The Impact of Incarceration on Children’s Care: A Strategic Framework for Good Care Planning

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Victoria Police
New South Wales Police
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Department of Education and Communities – NSW

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1 As of January 1, 2015, a names of a number of Victorian State Government departments have been amended as follows: Department of Human Services is now known as the Department of Health and Human Services; Department of Justice is now known as the Department of Justice and Regulation; Department of Education and Early Childhood Development is now known as the Department of Education and Training. As this project formally concluded on December 31, 2014, throughout this report, the original, rather than new titles will be used for consistency.
Executive summary

In order to examine current care planning experiences and practices for children whose primary carers are arrested and imprisoned in Victoria and New South Wales, this multi-method study gathered primary data from 151 imprisoned primary carers, 27 carers, three children and two adult children, along with 124 professional stakeholders. Secondary data was sought from both statutory and non-government organisations about imprisoned parents and children. Relevant rights, legislative and policy documents were also reviewed.

It is clear that numbers of parents being imprisoned are increasing, as are the number of children affected, yet this group remains hidden and relatively few children and families appear to access relevant support. Little data has been collected from statutory bodies about this group of children, and responses tend to be ad hoc and based on worker knowledge and experience.

The findings of the study suggest there are key crisis points during a parent's journey through the criminal justice system – arrest, remand, sentencing, imprisonment and release – with little formal attention paid to children at each of these stages. A lack of formal protocols and guidelines concerning children, along with limited inter-agency communication, means responsibility for children is poorly placed and coordinated, with children typically not recognised or seen.

Children most affected by parental incarceration are typically young – primary school aged - and most are required to move from their family home when their primary carer parent is imprisoned. While contact between the incarcerated parent and the child is generally maintained, there is often no specific follow up or support for children or their carers and they often do not feature in any pre-release planning.

For incarcerated primary carer parents, findings suggest clear gender differences exist within the criminal justice system in terms of parenting support. While mothers are offered a range of parenting services and support, fathers are offered very little support of this kind and are arguably less prepared when returning to a parenting role in the community.

The study did uncover, however, examples of good practice within this process and opportunities for positive intervention at every stage. Findings indicate that when discussions about children take place between parents and professionals, parents are more satisfied with the placement of their children, with better outcomes for children.

The recommendations provided are made at each of the defined crisis points, and place children at the centre of the process whilst acknowledging incarcerated primary carer parents. These recommendations focus on the implementation of holistic services at each stage of the prison trajectory and would allow potential clients to seek assistance if, and when, it is needed. It is also recommended that data gathering processes are prioritised within key organisations, to more accurately understand the scope of the issue and to better address the needs of children. Recommendations also focus on areas for further research.
1. Background

Children of imprisoned parents have been consistently described as “invisible” or “unintended” victims of crime, as “orphans of justice” or simply as the “collateral damage” of the everyday workings of the adult criminal justice sector. In Victoria and NSW, where this study was conducted, there is no official record of the number of children affected. This invisibility is mirrored nationwide (Dennison, Stewart, & Freiberg, 2013). More broadly, there is a general lack of attention or coherence across Australia’s states and territories to responding to this group of children (Saunders & McArthur, 2013).

With the considerable growth in Australia’s prison population in recent decades (ABS, 2014) unsurprisingly there have been flow-on effects to families. Recent research in Queensland estimated that around 5% of children will experience parental incarceration in their lifetime (Dennison et al., 2013; Quilty, 2005); no recent national estimates exist. A 2013 survey by the Australian Institute of Health and Welfare (AIHW, 2013) indicated that some 28% of prisoners have at least one child; this is thought to be a considerable underestimate however, as around one-in-five of the study respondents did not answer this question. Accurate data on ‘parents’, ‘carers’ and ‘children’ remain unclear, with limited official data gathered on either the parenting status of individuals when arrested, sentenced or entering prison, or the status or whereabouts of any of their children. In some jurisdictions prisons do seek information about children, but this is not widespread, nor is the information gathered or used systematically.

We know particularly little about what actually happens to children when their primary carer is taken into prison: the processes which respond to them, their trajectory of care, or how crises and transitions are managed. This study seeks to fill this gap.

1.1 Children of prisoners: existing knowledge

Research conducted since the 1960s has tended to focus on seeking to understand intergenerational links in offending, describing the impact on children of parental imprisonment and describing who cares for them. As noted above, little research has focused on understanding children’s care. Parental gender differences have been regularly reported in relation to children’s care (Glaze & Maruschak, 2008; Johnston, 1995), with it being observed that when fathers are incarcerated, the vast majority of children remain in their family home, cared for by their mother, whereas, when mothers are sent to prison, more commonly children require alternative arrangements. It is important to note, however, that most research has tended to look at mothers separately or ‘parents’ generically and that there has been limited focus on ‘carers’ – irrespective of gender.

There have been considerable methodological challenges to building knowledge about children who experience parental incarceration (Flynn, 2008). Despite this, the findings have shown considerable consistency and the impact on families of parental imprisonment has been demonstrated to be wide ranging, from finances and housing (Arditti, Lambert-Shute, & Joest, 2003; Smith, Grimshaw, Romeo, & Knapp, 2007) to social stigma and isolation (Brown, 2001); and specific behavioural and emotional problems have been noted with the children (Flynn, 2008). Murray (2007, cited in Burgess & Flynn,
argues, however, that the extent to which these become problematic is likely to be mediated by other factors occurring pre, during and post imprisonment. Kruttschnitt (2011) also highlights the differential effects of parental incarceration, and makes a clear argument for a focus on the factors responsible for these variations, including external or systemic factors. She asks that we consider not just who is affected, but the processes which have an impact on outcomes.

In recent years research has subsequently taken on a more applied orientation, seeking to move beyond describing the impact of parental incarceration, to consider, for example, how to support these children and ensure better outcomes. Findings from UK research (Burns, Brandon, Oakes, Olopade, & Krikorian, 2007) indicate that while children of offenders are significantly more disadvantaged across multiple life domains than their peers, the current system provides neither coherent support nor continuity of care; services are essentially fragmented. The authors’ conclusions indicate that formulating effective responses requires a paradigm shift, to ‘think family’. They argue that as a key transition point within the criminal justice system, parental imprisonment should be used to trigger a formal response to their children of assessment and intervention. They further argue that attention also needs to be broader: on working towards collaboration between services for children and adults. It is clear from that study that some of the factors which may ‘make a difference’ include the orientation of the service system (adult vs. child), as well as a measure of assertive outreach and appropriate timing of responses.

