

South Australian
Commissioner
for Children and
Young People
2022

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Join the Dots

Considering the impact of
parental incarceration on
children and young people

PROJECT REPORT NO. 29 | APRIL 2022



The Commissioner's Role

The South Australian Commissioner for Children and Young People is an independent statutory position, established under the Children and Young People (Oversight and Advocacy Bodies) Act 2016 (*the Act*).

The Commissioner's role includes advocating for systemic change to policies, programs and practices that impact the rights, development and wellbeing of South Australia's children and young people.

This work is informed by the experiences and issues of children and young people themselves, with a specific focus on those who struggle to have their voices heard.

The Commissioner's strategic agenda was formulated with direct input from children and young people. In particular children and young people asked the Commissioner to facilitate their involvement in decision making and to create opportunities for them to experience authentic participation in the adult world.

The Commissioner is working with a number of partners on this agenda including ways in which children and young people can have input into the design and delivery of policies, processes and practices that relate to delivery of services aimed directly at them.

Acknowledgements

Thank you to the 66 children and young people who shared their experiences, insights, and suggestions about the impact of having a parent in prison along with their interactions with the many systems and services they're exposed to as a result.

Throughout this report we have used unedited responses from children and young people to ensure their ideas and concerns are faithfully communicated to those who have the capacity to consider them and implement positive change.

Thank you to the 74 parents in South Australia's prisons who shared their thoughts and concerns about the impact of their incarceration on their children and what they believe could change at a systemic level to improve the support, wellbeing, and long-term outcomes for their kids.

This project would not have been possible without the support provided by South Australia's Department for Correctional Services (DCS), and particularly Jo McFarland (Principal Advisor, Women Offenders, Offender Development Directorate).

DCS supported CCYP to enter Adelaide Women's Prison, The Pre-Release Centre, Port Augusta Prison

and Mobilong Prison to run seven consultation sessions with incarcerated parents, as well as one joint session with incarcerated mothers and their children at Adelaide Women's Prison.

Thank you to G4S Custodial Services for supporting the Commissioner to gain entry to Mount Gambier Prison to meet with incarcerated fathers.

Thank you to the Adelaide Women's Prison, The Pre-Release Centre, Port Augusta Prison and Mobilong Prison for hosting the Commissioner's sessions with incarcerated parents.

Thank you to Second Chances SA for support to host focus groups with children and young people.

Thank you to Offenders Aid and Rehabilitation Services for support to connect and engage with families, including through a Family Fun Day event.

Finally, thank you to the many other stakeholders, advocates, and carers across South Australia for drawing attention to the experiences of this largely invisible group of children and highlighting the need for systemic responses to be developed with this group of children in mind.

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Commissioner's Foreword

Children with incarcerated parents are a vulnerable and hidden group whose lives and rights are not only affected by their parent's offending, but also how their community, and service systems respond.

While the purpose of incarceration is to punish the offender, children whose parents are incarcerated are often called the 'innocent victims' of the criminal justice system.

During my direct consultation with children and young people affected by parental incarceration, children described how their lives changed significantly when their parent was arrested and incarcerated. In many cases, this disruption was sudden and came 'out of the blue', with young people reporting how their lives took a 'u-turn' from 'stability to uncertainty' and 'everything does a flip'.

Currently, services place the onus on children and families to present themselves to service providers, often only when problems have already escalated. Yet families report that this is made difficult by barriers, including the stigma and secrecy surrounding incarceration, and a fear of intervention from statutory authorities that will not be supportive of keeping families together.

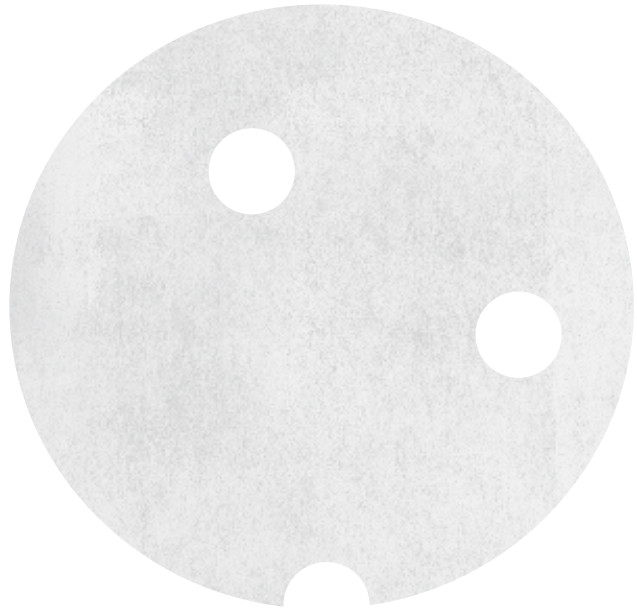
Indeed, many children and young people affected by parental incarceration said they were reluctant to tell others about their situation due to the fear of being shunned by friends or fear of involvement by statutory authorities.

Often, they are instructed to keep their experiences to themselves by those who care for them.

A significant body of research over recent decades has drawn attention to the plight of children with an incarcerated parent. There has increasingly been a focus not only on the experiences of prisoners as individuals, but also of prisoners' families, particularly dependent children. Like many other adult-focused service systems, the criminal justice system is being challenged to consider the parenting status of the adults who it serves.

This brings with it recognition of a need to move away from 'child-blind justice' (where the impacts of decisions on a child are "neither foreseen, acknowledged or remedied by the system") towards 'child-friendly justice' (whereby decisions at every stage of a system are centred on child rights in and of themselves rather than as an afterthought, or based on the "personal circumstances" of the offender).¹

These developments at a theoretical level have not consistently translated into practice at a systemic level, with limited examples of practical positive outcomes for children with an incarcerated parent.



Viewing adult systems through children's eyes requires a shift in thinking that is future-focused and grounded in child rights. It also requires meaningful engagement with children and young people, as well as with their parents and families, to ensure they have a say in the design and delivery of the systems and services that impact them.

Through consultation with South Australian children and young people who have parents in prison, and with incarcerated parents, system changes have been identified that they think will make a significant and positive difference to their lives. These findings resonate with widespread evidence in Australia and overseas, which recognises that the connection between an incarcerated parent and their children is a both a key motivator and a protective factor against parent reoffending.

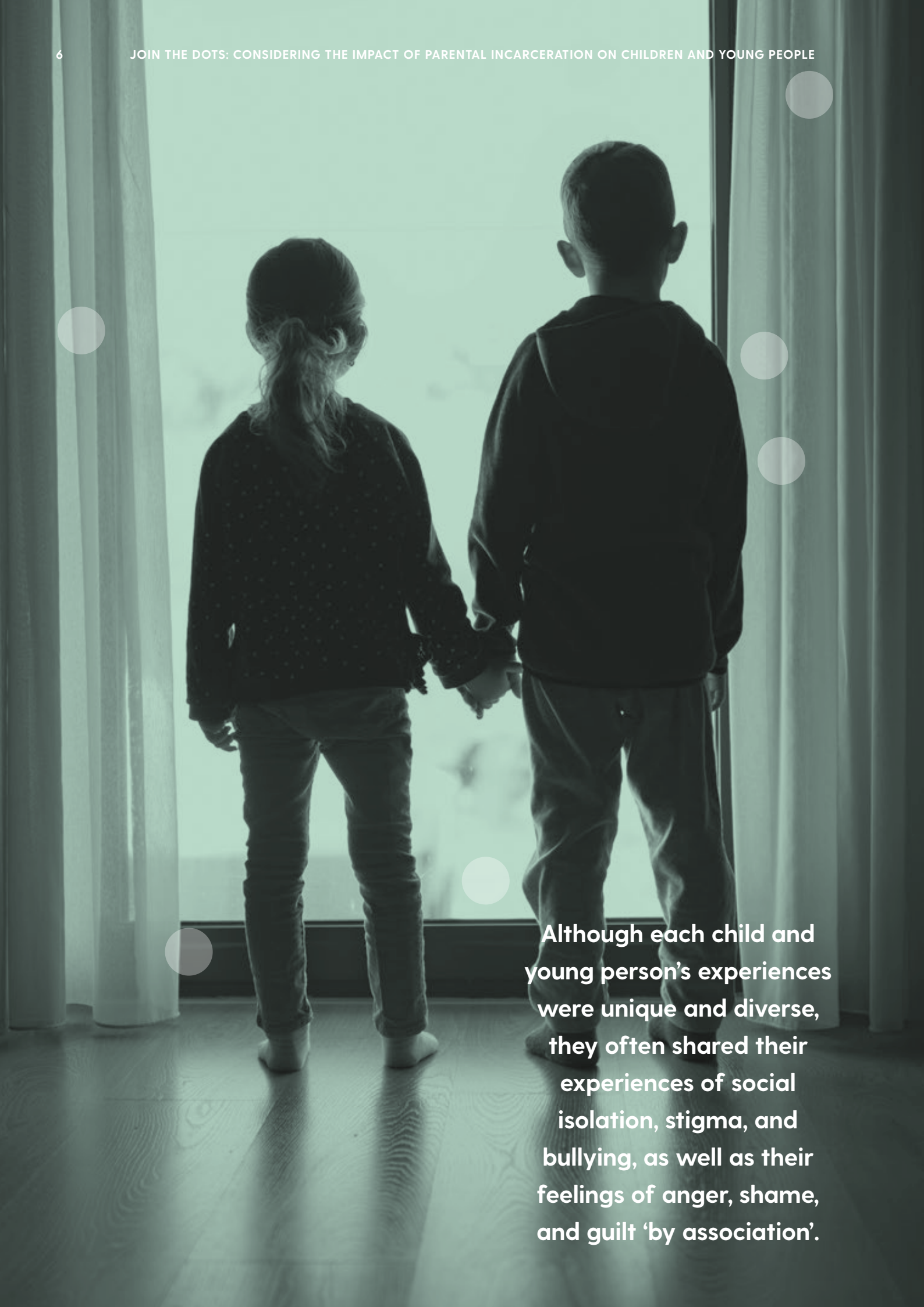
Several positive developments have taken place in the corrections space in recent years, including investment in interactive visits and funding for new visiting spaces. While these are important steps with positive outcomes for children, there is more to be done to protect and promote children's rights earlier – well before their parent ends up in custody.

This report provides a summary of what I heard during consultations with children, young people, and parents. Commentary about interactions with systems has been included in the hope that this will be the catalyst for more detailed discussions and analysis that can inform service system responses to children of incarcerated parents.

I am hopeful that because of this report, a group of South Australian children, who are currently sitting under the policy radar, will become more visible, and that the services and supports they are rightfully owed will become available in the shortest possible timeframes.

Helen Connolly

Commissioner for Children
and Young People,
South Australia



Although each child and young person's experiences were unique and diverse, they often shared their experiences of social isolation, stigma, and bullying, as well as their feelings of anger, shame, and guilt 'by association'.

Introduction

It is estimated that about 5 per cent of children throughout Australia will experience incarceration of a parent during their lifetime.² Data on the parenting status of adults entering prison, or on the status and whereabouts of their children during their incarceration, is not officially or routinely collected, or published, in any state or territory in Australia.

This lack of data leads to the absence of policy and little or no focus on services and support for these children. In addition, agencies working to support prisoners and offenders are not necessarily funded to also work with their children. Practice guides, policies, or service delivery models in the broader South Australian children's services area that have been specifically developed with this group of children in mind are not available.

When viewed from a child's perspective, having a parent in prison is invariably a loss, whatever the nature of their relationship prior to their parent's incarceration. Children and young people have described that it can mean losing a person who cares for them, losing income, food and clothing, and sometimes losing their homes and what was a safe place to live.

In addition to severe financial stress and changes to their living and care arrangements, children and young people also focus on the less tangible but equally significant impacts of parental incarceration, on their rights to be listened to, to be told the truth, to know they are not alone, and to have their relationship with their parent recognised.

Although each child and young person's experiences were unique and diverse, they often shared their experiences of social isolation, stigma, and bullying, as well as their feelings of anger, shame, and guilt 'by association'. They wanted to be treated as having potential and a future, rather than being stigmatised due to circumstances well outside of their own control.

