

SUBMISSION

Yfoundations' Submission

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for the Inquiry into the
Support for the Children of
Imprisoned Parents in New
South Wales

Published by
Yfoundations Inc.

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Redfern NSW 2016
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Suggested citation:

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About Yfoundations

For over 30 years Yfoundations has been the NSW peak body representing young people at risk of and experiencing homelessness, as well as the services that provide direct support to children and young people.

Our vision: Creating a future without youth homelessness. We believe that all children and young people have the right to safety and stability, home and place, health and wellness, connections and participation, and education and employment (together these are the foundations of our organisation). We know these are the foundations for the prevention of, and pathways out of, homelessness.

Our values underpin all the work we do. We value:

- Young people;
- Justice and human rights;
- Diversity and inclusion;
- Optimism and hope;
- Courage and Integrity.

We know that homelessness is an interrelated issue. It requires a whole of government and service response. We need to be innovative, collaborative, and determined if we are going to end homelessness.

Safety and Stability



It is vital that all young people not only feel safe, but also are actually protected from risk factors that may impede their developmental process. During childhood and adolescence young people must receive the necessary support to ensure they develop a strong safety system, both internally and within their external networks. A strong and stable foundation will foster confidence and independence within a young person, which will promote active participation in community life.

Home and Place



It is vital that all young people have access to a safe, non-judgemental home and place. A comfortable place that they identify with and feel a strong connection to. A Home and Place should be an environment that promotes growth and fosters positive development.

Health and Wellness



It is vital that all young people, particularly during the formative stages of their growth and development, are physically, socially and emotionally well. To ensure this, young people must have access to all the necessary prerequisites for achieving health and wellness. Being well and feeling healthy, will promote self-worth, and ensure young people feel competent to participate in their communities.

Connections and Participation



It is vital that all young people are given the opportunity to develop and nurture the connections in their lives. Connections to friends, family, community and society promote resilience and social inclusion. Young people must be listened to and have the opportunity to influence outcomes. Positive connections and genuine participation in community life during the formative stages of childhood and adolescence enables a young person to build a strong positive foundation and prepares them for adult life.

Education and Employment



It is vital that all young people are given the opportunity to pursue their educational and professional goals. Education and training is crucial to the growth and development of young people. Education and training, including formal tuition and practical life skills, promotes self-confidence and independence and provides young people with the skills and competencies.

Introduction

The prison population in NSW, and indeed Australia, is on the rise. Between 2012 and 2018, the prison population in NSW grew by approximately 40% from 9,602 individuals to 13,630. This rate of growth was higher than experienced before 2012 and forecasts show continued growth over the short and long-term.¹ A natural consequence of this increase is that more mothers and fathers with dependent children are in prison.

Current estimates of the number of children who experience parental incarceration vary as data is piecemeal and not routinely collected and released by any state or federal government. In 2011, on any given day in Australia, it was reported that approximately 38,000 children had a parent in prison.² In 2018/19, this had increased to 77,000 children.³

Data collected from the 5th National Prisoner Health Data Collection found that 54% of women detained are mothers with dependent children under the age of 15.⁴ Worryingly, incarceration can be intergenerational, and many people in prison had a parent in prison during their childhood.⁵ A recent survey of all young people detained in youth justice centres across NSW found that 53.6% had or have one or both parents in prison.⁶

A closer look at the numbers reveals that Aboriginal and Torres Strait Islander communities are more at risk. Aboriginal and Torres Strait Islander people are massively overrepresented in the criminal justice system. They make up just 2.9% of the total population in NSW⁷ yet 24% of the NSW prison population.⁸ This figure increases to around 34% for Aboriginal and Torres Strait Islander women, many of whom are primary caregivers. Studies suggest that as many as 80% of Aboriginal and Torres Strait Islander women in prison are mothers.⁹ Intergenerational incarceration is also higher within Aboriginal and Torres Strait communities. Findings from the survey of young people in detention found that Aboriginal young people were significantly more likely to have a parent who is or had been incarcerated (67.5% vs 36.6%).¹⁰

Unfortunately, parental incarceration is just one of a series of stressors facing children whose parent is involved in the criminal justice system. If we consider the full continuum of the criminal justice process – arrest, pre-trial detention, conviction, jail, probation, imprisonment and parole – the number of children affected is likely significantly larger.¹¹

[1] Audit Office of NSW, 'Managing Growth in the NSW Prison Population' (Auditor-General's Report, May 2019) 1.