1.2 Responding to children: ‘joining up’ adult and child systems

The criminal justice system is not the only adult-focused service system which is being challenged to see adult clients as parents. In Australia, changes in adult mental health services have been encouraged by research which drew attention to children (Cowling, 1996), by subsequent advocacy groups such as Children of Parents with a Mental Illness (COPMI) and strategies such as the Service Development Strategy for Families where a parent has a mental illness (FaPML) (The Bouverie Centre, 2014). The Alcohol and Drug Sector has also brought attention to children of adult clients in both research (Odyssey Institute of Studies, 2004) and the implementation of family focused training for Alcohol and Other Drug (AOD) workers (Scott, 2009). Addressing concerns in the health sector, St. Vincent’s Hospital, Melbourne, released a training DVD What about the children? Keeping children safe when your patient is a parent (St. Vincent’s Hospital, 2013). It is noted in the resource that when dealing with adults in the health system, information about children is not routinely collected or recorded and suggestions are made for clear procedures and resources for hospital staff to address this. It concludes by stating that in order to improve responses to children who may be vulnerable, adult services need to: ask about children; listen to parents; record the information; and share the information appropriately. It is clear that a range of adult-focused services have been, and continue to be, challenged to acknowledge children and respond to them adequately. In both Victoria and NSW there have been attempts to bring together key decision makers to better coordinate cross-department policies and programs which impact on children and young people. Both states also have a children’s

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commissioner. Whilst mention is made in places of children of prisoners, to date, however, there has been no decisive action taken regarding this group.

Parental incarceration is seen to provide specific challenges to cross-sectoral work, notably that ‘parental incarceration tends to draw children of prisoners, their caregivers, and parents into several systems that historically have not shared target populations, had common interacting problems, or worked together’ (Abram & Linhorst, 2007, p. 41). This can be seen quite simply: children’s services typically do not ask about parental incarceration, and adult services do not, as a matter of course, ask about children. This suggests that creating linkages between statutory and non-government services, and between prison and community based services, is essential to ensuring that children are made visible at an early stage in their parent’s contact with the correctional system.

1.3 Responding to children at parental arrest and sentencing

While children’s direct connection to the adult criminal justice system has received little specific attention, there has been some limited focus on the circumstances surrounding parental arrest. Arrest is seen to be problematic due to the number of children present when parents are arrested, as well as to the resultant trauma experienced by those children (Dallaire & Wilson, 2010). One of the very few studies which has investigated the specific responses of law enforcement agencies and child welfare organisations at parental arrest was conducted in California by Nieto (2002). The findings indicate clear gaps in responses to children. Less than half of the law enforcement officers who participated advised that they would enquire about the care of any child/ren present at the arrest of their parent/s; when children were not present, this was notably less (13%). Children of offenders were simply not routinely considered in day-to-day policing practice. Nieto (2002) describes a reliance on individual ‘instincts’ when evaluating how officers respond to children. The study highlights a number of issues of concern: the lack of awareness of parenting status/caring responsibilities of individuals being arrested; the lack of police policy around responding to children whose parents were being arrested; the absence of formal protocols between police and child protective services about these children; and poor communication between these agencies.

Subsequent to that study there have been some promising strategies implemented at parental arrest in the US, aimed at improving responses to children and reducing trauma. Puddefoot and Foster (2007) describe the development of formal protocols in two Californian jurisdictions for responding at all arrests where children are present; these protocols include the requirement that arresting officers ask about children, and document this, when arresting an adult. These developments are part of broader work in these areas, including the co-location of Social Workers in police stations for consultation and assistance with children. Similar cross-disciplinary work is described in the New Haven Child development-Community policing program in Connecticut, a now 20 year partnership between New Haven City, Police and Yale Child Study Centre. This project provides education about children and child centred practice to police and is a 24 hour consultation service; it requires police to document on the arrest sheet that they enquired about children; and progress and information sharing is maintained via a weekly program meeting. Most recently, the International Association of Chiefs of Police (IACP) (a US organisation) published Safeguarding Children of Arrested Parents (2014). This document is a model policy for responding to children. It is based on key principles: parental incarceration is an adverse childhood experience; parental arrest can have a lasting impact on children; and that
coordinating and responding to children's needs at the point of parent arrest has benefits for the wellbeing of the child, both in the short and longer term and can support the parent-child relationship. They are clear that the wellbeing of children can be maintained whilst preserving the integrity of the arrest and officer safety. Coordination is vital: “safeguarding a child's well-being is the shared responsibility of a number of partner organizations within the community, not only law enforcement” (IACP, 2014, p. 8). Key actions are seen to include: building interagency partnerships; planning, where possible, for arrests; asking about children at arrest; ensuring the appropriate placement of the child; asking about children again when parents are being processed into the prison/remand facility; follow up with the child/carer; and documenting information about children.

Turning to what happens when parents are sentenced, whilst there is limited research which focuses on this, in 2010 in Washington a new sentencing option was introduced to respond to parents and children. The Family and Offender Sentencing Alternative (FOSA) (Department of Corrections Washington State, 2014) targets parents of dependent children, who are found guilty of non-violent offences. It allows these parents, who must meet other criteria, to serve a 12 month period of community custody – with conditions and regular monitoring by the court - as an alternative to imprisonment. Although it is argued to be showing benefits in terms of recidivism trends and successful completion of orders, Leavell (2013) notes that there has been no formal evaluation to date.

Despite this promising initiative, little is known formally about children beyond the point of parental arrest; at a parents’ sentencing (in a more ‘traditional’ court setting), at the point of imprisonment or at post-release. Related research in the Victorian Children’s Court (Sheehan, 2001) investigated sentencing processes, finding that without guidelines, magistrates tend to rely on personal experiences to inform decision-making. How such discretion plays out in the adult court system, when sentencing parents with dependent children, is relatively unknown. Children's general invisibility during a parents' journey through the processes of arrest, sentencing and entering prison is, however, regularly noted (Brink, 2003).