Children with a parent or primary carer in prison are often impacted by many statutory authorities, from SA Police (SAPOL) and the courts to the Department for Correctional Services and prisons, and in some cases by the Department for Child Protection.

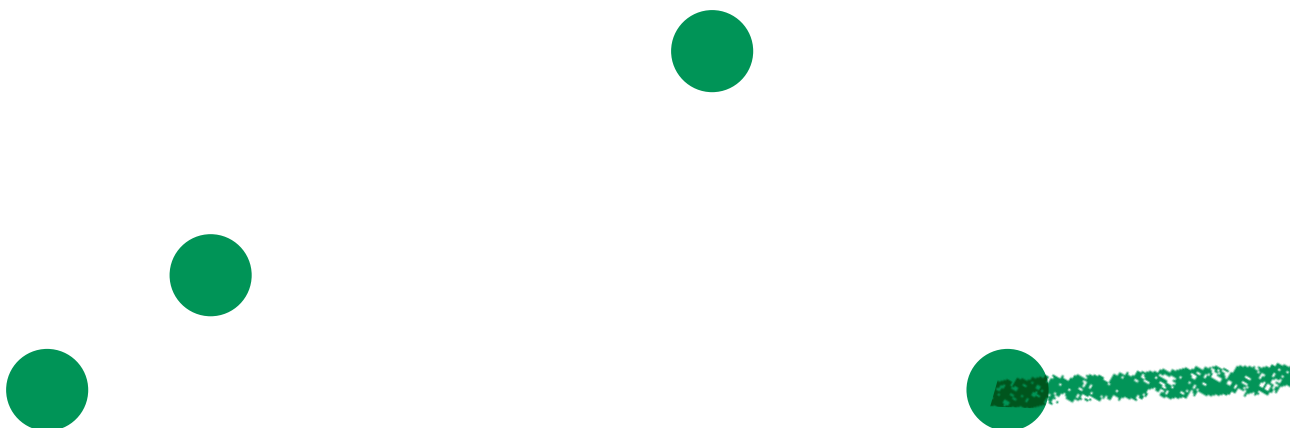
However, these systems, insofar as they are primarily designed for adults, are not systematically identifying, assessing, or considering the interests of children. Any information that is gathered is ad hoc. They are not used in a consistent way to understand children's needs, provide them with information and engage necessary services to support them.

There is currently no consideration given to the role the state could play in providing children who are separated from their parents with special consideration, as per Articles 9 and 20 of the United Nations Convention on the Rights of the Child.

In 2021, SAPOL changed their General Orders to clarify that arresting officers should take all steps to ensure that children are not present during their parent's arrest. This is an example of how a proactive response that anticipates the issues for children and young people could have short-term and lasting benefits to children and young people's mental health and emotional wellbeing.

This example also highlights how small changes to processes at each stage of the system could make the most of key opportunities for both crime prevention, and prioritisation of the safety and interests of children.

The negative impacts of issues identified by children and young people during their contact with adult systems can be addressed by taking a child-friendly approach to their design. This includes creating links between prison and community-based government and non-government services, strengthening them in ways that support the needs of children and young people.



Approach

The Commissioner set out to engage directly with a group of children who have parents in prison about what is important to them. This enabled her to better understand what the experience of having an incarcerated parent is like for a child, including what they believe needs to be done to ensure they have the best possible opportunities and outcomes in life regardless of their parent's incarceration.

As part of the development of the Commissioner's strategic agenda, numerous stakeholders and advocates working across government departments and non-government support agencies provided early insight into the invisibility and vulnerability of children with incarcerated parents. The Commissioner formally raised the issue of policy blindness towards this group of children in her 2019/2020 Annual Report.

To hear directly from those impacted by parental incarceration, the Commissioner facilitated several occasions to engage with children and young people and incarcerated parents, including a family fun day, two camps and two focus groups with young people, eight focus groups with incarcerated parents, and one joint session with incarcerated mothers and their children.

A total of 66 children and young people aged between 10 and 22 years told the Commissioner in their own words about the impact having an incarcerated parent has on them, and what they consider needs to change at each stage of the system to improve outcomes for children and young people.

While demographic information was not specifically recorded, participants shared information that indicated they were from diverse cultural and socio-economic backgrounds. Some participants were in care, some were Aboriginal, and children varied in their functional ability, with some children living with a diagnosed disability.

A total of 74 parents participated in focus groups across five South Australian prison settings: Port Augusta Prison, Adelaide Women's Prison, Mount Gambier Prison, Mobilong Prison, and the Adelaide Pre-Release Centre.



There were three sessions held with mothers, and five sessions held with fathers.

It became clear during the initial consultations just how difficult it is to engage and connect with families – particularly children – who are affected by parental incarceration. In addition to the stigma and secrecy surrounding contact with the criminal justice system, families lack trust in many government systems and agencies, often perceiving them as a risk to their safety and connections.

Although children with incarcerated parents are impacted by many government institutions, and by actors in the criminal justice and other systems, they are largely invisible to adult decision makers, authorities, and service systems. Further, much of the research on children with an incarcerated parent has used information gathered from adult stakeholders and imprisoned parents, rather than from children and young people themselves.

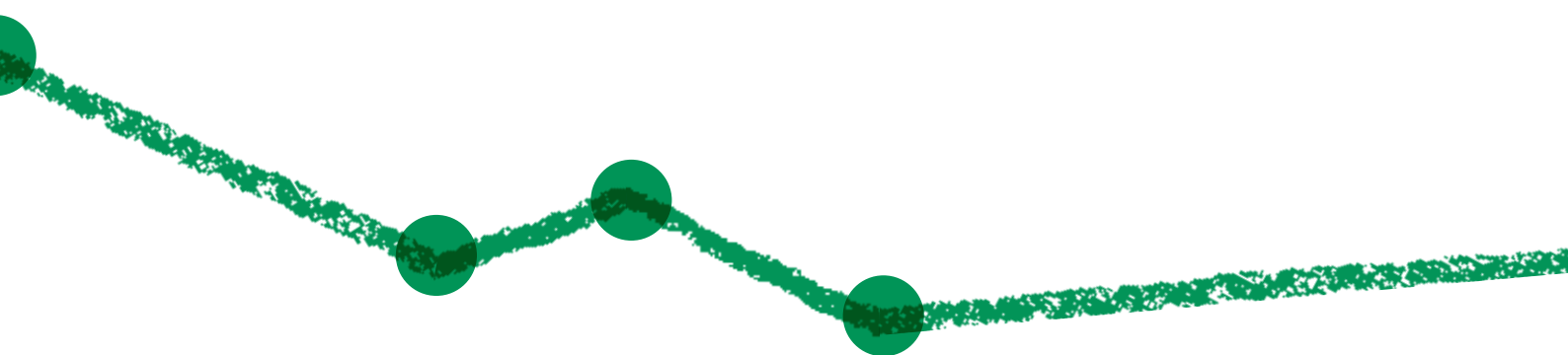
This report does not cover every issue raised during the consultations with children and young people or parents. Rather, it highlights the key themes and ideas for change that both children, young people, and incarcerated parents said would make the real differences to their lives.

It should also be noted that the consultations undertaken for this report took place prior to COVID-19, which has had a significant impact on prisons, including introduction of suspensions and restrictions on face-to-face prison visits.

A research report commissioned by SHINE for Kids in October 2020, presented the findings of a survey of 84 carers (mostly mothers) of dependent children with a family member (mostly fathers) in prison across Australia.³ The study had a particular focus on changes to prison visits during the COVID-19 pandemic and the impact restrictions had on maintaining family contact.

A key theme raised by both the children and incarcerated parents related to the impact incarceration was having on the 'other' parent or carer/s who are 'on the outside', including the lack of support or services made available to them across the community.

The key issues highlighted in the SHINE for Kids survey, echo what the Commissioner heard during her consultations before COVID-19. It also shows that the pandemic has exacerbated pre-existing challenges, as well as presented additional issues of concern.



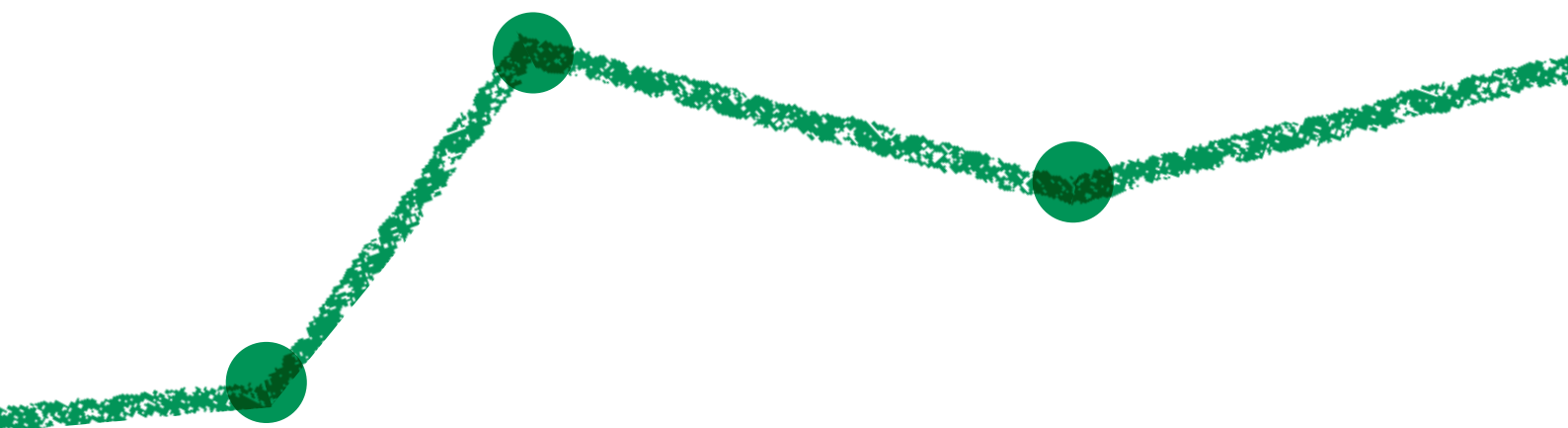
The overwhelming majority of respondents to the SHINE for Kids survey (95%) reported negative emotional and behavioural impacts for children as a result of restrictions to prison visits, with most reporting less time available for visits and poorer quality of visits than before the pandemic.

However, one positive development that resulted from the COVID-19 pandemic was the introduction of video visits. During our consultations, both children and parents repeatedly talked about wanting to have video calls set up via Skype and FaceTime. They said that increasing opportunities to have meaningful contact with their parent or child throughout the period of incarceration in this way would help to improve their lives and relationships with each other.

The carers in the 2020 SHINE for Kids study also noted the benefits of video visits. Not only did they mean children could remain in home environments, which are calmer than the hostile and stressful adult prison environments, video visits also meant parents could share normal everyday activities and routines with their children, such as helping with homework and reading a book before bedtime.

The SHINE for Kids study concluded that video visits should be as child friendly as possible, and not replace or reduce face to face visits, but instead be made available as an additional form of meaningful contact.

During the consultations, the Commissioner found significant variation in the way prisons supported the parenting capacity of prisoners, and the type of parenting programs made available. Some of the common challenges presenting across all prison environments included a lack of physical connection, particularly for younger children. Examples included unsuitable timing, insufficient frequency and limited amounts of time allocated for parent-child contact. There were also added difficulties related to access to devices and the quality of a phone call connection.



“

Case study – Andrew

Andrew is 18 years old. He now lives independently after three years of being homeless, couch surfing, and living in youth shelters. When Andrew was 15 his life was turned upside down when his father went to prison, and he still struggles with the impact of this today.



Andrew lived with his dad, a single parent. He doesn't really know his mum with whom he never really had much contact. The day Andrew's Dad was arrested by police at the family home is the day his life changed. He describes being in a state of 'absolute confusion', and how 'everything felt unreal'. 'Everything did a flip that day' and he says that he 'lost his sense of security' in his life.

Andrew explained that he had no idea what was going on, or what was going to happen to him from that day forward. He didn't really have any other family he could call upon and he didn't know who or how to reach out for help.

Andrew had never heard of support services or youth shelters and so had no idea how to find the support he needed. He wasn't even sure if anyone else had experienced something like this, and so also didn't know who he could ask for help. He explained that not knowing where to go for help was one of the biggest issues he faced.

