

Incarceration of a Parent or Caregiver

Executive Summary

Parental incarceration may 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.¹ This may impact upon a child's emotional, behavioural, and psychological development, educational performance, delinquency and risk of offending.²

Australian and international research has found that children who experience parental incarceration are at increased risk of:

- alcohol and drug abuse;
- lower educational outcomes;
- unemployment;
- developing aggressive and/or antisocial behaviours; and
- mental health problems.³

Children of incarcerated parents have also been shown to exhibit poorer developmental outcomes than children who are not separated from their parents, or are separated for other reasons such as divorce.⁴

Children with an incarcerated parent are also more likely to experience frequent socioeconomic hardship,⁵ which may precipitate offending behaviour.⁶

Parental imprisonment can contribute to the normalisation of contact with the criminal justice system within affected communities, and attitudes of distrust towards authorities.⁷

The impacts of parental incarceration may have particularly negative consequences for Indigenous children,⁸ who are more likely than non-Indigenous children to experience not only the imprisonment of a parent, but also to experience repeat parental imprisonment.⁹

The potential relevance of evidence of parental incarceration in sentencing proceedings includes an assessment of *moral culpability*; moderating the weight to be given to *general deterrence*; and determining the weight to be given to *specific deterrence* and *protection of the community*. There may also be issues relating to the likelihood of *hardship in custody*, a finding of *special circumstances* and the shaping of conditions to enhance prospects of *rehabilitation*.

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 1220.

³ See 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]; Joseph Murray and David Farrington, 'The Effects of Parental Imprisonment on Children' (2008) 37 *Crime and Justice* 133, 135.

⁴ Bell et al (n 1) 1220.

⁵ Mirko Bagaric, '[Redefining the Circumstances in which Family Hardship should Mitigate Sentence Severity](#)' (2019) 42(1), *UNSW Law Journal* 154, 168169 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); 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.

⁶ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, '[Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#)' (Report, 2013) 22.

⁷ Department of Family and Community Services (Cth), '[Families of Prisoners: Literature Review on Issues and Difficulties](#)' (Occasional Paper No 10, 2003) 13; 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; 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].

⁸ 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.

⁹ Ibid 341.