[2] Catherine Flynn, 'Responding to the Children of Women in Prison' (AFRC Newsletter No19, Australian Institute of Family Studies, August 2011) 1.

[3] Shine for Kids, 'This is Shine: 2018-19 Annual Review' (Annual Review, Shine for Kids, 2019) 12.

[4] Australian Institute of Health and Welfare, 'The Health of Australia's Prisoners 2018' (Report, Australian Government, 2018) 14.

[5] Ibid.

[6] Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, '2015 Young People in Custody Health Survey' (Report, NSW Government, 2017) 17.

[7] Australian Bureau of Statistics, 2016 Census QuickStats (July 2019) ABS

[8] Simon Corben, 'NSW Inmate Census 2016: Summary of Characteristics' (Statistical Publication, Corrective Services NSW, October 2017) 3.

[9] Rachel Carbonell, 'When Mum Goes to Prison' (23 June 2017) ABC News

[10] Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, above n 6, 18.

[11] Eric Martin, 'Hidden Consequences: The Impact of Incarceration on Dependent Children' (Journal Article, National Institute of Justice, March 2017) 2.

Children of incarcerated parents are often referred to as the hidden victims of the criminal justice system. Despite the significance of these figures, these hidden victims receive little support and do not benefit from the formal support mechanisms available to victims of crime, despite their prevalence and their similarities to direct crime victims.¹² There is no peak body to represent their interests and community attitudes are typically dismissive and lacking in sympathy.¹³

Children whose parents are involved with the criminal justice system face a host of short-term and long-term challenges and difficulties. They are six times more likely to end up in prison, 40% more likely to drop out of school, suffer from trauma, experience a change in school and primary caregiver, economic hardship, and intergenerational disadvantage. They must also learn to live with the stigma of being the child of someone in prison.¹⁴

There is a delicate balancing act between ensuring the safety of the community and protecting the rights of children with incarcerated parents. The United Nations Convention on the Rights of the Child provides a specific set of principles outlining the protection of children, including children who are vulnerable due to their circumstances. It states that State Parties shall respect the responsibilities, rights and duties of parents to provide appropriate guidance in the rights of the child.¹⁵ Furthermore, when a child is separated from one or both of their parents the State shall respect the right of the child to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interest.¹⁶ As a nation we spend \$16 billion a year on our criminal justice system yet in NSW services to support children of incarcerated parents are few and severely underfunded.¹⁷

Arrest Processes

Witnessing a parent's arrest can have serious and lifelong effects on a child. However, steps to minimise this trauma and provide support afterward can mitigate the risk. In NSW, there do not appear to be any policies, protocols, guidelines or legislation that govern a child-friendly approach to arresting parents with dependent children in their care. We phoned several NSW police stations to find out what steps police officers take to establish whether a person under arrest has dependent children in their care and what happens thereafter to ensure that any dependent children are properly supported both during and after the arrest. The majority of officers we spoke to could not answer the question. One officer shared that, in instances where a parent is under arrest, they phone the Department of Communities and Justice but could not elaborate any further.

[12] Ibid, 1; Service NSW, Help for Victims of Crimes (undated) NSW Government <<https://www.service.nsw.gov.au/transaction/help-victims-crimes>>

[13] Catherine Flynn and Melanie Field-Pimm, 'Children of Prisoners: Collateral Damage?' (Article, Shine for Kids, 2014) 1.

[14] Shine for Kids, above n 3.

[15] UN Convention on the Rights of the Child, Article 5

[16] UN Convention on the Rights of the Child, Article 9

[17] Shine for Kids, above n 3.

While it is unclear whether any policies do exist, what is clear, however, is that officers are poorly trained on what to do in such situations. While the mandate of the NSW Police Force is to maintain public safety and order, the reality is that officers are increasingly becoming the first responders to many social welfare issues and law enforcement personnel should all be trained on interacting with children and implement concrete steps before and during an arrest that consider the needs of children.