Andrew talked about the first time he moved into a youth shelter. He described the experience as being scary – how 'you suddenly go from living with people you know to living with strangers'.

He said for a number of years he struggled to find somewhere more permanent to live, putting himself in unsafe situations while he did. This included living with other young men who were kind enough to give him a place to stay rather than having to live in a men's shelter.

He also spoke about how being young for him meant he had no control; how he couldn't decide what he wanted to do, or where he wanted to be.

Not having somewhere to live was just one part of Andrew's situation. Andrew also talked about having no money to buy food and getting

so used to eating very little that 'you started to view not eating as a way to save money'. He talked about the impact this had on his mental health; how 'it feels as though you are living in a world that no one else would understand' and where 'you lose your dignity as well as any hopes you had for the future'.

Andrew said some of his most vivid memories from the day his Dad got arrested included wondering where his stuff would go; even the toys he'd had since he was a kid. He said, 'you eventually get used to not having any possessions – after something like this happens you don't get attached to things anymore'.

Andrew also talked about how he 'got told nothing'. He didn't know if he would see his Dad again. He didn't know what was happening. He said one of the things he missed most was spending birthdays and Christmas' together. He said it wasn't really about the presents, but that you stop celebrating and that 'it's still these times of the year that he struggles with most'. He also said he lost the ability to trust on that day, and that this is something he is still working on changing, but feels he has a way to go yet.

Andrew's Dad is still in prison, but he has more regular contact with Andrew now. It's become easier now that Andrew's life has become a little more settled. Andrew has support and somewhere to live and he also has his own source of income. He said that in a situation like this, kids should be given as much information as possible from the start. He said that getting as much information about what was happening, and about what would happen next, as well as who could help, is really important. He also said that knowing others are experiencing something similar is really helpful. Having 'good support, consistent access to food, somewhere safe to live and proper mental health support' were the things he said he needed most.

Recommendations

When a parent or primary caregiver comes into contact with the justice system, their child should receive timely and age-appropriate information about their parent's situation. This includes their child or children being told the exact whereabouts of their parent at all stages of their contact with the justice and correctional system, and about what support services are available to them.

The 'legal system is confusing' and there is a lack of child-friendly and youth-friendly information about how, when, and why decisions are made. There is also little information about what support is available to children and young people at each stage of the incarceration process.

Specifically, it is recommended:

1

The Department for Education, SA Health, Department for Child Protection and Department of Human Services identify children of incarcerated parents as a priority access group for government support services and develop and implement protocols for frontline staff.

2

Department for Correctional Services (DCS) adopt a child rights and child safe environments approach to all interactions with children and young people and apply this approach to decision-making processes. This includes providing child-friendly information about prison processes, establishing family visit times in suitable venues and spaces, promoting prisoner reconnection and reintegration with children, and considering children's best interests in discussions regarding prisoner rotation.

3

DCS work with the Department of Human Services and other non-government service providers to invest in parenting support initiatives that help incarcerated fathers as well as mothers understand child development, so that they can learn to engage with their children and promote positive connections and prosocial behaviours.

4

Adult-focused justice services adopt a child-focused approach in all interactions where children are present, or where children are directly impacted. Children's rights should be actively considered in the administration of justice, including decisions regarding parent arrest, bail and sentencing.



Key messages from children and young people affected by parental incarceration

- Children and young people affected by parental incarceration are not a homogenous group. Each child has unique experiences which vary according to their age and circumstances, as well as to available sources of support and care.
- Children and young people affected by parental incarceration commonly say they feel as though no-one else understands them or that they know anyone who is going through a similar experience.
- Children and young people affected by parental incarceration say they need immediate and ongoing support at the time an arrest is made. They need to know what support is available to them and how they can access it, both for themselves and for the 'other parent' or carers who are 'on the outside'.
- Children and young people affected by parental incarceration see knowing the truth about their parent's situation as key to being able to seek effective help. They want to be informed about what is happening to their parent, and why, at every stage of the judicial proceedings and processes. They also want to know what is happening to their parent throughout their parent's time in prison, including knowing what life is like for their parent while in prison.
- Children and young people affected by parental incarceration say they want more flexible options for improved and increased contact with their parent. In particular, children and young people want visits to be easier, more often, longer, and more child-friendly, confidential, and natural.
- Children and young people affected by parental incarceration say they often feel punished and blamed for factors outside of their control and have to deal with this feeling along with the many other emotional, financial, educational, and social impacts they are forced to face.
- The financial impacts of parental incarceration on family income often impact on a child or young person's ability to live in a safe environment, to eat regularly, participate in education, or undertake their social activities and organised sport.
- Having a parent in prison impacts on many significant relationships beyond the parent-child relationship, with many children and young people describing that they have 'learnt not to trust people' as a result of their experiences with the law and government social services.
- Depending on the nature of the parent-child relationship prior to the parent's contact with the justice system, and 'depending on the crime', it is important to consider that children and young people may be afraid of their parent or carer who is in prison and need different support as a result.

Key messages from parents serving sentences in South Australian prisons

- Parents don't stop being a parent when they go to prison, and their children don't stop needing them.
- Parents stress that their actions are not their children's actions, and that their children should not be treated as though they are guilty 'by association'.
- Parents want greater education to improve understanding in the community (in schools and in the media particularly) to reduce the stigma of being in contact with the justice system and the impact this has on their children.
- Parents want more specialised, individualised and practical support for their children. This includes psychological help, transport and housing assistance, as well as financial support to help keep children engaged in their hobbies and sporting commitments and special interests.
- Parents say maintaining contact with their children is a significant motivating factor for their rehabilitation while in prison, as well as for their subsequent capacity to remain out of prison once released.
- Parents in South Australia's prisons would like longer and more frequent visits with their children and for these to be conducted in more child-friendly environments. They would like opportunities to engage in "normal" and age-appropriate activities with their child, including some outdoor activities as well as opportunities to watch a family movie together in a child-friendly setting.
- Parents in South Australia's prisons highlighted the need for prison staff to be trained in ways that will ensure they have a much better understanding and respect for their role as a parent and to support parent-child relationships for the sake of their children as well as themselves.
- Parents felt they would benefit from programs in prisons that would help them better understand child development, teach them communication skills and support them to be better role models for their children. Fathers felt strongly that there was a lack of parenting support tailored to male carers, and said they wanted more opportunities to talk to other incarcerated parents and be able to provide support to each other, as well as to their children.
- Parents said that the costs associated with transport, distance, a lack of appropriate accommodation, and the practice of 'rotating' prisoners between prisons without notifying families, or considering the location of a prisoner's children, are all significant barriers to family visits.
- Parents seek greater support for the 'other parent' or family members (often grandparents) who become the primary carers of their children while they're in prison.
- Parents in South Australia's prisons seek more information about their release dates, along with more practical support and planning for their release. This included support with parenting and help to reconnect with their family as well as support to find accommodation and employment.

What rights does a child with a parent in prison have?

The decision as to whether or not a parent should go to prison directly affects a child's development and life outcomes. Core human rights requirements dictate that where decisions are being made that directly impact on children, the best interests of those children should be considered and their voices heard.

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." – Article 3 (1) of the United Nations Convention on the Rights of the Child (UNCRC).

Despite these human rights requirements, bail and sentencing processes typically consider the rights and perspectives of an offender's child or children as an afterthought, if at all.

The UNCRC has emphasised that the 'children of incarcerated parents have the same rights as other children', and that the best interests of the child should be a primary consideration at all stages of a parent's contact with the justice system.⁴ This includes actions and decisions made during arrest, while in detention, when sentencing, in considering which prison they will serve their sentence, opportunities for children's visits to the prison, programs undertaken during the parent's incarceration, their pre-release, release, and reintegration into the community including support for parenting 'outside'.

The incarceration of a parent or caregiver has significant and unique impacts on the lives and rights of children as set out in the UNCRC. Parental incarceration clearly affects the right of a child to know their parents and, as far as possible, to be cared for by them (**Article 7**).

According to **Article 9(3)** a child who is separated from one or both parents, has the right to maintain personal relations and direct contact with both parents on a regular basis, except if this is contrary to the child's best interests. Where a child is temporarily or permanently deprived of their family environment, the child 'shall be entitled to special protection and assistance provided by the State' (**Article 20**).

Article 2 recognises the duty of the State to protect a child from punishment or discrimination which they suffer as a consequence of the status or activities of their parents. Accordingly, the UN Committee on the Rights of the Child has stressed that prison visits should be treated as a key element of the fulfilment of a child's right to meaningful contact with their incarcerated parent, rather than as a privilege of the prisoner that can be taken away as a disciplinary measure.

This principle is enshrined in Rule 23 of the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the 'Bangkok' Rules).

In line with a child's right to seek, receive and impart information (**Article 13**), the UN Committee has emphasised that children with an incarcerated parent should be provided with child-friendly information about their parent's whereabouts, and about available support networks and services. Further to this, the media coverage of a parent's court case or the stigma associated with incarceration may affect the child's right to privacy and their right to freedom from attacks against their family life, home, or reputation (**Article 16**).

International standards, rules and guidelines in crime prevention, criminal justice and human rights recognise the rights of children of incarcerated parents. The 'Bangkok' Rules, while focused on female prisoners, require consideration of the child's best interests. This consideration is echoed in the Revised Standard Minimum Rules for the Treatment of Prisoners (aka the 'Nelson Mandela' Rules).

The overarching principle of the best interests of the child is 'a substantive right, interpretive approach, and a rule of procedure; all three of which are relevant when considering the best interests of children with incarcerated parents'.⁵ As such, International Standards, including guidance from the UN Committee, emphasise that best interests assessments should be incorporated into actions and decisions at the time of arrest, bail, pre-trial detention, sentencing, and (in the case of infants) whether a child should go to prison or not with their carer.

The Committee also recommends use of non-custodial alternatives where possible, both during sentencing and at pre-trial stages; applying measures that will prevent separation between

parents and children; and allowing parents to make arrangements for childcare before they go to prison.⁶

These principles are embedded in South Australia's *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, which legislates that each state authority must 'in carrying out its functions or exercising its powers, protect, respect and seek to give effect to the rights set out in the United Nations Convention on the Rights of the Child'.

The objects and principles of the *Children and Young People (Safety) Act 2017* (the Safety Act) give effect to Article 3 of the UNCRC, stating that the 'paramount consideration' throughout the administration, operation and enforcement of the Act must always be about children's safety and protection.

A failure to uphold the rights of children with incarcerated parents is a failure to meet our obligations under Section 4 of the Safety Act 'to consider their best interests front and centre', 'to keep all children in South Australia safe and healthy', 'do well at all levels of learning', have 'skills for life' and have a 'voice and influence'.

The Safety Act also requires all statutory and non-statutory organisations that work with children, or that provide services to children – including those interacting with the criminal justice and corrections system – to develop child safe policies and procedures and provide child safe environments. In South Australia, guidance to support organisations to create child-safe and child-friendly environments has been in place since 2012 and has more recently been superseded by the National Principles for Child Safe Organisations.

At a national level, the Guiding Principles for Corrections in Australia (the re-branded Standard Guidelines for Corrections in Australia)

sets out goals and outcomes for correctional services across Australia's states and territories.⁷ Rather than an enforceable set of standards or laws, the Guiding Principles demonstrate national intent to ensure prisoner visits account for the safety and best interests of children. The principles also consider support for family and community connections, including decisions regarding prisoner placements and temporary leave programs.

Despite legal and official recognition at a state, federal and international level to better understand and respond to the children with an incarcerated parent, there has been minimal policy response, and a lack of strategy and support shown for this group of children across Australia.

In addition, there appears to be a significant difference between the way children are treated when facing separation from parents in criminal courts compared to when they face separation in the family law court. In family law court decisions, parent-child separation is determined after a lengthy process where children can be provided with the opportunity to have their views and needs considered and represented as evidence. Criminal courts, by contrast, treat defendants and offenders as individuals, and are often blind to the needs of their children, including how their children might be impacted, and how these impacts are relevant to the sentencing decisions that have been or are made.

