

Incarceration of a Parent or Caregiver

The purpose of this document is to collate published research, the findings of government reports and inquiries, and academic commentary in relation to the incarceration of a parent or caregiver, and the effects this may have on a person's behaviour; development; physical, mental and social well-being; and links to contact with the criminal justice system.

Introduction

- 1 Children with an incarcerated parent or caregiver have been described as an 'invisible' group who have not been adequately identified, assessed or supported.¹
- 2 Parental incarceration has been found to interfere with the attachment relationship between a child and their parent or caregiver, cause financial hardship, disrupt care and living arrangements, and subject children to stigmatisation and shame.² This may impact upon a child's emotional, behavioural, and psychological development, educational performance, delinquency and risk of offending.³
- 3 A significant association has been found between parental incarceration and substance use and criminal behaviour reported by adolescents.⁴
- 4 These potential impacts may have particularly negative consequences for Indigenous children when cumulated with other forms of disadvantage.⁵

Prevalence

- 5 The Australian prison population is growing faster than the Australian population,⁶ with the highest imprisonment rates being among people of child-rearing age.⁷ Although data are not routinely collected on the parental status of prisoners,⁸ the Australian Institute of Health and

¹ See, eg, Megan Bell et al, '[Using Linked Data to Investigate Developmental Vulnerabilities in Children of Convicted Parents](#)' (2018) 54 *Developmental Psychology* 1219, 1219.

² Ibid.

³ Ibid 1220.

⁴ Australian Institute of Health and Welfare, [The Health of Australia's Prisoners](#) (Report, 2015) 31.

⁵ Susan Dennison, Anna Stewart and Kate Freiberg, '[A Prevalence Study of Children with Imprisoned Fathers: Annual and Lifetime Estimates](#)' (2013) 48 *Australian Journal of Social Issues* 339, 357.

⁶ Australian Institute of Health and Welfare, [Australia's Health 2018](#) (Report, 2018) 302.

⁷ In 2018, persons 25 to 29 years had the highest imprisonment rate (423 prisoners per 100,000 persons aged 25 to 29), followed by persons aged 30 to 34 years: Australian Bureau of Statistics, [Prisoners in Australia, 2018](#) (Catalogue No 4517.0, 30 June 2018).

⁸ Dennison, Stewart and Freiberg (n 5) 340.

Welfare's [study of the 2015 National Prisoner Health Data Collection](#) found that 46% of prison entrants had children who depended on them for their basic needs:

Indigenous entrants (54%) were more likely than non-Indigenous entrants (43%) to have dependent children. The proportions for men and women were similar. While just over one-half (54%) of entrants did not have any dependent children, 9% had at least four. Indigenous entrants had more dependent children than non-Indigenous entrants, but the group most likely to have at least 4 were those aged at least 45 years (15%). Some of these dependent children may have been the grandchildren of the entrants.⁹

- 6 A [2017 study](#) of imprisoned fathers in Queensland estimated that between 3.3% and 3.8% of non-Indigenous children, and between 12.5% and 16.3% of Indigenous children, are likely to experience paternal imprisonment.¹⁰ This means that Indigenous children are nine times more likely annually, and four times more likely in their lifetime, to experience the imprisonment of their father.¹¹
- 7 It has also been estimated that up to 80% of Indigenous women in prison are mothers.¹² These statistics do not take into account the imprisonment of other caregivers and close family members.
- 8 Indigenous children are more likely than non-Indigenous children to experience not only the imprisonment of a parent, but also to experience repeat parental imprisonment.¹³