See Appendix 1 for further examples of responding to children.

1.4 Caring for children whose parents are imprisoned

From the instigation of research in this area, there has been some interest in the formal processes or systems which children and families have to engage with when a parent is facing imprisonment. This focus was first evident in the seminal work by Zalba (1964) who profiled the experiences of 124 imprisoned mothers and their children in California. What was evident was the lack of formal supports, accessed or offered, for families, despite almost half of these children needing to move from home and almost one-in-four children experiencing behavioural problems. This study established three concerning and continuing trends: the social isolation of families involved with the criminal justice and prison systems; the poor linkages families have with formal support services; and the limited attention given to arranging the care of dependent children. The consequence of this limited attention has been described as the ‘haphazard’ placement of children. That children’s care is commonly ad hoc and informal has been reiterated in subsequent research. Later findings indicate that parents often feel they have no time to arrange care (for example see Healy, Foley, & Walsh, 2000; Hounslow, Social Research Evaluation Ltd, & NSW Family and Children's Services Agency, 1982; Sack, Seidler, & Thomas, 1976).
or feel unprepared for prison (Begg, 2002); at times this has been linked to a perception of inadequate communication with legal representatives (for example see Sack et al., 1976). It has also been suggested by Enos (2001) that women facing imprisonment have fewer resources to draw on, and when combined with hastily made plans this may result in inappropriate placement.

Beyond these general suggestions, little is known about what leads to such poor arrangements for children, what outcomes exist for children, or what could be done to improve this situation for children and families.

1.5 Post-release family reunification

There is currently limited knowledge of how or if families reconnect after a parent is released from prison, although the known challenges to reconnection centre around poor preparation for release and poor attention to children and families in the pre- and post-release phases. What actually happens in families after release is largely unknown. The few studies which have examined family reconnection have tended to rely on parents’ stated plans to reunify after prison, while an even smaller number of studies have actually gathered data in the post-release period (Anderson, 2003; Hayward, 2007; Martin, 1997; Stanton, 1980). It is also relevant to note that these studies have tended to focus on mothers, with subsequently little known about fathers who have a direct caring role with their children. A range of factors have been identified as influential in planning for reunification: pre-prison placement of the child (i.e. parent/s had a direct caring role), the age of the child, their personality, the previous parent-child relationship, length of sentence, and frequent opportunities for contact (Koban, 1983; McGowen, 1978) – this is often associated with a positive parent-carer relationship. Parental problems, particularly chronic substance abuse, have been suggested as hindering factors in family reunification (Enos, 2001; Martin, 1997). Flynn’s (2013) more recent findings, however, indicate that such problems may not always be prohibitive, and may be mediated by supportive factors – notably ongoing family support and heroin replacement therapies.

1.6 Lessons learned from cross-sectoral work: children whose parents are in contact with mental health services

Although there are clear ideological differences between the adult criminal justice and mental health systems, children of parents with a mental illness (COPMI) share many characteristics of children of imprisoned parents. These include shared shame, stigma, poor mental health outcomes, antisocial behaviour, abrupt separation from parent due to institutionalization, and limited access to services (Moses, 2010). Yet the service provision and advocacy for these equally vulnerable groups is vastly different.

Over the past decade, an increased awareness of COPMI has ensured that a number of services, interventions and programs have been developed to meet the needs of this group. One of these strategies includes an extension of the individual case management model to encompass family care plans (Reupert, Green, & Maybery, 2008; Reupert & Maybery, 2009). These plans incorporate both crisis planning (ie for relapse and hospitalisation) and care planning (relevant short and long term family goals) components. The aim of such care plans is to aid empowerment, enhance the family’s capacity
to manage during a crisis, reduce stress, minimise disruption to the family and to ensure that other crises are averted, such as children being placed into out-of-home care or siblings being separated. For family care plans to be successful, all key stakeholders – including relevant workers, parents, children and extended family members – must be included within the discussion. This ensures that roles and associated responsibilities are discussed, clarified and negotiated.

Family care plans within the mental health system may have some relevance for the criminal justice system because, as noted above (Moses, 2010) both groups of children will experience separation from the parent due to institutionalisation, separations may be abrupt and unplanned, and families typically experience a range of other difficulties. Appropriate coordinated care planning may be one way to manage the challenging and immediate circumstances experienced by these two groups of children, and to perhaps minimise the negative effects of parental incarceration. As noted earlier, one clear challenge to implementing an approach of this type (with children whose parent/carer is facing prison) is finding common ground between the systems involved, as each have distinctive underlying principles. Subsequently, it would also be challenging to identify who amongst the current ‘players’ would be willing and able to take a lead role on such an initiative. Yet any shifts in practice to become more responsive to children will require more than one organisation, and a cross government approach (Abram & Linhorst, 2007).

Despite considerable and growing numbers, there is little known about the circumstances and care of children whose primary carers are imprisoned. Responding to this issue requires us to understand the current experiences – what happens at the ‘crisis points’ of arrest, sentencing, imprisonment and release. Developments in other fields of practice, such as health/mental health can assist us in developing effective cross sector collaborations and interventions.
2. Methodology

As part of an Australian Research Council (ARC) funded Linkage project, this overall study sought to build Australian knowledge in this area, by describing the current care planning practices and experiences for children when their primary carer is incarcerated, in the Australian states of New South Wales (NSW) and Victoria.

Ethical oversight of the project has involved nine Human Research Ethics Committees (HREC) or Research Coordinating Committees (RCC) reviewing and approving the project. Data were sought from multiple primary and secondary sources.

2.1 Data sources

2.1.1 Secondary data

- Department of Justice - Department of Corrections Victoria: Prison reception data in relation to parents and children
- Department of Corrective Services NSW: Prison reception data in relation to parents and children
- Department of Human Services: Victoria: data were sought in relation to: children subject to child protection intervention where there is parental imprisonment, children in OOHC where there is parental imprisonment
- Family and Community Services NSW: data were sought in relation to children subject to child protection intervention where there is parental imprisonment, children in OOHC where there is parental imprisonment
- Study partner organisations (VACRO; SHINE for Kids; Prison Fellowship): where known this includes the demographics of children (such as age, sex, gender and CALD status), data on parental incarceration for children accessing these services, programs accessed within these organisations, and the care arrangements of children
- Rights frameworks, policy and legislation.