In the US, there are established cross-disciplinary programs to ensure child-sensitive practice at arrest. For example, in 2014, the International Association of Chiefs of Police issued a detailed and comprehensive model protocol that includes, where possible, interagency collaboration with child welfare organisations, avoiding the use of force and handcuffing the parent in front of the child, allowing the parent to make arrangements for the child, talking to the child in an age-appropriate way, and making arrangements for any children not present about whom the arrested parent alerts the officer.¹⁸

In New York City, the City Council recently voted to pass a bill that would require the police department to develop guidance for its officers on procedures to be followed when arresting a caregiver whose child is present to minimise the trauma to children. It would also require the police department to train its officers on the new procedures.¹⁹

When possible, pre-arrest planning is also essential. For example, the police should endeavour to arrest parents at a time when children are least likely to be present. If that isn't possible, knowing how many children are likely to be present at the time of arrest would allow officers the time to ensure that support services are available for children who experience the arrest of a parent. There are already programs in place that should allow for this to happen. For example, police forces across Australia have access to SupportLink, a national referral and diversion gateway for police and other emergency services to participate in early intervention. The SupportLink framework allows police to refer via a single referral gateway embedded within their systems and gives local, state and nationally based support agencies the ability to proactively target vulnerable clients, seamlessly and proactively.²⁰

Recommendations and Actions

Recommendation 1: The NSW Government to develop and implement statewide child-friendly arrest protocols and provide training on their proper implementation.

Action 1: The NSW Government to invest in the research of child-friendly arrest principles and the development of associated protocols.

Action 2: The NSW Government to invest in providing adequate training to all NSW Police Force officers.

[18] Cynthia Burnson, 'How Witnessing a Parent's Arrest Affects a Child' (Blog Post, National Council on Crime and Delinquency, January 2019).

[19] The Osborne Association, 'City Council Passes Child Sensitive Arrest Bill Taking Important Steps to Safeguard Children at the Time of a Parent's Arrest' (Media Release, August 2019) 1.

[20] SupportLink, Welcome to SupportLink (undated).

Action 3: Once the protocol has been established, the NSW Government to invest in yearly reviews to measure its success.

Sentencing

When parents are imprisoned this necessarily has implications for their dependent children, especially where both parents are incarcerated of the offender is a primary carer or sole parent. While efforts to minimise the traumatic effects of parental incarceration are needed and necessary, the most effective way of promoting the wellbeing of children of incarcerated parents is to stem the flow of parental incarceration and reduce the number of children exposed to it. Avoidable threats to child development are best tackled from a prevention perspective, in which the risk itself is reduced or eliminated, rather than solely focusing on addressing the problems that arise from parental incarceration.²¹

The impacts felt are usually more pronounced when a mother goes to prison. Charlotte Jones, from Melbourne's Mental Health Legal Centre, shared: "Male prisoners will often have a home, a partner and their children to come back to. [For] female prisoners, often that won't happen. With them leaving, the family unit disintegrates. When you take a mother out of a family, that can suddenly leave six people without care and support."²² When a mother goes to prison, their children may lose not only their mother but also their home, school, friends and familiar community if it becomes necessary to re-locate the children for care purposes.²³

The imprisonment of a parent from their dependent children results in their forcible separation and therefore impacts the child's rights under Articles 8 and 9 of the United Nations Convention on the Rights of the Child. It is expected, therefore, that sentencing courts obtain information on dependent children and weight the rights of any dependent children against the seriousness of the parent's offence.

In some Australian sentencing legislation, specific provision is made for the consideration of family hardship. For example, s 16A(2)(p) of the Crimes Act 1914 (Cth) states that in determining the sentence to be passed, the court must take into account 'the probable effect that any sentence or order under consideration would have on any of the person's family or dependants.' Similar provisions exist in sentencing legislation in the Australian Capital Territory and South Australia. In most other states and territories, the impact on the person's dependants can be taken into account under general sentencing provisions that require the court to consider any mitigating factor or other relevant circumstances.²⁴

The situation in NSW is different. The Crimes (Sentencing Procedure) Act 1999 (NSW)

[21] Burnson, above n 18.