Impacts on Children

- 9 A range of negative impacts for children of incarcerated parents and caregivers have been noted by Australian governments and research bodies. In 2013, the Senate Legal and Constitutional Affairs References Committee's [Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#) acknowledged that

children with an incarcerated parent commonly experience a similar pattern of traumatic events, often witnessing their parent's crime and arrest, losing a parent, the disruption of their family environment, and the difficulties associated with visiting their parent within the prison system. Children with parents in prison are also more at risk of abusing drugs and alcohol, dropping out of school and exhibiting aggressive and/or antisocial behaviours.¹⁴
- 10 Similar findings have been made internationally. A literature review by researchers from the Institute of Criminology at the University of Cambridge (UK) found that parental imprisonment is a strong risk factor and possible cause for adverse incomes including

⁹ Australian Institute of Health and Welfare, [The Health of Australia's Prisoners](#) (Report, 2015) 32. The study also found that the 'experience of having a parent or carer imprisoned was not uncommon during the childhoods of the entrants', with 17% reporting having at least one parent imprisoned while they were a child.

¹⁰ Ibid 354.

¹¹ Ibid 357.

¹² Human Rights Law Centre and Change the Record, [Over-represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-imprisonment](#) (Report, 2017) 13; Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, [Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#) (Report, June 2013) 21 [3.16].

¹³ Dennison, Stewart and Freiberg (n 5) 341.

¹⁴ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, [Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#) (Report, June 2013) 22 [3.17].

antisocial behaviour, offending, mental health problems, drug abuse, school failure and unemployment.¹⁵ Possible explanations for these outcomes include:

the trauma of parent-child separation, children being made aware of their parent's criminality, family poverty caused by the imprisonment, strained parenting by remaining caregivers, stigma, and stresses involved in maintaining contact with the imprisoned parent. However, there is little empirical evidence on the importance of these mechanisms.¹⁶

Lower developmental outcomes

- 11 A [2018 study](#) of 19,071 children by the Telethon Kids Institute and the University of Western Australia found that children of incarcerated parents exhibited poorer outcomes on the Australian Early Development Census compared to children who are not separated from their parents, or are separated for other reasons such as divorce.¹⁷
- 12 Children with incarcerated parents were found to have a higher risk of poor social, emotional, physical, cognitive and communicative development than other children, leading the authors to suggest that parental incarceration constitutes an independent causal risk factor for children's development.¹⁸

Links to out-of-home care

- 13 In 1997, the [Legislative Council Standing Committee on Social Issues](#) acknowledged the following in its *Report into Children of Imprisoned Parents*:

In the case of the children of a sole carer '[parental incarceration] can mean entry into the substitute care system and the possibility that they will be made wards of the state... Numerous studies have shown that state wards are an extremely vulnerable group in society. They are at risk of homelessness, drug abuse and entry into the juvenile justice system.'¹⁹

- 14 Recent research suggests a particular link between maternal incarceration and an increased risk of children being placed in out-of-home care. A [2017 report](#) co-authored by the Human Rights Law Centre and the Change the Record Coalition found:

When women are taken into custody, even for short periods, the impacts ripple throughout families and communities and can have 'long-term cumulative effects' ... Children whose mothers spend time in prison are more likely to have a disrupted education, poor health and unstable housing – factors that heighten the risk of a young person entering child protection or justice systems.²⁰

- 15 The 2013 Senate [Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#) found that 'children may also face an uncertain future when their mothers

¹⁵ Joseph Murray and David Farrington, 'The Effects of Parental Imprisonment on Children' (2008) 37 *Crime and Justice* 133, 135.

¹⁶ Ibid.

¹⁷ Bell et al (n 1) 1220.

¹⁸ Ibid.

¹⁹ Legislative Council Standing Committee on Social Issues, Parliament of Australia, [A Report into Children of Imprisoned Parents](#), (Report No 12, 1997) 53, 57.