2.1.2 Primary sources

Expert professional stakeholders: 124 professional stakeholders from a range of sectors in direct contact with children and families of prisoners: magistracy, police, prisons, child protection, foster care and education participated; there was also representation from the non-government sector and community and government interest groups. Similar numbers of participants were involved across all

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4 These consisted of Monash University HREC, Victorian Department of Justice and its NSW counterpart Corrective Services, Department of Human Services Victoria and Family and Community Services in NSW, Police in both states, and the Department of Education and Early Childhood Development in Victoria, as well as the Department of Education and Communities in NSW.
5 This information was not available from the Victorian Department of Human Services – Child Protection.
6 These data were unavailable, data able to be provided was an estimate re OOHC, where ‘carer imprisonment’ was noted.
sectors. Data were gathered in Melbourne and in two regional areas. Stakeholders participated in either a focus group (21 focus groups were facilitated) or an individual interview (33 interviews were conducted). Interviews were offered to those who were unable to attend a focus group (e.g. magistrates) and were used more often, typically by telephone in NSW to address geographic distance. Face-to-face data collection in NSW was limited to two key areas: again seeking representation from the capital city (Sydney) and regional NSW, (Northern NSW).

Data gathering occurred during the period October 2011 to May 2012, followed by a later period with education staff from May - August 2013 in Victoria and October 2013 – February 2014 in NSW.

**Primary carer parents**: This study defined primary carer status by three outcome-focused criteria. A parent was defined as a primary carer, if at the point of their arrest/imprisonment:

1. their child/ren required a new carer (relative, friend, or associate) to take over their care in their own home;
2. their child/ren were moved to a new house to live with a different carer; or
3. their child/ren were left with no carer.

This was established with potential participants prior to interview. If at least one of these events applied, individuals were eligible for participation.

One hundred and fifty-one imprisoned parents participated in the first round of interviews as shown in Tables 1 and 2 below. The majority of interviewees were sentenced, but a small number (n=15) were being held on remand. All participants had been incarcerated for more than three months at the point of interview. Forty-seven percent of participants (n=42 in Vic and n=29 in NSW) were interviewed at follow-up, approximately six months later.

<table>
<thead>
<tr>
<th>Gender</th>
<th>State</th>
<th>Total</th>
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<tbody>
<tr>
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<tr>
<td>Female</td>
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<td>53</td>
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<tr>
<td>Total</td>
<td>77</td>
<td>74</td>
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</table>

Table 1 Number of primary carer participants in Victoria and NSW

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7 Due to challenges in recruiting incarcerated primary carer parents at the initial stage of the study, the follow up interviews occurred between 6 and 12 months after the initial interview; most were conducted at around six months.
Data gathering for the initial interviews occurred from May 2012 to April 2014; follow up interviews from July 2013 to November 2014. Challenges in engaging prison sites and recruiting imprisoned parents extended the data collection period.

**Carers:** Nine carers in NSW and 18 in VIC participated in interviews.

**Children:** Five children participated in interviews; two of these were adult children.

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8 The number of participants from each prison has been identified, elsewhere in the report no identification of prison location is made with regard to participant responses.
2.2 Primary data: sampling, data gathering and analysis

2.2.1 Professional stakeholders

As there is limited formalised knowledge of the experience of professionals in responding to children whose primary carer has been incarcerated, an exploratory approach, relying on a non-probability sampling strategy, was used. One of the main objectives of the study is to provide new insights on the experiences of this cohort.

A maximum variation sampling strategy (Patton, 2002), purposefully selecting a wide range of professions and/or areas of practice from across the arrest-sentencing-imprisonment journey, and including participants from urban and rural areas, sought to generate a sample that represented the broadest group of participants possible, improving transferability of findings. Given the limited existing data about how children are responded to when their parents are in contact with the criminal justice system, with no existing research in Australia from a service-provider point of view, the intent of this approach was to “[capture] and [describe] the central themes that cut across a great deal of variation” (Patton, 2002, pp. 234-235). This approach was supplemented by snowball sampling, whereby participants recommended the study to other colleagues who they were aware had practice experience with this client group.

The current paucity of knowledge also led to the use of a semi-structured interview/focus group schedule for data collection. This schedule focused on five core areas: the organizational perspective on children of prisoners; organizational expectations of responding to these children; current processes for responding; professional experiences of working with these children; and suggestions for improvements. This approach allowed for comparison across stakeholder groups and states in the key areas of investigation, but also provided sufficient scope to allow for participants to shape the discussion, introduce new or unanticipated ideas, and capture the complexity of individual experiences and contexts. The data gathered from these stakeholders was used to shape the more structured data collection tool for use with families.

The majority of the data gathering sessions were audio recorded; where this was not possible, for example due to security constraints, such as in prisons, note taking was employed to record the data. In Victoria, a total of 15 focus groups and four individual interviews were conducted over the data gathering period. In NSW, there were a total of 29 individual interviews and six focus groups. The predominance of individual interviews in NSW reflects an effort to accommodate the needs of some professionals with considerable time constraints as well as their geographical location. All audio material was transcribed. Once the bulk of the interviews and focus groups were completed, all researchers who were involved in data gathering had input into the identification of 13 key themes related to the research topic. These were refined through discussion until five major themes in line with answering the research question were agreed upon, as is appropriate with research of an exploratory nature (Grbich, 2007). One researcher then had primary responsibility for coding transcripts via NVivo10 – data analysis software. Multiple coding of a selection of transcripts was also undertaken by three members of the research team to check inter-rater reliability of the coded themes. Analysis of this qualitative data took an enumerative approach, where the repetition of words and ideas indicates importance (Bryman, 2012).
2.2.2 Families affected by imprisonment

A stratified purposeful sampling strategy (Patton, 2002) was implemented, as the study was seeking to capture a diversity of participants and experiences, beginning with the imprisoned parents. Core features of the sample were gender (seeking both mothers and fathers); prison security setting (seeking participants from minimum, medium and maximum security settings); and geography (seeking participants from both states - NSW and Victoria). A number of prisons were identified in conjunction with the relevant correctional services departments as suitable data collection sites, in both states, on the basis of security rating and numbers of known parents. This was revised on a number of occasions due to practical constraints, typically involving the site being unable to participate in research or identifying no primary carer parents in their prison population. Challenges in primary carer fathers self-identifying as primary carers were particularly noted.