In the criminal courts, there is limited consideration given to children's best interests and specific circumstances such as their age, health or emotional needs. Neither are disruptions to their education, and plans for their care and living arrangements considered, including the situation of prospective carers and whether the children will be separated from their siblings as a result of their parent's incarceration.

There is also a lack of attention given in the criminal courts as to whether the children of defendants will be able to visit their parent, including the distance between a prison and the child's home, the cost of visits and any support offered. Judges are more likely to consider impacts on a child when sentencing mothers, who tend to be primary caregivers. Indeed, while the majority of prisoners are men, cases in which 'a child or children of a male defendant play a role in the sentencing of their father, are few and far between'.⁸

Further, there is no explicit obligation to consider the best interests of the child in South Australian or Commonwealth sentencing legislation. South Australia's *Sentencing Act 2017* provides that, in determining a sentence for an offence, the court must consider factors related to matters that include 'the defendant's character' and 'general background'.⁹ A court may order a pre-sentence report on the defendant's 'physical or mental condition', 'personal circumstances and history' or 'any other matter that would assist the court in determining sentence'. However, this report is not required to consider the impacts a defendant's sentence may have on any dependent children.

Other sections of the *Sentencing Act 2017* (SA) recognise children as 'dependents' worthy of consideration in decisions regarding community service and financial penalties, but there is no specific reference made to children being considered when the custodial sentencing of defendants who have parenting responsibilities is being determined.

Commonwealth legislation is more specific. In determining a sentence for federal offences, as per the *Crimes Act 1914* (Cth), the court must take into account 'matters as are relevant and known to the court', including 'the probable effect that any sentence or order under consideration would have on any of the person's family or dependents'.¹⁰

Further, bail authorities – Magistrates, District and Supreme Court Judges, and Police – may consider the impact of bail on a person’s child as a ‘relevant matter’ and as grounds for review of a bail decision. However, there is no specific provision whereby a person’s child or family is systematically accounted for.

While children may be mentioned in sentencing remarks, there is little evidence of where the impacts on a child’s life or wellbeing translates into a parent being given a mitigated sentence as a result. While this can be explained by logistical factors that include time pressures, it may also be unclear to Judges what weight should be attributed to the child’s best interests in determining an appropriate sentence for a defendant who is a parent.

There is the broader challenge too of reconciling the rights of children with the aims of criminal law. It could be argued, for example, that consideration of children is irrelevant if not outright contrary to justice, and that it would be inappropriate or even discriminatory to sentence offenders with children differently to offenders without children.¹¹ However, ignoring the interests of children of defendants, directly conflicts with the rights of the child, which should be upheld at all costs.

International guidance has underscored that ‘the consideration of a child’s right to have contact with a parent who is incarcerated does not imply a weakening of laws or amount to a ‘get out of jail free card’ for that parent.’ Acknowledging the rights of children is not allowing parents to avoid appropriate punishment, but rather to protect innocent children from harm, as much as possible.¹²

When those who break the law are defined exclusively as ‘criminals’ and the purpose of incarceration is primarily punishment and deterrence, there is little room for flexibility in sentencing. On the other hand, flexibility in sentencing becomes more likely when the purpose of incarceration is seen to be rehabilitation.

“ No constitutional injunction can in and of itself isolate children from the shocks and perils of harsh family and neighbourhood environments. What the law can do is create conditions to protect children from abuse and maximise opportunities for them to lead productive and happy lives...In situations where rupture of the family becomes inevitable, the State is obliged to minimise the consequent negative effect on children as far as it can.” Justice Albie Sachs, *S v M* (CCT53/06) [2007] ZACC18.

Decisions in relation to sentencing and the impact it will have on a defendant’s child or children will vary according to the nature and severity of the offence, and more importantly the extent to which the child was affected by or a victim of the parent’s offence.

Sentencing decisions need to ‘be tailor-made to each case’ based on close and individualised examination of a defendant’s child’s real-life situation. If a case clearly requires a custodial sentence, every effort should be made to ensure the child receives adequate support and care and access to regular contact with their parent. If a range of sentences would be appropriate, paramount consideration should be given to the best interests of the child.

What do we know about children with a parent in prison?

The experiences of children and young people who have a parent or carer in prison are diverse. They vary according to a range of factors that includes their age, the nature of their relationship with their parent prior to contact with the justice system, the quality of their other family relationships, and what community support is made available to them and when.

Broader socio-economic factors also come into play. The nature of their parent's crime, the length of the prison sentence, and changes to living and care arrangements also influence a child or young person's experience of their parent's incarceration and impacts on the kinds of supports they need.

A clear understanding of the size and scale of this group of South Australian children and young people, and the diversity of their experiences and needs in both the short and long term, is essential to informing appropriate responses. This is not only the case for the families concerned, but for the whole South Australian community. However, data on either the parenting status of adults entering prison, or the status and whereabouts of their children is not officially or routinely collected or published in any state or territory in Australia.

Estimates from over a decade ago suggest that approximately 5% of children in Australia will

experience incarceration of one of their parents during their lifetime.¹³ Given incarceration rates have been rising since, it is likely that this percentage is even higher today.

Research from Queensland has projected conservative estimates that 4.2% of all children and young people experience the incarceration of a parent, with this figure rising alarmingly to 16.3% for Aboriginal children and young people.¹⁴ These figures are consistent with research from New South Wales, which estimates 5% of all children and young people will experience incarceration of a parent during their lifetime, with this figure rising to 20% for Aboriginal children and young people.¹⁵

The National Prisoner Health Data Collection (NPHDC) is the main source of data about the health of people in Australian prisons. This data is collected by the Australian Institute of Health and Welfare every three years with the most recent data collected indicating the following:

- Almost 2 in 5 (38%) of prison entrants in the 2018 NPHDC reported having children in the community who were dependent on them for their basic needs.
- Between the 803 prison entrants recorded in the data collection there was a total of 1,451 children who depended on their incarcerated parents for their basic needs. This equates to almost 2 children per prison entrant.
- Women (54%) were more likely than men (36%) to have dependent children.
- Almost half (47%) of Indigenous prison entrants had dependent children, compared with one-third (33%) of non-Indigenous entrants.¹⁶

Based on the above figures the numbers of children and young people who currently have an incarcerated parent in South Australia could be between 1,500 to 6,200 children, with anywhere from 16,400 to 19,600 children and young people under 18 years having experienced parental incarceration at some point in their lifetime.¹⁷ This equates to between 2 and 3 students in every South Australian classroom. Due to the correlation between poverty and crime, these students are likely to be concentrated in schools operating in the most disadvantaged areas of the state.

South Australia was the only state or territory in Australia where prisoner numbers increased between 30 June 2019 and 30 June 2020, with a total of 2,986 prisoners in South Australian prisons at 30 June 2020.¹⁸ The number of prisoners in South Australia increased by 4% to 3,105 prisoners at 30 June 2021, with the state's prisoners making up 7% of Australia's total prison population.¹⁹ As the prison population grows, so too does the number of children impacted by parental incarceration.

Although the significant majority of prisoners are men, there has been very little attention given to the parenting status of these men. While women make up a smaller proportion of the prison population, currently South Australia's female prison population is growing at a greater rate than the male prison population, consistent with trends both nationally and globally.²⁰

The growing numbers of women going to prison has implications for children's care arrangements. Most children typically remain in their home and are cared for by their mother when their father goes to prison, whereas when mothers are imprisoned, children are more likely to need alternative care arrangements put in place.²¹

The majority of women in prisons have children who depend on them.²² According to data from South Australia's Department for Correctional Services (DCS) in June 2019:

- 60–65% of women in South Australian prisons identify as having children.
- 30–40% identify as a primary carer to a child.
- 10–15% of women in prison will self-identify as a sole carer.
- 1 to 2 women each year will be at risk of giving birth while in prison.²³

Given the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system, Aboriginal and Torres Strait Islander children and families are disproportionately impacted by parental incarceration. The number of Aboriginal parents – particularly mothers – in prison directly impacts the number of Aboriginal children in out-of-home care.²⁴

Practices and processes across the criminal justice and correction system need to urgently address the key systemic issues that disproportionately impact Aboriginal and Torres Strait Islander families and communities through actioning the

suite of recommendations made in the Pathway to Justice Report and the findings of the Royal Commission into Aboriginal Deaths in Custody.

The NPHDC reveals that the majority of prison entrants have been to prison before, indicating a lack of support and connection prior to and upon release from prison. More than half of the pre-release prisoners captured in the NPHDC expected to be homeless upon release from prison. Rates of prisoner entrants who were re-entering prison were higher among Aboriginal and Torres Strait Islander people, suggesting that Aboriginal people are less likely to receive the timely and culturally appropriate support they need upon their release.

There are circumstances where it might be argued that parental incarceration is in the child's best interests, such as when a child or family are the victims of a parent's crime, or the parent-child relationship is problematic.²⁵ Nevertheless, when considered from a child's perspective, the incarceration of a parent can have 'potentially traumatic consequences, regardless of the level of contact prior to sentencing'.²⁶

The experience of parental incarceration exacerbates inequality amongst those who are already disadvantaged, with many families that are impacted by parental incarceration also impacted by experiences of poverty, domestic violence and substance misuse.²⁷

While parental incarceration itself is recognised as an adverse childhood experience (ACE), recent research also associates parental incarceration with a fivefold increase in exposure to other ACEs.²⁸ The social exclusion, stigma and emotional and financial distress, trauma and disruptions associated with parental incarceration have been linked to deterioration in health and education outcomes of children with an incarcerated parent, including an increase in antisocial behaviour.²⁹

A study of more than 1,500 children and adults in four European countries (the COPING Project), showed that the children affected by parental incarceration have a 25 to 50 per cent higher risk of experiencing mental health problems than the general population, particularly for those aged over 11 years.³⁰ More recent Australian research, using data from the Australian Early Development Census and the New South Wales Child Development Study, found parental criminal offending to be an early childhood risk factor associated with particular developmental vulnerability at age 5 showing up in later mental health disorders.³¹

Despite the social and economic impacts of parental incarceration on children, these children are not destined to enter the criminal justice system themselves. While research has focused on the correlation between parental offending and children's behaviour, intergenerational offending is not an inevitability.



While a significant number of young people in youth justice settings report that their parents had been incarcerated, the majority of children and young people who experience parental incarceration do not go on to offend themselves.³²

There are multiple risk factors typically associated with criminal offending, including social and economic vulnerability and other familial and environmental factors. Parental incarceration can compound these risks, and can impact the ways in which the justice, education and child protection systems perceive and treat children and young people with a history of parental offending.³³ More importantly, there is a need for greater understanding about what protective factors may prevent intergenerational offending.³⁴

When this group of children are treated as future criminals, it is unlikely they will receive either a “fair go” or the kinds of supports that will address their needs. It is only when this group of children are seen and heard as citizens and rights-holders that systems will be able to collaborate effectively to support them.

For this to improve, policy and practice should be informed by the voices of children and young people themselves, as well as by their parents and carers.

Children with incarcerated parents have diverse experiences and their life outcomes are directly impacted by the quantity and quality of the supports they receive. Evidence suggests that early identification and timely access to appropriate support can be major factors in helping to reduce the likelihood of intergenerational offending.



What children and young people told us about having a parent in prison

Children and young people told us that ‘everything changes’ when a parent goes to prison. They talked about changes to their ‘whole lifestyle’, from what they eat and where they live to how much money they have and how they sleep, feel, and communicate.

“ Put food in your mouth but bland, lose appetite eg. instances when did not eat for a week – feel constantly sick.”

“ So stressed feel empty inside.”

They described their confusion, fear and numbness as a loss of connection and hope; a loss of control of emotions; a loss of ‘that general sense of security’ and stability, of ‘goals and ambition’, privacy and dignity, and of special occasions. Children reported how unreal it feels to come to terms with parental incarceration and how difficult it is to ‘realise what is happening’, ‘process it’ and ‘accept’ it.

“ Coming to realisation they’re not coming home – go from kissing them good night every night to I’m not going to see you maybe once a week if you’re lucky.”

“ Have this lasting feeling – doesn’t feel the same as it use to.”