[22] Carbonell, above n 9.

[23] Dianna Kenny, 'Meeting the Needs of Children of Incarcerated Mothers: The Application of Attachment Theory to Policy and Programming' (Report, University of Sydney, October 2012) 2.

[24] Tamara Walsh and Heather Douglas, 'Sentencing Parents: The Consideration of Dependent Children' (Book) 138.

sets out an exhaustive list of mitigating factors in s 21A(3), none of which allow for the impact on dependants to be considered. In determining hardship to dependent children, NSW judges abide by the general principle that hardship to family and dependents is an unavoidable consequence of a custodial sentence and is not a mitigating consideration, unless such hardship is 'wholly, highly or truly exceptional.'²⁵ In *R v Edwards* (1996), Gleeson CJ said:²⁶

"There is nothing unusual about a situation in which the sentencing of an offender to a term of imprisonment would impose hardship upon some other person ... Sentencing judges and magistrates are routinely obliged, in the course of their duties, to sentence offenders who may be breadwinners of families, carers, paid or unpaid, of the disabled, parents of children, protectors of persons who are weak or vulnerable, employers upon whom workers depend for their livelihood, and many others, in a variety of circumstances bound to result in hardship to third parties if such an offender is sentenced to a term of full-time imprisonment." This passage has been quoted with approval in subsequent cases.²⁷

The criminogenic profile of female prisoners is profoundly different from that of male prisoners. Perhaps the most important difference relates to women's experiences of violence. Repeated studies have found that at least 85% of women prisoners in Australia are victims of abuse, with most having experienced multiple forms and incidents of violence.²⁸

What's more, female prisoners are among the most socially, culturally and economically marginalised populations in Australian society. The literature universally recognises that the majority of women prisoners have a history of:

- Poverty – many are dependent on Centrelink benefits and are in debt before prison
- Housing insecurity – many are homeless before imprisonment
- Unemployment. The few who are employed before their imprisonment tend to work in low income jobs
- Poor educational outcomes – most have not completed secondary schooling
- Poor health including substance abuse and mental health concerns
- Government intervention – more than half have been in state care as a child and up to 25% have spent time in youth detention facilities.²⁹

Data released by the Australian Bureau of Statistics shows that between 2005 and 2015, the women's imprisonment rate in Australia increased by more than 50%. Sixty percent of female prisoners (compared with 2% of males) are first time offenders. Aboriginal and Torres Strait Islander women are the fastest growing cohort of prisoners in Australia, with imprisonment rates growing faster than for both Aboriginal men and non-Aboriginal women. Aboriginal women are even more likely to be imprisoned for minor offences than non-Aboriginal women.³⁰

[25] Judge Dina Yehia SC, 'Sentencing Checklist' (The Public Defenders, January 2019).

[26] *R v Edwards* (1996) 90 A Crim R 510.

[27] *Hoskins v R* [2016] NSWCCA 157 at [63].

[28] Debbie Kilroy, 'Women in Prison in Australia' (Panel Presentation, Kilroy and Callaghan Lawyers, February 2016) 1.

[29] *Ibid.*, 2.

[30] *Ibid.*

The purpose of our criminal justice system should not be to penalise the most vulnerable amongst us. The purpose of prison is to keep communities safe and rehabilitate serious offenders. When our criminal justice system imprisons disadvantaged first-time women offenders for low level offending, it is impossible not to wonder whether we, as a society, has lost touch of this basic premise.

Recommendation

Recommendation 2: The Parliament of NSW to amend the Crimes (Sentencing Procedure) Act 1999 (NSW) to include the probable impact of dependent children as a mitigating factor in sentencing parents of dependent children.