Primary carer parents in prison (N=151) participated in individual face-to-face interviews, conducted in the prison. Interviews were structured and focused on key decision making and transition points for their children during parental contact with the criminal justice system: pre-imprisonment events; arrest; remand; sentencing; imprisonment. These respondents were also invited to participate in follow up interviews which focused on responses to children during imprisonment and post-release. These subsequent interviews were typically conducted via telephone. The use of a structured interview schedule (with approximately 50% open questions and 50% closed questions) allowed efficient gathering of qualitative and quantitative data. This maximised the study's capacity to both capture a holistic view of the issues and be able to compare data across participants. All interviews were recorded by comprehensive note taking. Because of the structured nature of the data gathering, qualitative data were coded by question via NVivo 10. Quantitative data were entered into and analysed by SPSS, interview details are shown in Table 3 below.

<table>
<thead>
<tr>
<th>Table 3 Number of participants at first and second interview</th>
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<tbody>
<tr>
<td>First Interview</td>
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<tr>
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<tr>
<td>Mothers VIC</td>
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<td>Mothers NSW</td>
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<td>Fathers VIC</td>
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<td>Fathers NSW</td>
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<td>Carers VIC</td>
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<td>Carers NSW</td>
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<td>Carers (P/O) VIC</td>
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<td>Carers (P/O) NSW</td>
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<td>Children NSW</td>
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<td>Adult children NSW</td>
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<td>Children (P/O) VIC</td>
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<td>Children (P/O) NSW</td>
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<td>Total</td>
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(P/O refers to those participants recruited through partner organisations)
Overall, there was a response rate to the request for a second interview of 47 per cent (n=71) across both states. In VIC, there were a total of 42 follow up interviews with mothers and fathers, a response rate of 55 per cent; 61 per cent mothers and 49 per cent fathers. For those participants interviewed, only seven were located in the community, with 35 of these still in prison (n=28) while the remaining seven had returned to prison – six of these were mothers (one respondent did not participate in a follow up interview as her children were no longer dependant). In NSW, there were 29 follow up interviews with mothers and fathers, a response rate of 39 per cent: 38 per cent mothers and 43 per cent of fathers. Only one female participant completed a follow up interview in the community, the remaining 28 participants were located in prison and had been incarcerated since their first interview. What this indicates is that overall 70 per cent of those who were interviewed in prison had been there since their initial interview. Of the participants (n=80) who did not take part in the follow up interview, the reasons are shown in the table below:

Table 4 Study attrition: non-participation at second interview

<table>
<thead>
<tr>
<th></th>
<th>VIC</th>
<th>Total VIC</th>
<th>NSW</th>
<th>Total NSW</th>
<th>Overall Total</th>
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<td>Mother</td>
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<td>21</td>
<td>21</td>
<td>0</td>
<td>48</td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Father</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Mother</td>
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<td>0</td>
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<td></td>
</tr>
<tr>
<td>Father</td>
<td>3</td>
<td>0</td>
<td>6</td>
<td>0</td>
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</tr>
<tr>
<td>Mother</td>
<td>3</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Prison</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lost</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Father</td>
<td>3</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Mother</td>
<td>1</td>
<td>8</td>
<td>9</td>
<td>1</td>
<td>16</td>
</tr>
<tr>
<td>Declined</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Father</td>
<td>4</td>
<td>3</td>
<td>7</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Mother</td>
<td>3</td>
<td>1</td>
<td>4</td>
<td>0</td>
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<tr>
<td>Other</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Father</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Mother</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>20</td>
<td>15</td>
<td>35</td>
<td>12</td>
<td>44</td>
</tr>
</tbody>
</table>

Table 4 indicates clearly that the majority of parents (n=57, 71%) who did not participate in a follow up interview were ‘lost’ to the study. These participants were simply unable to be located for follow up interviews: 84 per cent of these were in the community (n=48) and 16 per cent were in prison (n=9). This is quite common in research with prisoners in the post-release phase. Seventeen participants declined a second interview; these were mostly individuals located in a prison setting. Reasons for declining the interview varied: some participants were close to release and too focused on other things (such as housing); others informed us there had been no change in their circumstance since the initial interview; and others simply declined without giving any reason. A small number of participants did not participate due to multiple rescheduling of appointments, relatives unable or unwilling to locate participants, or the child no longer being dependent.

We sought to recruit carers of all children and children themselves, if aged over 12 years, from all primary carer parents. Contact details were obtained from imprisoned parents and a letter sent from

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9 The only exclusion criteria were if the offence for which a parent was imprisoned was an offence against a member of the family and/or there was a current legal intervention order for family violence against the parent.
the research team asking for family members to make contact if they wished to participate. The letter clearly stated that if there were outstanding family violence issues or if the parent’s crime was committed against someone in the family, that contact should not have been made, and apologised for any concern or inconvenience. We also offered contact details if family members wanted to discuss this.

Recruiting families proved to be one of the most challenging aspects of the study. There were 83 carers who were eligible to take part in the project; all of these people were sent letters of invitation. Of those, 12 responded and were interviewed, a response rate of 14%. In addition, three children and two adult children responded and were interviewed. A range of factors impeded family participation. Of the 151 primary carers, 33% (n=50, 14 VIC and 36 NSW) did not give permission to contact the family, while a further 16% (n=24, 7 VIC, 17 NSW) were ineligible due to AVOs, IVOs, DHS care, or due to the offence. This meant that in NSW, 72% of family members were unable to be contacted. In NSW, a considerable number of participants did not give permission to contact the family. Due to the low response rate, we sought to broaden our recruiting of carers and children by seeking to include those who were not connected with any existing study participant, but had still experienced the incarceration of a primary carer parent. The study was advertised through our NGO partner organisations, via mail-outs, on web-pages and by researchers attending prison family days; a $50 voucher was also offered to each participant family. This strategy yielded 15 participants: eight from Victoria and seven from NSW (14 carers and one child).
3. Findings

This section of the report presents the findings from the study in four key areas: broader context; study participants; existing data on children of prisoners; and responding at crisis points. We begin by establishing the context for the study, by describing and examining the key rights, legal and policy frameworks in both states, specifically looking to how or if children of prisoners warrant specific attention. Demographic details of the study’s prisoner respondents and their children are then presented. Secondary data sets from both statutory and key non-government organisations are examined, to estimate both the numbers of parents and carers in prison, as well as the numbers of children affected and in contact with services. The final section of the findings addresses in detail current responses to primary carer parents and their dependent children at arrest, sentencing, imprisonment and release.