Children with incarcerated parents focused on the impact it has on their ability to trust and maintain healthy relationships – not only with their parents and carers, but also with

their peers, friends, siblings and other family members. They described their feelings of isolation, hopelessness, and anger ‘at everything’, their fear about what is happening, and the ‘anxiety that builds up’ about how to talk to people. Without feeling heard or receiving appropriate support, many young people described how they would sometimes ‘take it out on others’, ‘withdraw’ and ‘shut people out’.

Many children and young people expressed fear that their parent would forget them as well as uncertainty about what would happen to their siblings. Others focused on how a lack of safety and stability at home impacts on their education, compounds their social isolation, affects relationships with friends, while also increasing poverty and their ability to afford food and somewhere to live.

“ No money, can’t go out with friends – lose contact.”

“ Saving money so you don’t eat.”

“ It takes a long time for me to open up to people. Even talking to counsellors is difficult.”

Some young people reflected on how they were forced to gain independence and maturity when their parent went to prison, and how this isolated them from their peers. They reflected on a lack of understanding, support, and information from their peers, as well as from the significant adults in their lives both inside and outside of school.


Others reflected on how the experience of parental incarceration changed their outlook or 'sense of morals', describing that they no longer 'take so much for granted'.

- “ *Mature faster. Friendships (change). Older friends. Mental instability.*”
- “ *Doing things on your own, independence, life changing things.*”
- “ *Gained a large appreciate for the smaller things – never as a kid think you'd appreciate \$1 frozen coke as a given.*”

Children and young people's access to support was impacted by their capacity and the opportunities made available to them to safely express their feelings. Many of them described being told, either explicitly or implicitly, to keep their circumstances secret, and many were fearful of how others might respond if they were to find out about their parent's whereabouts. They feared others might 'change their opinion of you' or 'judge you' as though 'you are like your dad'.

- “ *Kept self safe by not telling judgmental people.*”
- “ *Others your age don't understand.*”
- “ *Lasting impact on cross generations, my son doesn't know his poppy.*”

The children and young people who participated in the consultations wanted people to understand that 'everyone's different', and that 'not everything comes to everyone the same way' and as such 'not everyone comes out the same'. Their experiences and perceptions highlight their invisibility to many of the systems and services with which they have had contact as a result.



“We have had a rough childhood. We don't show it but we are hiding it.”

- “ *It's always in the back of your head.*”
- “ *Kids don't stay the same. Their feelings change.*”

Children and young people with incarcerated parents consistently reported needing more information at every stage of their parent's contact with the justice system. They wanted to know much more about what was happening and why, what they could do, and where or who they could go to for support. These factors were seen as a precondition for 'coming to terms' with the significant changes to their lives, as well as enabling them to keep connected to their families and community.

- “ *I can't get help if I can't understand it myself.*”

“ The parent still did a bad thing, the family needs to know the entire story to help grieve. Not coming to terms with the reality doesn't give any type of closure or reach out for children who need help understanding.”

In particular, children and young people wanted to be informed about whether their parent was okay, how long they would be ‘in there’, and when the parent would be ‘coming back’. They also wanted to know ‘if there is anyone out there with a similar situation’ who could ‘really understand’ and make them feel less scared and alone.

“ Visits were weird having no idea what happened.”

“ No one listens to you because you're so young.”

“ Just because you're a child doesn't mean you can't be told the harsh truth.”

“ Very important to know stuff. Lots of secrets in the family – ruining family, accidentally sharing info think others know, drama, arguments – siblings knowing more than each other.”

“ Been lied to many times, then the other parent tells different stories. Then when truth comes out they said we were trying to protect.”

Children and young people drew on their personal experiences at specific points of contact with the system, identifying small changes to processes and practices that they believed would have made a significant difference to them.

The examples for change they gave were for each stage of their parent's arrest, sentencing, and incarceration, and with a belief that if they were implemented they would also be likely to produce positive outcomes for the broader community as well.

Above all, young people wanted to be listened to, and to have someone to trust, to talk to and ‘hear us out’ as part of a ‘network that would reach out as soon as a parent/guardian gets locked up’, if not earlier. As one young person said:

“No one was helpful – but they could have been.”

“ Want people to understand it's not easy growing up with a parent in prison.”

Children and young people consistently described the legal system as ‘confusing’ and overwhelming, particularly in decision-making about their parent's bail, sentencing and release from prison. They said they would constantly wonder what was happening, and how long their parent would be in prison.

They reported receiving very little (if any) information about the nature of these decisions, when and why they were made, and the potential impacts of these decisions on them and other family members. They described being told one thing and making plans around this, only for this to change without adequate explanation. They described losing hope, and the negative impacts on their trust in the adults and systems around them that followed.

“ Legal system is confusing.”

“Kept given different dates when Mum would get out, court changed dates – still being told dates, stop telling me – another slap everytime.”

Their invisibility in decision making, compounded by a lack of information and support, made it difficult for children and young people to navigate and cope with their parents' key transitions through the justice system; transitions that were already associated with complex emotions. In particular, young people described not knowing how and what to feel about their parent's release from prison and feeling ill-prepared and isolated, particularly as the courts seemed to change release dates in an ad hoc way. This increased their anxiety and made planning difficult.

Children also said that 'depending on the crime', they 'may be afraid' of their parent 'when they get out'.

“ Might not always be the same situation as what is in their head – they might not come out as the same person.”

“ When mum came out didn't know how to feel happy or (is she) better off in there.”

Children also said they wanted to know what their parent was thinking, both at the time of offending and when completing their sentence and being released.

What parents in South Australia's prisons said about how systems could better support their children

Parents across South Australia's prisons shared the strong belief that their children did not deserve to suffer for their crimes. They highlighted the need for more immediate and ongoing support for their children to be made available and identified changes to systems and processes they believed would improve their children's visibility, circumstances, and outcomes.

Parents described maintaining contact with their children as being key to their child's wellbeing, relationships, education, and long-term outcomes, as well as to their own motivation to 'stay out of trouble', 'do something different' and engage in rehabilitation.

“ Need to sort things out so can see them when I get out.”

At the same time, however, parents noted that key systems in place across adult justice and corrections did not consistently – if ever – recognise their status as a parent. They said when no one asks if you are a parent, or if there are children in your care, it is extremely difficult to prioritise the needs and expectations of those children and to get the necessary timely and ongoing support you know they will need.

“ Judge only one who look at past (asked how many kids).”

Parents reported diverse experiences both within and across different prison settings, and how these varied according to factors that included the nature of their sentence, their relationship with their child or children prior to incarceration, and the level of connection they had with their child or others on the 'outside' during their time spent in prison.

Some parents said that they knew their kids didn't consistently know where they were, or that they as parents didn't consistently know where their kids were. Many parents reported having no choice about what their children were told about their whereabouts or circumstances when they were sent to prison. They wanted to see changes to how and what information is shared with their children, including more opportunities to be part of the decision-making around what happens to them as a result of their incarceration.

Many parents also said that their child's ability to cope depended on the information and financial and practical support available to those caring for them outside of prison; whether this was the 'other parent', grandparents or other carers, including kinship or foster carers. They said that more support for these 'other' carers, as well as support for the incarcerated parent is needed to build or rebuild relationships they considered key to providing their children with adequate support.



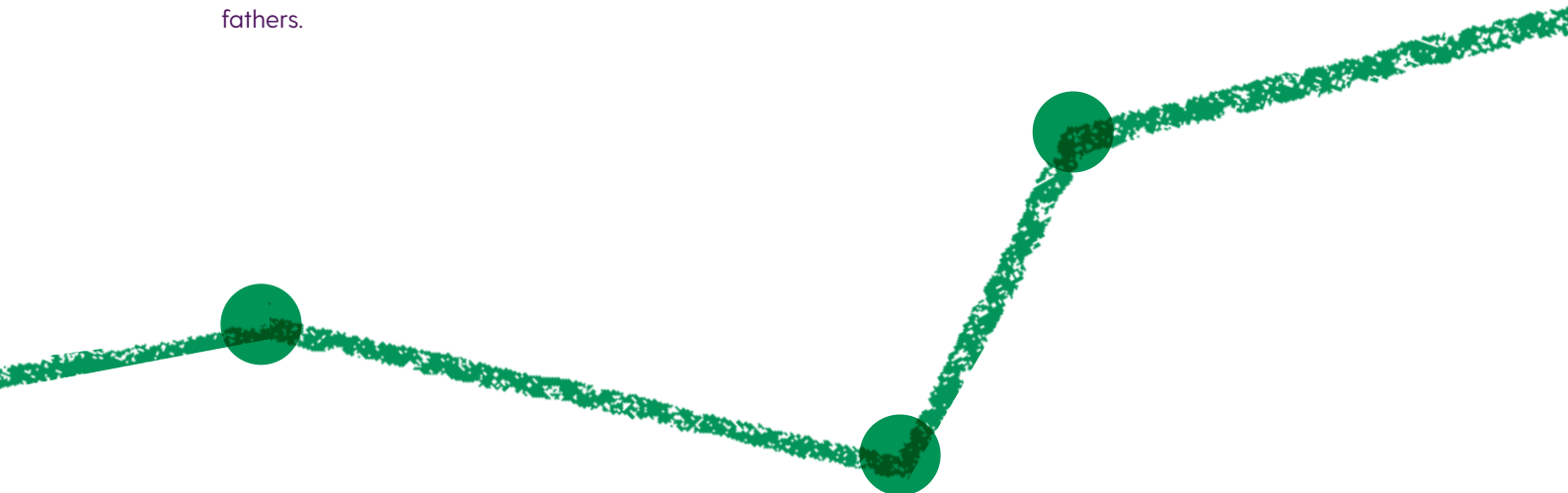
Parents also wanted more support for themselves to 'be better parents' both during their incarceration and post-release.

They said that alongside other support to find housing and work, 'stay off drugs' and 'rebuild relationships' they wanted access to more comprehensive and positive parenting programs that covered child development, relationship-building, and how to effectively engage and communicate with children at different ages. This included more opportunities for peer support and learning.

There were significant differences between the experiences of incarcerated fathers and mothers. While the Adelaide Women's Prison has child-friendly infrastructure and runs parent support programs for incarcerated mothers, this was largely not the case for incarcerated fathers.

Mothers also reported a disparity in opportunities available to mothers in Adelaide Women's Prison compared to Port Augusta Prison, where parenting support programs for women prisoners were not consistently available.

Aboriginal mothers and fathers described the importance of 'teaching your kids, your way, by your Law' and highlighted the difficulty there is in sharing cultural knowledge and traditional practices with their children while in prison. They wanted access to more programs and support services developed and delivered by the Aboriginal community in a culturally sensitive way. In particular, they would like to see more Aboriginal family practitioners made available to support their children.



SYSTEMS INSIGHTS FROM CHILDREN AND PARENTS



Department for Correctional Services

What children and young people said about their contact with correctional services and visiting their parents in prison

For children and young people with a parent in prison one of the most important things was being able to have meaningful contact with their incarcerated parent, and yet this was also one of their biggest challenges. They spoke about the importance of contact and visits to put their 'mind at ease', to know their parent's 'real situation' and to be reassured that their parent is okay.

“ See their house. How they live. What they do there. Routine. See how they keep their room. If visits were adjusted, I'd be able to have a closer relationship with my mum. Being able to ring my mum or request to call her”.

“ The hardest thing in my life is not going to see mum in jail.”

When talking about their visits to prison, children and young people described the difficulties of both 'getting there' and 'being there', and made suggestions for small changes to the timing, frequency and length of visits, staff attitudes, physical environments, as well as what types of activities they can do with their parents during their visits to improve their overall wellbeing. They said addressing these things would help to significantly improve their visitor experience.

While young people described being excited to see their parent during their first visit to prison, most also described how it 'didn't feel right' and how they 'cried a lot' afterwards. Many described how it 'got easier as they got older'.

They were adamant that they 'deserved to get to know' their parent regardless of their parent's incarceration, and that they wanted to be treated with respect, rather than punished for their parent's situation.

“Why should we suffer?”

Children and young people reported that they did not receive information about what kind of contact they could have with their parent, either on the phone or face-to-face, prior to their visit. Without clear information about what to expect, and any understanding of the reality of their parent's situation and environment, children were left to imagine what was happening, often with upsetting and discomfiting scenes from 'American TV shows' and use of 'handcuffs' coming to mind.

“ What you see on TV is different.”