Maintaining Contact with Incarcerated Parents

Maintaining relationships is important for both children and their imprisoned parents: children adjust better and imprisoned parents adjust better post-release reducing recidivism. This is especially the case if the parent is a strong support in the child's life. The interruption of the child-parent relationship can lead to or exacerbate many of the risk factors already highlighted.³¹

In the UK, the Farmer Review of the criminal justice system highlighted the importance of family and other relational ties to the prisoner's rehabilitation and their child's wellbeing. In one study, prisoners who received visits from a family member had 39% lower recidivism rates than for those who did not. Lord Farmer highlighted in his foreword: "This report is not sentimental about prisoners' families, as if they can, simply by their presence, alchemise a disposition to commit crime into one that is law abiding. However, I do want to hammer home a very simple principle of reform that needs to be a golden thread running through the prison system and the agencies that surround it. That principle is that relationships are fundamentally important if people are to change."³²

In NSW, we are not doing enough to help children of prisoners maintain and strengthen relationships with their incarcerated parents. If prisons are truly to be places of reform, we cannot ignore the reality that a supportive relationship with at least one person is indispensable to a prisoner's ability to get through their sentence well and achieve rehabilitation.³³

There are 41 correctional centres across NSW. Many are in regional and remote parts of the State. When considering where to place offenders, no consideration is given to proximity to dependent children and family members. There is also no provision for prisoners, or families of prisoners, to request a placement in a detention facility near

[31] Martin, above n 11, 4.

[32] Lord Farmer, 'The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime' (Report, Ministry of Justice, August 2017) 4.

[33] Ibid, 7.

any dependent children, except in exceptional circumstances, for example in instances where an immediate family member is gravely ill.

As a result, families have to travel great distances to see their loved ones, often at great expense. While there are a couple of funded programs across NSW that subsidise the cost of visiting loved ones, these are underfunded. For example, Community Restorative Centre NSW is funded to provide travel subsidies for those having to travel long distances to see their family. They told us however that this funding usually runs before the end of the financial year. They told us: "Last year, the funding ran out in May and this year it is set to run out in March." In addition, costs must first be incurred before they can be reimbursed and not all families have the means to do so.

Once there, prison visits can be a daunting experience for children. It can be a traumatic, confusing and frequently upsetting time for children who cope with conflicting emotions and a harsh, child-unfriendly environment.³⁴ For example, in maximum and medium security correctional centres, if children need to use the toilet, they need to be re-screened by correctional officers before continuing the visit again.³⁵ Visitors are also forbidden from taking any personal items into the prison visiting area, which means that children have no comforting toys, books or activities to entertain themselves during visits that can last for up to three hours.³⁶

Shine for Kids runs the Prison Invisits Program at certain correctional centres in NSW, which offers activities to occupy children between times spent talking to their parent. As their children have things to do, parents and carers have more opportunities to relate with each other in an adult context rather than being focused on the continual supervision of their children during the visit. They also have the opportunity to receive information regarding other services which may be suitable for their children.³⁷

Shine for Kids also runs Child Parent Activity Days across nine correctional centres in NSW. This allows a parent to interact with their child in a normalised setting. Parents and their children are able to roam around the allocated space, rather than having to stay seated at a table, there are activities for them to take part in together and they have lunch together. Child and Parent Activity Days are positive experiences for parents in custody who are attempting to keep the contact with their child and also re-establish contact with a child who may not have had a lot of contact with the parent due to being incarcerated and may not be able to attend regularly.³⁸

The Belonging to Family Program is for Aboriginal and Torres Strait Islander parents serving between 6 and 12 months. The Program aims to reduce recidivism through group work to maintain and strengthen the connections between parents and their children and families.³⁹

[34] Shine for Kids, Arts, Crafts and Diversionary Activities for Children Visiting their Parent in Prison (undated) Shine for Kids

[35] CSNSW Visits policy 9.

[36] Shine for Kids, above n 34.

[37] Ibid.

[38] Ibid.

[39] Shine for Kids, Strengthening Connections Between Aboriginal Inmates, Their Families and Communities to Reduce Recidivism (undated).

In NSW, the Mothers and Children's Program provides residency options for children under the age of five to live with their mothers full-time while serving their sentence. There is space for just 21 children and as a result, the program is difficult to get into. As data on the number of parents with dependent children is not systematically gathered, we cannot assess the percentage of mothers in prison that might qualify for the program against the percentage of mothers that are ultimately accepted into the program.

Recommendations and Actions

Recommendation 3: The NSW Government to explore the viability of a Corrective Services policy that allows parents to be placed in correction centres near family and children.