3.1 The broader context: rights, law and policy in Victoria and New South Wales

Table 5 below summarises the key frameworks (rights, policy and law) which can and should shape responses to children whose carers are facing imprisonment; these are then discussed in more detail. Although there is some congruence across both states, there are also considerable differences in what guides the current responses.

<table>
<thead>
<tr>
<th>Frameworks for responding to children of parents facing prison</th>
<th>Victoria</th>
<th>NSW</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Human rights</strong></td>
<td>Charter of Human Rights and Responsibilities Act (2006)</td>
<td></td>
</tr>
<tr>
<td><strong>Protocol between Child Protection and Victoria Police</strong> (Department of Human Services, 2012b)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sentencing Act (1999)</strong></td>
<td>Commonwealth Crimes Act (1914)</td>
<td>Commonwealth Crimes Act (1914)</td>
</tr>
<tr>
<td><strong>Child protection</strong></td>
<td>DHS (2012a): Mothers and Children Program Working Agreement (with Corrections Victoria)</td>
<td></td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td>No specific policies</td>
<td>No specific policies</td>
</tr>
</tbody>
</table>
3.1.1 Rights frameworks

Children’s rights

High Commissioner for Human Rights, 2008), to which Australia is a signatory, is an accepted, but
non-enforceable set of principles, which provides specific protections for children, particularly those
made vulnerable by their circumstances.

Whilst separated from their parent who is imprisoned, the child should be afforded the protection of
Article 5 of UNCROC, that the State will respect the responsibilities, rights and duties of parents, and
also the right of the child to maintain personal relations and direct contact with their parent on a regular
basis, except where it is deemed not in the child’s best interests (Article 9). Maintaining relationships is
important for both children and imprisoned parents: children adjust better (Johnston, 1995; Trice &
Brewster, 2004); families have a better chance at reunification (Koban, 1983); and imprisoned parents
adjust better post-release (e.g. Trice & Brewster, 2004). Research findings to date however indicate
that imprisoned parents continue to be managed with negligible regard for their family context or
responsibilities (Butler, 1994; Healy et al., 2000; Lilburn, 2001) and to be incarcerated at significant
distances from home (Flynn, 2013; Goulding, 2004; Healy et al., 2000; Mumola, 2000).

UNCROC Articles 9 and 12 also indicate that where children are separated from their parents, all
parties involved in any decision-making proceedings, including children, will have the opportunity to
participate and make their views known. UNCROC particularly notes the right of the child to be heard in
any legal or administrative proceedings affecting them. Whilst this principle has been incorporated into
the dealings of Family Courts (the matrimonial proceedings jurisdiction) in a number of western
countries, there are currently no avenues for the child’s views to be heard in any proceedings when
they are separated from their parent because of parental incarceration.

Finally, where parental imprisonment leads to a child being displaced from home, the child should be
afforded the protection of Article 20: where a child is deprived of their home environment, special
protection and assistance is to be provided by the State. No such assistance is routinely provided to the
children of imprisoned parents.

Human Rights

In Victoria, the Charter for Human Rights and Responsibilities Act (2006) introduces a range of
international human rights principles into its domestic law. In particular is the right not to have one’s
family ‘arbitrarily interfered with’ (Article 13)\(^{10}\) and to the protection of families as ‘a fundamental group
unit of society’ (Article 17)\(^{11}\). Charter provisions are not enforceable in themselves, but public
authorities are required to take them into account when exercising their powers (Article 38(1)).\(^{12}\) Whilst

\(^{10}\) Art 13 A. **person** has the right—(a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily
interfered with.

\(^{11}\) Art 17(1) Families are the fundamental group unit of society and are entitled to be protected by society and the State. (2)
Every **child** has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or
her by reason of being a **child**.

\(^{12}\) Art 38 (1) Subject to this Section, it is unlawful for a public authority to act in a way that is incompatible with a human right
or, in making a decision, to fail to give proper consideration to a relevant human right.
they do not appear to be influencing significant decision making discussed here, these provisions have been recognised as relevant in situations where children are removed from their families, including when a family member is in prison (Department of Justice Victoria, 2008). The Mothers and Children Program in Victoria, where children can reside with their mother during her imprisonment also acknowledges the Charter, describing the best interests of the child as being the most important factor in protecting family rights.

NSW does not have specific Human Rights requirements.

The UNCROC could provide relevant guidance to organisations when considering appropriate responses to children whose parents are arrested and imprisoned. To date, however, there has been limited attention to consideration of the rights of children of prisoners.

3.1.2 Policing

Responding to children when arresting their primary carers is understood to be a minor part of a police officer’s role on a day to day basis, simply on the small number of cases that are likely to arise, particularly those which result in the parent being immediately removed from the home environment.13 Police officers have multiple responsibilities at the point of arrest: to arrest the person in a timely and safe manner and to ensure that correct process is followed and evidence obtained. The presence of children or the arrestee’s responsibility for dependent children, however, remains an issue which requires attention, as the decision to arrest and remove a parent has implications for children, who may then be in need of protection. In most circumstances after being arrested, it is more typical for people to be bailed and allowed to return home, often within a few hours. Clearly in this research, we are most interested in those extreme cases where parents are removed from the home for substantial periods of time, during arrest, remand and/or imprisonment.

Victoria

The Victoria Police Manual and more recently the Protocol between Department of Human Services Child Protection and Victoria Police give some direction to officers about responding to children.