Children and young people reported that the timing, frequency and length of time allocated to a phone call or face to face visit with their parent was insufficient to enable meaningful connection. One of the most common suggestions to address these issues was to increase the length of visits and the frequency and timing of phone calls. The cost of calls for children was also an issue.

“ 15 minutes, 80c landline, \$3 mobile – need to be cheaper.”

Longer visits were seen as crucial, particularly given that it took many young people a long time to travel to the prison, which could be far from where they were living. It was also difficult

to make journeys that were long and costly when they had limited or no reliable access to transport. While some described being 45 minutes away, others reported being at least 3 hours away and suggested allowing video calls at least once or twice per week to complement face-to-face visits would be one way to help.

- “ Visits are only 40 minutes, some live further away, so long way to go for a short time.”
- “ Need more time, for meaningful interactions, important for young people, not just about relationship with mum.”

“Can’t open up with someone standing next to me the whole time.”

Children and young people’s experiences of visits varied from prison to prison, as well as according to their individual circumstances and level of family support.

For children and young people in care, contact was particularly difficult. There were also negative impacts when parents were ‘rotated’ or transferred to a different prison in a different location, potentially further away from their family, and done without any consultation or notification to families.

The further the distance between a parent’s prison and their child the greater the risk of lack of contact issues. As demonstrated in the 2020 SHINE for Kids study, families who reported travelling more than two hours to visit the prison were three times more likely to report problems maintaining contact with the incarcerated family member, compared to those who travelled less.³⁵ Transport and distance also disproportionately impact Aboriginal families and those in regional and remote areas. As such, additional support is needed for these families.

Children and young people described how prison environments are not designed to meet the needs of families and are not conducive to genuine connection between children and parents. They described visits as loud and crowded with a lack of access to necessities like food and toilets, or change rooms for infants and babies.

Children and young people wanted visits to feel ‘less like a prison’ and more ‘natural’ and home-like. They wanted visiting spaces set up for a range of ages with soft furnishings, ‘hang out’ and play spaces, toys, food, and drinks. Older young people reflected on how difficult it was to share ‘big life changing things’ with their parent while in a prison setting, or to have ‘normal’ parent-child conversations about puberty and growing, such as ‘periods and boyfriends’.

Children and young people sought opportunities to do ‘simple, everyday things’ with their parents to ‘feel normal’, or as normal as possible. They wanted opportunities to ‘bond’ with their parent, spend time with them, hug them, and speak to them at any time. They suggested being able to ‘make stuff’ and ‘do stuff’; play sports, games, or play with toys together, do colouring in or craft, bring snacks, or do their schoolwork or artwork for ‘show and tell’. They also wanted occasional movie nights or sleepovers together, and opportunities to ‘share more photos’ and to exchange gifts.

- “ Need to be able to do motherly daughter stuff, cook together, go to visit her work, her house, see where she lives.”
- “ Being able to go to the toilet during visit. Activities/board games. Being able to give mum stuff during visit (just as long as it’s okay to).”

They wanted visits to be more private and confidential, where it was ‘easier to say stuff’, preferably with a separate space for each family. Some would like to have a support

worker present during visits as a trusted source of support and information, while others suggested a 'homework club after school' with their parent would be good.

“ Food & drink. 2 hr long visit. Outside visits. Xbox. Better support for kids in care. Playstation.”

“You can see them but can't be with them.”

“ Longer visits time. Food. Crafts. Being able to do hair. Make-up. Less strict. Being able to bring in stuff to show. Toilet times of not going during visit. Chair distance. Touching. Dress code. Birthday visit.”

One of the hardest things many children identified was a lack of physical contact with their incarcerated parent, because 'sometimes all you need is a hug'. Some young people reported how sad it was that 'siblings can't all go at once', with one young person describing the impacts of this as seeing their brother 'upset every day'.

“ Spending time with siblings and mum at the same time (even just going out for lunch).”

Many children and young people focused on how their experiences and feelings towards special occasions and milestones changed negatively when their parent went to prison. They described 'missing out' on birthdays, Christmas, and other significant days, because visits are not necessarily accommodated during these times, and the exchange of cards or gifts into and out of the prison is prohibited.

“ [You miss] birthdays and Christmas – don't have anyone to celebrate it with or for you – big wake up call – ever since lost that feeling the buzz of the holiday.”

Children and young people wanted to be able to celebrate these occasions with their loved ones,

ideally in person. Or at least be able to phone in where visits are not possible. They also wanted some leniency for contact with their parents on compassionate grounds; when they needed their parent because of a death in the family.

“ Grandad passed away and Dad couldn't even get a visit.”

More broadly, children and young people suggested having 'special days' every three months or so, where children and their parents could have a BBQ and a chance to be outside and play football or other sports and games together. Others highlighted the need for Family Fun days that are well advertised so that many families go and so children can relate to other children going through similar experiences.

It was clear that the attitudes and behaviour of prison staff had a significant influence on children and young people's experiences. Children and young people described the most positive visits as those where the staff were 'nice'. But this was only reported 'sometimes' and it was commonly reported that 'different guards have different rules'. Children and young people described how they were made to feel as though they had done something wrong, and were being 'watched' and 'told off' when they went for their visits.

“ Having parents in prison is hard enough as it is and guards being rude and disrespectful makes it worse and makes us feel like shit.”

“ Some officers can be nice, sometimes rude.”

“ They waste time at entry even though they tell you to arrive 10 minutes early.”

They expressed frustration at visit times being cut short due to them being made to wait upon entry for no clear reason. Or visits being cut short at the end, also for no clear reason. Young people described feeling 'belittled' by staff who 'think they're better than you', and how this lack of respect compounded how

scared they felt during searches undertaken after visits.

“Raised voice when time's up. On the spot, no notice, no good-bye time.”

“ Not getting told off for hugging your parent too long or [prison staff] cutting visits short.”

Children and young people acknowledged that there are many considerations for correctional services staff, particularly regarding security. However, there was also a real sense that relatively small changes could be introduced to make processes and environments more child-friendly, and that these could align rather than conflict with other security and safety concerns and considerations.

While most children and young people wanted to keep in contact with their incarcerated parents, they described the nuances of their experiences, and complexity of emotions, as difficult. Some spoke about the emotional impact of seeing their parent in prison, particularly when they were worried about their ‘other parent’ struggling with inadequate support. Many children and young people wanted greater opportunities in the prison for their parent to be recognised as a parent, and for them to receive practical parenting support while there.

“ Seeing him knowing one parent doing everything.”

“ Mum very worried and worry, overprotective – especially when he came out, worried he would look for her.”

The 2020 SHINE for Kids Survey of Carers of children who had a parent in prison, undertaken during the COVID-19 pandemic, found that

the most suggested action to support children during this time was reintroduction of face-to-face contact visits. This suggestion was even more common than the need for psychological or social support.³⁶

Feedback on the experiences children and young people have when visiting an incarcerated parent include the following:

- Children and young people lack information about what to expect regarding contact with their incarcerated parent.
- The timing, frequency and length of phone calls and face-to-face visits vary from prison to prison and are falling short of meeting the needs of children.
- There is little or no transport assistance for children and young people who want to visit their parent in prison, and this is disproportionately impacting on those who live long distances from the prison in which their parents are serving their sentence.
- Children and young people are unable to ‘do things’ with their incarcerated parent (including celebrate special occasions or milestones), and this is a barrier to meaningful contact.
- The physical environment of prison is not child-friendly or youth-friendly, and lacks toilets, privacy, food, drinks, or spaces for play and relaxation together.
- The attitudes of prison staff have a significant impact on a child’s experience of visiting their incarcerated parent, and children report that staff can often be rude and intimidating during entry or searches, ‘punishing’ children by wasting precious time during visits.

What parents said would improve visits and contact with children during their incarceration

Some parents reported being asked about their parenting status and the whereabouts of their children upon entering prison. However, this information did not appear to be consistently collected, or to necessarily influence how they received information or experienced visits and contacts.

Like many of their children, many incarcerated parents shared nuanced reflections on the mixed emotions of visits with their children. Parents described the importance of visits to bring structure to their lives and to support their connection with their 'outside' identity. This helped them cope while in prison as well as motivating them to work towards better outcomes upon their release.

Parents also described how visits can bring up past trauma and be stressful and emotionally difficult, both for them and for their children. While parents wanted to stay connected to their children and valued contact, parents also said they didn't necessarily want their child to be in the prison environment.

They raised other concerns about visits being too infrequent, not long enough and expensive. Some noted that the visiting centre at their prison, which held up to 500 prisoners, only had 60 chairs with only three times made available for visits over the weekend. Others were concerned about a lack of information and communication between corrective services staff and their families, particularly when it came to prisoners being 'rotated' or moved between prisons. Parents noted that decision-making around rotation between prisons did not consistently take into consideration the location or needs of their children.

Barriers to both 'getting there' and 'being there' were exacerbated for families who lived far away from the prison, and who had no access to affordable and safe accommodation nearby. They also said that the cost of phone calls or sending mail to their children limited their ability to maintain good connections.

Incarcerated mothers and fathers made several suggestions to improve their child's experience, and foster meaningful connections during the period of their incarceration. These suggestions included providing:

- more opportunities for longer and more frequent visits
- more opportunities for children to visit separately to other adult visitors
- more opportunities for multiple children, or larger families to visit at the same time, particularly when they have travelled significant distances to get to the prison
- more information for children about their parent's incarceration, including what to expect at visits and what kind of physical contact will or won't be allowed
- quality information and programs for parents about child development so they can learn how best to communicate with their children, including opportunities to participate in joint programs with their children
- training for prison staff to better understand the role many prisoners have as a mother or father, and the need to support parent-child relationships
- contact and visits with children framed around the rights of the child and not as a privilege for the incarcerated parent that can be removed as a form of punishment
- child-friendly environments across prison settings including easy access to:
 - toilets, without 'toilet time' being taken out of their visit time

- food and drink
- toys and/or a playground
- separate family rooms; and
- opportunities to ‘do things’ with their children, including outdoor activities.

Many parents felt that more opportunities to participate in meaningful activities with their children when they visit would improve their child’s experience and overall wellbeing. Parents understood this could, or would not necessarily be a regular occurrence, but nevertheless felt there should be more opportunities for families to visit for longer, including up to ‘a day’ or ‘for a whole weekend’. These would be special occasion visits where families could ‘cook up a feed’ and engage in other fun activities together. They also sought more financial and practical support for their families, so they can afford transport, food and ‘somewhere safe to stay’ nearby when they do come to visit. A number of fathers wanted ‘footy days’.

Others were seeking permission to be alone with their child, or to be granted supervised home visits to connect with their child in a more ‘normal’ and familiar environment, pending it was safe for the child for them to do so. Parents explained that phone calls with their children could be hard for everyone, particularly when there are not enough phones, or not enough time allocated for calls, which also cost a lot of money.

Some parents, particularly those with children who lived interstate, recommended that Skype or FaceTime be made available. Since commencing work on this project, video calls have become more available due to a ban on face-to-face visits put in place because of COVID-19. Parents said that where possible, it was important phone calls and video calls not be substituted for face-to-face visits. Both postage, phone calls and video calls needed to be more accessible and affordable, particularly for those children with limited or no Internet access, including families living on the APY lands.

SA Police

What children and young people said about contact with police

Just as children and young people's experiences of prison visits were significantly shaped by the attitudes of staff, their experiences with police also appeared to come down to the behaviour and attitudes of the police officers with whom they came into contact.

Young people who were present at the time of their parent's arrest described being treated as an extension of their parent; as 'criminal' or 'guilty' by association. Others described feeling invisible, ignored, and as though they had 'no control' over what was happening during searches, raids or arrests.

“ Privacy. Having no control... Watching other take our belongings.”

“ Raided (by Police) – treated the whole family like shit and scum and like it was my decision to be in that situation. From the second they rocked up they were rude, talking down.”

Where a child was not present during an arrest, children and young people were clear they needed to be provided with information about what had happened to their parent, what was likely to happen next, and what this meant for their living arrangements and education in the short term at least.

Given that police are also a bail authority, consideration should be given to the impact bail decisions will have on the child or children of an offender.