Recommendation 4: The NSW Government to encourage positive parent-child relationships through the funding and expansion of programs that support families to maintain contact.

Action 1: The NSW Government to invest in child-friendly spaces for children visiting families in detention centres.

Action 2: The NSW Government to invest in programs that support visits between children and their parents.

Recommendation 5: The NSW Government to expand the Mother and Children's Program across NSW commensurate with need.

Action 1: The NSW Government to routinely collect data on the number of mothers in detention who qualify for the program.

Action 2: The NSW Government to fund and open facilities for mothers and their babies in several locations across NSW.

Conclusion

Despite the growth in the NSW prison population, children of incarcerated parents are overlooked by a criminal justice system that fails to see them as rights holders. The failure of the government to consider or consult with the children of prisoners at all stages of the criminal justice process can result in their rights, needs and best interests being overlooked and actively damaged.⁴⁰

April Long, National Programs Manager at Shine for Kids, a not-for-profit funded to run programs to support the families of incarcerated individuals, shared that there is: "no

[40] Shine for Kids, above n 3, 10.

comprehensive policy for children of prisoners specifically addressing the human rights issues that impact them. Child welfare and criminal justice policies to support children with imprisoned parents are lacking, as is data to legitimise these policies in the eyes of policymakers. Children with imprisoned parents need greater cross-sectorial support in the home, prison, at school, in the community and during all stages of the judicial process.”⁴¹

As you can see there is mounting evidence outlining the negative effects of parental incarceration on children.

While parental incarceration does not guarantee intergenerational criminal behaviour - not all children with incarcerated parents go on to commit crimes - there is mounting evidence that it increases the risk of a young person potentially offending. A recent survey of young people detained in youth justice centres across NSW found that 53.6% had or have one or both parents in prison.⁴² It costs us \$1,400 per day to keep a young person in youth detention facilities in Australia.⁴³

A recent study using a sample of over 21,000 Australian children and their parents found that parental offending increased a child’s likelihood of conduct problems.⁴⁴ Research has also frequently found an association between low educational attainment and parental incarceration.⁴⁵ Children have highlighted that the chaos at home, distress and extra responsibility they experienced severely impacted on their ability to concentrate, meet deadlines and achieve the academic success they aspired to.⁴⁶ By one estimate, children of prisoners are 40% more likely to drop out of school. The lifetime cost of their unemployment estimated at \$1.1 million per person, and the cost of early school leaving is estimated to be around \$650,000 per person per year.⁴⁷

Many children identified that they felt unable to trust, talk to, or access any person outside of their immediate family, or friends that were in similar situations, which prevented them from accessing help, support, and developing new relationships with peers. Those who had disclosed their parents’ incarceration experienced bullying and teasing from their peers or had been singled out by adults and consequently made to feel ashamed.⁴⁸

Children also shared that parental incarceration impacted significantly on family finances. While many were in families that already had low incomes, they described that the incarceration had further reduced joint incomes or inhibited the remaining parent’s capacity to work. Others described instability in the form of insecure housing or a lack of secure adults in their lives. They talked about living with friends,

[41] Ibid.

[42] Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, above n 6, 17.

[43] Shine for Kids, above n 3.

[44] Stacy Tzoumakis et al, 'Parental Offending and Children's Conduct Problems' (Report No 571, Australian Institute of Criminology, March 2019) 1.

[45] Martin, above n 11, 3.

[46] Vicky Saunders and Erin Barry, 'Children with Parents in Prison' (Research to Practice Series Issue 4, Institute of Child Protection Studies, December 2013) 4.

[47] Shine for Kids, above n 3, 13.

[48] Saunders and Barry, above n 46, 3.

boyfriends, or in refuges, sometimes due to their parents' incarceration, but for others, due to parental alcohol and other drug issues or family conflict.⁴⁹

Despite this mounting evidence on the negative impacts of parental incarceration, formal mechanisms for children in NSW, and indeed Australia, are minimal. What we can say without a doubt, however, is that the cost of inaction is far greater than the cost of long-term investment in these hidden victims of parental incarceration.

[49] Ibid, 5.