²⁰ Human Rights Law Centre and Change the Record, [Over-represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-imprisonment](#) (Report, 2017) 13.

are imprisoned, and often come to the attention of child welfare agencies. As a consequence, they may be placed in out-of-home care.²¹

16 The [Australian Human Rights Commission](#) has also noted that

[m]others that are prisoners experience difficulties in maintaining their relationship with their children and suffer disruptions to family life, which can lead to their children suffering from emotional and behavioural problems. Indigenous women prisoners, in particular, can suffer from disruptions to their cultural responsibilities and dislocation from their communities.²²

17 A [2003 report](#) by the Department of Family and Community Services (Cth) found:

When mothers go into prison most children not only lose their primary caregiver but many become parentless, as female offenders are often sole parents. Women prisoners have to rely on a range of people, including grandparents, aunts, uncles and foster carers, to provide care for their children ... As well as being separated from mothers, the children of women prisoners are often separated from other siblings at the time of the mother's imprisonment or as subsequent placements break down ... The Standing Committee on Law and Justice (1999b) highlighted the harmful effect of multiple placements and noted that children who have three or more placements have twice as many subsequent arrests as those who had less than three placements.²³

18 Researchers from the Institute of Criminology at the University of Cambridge (UK) similarly found that 'when mothers are imprisoned, children are less likely to be placed with their other parent and are more likely to be placed in foster care',²⁴ and that disruptions to care and living arrangements may decrease the quality of care and supervision that children receive.²⁵

Lower educational outcomes and financial hardship

19 In 2011, the [Standing Committee on Aboriginal and Torres Strait Islander Affairs](#) found that

[t]he impact of incarceration on an offender's family, up or down the generational tree, cannot be underestimated. The consequences can be long term, including 'missed opportunities to develop skills, further education and difficulty in attaining appropriate employment well after the period of imprisonment'.²⁶

20 The Committee also found that the consequences of parental incarceration can be 'far-reaching, as they affect the social and economic position of the family and the development of children'.²⁷

²¹ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, [Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#) (Report, June 2013) 22 [3.18].

²² Australian Human Rights Commission, [Human Rights and Prisoners](#) (Information Sheet, 2009).

²³ Department of Family and Community Services (Cth), [Families of Prisoners: Literature Review on Issues and Difficulties](#), (Occasional Paper No 10, 2003) 21–2 (citations omitted).

²⁴ Joseph Murray and David Farrington, 'The Effects of Parental Imprisonment on Children' (2008) 37 *Crime and Justice* 133, 179 (citations omitted).

²⁵ *Ibid* 174.

²⁶ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, [Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System](#) (Report, 2011) 43.

²⁷ *Ibid*.

- 21 [Recent legal scholarship](#) has considered empirical data showing that the negative impact of imprisonment on an offender's children can be particularly profound where the offender is the primary income earner.²⁸ Children with an incarcerated parent were nearly twice as likely to experience frequent socioeconomic hardship as other children.²⁹ Further:

A less obvious but equally important outcome of imprisonment concerns the link between poverty and crime. If the principal income earner of a family is imprisoned, this necessarily means that the family unit will become economically challenged and research shows that 'children with an incarcerated parent are likely to experience higher rates of poverty, food insecurity, homelessness.'³⁰

Impacts on family relationships

- 22 The 2013 Senate [Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#) acknowledged numerous submissions regarding the breakdown of social and family relationships as a result of incarceration:

High rates of imprisonment break down the social and family bonds that guide individuals away from crime, remove adults who would otherwise nurture children, deprive communities of income, reduce future income potential, and engender a deep resentment toward the legal system. As a result, as communities become less capable of managing social order through family or social groups, crime rates go up.³¹

- 23 A [2003 literature review](#) by the Department of Family and Community Services (Cth) considered the difficulties in maintaining contact and visitation during a parent's imprisonment, finding that

numerous studies reported that maintaining meaningful contact between an imprisoned parent and their children is extremely difficult. 'Although many families experience disruption prior to the parent's entry to prison, the incarceration of a parent puts an excessive strain on the maintenance of family cohesion' ... Visiting a family member can be a difficult and often traumatic experience for children. The security measures can frighten and intimidate, and sometimes a family member is subjected to body searches which families described as humiliating. Some families in the literature also described being regarded with suspicion and 'treated as if they were inmates, with little respect or regard for their rights'.³²

²⁸ Mirko Bagaric, '[Redefining the Circumstances in which Family Hardship should Mitigate Sentence Severity](#)' (2019) 42(1), *UNSW Law Journal* 154, 168.