Children and young people wanted opportunities to access key support services at an earlier stage in the process. This requires different agencies across the adult corrections system to have processes put in place that enable them where appropriate to share information to identify

any children of adults they are arresting or sentencing for referral to support services. In some cases, particularly where their parent's offence was likely to be subject to remand or a custodial sentence, young people said it would have been helpful for the police and courts to have notified support services on their behalf, including their school. That way they were not having to do so themselves.

Since our consultations with children and young people took place, SA Police have made changes to General Orders to clarify that officers should avoid arresting parents in front of their children, acknowledging that this can be a traumatic experience. This is a simple yet positive change, with significant potential to lead to better outcomes for both parents and children, as well as for police officers.

What parents said about the impact of their interactions with police on their children

Some parents raised concerns about their interactions with police, and how this impacted their children directly or indirectly.

A number of parents reported being arrested multiple times, or held in police cells without being asked whether they had children. In other cases, where police were aware of an offender's parental status, some parents described threats or intimidation from police that weaponised their children against them, or that significantly undermined their confidence as parents.

Reported examples included instances of police threatening detainees that they will 'lose your kids' if they fail to share information with police, including incriminating information. Others were told they were a 'bad mother' or 'bad parent' for having committed a crime.

Department for Child Protection

What children and young people said about being in care and having a parent in prison

While all children and young people affected by parental incarceration reported challenges in maintaining pre-incarceration levels of contact with their parent, those in care faced particular challenges regarding contact and access arrangements while their parent was in prison, as well as reunification after release.

“ Monday to Friday, no visits unless court ordered for Guardianship kids.”

“ No visits harder. Constant reminder of what he did.”

Children and young people in care also described being separated from their siblings and that they ‘hardly saw each other’ while their parent was in prison. As one young person said, ‘when Dad has kids to multiple women, contact gets lost’ between siblings ‘when he is locked up’.

Children and young people described what they thought were important characteristics for DCP workers to have. They wanted staff who understood the importance and meaning of children having contact with their parent, both in and out of custody, and who supported and encouraged positive contact.

They also wanted staff to communicate between each other and between children and their parents in ways that demonstrated their interests were being taken into account.

For example, it was important for children that workers told their parents that the child had received the parents’ letters and vice versa.

“ Scary to go looking for places [for help] – especially somewhere to stay.”

“Moving to youth shelter is one of the most uneasy feelings you can have. Going from living with people you know, love and trust to living with strangers.”

Some children and young people identified alternatives to being put in care, from being ‘put with other family’ or supported to live independently if the young person is old enough. Many young people also identified a need for more support, particularly psychological support, for children who had experienced emotional or physical abuse.

They described the need for counsellors to be neutral and respect their privacy. Some children reported experiences with child protection social workers who would ‘report back’ about conversations children had with their counsellors to parents, carers or the Department frequently, including when this was not considered necessary or appropriate.

What parents said about contact with their children when they were placed in care

Parents with children in the care of the Department for Child Protection or foster care highlighted challenges maintaining contact or arranging visits with their child or children.

Some parents described having limited (if any) contact with their child while they were incarcerated and receiving no information about their child's care, while others were distressed and concerned that they had no opportunity to contest a Guardianship Order if it was placed during their incarceration.

“ No visit for 3 years, 3 kids with foster carers, daughter in foster care, they don't want her to visit.”

Parents understood the reluctance of carers or the Department to bring children into prisons, particularly for younger children. At the same time, however, they felt helpless and concerned about both the short and long-term impacts of their separation from their child, which they often felt was contrary to their child's best interests.

Parents in prison view access to children as a motivating factor for improving their lives while in prison, and upon their release. They wanted the Department for Child Protection, carers, social workers, decision makers, and staff across the courts and prisons, to be more proactive in working together with them to support child-parent connections, starting with sharing information as requested and supporting visits and phone contact on a more regular basis.

Parents were clear that there needs to be more focus placed on supporting them to rebuild relationships with their child or children where it is safe to do so. They also wanted support to maintain pre-incarceration levels of contact with their children while in prison, as well as with the broader community upon their release.



Education

What children and young people said about their interactions with the education system

Children and young people spoke about how their experience of parental incarceration affected their attendance, participation, and achievement at school. They reported that their ‘grades went down’ and that they had ‘trouble’ at school while they dealt with overwhelming emotions, stress and disruption to their daily and weekly routines.

It was also common for children and young people to report taking on additional caring responsibilities for other family members when their parent went to prison. In addition to time scheduled to get to and from prison visits, these additional responsibilities often reduced school attendance. They felt that these added difficulties were often overlooked.

Given the amount of time children and young people spend at school, schools are considered and recognised as a key protective factor for them. Principals, teachers and other school staff need to be made aware of the needs of children affected by parental incarceration, and should be equipped and prepared to provide appropriate, timely, and practical support where and when this is needed. This includes strategies for deflecting bullying and victimisation of this group of children by other students.

While in high profile cases, schools are likely to be aware of students whose parents are offenders, schools are not automatically informed by the courts or correctional services when a child’s parent is sent to prison.

As a result, it is hard for schools to respond appropriately to the needs of the students affected.

Children and young people shared mixed views about whether schools should be informed when students have parents or carers in prison. Many did not see any value in this because of their own negative experiences of how their school responded to their situation. It was common for young people to report school staff – from principals to teachers and counsellors – breach their trust by ‘snitching’ and ‘talking to each other about you’. One young person described how their principal ‘told the whole class’.

“ You would never tell school, they snitch.”

“ School counsellor don’t do much. Strategy didn’t match the situation.”

Some young people described how their school ‘didn’t care’ or didn’t respond appropriately, and others wished their school would have ‘let me have time’ or worked with them to ensure their response ‘matched the situation’.

Despite having had negative experiences at school, young people felt that in the main it was important for teachers and schools to know about students affected by parental incarceration in order to be able to support them to keep connected to learning and to better manage their stress and emotions.

“Schools need to know we are still human, and we still mean something to someone.”

“ Teachers should know – just certain teachers for support.”

“ Support around stress, coz stress and learning is hard.”

What parents said about support for children in the education system

Parents also focused on the potential for changes outside of the adult justice and corrections system that they felt would make a positive difference in their children’s lives.

Parents felt that schools and the education system could do things differently to better meet the needs of children affected by parental incarceration. Parents described how schools ‘shut it down’ and told children of families to ‘keep it quiet’, for example by ‘not talking about visiting mum in prison on the weekend’. Some parents described how their children were pushed to change schools under a different name because of the stigma attached to them.

One parent described calling their child’s school principal from prison because they were worried the school might expel their son ‘with the assumption that he is the same’ as his incarcerated parent.

“ Parents were gossiping amongst each other – Principal said it would be better for [the] child to change schools.”

Parents noted that there did not appear to be any process at schools or at the department level to identify vulnerable children, let alone provide them with extra support. Most reported that school-based counsellors were not equipped to provide the necessary support,

information or referrals needed by a child with a parent who had been incarcerated.

They felt more could be done to provide proactive support for children to stay engaged in their schooling and education in ways that respected their privacy and did not perpetuate stigma and isolation. A small number of parents reported receiving their child’s report card from the school, while others received no communication at all and thought they would benefit from some updates from their child’s school from time to time.

Mostly, parents wanted to see changes in the way schools and the community view children of incarcerated parents, to reinforce the message that a child or children should not be blamed for the behaviour of their parent. They felt the media had a significant role to play in promoting this message.

Parents raised concerns about media coverage that is insensitive to children’s safety, privacy and rights. They described the significant impacts of ‘what kids see on TV’ or in the media, not only at the time of their parent’s arrest and parole, but well after. Often ‘catching kids off guard’, this media coverage forced them to be constantly revisiting their parent’s crime resulting in significant impacts over the long term.

When the media does not suppress the name or face of parents, it is not hard to find out who the child of that parent is. This news spreads quickly amongst parents and staff in a school environment, often without any support for the child concerned. In high profile cases, or protracted cases, parents thought their child would benefit from a mentor or mediator to support the child at critical times, and to also support communication between the child or children and their parent.

What children and young people said about the additional support they need

Children and young people told us that their families experience significant financial hardship when a parent goes to prison, particularly when the parent is the family's primary or sole income earner. Children emphasised the need for additional financial support to be made available for families who have a parent in prison. This needed to include support 'for kids to do the activities that help them release stress', such as play sport or engage in other physical and creative activities. These extra curricular activities not only encourage pro-social behaviours for these children they are also considered essential to ensuring children already at risk of social exclusion, do not suffer further due to parental incarceration.

One of the most common suggestions for additional support was to provide more specialised counselling at the time of the parent's incarceration. Others wanted access to a dedicated person at each prison, and in the community, who would be focused on the needs of children with a parent in prison. This person could support parents to have difficult conversations with their children about their offence, including what is happening and what might happen in the future.

In addition to coping with the significant disruptions to their lives, children and young people were also concerned about how their 'other parent' or carer was going to cope, often without any additional support. They described how this 'other parent' had 'changed', and how this impacted on their own ability to cope. There are also a substantial number of grandparents or other significant adults in these children's

lives, who become primary carers to children with incarcerated parents, often stepping into these roles without additional support, or any information about how to access it.

Further, media reporting of criminal offences, court proceedings and sentencing can be prolonged and detailed. There is often little or no regard given to the children of offenders as unique individuals with their own set of rights including a right to privacy. This can be very harmful to children and their families in high profile cases, particularly those involving child sex offences where the community response to such crimes is more likely to be ostracising and stigmatising of innocent children of offenders, who themselves may in fact be the victims of the crime.

Given the negative impact of this public attention and response such cases attract, there is a need for a designated response; one that includes social workers, psychologists and psychiatrists with expertise in this area, to be working with children who have parents in prison. These children should be provided with an automatic referral to support services as soon as a parent or carer comes into contact with law enforcement and the correctional system.

“ *That's the problem at the time – you don't know who can help.*”

“People telling me how I feel rather than asking me how I'm feeling.”



Getting it right: good practice examples from here and overseas

In addition to the significant body of research highlighting the impact parental incarceration has on children, there is also growing evidence of what needs to occur to ensure better outcomes for these children.

A move to ‘child-aware’ approaches at each stage of the justice system challenges the assumption that the adult criminal justice system and associated services have little or nothing to do with that adult’s child or children.

By listening to the diverse experiences and insights of children and young people who are being affected by their parent’s incarceration, as well as to the incarcerated parents of these children, governments can implement policy solutions that support every child’s right to the best possible standard of health, education, social and economic participation and connection with community. This requires a cross-agency approach in the interests of each child or young person being impacted, including by relevant agencies being obliged to act on behalf of the child at each point in the process and regardless of whether it is part of their core business to do so or not.

South Australia’s Department for Correctional Services acknowledges ‘poor family relationships’ as a ‘risk factor’ for reoffending, while

‘positive relationships and social networks’ are recognised as ‘factors that contribute to reduced reoffending’.³⁷ Nevertheless, such evidence is not consistently translated into practice across the corrective system or applied to any other parts of the criminal justice system.

To ensure evidence is being embedded into practice across the state’s justice systems, South Australia needs to learn from other parts of Australia, and the world. This includes observing how public policy responses are being developed to support children whose parents are in contact with the justice and prison system, and tailoring them to suit.

“Your future only depends on you. Just because your parent has gone away it doesn’t mean you have to put your life on hold.”



Evidence of good practice being used by police at the point of arrest

Over recent decades, research has highlighted the effects of a parent's arrest on children, as well as the ways in which law enforcement can safeguard these children to ensure they do not subsequently 'fall through the cracks'.³⁸ Parental arrest is recognised as a 'key point of potential intervention', including referral to services that can respond to the specific circumstances of a child or children.³⁹

Recent amendments to South Australia Police General Orders are promising insofar as they clarify that arresting officers should take all steps to ensure that children are not present during their parent's arrest. Overall, however, there needs to be comprehensive policy, procedures, and training in place for police officers to enable them to address the processes and responsibilities that apply to a child prior to, during, and following their parent's arrest.

