

⁸⁹ McCrickard and Flynn (2016) op cit.

Post-release support

A particularly neglected area in both research and support services is the post-release period. The release of a parent from imprisonment, despite being potentially a very positive event, will none-the-less be a significant disruption and adjustment for their child. Support during the post-release period is acknowledged as important.⁹⁰ However, there are few supports available for the children of released parents, and little research on what support services are most effective. It is important that further research should be conducted on this neglected area, but this should not prevent putting in place supports utilising existing practical knowledge of service providers.

Recommendation 12: Further research should be funded on the post-release period for children of imprisoned parents, and the supports needed during this time. This research should include consultations directly with appropriate children and young people to ensure their voices are captured in any research undertaken.

Recommendation 13: In parallel with the above recommended research on post-release support for children of prisoners, service providers with relevant experience should be approached with funding to develop and deliver programs of support for this group. These programs should be evaluated as part of the research, with evaluation including the perspectives of children and young people.

Conclusion

ACYP's role is to advocate for and promote the safety, welfare, well-being and voice of children and young people, particularly those who are vulnerable, this submission was written to present the existing evidence on children of imprisoned parents from a child rights perspective. The recommendations are designed to ensure that this vulnerable group of children and young people are supported to achieve their full potential. ACYP thanks the Committee for considering this submission. If any further information is required please contact ACYP on 9248-0970 or at ACYP@acyp.nsw.gov.au.

⁹⁰ Bartels and Gaffney (2011) op cit.