With the Department of Human Services (DHS) - Child Protection as the lead agency for the protection of children in Victoria, police responsibilities are spelled out in the Child Youth and Families Act (2005) and in the Protocol between Department of Human Services Child Protection and Victoria Police (2012b). The latter document gives some direction to officers about responding to children of parents in

13 Whilst it is clear that police deal with the vast majority of bail applications (Victorian Law Reform Commission [VLRC], 2005), there is no readily available public data which indicates the rate of bail vs. remand. The most recent data available indicate that some 26,000 arrested individuals were bailed by Victoria Police in 2005 (VLRC, 2005). This compares to a much smaller number who were received into Victoria’s prisons, either via Police or the courts: 4,862 people in 2005/6 (Victorian Department of Justice, 2007). (This latter figure also includes those individuals who were bailed to appear in court but were given a custodial sentence). Recent comparable data (NSW Law Reform Commission 2012: para. 4.6, cited in Brown, 2013) suggests that around 72% of prison receptions are those being remanded into custody. On the basis of these figures, we could estimate that approximately 13% of individuals arrested are remanded into custody.
contact with the criminal justice system. It notes that a report to Child Protection must be made by police officers in their role as protective intereners, when a child is deemed to be ‘in need of protection’; most substantively this includes where there is likelihood of significant harm to the child because of physical, sexual, emotional abuse or neglect. However, this protocol also advises that officers must consider making a report to Child Protection when they form a belief on reasonable grounds that a child is at risk and in need of protection due to a range of circumstances, including abandonment or parental incapacitation. It is noted that this

may include situations where a primary carer of dependent children is in custody and incapable of caring for their child during this period and there is no other suitable person willing or able to care for the child. (Department of Human Services, 2012b, p. 11).

Whilst parental arrest is not specifically named in the protocol, such parents are ‘in custody’, although perhaps for a short period; additionally, such a situation could be seen to lead to parental incapacitation. As it stands, however, what being incapacitated entails, or what makes a person suitable to care for a child are open to interpretation. Quite specifically, in fulfilling their responsibilities to persons in police care, the station sergeant also has a responsibility to enquire if the person in custody is a primary carer and if so, to enquire if suitable arrangements have been made for the care of that child; if there is no suitable carer, a referral to the Department of Human Services (Child Protection) should be made. The ability to take action in this area is clearly influenced by parents’ willingness to disclose that they have dependent children.

**NSW**

At the time of writing there is no existing protocol between NSW Police and Family and Community Services – Community Services (Child Protection Services).

The *Police Force Handbook* (NSW Police Force, 2013) does however, outline specific procedures for officers who are caring for a child or children as a result of their parent’s hospitalisation or death; parental arrest is also specifically noted. These procedures include attending to their basic and emotional support needs. Police are required to make all reasonable efforts to place the child in the care and custody of a “parent, guardian, relative, or other approved person. In the absence of another caregiver, police are to contact the Department of Community Services to take custody of the child” (NSW Police Force, 2013, p. 31).

Specific direction is also given to officers about their responsibility for any children, stating that

Whilst awaiting the arrival of alternative care, police are responsible for the child’s safety and wellbeing. To ensure the safety of the child, police should supervise the child at all times and take the following into consideration:

- does the child require medical attention (if medical attention is required seek permission from parent or medical practitioner)
- does the child require special attention (i.e., mental health, medications, allergies, asthma)
- are there protective orders or custody orders in place restricting a parent/guardian from having custody of the child
- does the child require basic needs, i.e., food, clothing, water
- does the child require the services of another agency (e.g., counselling, in the event of witnessing a traumatic event)
- Provide reasonable safe facilities for the child to use the toilet. (NSW Police Force, 2013, p. 31).

Police responses to children at parental arrest in Victoria and NSW are shaped by different sets of expectations and associated procedures. In Victoria, whilst there is a protocol with the relevant child protection agency, this does not specifically address the situation of parental arrest. Whereas in NSW, although no Police-Child Protection protocol exists, officers are given specific instructions as to their responsibilities to children present at parental arrest.

3.1.3 Legal responses

**Victoria**

In Victoria, the Magistrates courts make decisions concerning children at two important points of time: when making decisions about whether a parent is granted bail or is remanded in custody; and, if the person is found guilty of the crime alleged, Magistrates make decisions about sentencing, including whether to incarcerate the parent.

**Bail:** Bail Act 1977: Bail will usually be granted for all but the most serious offences, unless the court believes there is a risk that the person will not come to court when the trial is set, or will offend or interfere with witnesses. The fact that the person has caring responsibilities is not a consideration referred to in the legislation, but childcare responsibilities are considered ‘clearly relevant’ to any risk of absconding or reoffending (Memery v R, 2000; Re Mitchell, 2013).

**Sentencing:** Sentencing Act 1991: The sentencing legislation gives criteria for sentencing, including mitigating and aggravating circumstances. The impact of the sentence on children or other family is not mentioned in the legislation.

It is recognised that imprisonment will almost inevitably cause hardship for family members and it would be unjust for a person with dependants to receive a lighter sentence than a person committing the same offence who does not have dependants (Markovic, Zoran v R, 2010). As the Victorian Court of Appeal stated recently, ‘It has long been the position at common law that, unless the circumstances are shown to be exceptional, family hardship is to be disregarded as a sentencing consideration’ (Markovic, Zoran v R, 2010). The Commonwealth Crimes Act (1914) does require a court to take account of ‘the probable effect that any sentence or order under consideration would have on any of the person’s family or dependants’, but this is still said to be subject to the need to find ‘exceptional circumstances’
Whether such caring responsibilities amount to ‘exceptional circumstances’ appears to be a very subjective decision.

**NSW**

**Sentencing: Crimes (Sentencing Procedure) Act 1999 (NSW):** Section 21A(1) of the sentencing legislation includes the presence of children during an offence as an aggravating factor when sentencing. In this case, the effect of an offence on children is seen to be relevant. However, data relating to sentencing, and the likely impact of parental incarceration on children, suggests that in these instances the effects/consequences of offending on children are not seen to be relevant.

Consideration of the impact of a sentence for a NSW offence upon a third party, including family members of the defendant, is dealt with under common law in NSW. There must be exceptional hardship to a family before the hardship can be taken into consideration to determine the sentence that can be imposed. There may be evidence of such hardship to the family of a person if the person is sentenced to full time custody where “a sense of mercy or of affronted common sense imperatively demands that the [sentencing judge] should draw back” (R v Mitchell, 1974).