The US International Association of Chiefs of Police (IACP) has created a model policy that aims to minimise the trauma for children while 'maintaining the integrity of the arrest'.⁴⁰ The IACP model policy emphasises the 'shared

responsibility' to keep children safe at each stage of the arrest, and provides guidance for actions related to:

- **Agency coordination:** Collaboration and coordination between law enforcement, child protection services and other key partner organisations, including schools, health and mental health services, and youth organisations or programs, is 'essential for meeting the varied needs of a child whose parent has been arrested'. Responsibilities include developing cooperative agreements, holding regular meetings and sharing contact information.
- **Training:** To support the children of an arrested parent, police officers need to be given specific training that will enable them to communicate more effectively with a child or the children of an arrested parent. This includes having a better understanding and knowledge of the stages of child development. Training in relation to the respective roles, responsibilities and policies that relate to a child whose parent is being arrested should be made available to police staff, child protection staff, and other partner organisations involved.
- **Pre-arrest planning:** Those taking emergency calls should ask if a child is present at the scene and notify responding officers accordingly. Where reasonably possible, officers should delay an arrest until the child is not likely to be present, consider another time and place for making the arrest, or 'make arrangements to have representatives from appropriate partner organisations at the scene or on call'.

- **Making an arrest:** The model policy outlines both general procedures and specific procedures when a child is present or not present. A determination regarding appropriate placement of a child should be made regardless of whether or not the child is present.
- **Determining appropriate placement of child:** Although placing a child in the custody of child protection services may sometimes be the only option, it should 'not be routinely regarded as the only or even the best option'. The arrested parent 'shall be given reasonable opportunities to make alternative arrangements for care'. The child should be placed temporarily with a caregiver, often the other parent, a close relative, or family friend. Because 'if this individual is capable of assuming responsibility for care of the child' this can provide stability and familiarity that will help the child to cope with other changes. It will also help the child to understand that they have done nothing wrong.
- **Interacting with a child:** Parents should be given an opportunity to 'reassure the child and explain to them what is happening'. Where it is not safe or appropriate to do so, police officers shall explain to the child, in an age and developmentally appropriate way, what has happened to their parent, emphasising to the child or children that they have 'done nothing wrong and will be safe'. If officers ask parents about particular items or objects that provide their child with comfort, these items should be given to the child to take with them at the time.
- **Follow-up:** Wherever possible, follow-up should be conducted to support the continued safety and wellbeing of the child or children. Police departments may designate a liaison or arresting officer to work with partner organisations to determine the responsibility for and scope of this follow-up.
- **Documentation:** Whenever an arrest is made, the existence of any dependent child or children should be noted in the arrest report and documentation, whether or not they were present at the arrest. Collected information should include (at a minimum) the child's identity; any special needs; the contact information of any actual or potential caregivers, any involved representatives from partner organisations, or any adult who may need to be contacted for notification purposes, such as school officials, medical professionals, etc. The child's final placement and any other observations related to the child's wellbeing or living conditions should also be noted, including those that will require further investigation and response.



At court and during sentencing

Children of Prisoners Europe (COPE), an organisation working on behalf of children with incarcerated parents across Europe, has developed best practice guidance to ensure that children's rights are centred 'in and of themselves' during the sentencing of a parent or primary caregiver as opposed to considering children as 'personal circumstances of the criminal'.⁴¹

“ If a child is to be [...] imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them.” – Justice Albie Sachs, *S v M* (CCT53/06) [2007] ZACC18.

The toolkit draws on the landmark *S v M* case in South Africa's Constitutional Court in 2007, where a sentence was overruled on the basis that insufficient consideration was given to a mother's role as primary caregiver of three children. While Justice Albie Sachs did not include prescriptive directions, judgment included directives for future sentences in which children are concerned, including that courts should:

- Determine if a defendant is a primary caregiver.
- Use those means available to the court to discern the parenting status of the defendant and what effect incarceration would have on the child.
- Ensure that the child receives adequate care when a case clearly requires a custodial sentence.
- Determine an appropriate sentence if the sentence is clearly non-custodial.
- Consider the paramount importance of considering the best interests of the child if a range of sentences would be appropriate.

In jurisdictions such as Norway, to uphold the rights of the child, consultation with children at the time of their parent's sentencing has been standardised in Sentencing Guidelines.

A recent research paper from Australia's Productivity Commission on 'Australia's Prison Dilemma' notes that between 2012 and 2019 Australia's incarceration rate has risen by 31% despite an 8% decrease in the offender rate during the same period.⁴² It concluded that:

“ While acknowledging the community's desire to punish offenders and the need to maintain community safety, finding alternative pathways for some lower-risk offenders could deliver better outcomes for offenders, victims and the community and yield substantial savings.”



During incarceration

Researchers at Monash University have developed a 'strategic framework for good care planning' for children with incarcerated parents, based on evidence that incarcerated parents are more satisfied with care planning when:

- there were fewer movements of their children;
- prisoners felt involved with decision-making; and when
- police officers, lawyers, and corrections staff inquired about the welfare of their children.⁴³

A Victorian study shows that the immediate impact of parental incarceration was minimised when children had a supportive carer, knew where they would be living, and were aware of their mother's location, including when they could visit.⁴⁴

While many policies and practices in prisons are in place to ensure the safety and security of the prison facility, evidence shows that policies that encourage parent-child contact offer benefits without compromising a facility's safety or security.⁴⁵

The benefits of contact between parents and their children during their parent's incarceration include better health and welfare outcomes for both the incarcerated parent and their children and families, and better prison discipline more broadly. Beyond the period of incarceration, positive family contact – particularly alongside housing support, financial support, education support and support to find employment – has also been found to prevent re-offending and result in an overall better transition from prison back into the community.⁴⁶

The UK Ministry of Justice commissioned the Farmer Review, which found that the focus of rehabilitation initiatives lies overwhelmingly on employment and education agencies, yet improving family and relational ties can bring stability and structure to prisoners' lives and 'provide meaning and all-important motivation to these other strands of activity'.⁴⁷ Farmer highlighted that prisoners who receive visits from families or partners have a re-offending rate that is 39% lower than those who do not receive such visits.

Supporting family ties to reduce reoffending reduces broader social and economic burdens on corrective systems, as well as on health and social service systems operating beyond the justice system. This means 'fewer victims, more children growing up with their parents, fewer prisoners, lower costs, more prisoners taking advantage of educational and employment opportunities so that they come out and work, as well as more tax revenue'.⁴⁸

In Australia, the Mother's and Children's Program run by Corrective Services NSW at Emu Plains Correctional Centre aims to reduce the impact of parental incarceration on dependent children. The program allows children up to school age to live with their incarcerated mother on a full-time basis, while children from school age up to 12 years have the opportunity to live with their

mother on an occasional basis. Although there is limited formal evaluation of this program, it aligns with a child-rights approach insofar as it provides the opportunity for a closer and more normal parent-child relationship than would otherwise be possible.⁴⁹

SHINE for Kids is an organisation in Australia specifically set up to support children with a parent in the criminal justice system. SHINE for Kids runs programs in New South Wales, and several prisons in Victoria, one in the ACT and one in Queensland. Shine for Kids Programs provide:

- Child and Family Centres, which offer child-friendly drop-in centres and supportive spaces for families before or after prison visits.
- Child/Parent Activity Days, set aside for children with an incarcerated parent to spend time with their parents without other family members, and engage in everyday tasks not possible at a normal visit.
- Ride by Your Side Transport services, provide transport and mentoring for children to visit their incarcerated parent or to attend Child/Parent Activity Days.
- Prison Invisits Program provides activities for children during a visit to make visits more enjoyable for children.
- The ‘Belonging to Family’ program strengthens connections between Aboriginal and Torres Strait Islander parents in prison with their families, children, extended family and Elders in their community.⁵⁰

In partnership with the University of Western Sydney, SHINE for Kids also provides teachers with training to best support children with a parent in prison and provides primary school children with an incarcerated parent with tailored, one-on-one mentoring in the classroom. Data collected has recorded 96% of students in the RISE program feel more

supported in the classroom, and 80% of principals said teachers and the school community have increased knowledge of how to recognise and address the unique needs of students with an incarcerated parent.

A practice guide prepared for the United States Department of Justice by a committee of experts, *Model Practices for Parents in Prisons and Jails: Reducing Barriers to Family Connections*, highlights that the best contact for children occurs when prisons feel less like a prison, and when there is buy-in from frontline staff, as well as from prisoners, children and other family members themselves.⁵¹

Given that carers outside of prison can be key decision makers in relation to whether children are able to maintain contact with their incarcerated parent, it is important that support and guidance is made available to carers. This includes acknowledging the benefits as well as assessing the risk factors to children of these visits. In the absence of guidance, research has found that carers and professionals rely on personal experiences as frames of reference to inform decision-making, and that sometimes these may not be in the best interests of the child.⁵²

The engagement that informed this report has itself highlighted some positive practices. It is promising that the model of joint engagement with mothers and children at Adelaide Women’s Prison has formed the basis of an ongoing activity program for incarcerated mothers and their children. More appropriate facilities for visits are also helpful.

Correctional staff present during the joint session with incarcerated mothers and their children reported that they had ‘never seen anything like this done before’ and that it was ‘so lovely to see the women engage with their children in such a normal way’.

Our office identified the following aspects of the engagement session that made it powerful along with indicators of success for future practice, that include:

- Normalising interactions between parents and children
- Enabling enough time for meaningful encounters to occur
- Providing children with an opportunity to repair some of the harm that has been done to them by developing a positive connection with their parent; and

- Providing an activity for parents and children to do together allowing time for comfort and connection to be (re)established to lessen the intensity of the encounter.

It was observed that Mount Gambier prison allows 2 visits per day for 2 hours each, and parents said this extra hour and access to games like UNO allows for real connection and a 'real conversation' that wasn't possible in shorter or less frequent visits.

Responses from correctional staff reported that they had 'never seen anything like this done before' and that it was 'so lovely to see the women engage with their children in such a normal way.'



Next Steps

From my direct engagement with children affected by incarceration of a parent, it is clear the incarceration of a parent should provide the signal for agencies and service providers to systemically identify children who are at risk, and provide early intervention and dedicated support services for the entirety of their parent's incarceration. Where appropriate, they should also support families to reunite after a parent has been released from prison.

Currently the South Australian adult justice and corrections system does not see itself as being responsible for the children of an incarcerated parent. This systemic blindness is exacerbated by a view of prisoners as 'individuals' and the dominance of a 'tough on crime' approach to criminal justice.


While in some cases, incarcerating a parent or carer can provide a degree of protection to children, it can also result in enduring negative impacts on families and future generations. We've heard directly from children and young people affected by parental incarceration that it is not unusual for them to:

- Be treated as though they are also guilty of their parents' crime and serving a 'hidden sentence'
- Fall through the gaps of systems which have no clear protocols for identifying children, let alone understanding their needs, or providing information or appropriate and timely support for them; and

- Experience sudden separation from their parent and then struggle to maintain meaningful contact with them during the period of their incarceration.

This report also shows that this systemic blindness is not inevitable. It is possible to make small changes at each part of the system so that awareness of the needs of children and child-friendly policies and practices are embedded into all relevant systems and services.

If the parenting status of sentenced prisoners or those who are being held in remand, was identified at the point of arrest, this could be a starting point for a comprehensive approach that ensures this group of children are met with an appropriate systemic response. This would include determining which specialised support services are needed throughout all subsequent stages of their parent's incarceration and release.



Leaders and decision-makers need to work together across law enforcement, courts and corrective services, as well as in the media, education, and health systems and services, to ensure this group of children become visible at the earliest possible stage of their parent's contact with the justice system. This requires information-sharing and collaboration across sectors that traditionally do not interact.

More should be done across the community, through the media and via schools, to increase public understanding of the plight of this group of children, and to change public discourse in a way that promotes alternative and rights-based approaches to supporting them. This support should include counselling along with financial and accommodation support tailored to individual children's needs. This includes support to maintain engagement with their education as well as with their social connections and other activities that contribute to their physical and mental health and wellbeing.

We need to ensure frontline staff across these systems, such as support workers, social workers, psychologists and psychiatrists, are equipped to undertake the specialist work required to support children with an incarcerated parent.

These are opportunities for South Australia to not only reduce reoffending, but also to break the cycle of intergenerational incarceration, thereby reducing the risk of ongoing behavioural, emotional, health, and education issues for thousands of South Australian children whose rights we have a responsibility to ensure are upheld.

Endnotes

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