²⁹ Ibid 169 citing David Murphey and P Mae Cooper, 'Parents Behind Bars: What happens to Their Children' (Research Paper, October 2015) 6. See also Gwyneth Boswell, 'Imprisoned Fathers and Their Children: A reflection on Two Decades of Research' (2018) 24 *Child Care in Practice* 212; Vicky Saunders and Morag McArthur, '[Children of Prisoners: Exploring the needs of Children and Young People Who Have a Parent Incarcerated in the Australian Capital Territory](#)' (Report, SHINE for Kids and Institute of Child Protection Studies, October 2013).

³⁰ Ibid 169 citing Institute for Research on Poverty, [Poverty Fact Sheet. Life Beyond Bars: Children with Incarcerated Parent](#) (Report, 2015) 2.

³¹ Victorian Equal Opportunity and Human Rights Commission, Submission No 42 to Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, [Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#) (15 March 2013) 6.

³² Department of Family and Community Services (Cth), [Families of Prisoners: Literature Review on Issues and Difficulties](#), (Occasional Paper No 10, 2003) 16–17 (citations omitted).

- 24 In relation to Indigenous offenders, the Australian Institute of Health and Welfare's report, [The Health of Australia's Prisoners 2015](#), found that frequent gaol movements make continuity of personal contact difficult and expensive:

Indigenous dischargees were the most likely to report having had no recent contact (19% compared with 9% for non-Indigenous). They were also less likely to have phone contact (64% compared with 75%) or visits (25% and 37%) than non-Indigenous dischargees.³³

- 25 The [Department of Family and Community Services \(Cth\)](#) found that

[v]ast distances are also an issue for many Indigenous people in custody as they are often sent to prisons that are a long way from their communities. The Commission for Children and Young People and the Aboriginal and Torres Strait Islander Advisory Board (2001) stated 'it is very difficult for relationships to continue and flourish when one person in that relationship is in prison. Intermittent contact, and a sense of losing touch with loved ones can cause all parties great anguish'.³⁴

Stigma and social exclusion

- 26 A number of qualitative studies suggest that experiences of stigma, shame, social exclusion and isolation are outcomes of parental imprisonment.³⁵ A [2013 study](#) of children with incarcerated parents in the Australian Capital Territory found:

Young people identified that they felt unable to trust, talk to or access any person outside of their immediate family or friends that were in a similar situation. This lack of trust and need for 'silence' prevented them accessing help and support as well as developing new relationships with peers.³⁶

- 27 Other outcomes included experiences of being bullied or teased by peers, or being singled out by adults and consequently made to feel ashamed.³⁷
- 28 A 2018 study of caregivers of children with an imprisoned father in Queensland found that families in the study were significantly more socially excluded than families in the general

³³ Australian Institute of Health and Welfare, [The Health of Australia's Prisoners](#) (Report, 2015) 33.

³⁴ Department of Family and Community Services (Cth), [Families of Prisoners: Literature Review on Issues and Difficulties](#), (Occasional Paper No 10, 2003) 20.

³⁵ See, eg, Chris Trotter, Catherine Flynn and Susan Baidawi, 'The Impact of Parental Incarceration on Children's Care: Identifying Good Practice Principles from the Perspective of Imprisoned Primary Carer Parents' (2017) 22 *Child and Family Social Work* 952, 952; Andrea Dawson et al, 'Children of Incarcerated Parents: Insights to Addressing a Growing Public Health Concern in Australia' (2012) 34 *Children and Youth Services Review* 2433; Joseph Murray and David Farrington, 'The Effects of Parental Imprisonment on Children' (2008) 37 *Crime and Justice* 133, 175; Vicky Saunders and Morag McArthur, '[Children of Prisoners: Exploring the needs of Children and Young People Who Have a Parent Incarcerated in the Australian Capital Territory](#)' (Report, SHINE for Kids and Institute of Child Protection Studies, October 2013) 32.

³⁶ Vicky Saunders and Morag McArthur, '[Children of Prisoners: Exploring the needs of Children and Young People Who Have a Parent Incarcerated in the Australian Capital Territory](#)' (Report, SHINE for Kids and Institute of Child Protection Studies, October 2013) 32.

³⁷ Institute of Child Protection Studies, '[Children with Parents in Prison](#)' (Research to Practice Series Report No 4, December 2013) 3.

population across three indicators: inadequacy of living conditions, a lack of participation in common social and community activities, and a lack of access to adequate services.³⁸

Links to Contact with the Criminal Justice System

29 The NSW Justice Health Network [Patient Health Survey Report 2015](#) made a number of statistical findings relating to the prevalence of parental incarceration among inmate populations:

- nearly one in five (18.7%) inmates reported that either or both of their parents had been incarcerated during their childhood;
- of those inmates, more than three quarters of men (78.7%) and more than half of women (59%) reported that their father had been incarcerated; and
- a higher proportion of women (23.1%) reported that their mother had been incarcerated than men (11%).³⁹

30 The [Australian Institute of Health and Welfare](#) in 2015 found:

Being in prison has a ripple effect back into the community, with most prisoners leaving a family, often including children. This may be intergenerational, with prisoners having themselves experienced parental imprisonment during their own childhood.

The experience of having a parent or carer imprisoned was not uncommon during the childhood of the entrants (17%) in this collection.... Indigenous entrants were more likely than non-Indigenous entrants to report having had parents or carers in prison during their childhood (26% compared with 13% respectively). Around one-sixth (17%) of Indigenous entrants said their father had been in prison, compared with 10% of non-Indigenous entrants. A higher proportion of non-Indigenous than Indigenous entrants reported having had no parents in prison (81% compared with 65%).⁴⁰

31 In relation to juvenile justice detainees in New South Wales, the [House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs](#) heard in 2011 that 41% had a parent 'who had been in prison at some time during the formative years of that young person in custody', while 11% had a parent in custody at the same time.⁴¹

32 In relation to Indigenous offenders, the Australian Government's [Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report](#) included the following findings:

- 'In 2015, Indigenous prison entrants were more likely than non-Indigenous entrants to report having had parents or carers in prison during their childhood (26% and 13% respectively)';

³⁸ Kirsten L Besemer and Susan M Dennison, 'Social Exclusion in Families Affected by Paternal Imprisonment' (2018) 51(2) *Australian & New Zealand Journal of Criminology* 221, 233.

³⁹ Justice Health and Forensic Mental Health Network, [Network Patient Health Survey Report](#) (2015) 25.

⁴⁰ Australian Institute of Health and Welfare, [The Health of Australia's Prisoners](#) (Report, 2015) 31.

⁴¹ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, [Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System](#) (Report, 2011) 42.

- ‘Aboriginal inmates were also more likely to report their parents had been placed in care as a child (27% of Aboriginal women and 14% of Aboriginal men)’;
- ‘Aboriginal youth in custody in NSW were twice as likely to have ever had a parent in prison (61% compared with 30%) and 16% had a parent in prison at the time of being surveyed (compared with 4% of non-Indigenous youth)’; and
- ‘In NSW prisons, one in three Aboriginal inmates had a parent imprisoned during their childhood (3 times the non-Indigenous rate). Aboriginal inmates were also more likely than non-Indigenous inmates to have dependent children (Indig & Wales, 2010).’⁴²

Trauma

- 33 A [2003 literature review](#) conducted by the Department of Family and Community Services (Cth) found that:

Parental arrest can be very traumatic for children of all ages ... unlike victims of violent crime, there is no victim support for children who are present at their parent’s arrest, even when the arrest has been violent and traumatic. Post-traumatic stress disorder has been identified in some children of prisoners with symptoms such as fear, hyper-alertness, sleep disturbances, withdrawal and impaired memory and concentration.

Aungles (1994) and Amira (1992) referred to policing practices where ex-offenders are the first suspects for crimes that have been committed. Aungles noted that repeat house searches and arrests are highly stressful to the children and partner of the ex-offender and make it difficult for the family to positively move forward with their lives. Amira (1992) commented ‘familiarity with police contact, arrest, and having a family member in prison can lead either to acceptance that this is an inescapable ‘fate’ or to a certain glamorisation of crime and its consequences ... This can, in turn, even create certain expectations of police harassment, involvement in illegal activities, and the expectation of probably “doing some time”’.⁴³

Attitudes to incarceration and distrust of authorities

- 34 The Department of Family and Community Services (Cth) also found that studies by

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⁴² Australian Health Ministers’ Advisory Council (Cth), [Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report](#) (2017).

⁴³ Department of Family and Community Services (Cth), [Families of Prisoners: Literature Review on Issues and Difficulties](#) (Occasional Paper No 10, 2003) 13 (citations omitted).

harassment, involvement in illegal activities, and the expectation of probably “doing some time”⁴⁴.

- 35 This was reinforced by the findings of the [House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs](#) in 2011:

A significant detracting factor in young people’s environment is the intergenerational entrenchment of involvement with the criminal justice system among many Indigenous people and communities ... As ‘many Indigenous fathers have been or are incarcerated’, and ‘the trend for Indigenous women incarcerated is also on fast track’, their children are normalising a life spent in contact with the criminal justice system.⁴⁵

- 36 The Final Report of the Senate Legal and Constitutional Affairs References Committee’s [Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#) also acknowledged that a consequence of the ‘normalisation’ of imprisonment is that ‘imprisonment loses much of its deterrent effect and becomes a “rite of passage” for disenchanted young people’.⁴⁶

Cumulative impacts for Indigenous children

- 37 In 2013, the [Senate Legal and Constitutional Affairs References Committee](#) found that:

Indigenous prisoners are affected profoundly with the breakdown of links with family members and communities. Indigenous communities are also affected as every individual has a role to play including financial and social. If an individual or group of individuals is removed, the community is heavily burdened, weakening the community and exacerbating economic distress creating prime conditions for further offending behaviour.⁴⁷

- 38 A [2013 study of paternal imprisonment in Queensland](#) concluded that:

Removal and subjugation by imprisonment of one or more parents or kinship family members, and the removal of Indigenous children into State care continues to erode the security that the traditional Indigenous family once provided. Relative to non-Indigenous children in Australia, Indigenous children of the same age face a range of developmental and environmental difficulties independent of parental incarceration, including higher rates of juvenile offending, detention and suicide and lower rates of school completion and employment. These independent difficulties make this group particularly vulnerable when faced with the additional stress of parental imprisonment and may increase the risk of intergenerational criminality as well as intergenerational social exclusion and other poor developmental outcomes.⁴⁸

⁴⁴ Department of Family and Community Services (Cth), [Families of Prisoners: Literature Review on Issues and Difficulties](#) (Occasional Paper No 10, 2003) 13.

⁴⁵ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, [Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System](#) (Report, 2011) 42–3.

⁴⁶ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, [Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#) (Report, June 2013) 33 [4.29].

⁴⁷ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, [Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#) (Report, 2013) 22.

⁴⁸ Susan Dennison, Anna Stewart and Kate Freiberg, ‘[A Prevalence Study of Children with Imprisoned Fathers: Annual and Lifetime Estimates](#)’ (2013) 48 *Australian Journal of Social Issues* 339, 357 (citations omitted).