**Commonwealth**

The Commonwealth Crimes Act (1914) s. 16A refers to matters to which court should have regard when passing sentence for federal offences. When sentencing for a Commonwealth offence, the court should have regard to the probable effect that any sentence or order under consideration would have on the person’s family or dependants. This is contained under Part 2 (p) of the legislation specifying “the probable effect that any sentence or order under consideration would have on any person’s family or dependents.”

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**Sentencing law and guidelines in both states indicate limited consideration of children of offenders before the court, unless the situation can be shown to be ‘exceptional’.”**

3.1.4 Child protection

**Victoria**

*Department of Human Services* Child Protection has practice advice (DHS, 2012a) about the placement of children with mothers in prison in response to the ‘Mothers and Children Program’ operated by Corrections Victoria. There is no similar program for fathers. The advice is based on an understanding that in some cases it may be in the best interests of a child (particularly infants or young children) to reside with their mother during her period of imprisonment. The ‘Mothers and Children Program Working Agreement’, between Child Protection and Corrections Victoria, allows for exchange of
information between the two departments. Specifically, information is provided by Child Protection about any past or current Child Protection involvement to assist Corrections Victoria in assessing applications for the program. There is no further practice advice in the Victorian Child Protection practice manual specific to responding to children living in the community whose parent/s are incarcerated.

A broad protocol, as discussed in 3.1.2, outlines the responsibilities and relationships between Child Protection and Victoria Police. There is no specific attention to children whose primary carers are arrested or imprisoned.

**NSW**

*Family and Community Services (FaCS) – Community Services* - There are no policies/protocols/agreements between FaCS and Corrective Services or NSW Police in relation to responding to children of parents who are arrested/remanded/imprisoned. As noted above (3.1.2), NSW Police provide guidance to their officers about their responsibility to make a report where, as a result of parental arrest, children are left with no suitable carer.

Currently, there is limited policy attention to this specific group of children or clear protocols between statutory child protective services and police services.

**3.1.5 Education**

Given that education of all children aged 6 – 17\(^{14}\) years is mandatory in both states, it is relevant to consider how or if these children are recognised in current Education Policies.

**Victoria\(^{15}\)**

In Victoria, there are no specific guidelines or policy to assist schools or staff in responding to the needs of these children (Department of Education and Early Childhood Development, 2014b). Similarly, there is no communication pathway between either Corrections Victoria or the Department of Human Services - Child Protection and the education system to inform schools when parental imprisonment occurs, despite all departments being represented on the Children’s Services Coordination Board. The role of this board is to coordinate state government departments to improve outcomes for children, “particularly those vulnerable to harm, disadvantage or social exclusion” (Department of Education and Early Childhood Development, 2014a: Para. 3).

**NSW**

Similarly, in NSW there are no guidelines or policies to assist schools in responding to the needs of these children (NSW Department of Education and Communities, 2015b). One policy on children in out of home care, indicates that schools are required to liaise with carers regarding children in out of home care and their educational outcomes (NSW Department of Education and Communities, 2015a), and

\(^{14}\) In both states, children must complete Year 10 and then either be in some form of education, training or employment, or a combination of these until they turn 17 (Australian Curriculum Assessment and Reporting Authority, 2012, National report on Schooling in Australia 2012, http://www.acara.edu.au/verve/_resources/20141219_ANR_2012_Parts_1-6_and_10.pdf

\(^{15}\) A publication which specifically examines school responses to children in Victoria will be published in Children Australia: McCrickard, R & Flynn, C ‘Responding to children of prisoners: the views of education professionals in Victoria’ (in press)
another policy on student health in NSW public schools notes that it is the responsibility of all school staff to ‘protect students against risk of injury or harm which should reasonably have been foreseen’ (NSW Department of Education and Communities, 2015c), yet there are no policies that specifically mention children whose parents have been arrested or incarcerated.

Currently there are no specific protocols in either state guiding communication about parental imprisonment between the education departments and either correctional services or child protective services.

An overview of the current legislative and policy guidelines in Victoria and NSW indicates that limited attention is given to the specific needs or rights of children whose parents are incarcerated, beyond guidelines for NSW police officers with regard to their duties to care for children if present at parental arrest.

Whilst children’s and human rights provisions exist, the current frameworks governing arrest, sentencing and imprisonment processes and subsequent communication in the adult jurisdiction do not give weight to the rights of dependent children to parental care.

3.2 Imprisoned parents and their dependent children

The prisoner sample included 151 incarcerated parents across 9 adult prisons in NSW and 5 Victorian adult prisons. Participants had been in custody during their current term of imprisonment for a minimum of three months prior to the interviews. Table 6, below, outlines the self-reported socio-demographic and criminal justice characteristics of the study sample. Time in prison during the current sentence was not collected from participants or official records; this was estimated based upon self-reported information collected from participants (minimum sentence length, time on remand, release date and the date of interview). Maximum and minimum possible lengths of time spent in custody during the current imprisonment were calculated for each participant, and the midpoint of these values (which were generally 12 months apart) was used as an estimate of the time spent in prison during the current imprisonment.

16 Additional publications focusing on specific sub-groups are in process: See Appendix 2 for these and other publications arising from this study.
Table 6 Prisoner sample characteristics

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Primary carer prisoner sample (N=151)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gender</strong></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>60.3%</td>
</tr>
<tr>
<td>Male</td>
<td>39.7%</td>
</tr>
<tr>
<td><strong>State</strong></td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>49.0%</td>
</tr>
<tr>
<td>Victoria</td>
<td>51.0%</td>
</tr>
<tr>
<td><strong>Age (years)</strong></td>
<td></td>
</tr>
<tr>
<td>Mean = 36.2 [19-65]</td>
<td></td>
</tr>
<tr>
<td><strong>Born in Australia</strong></td>
<td>80.1%</td>
</tr>
<tr>
<td><strong>Indigenous</strong></td>
<td>15.2%</td>
</tr>
<tr>
<td><strong>Prior terms of imprisonment (remand or sentenced)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Held in police cells for current offence</strong></td>
<td></td>
</tr>
<tr>
<td>84.0%</td>
<td></td>
</tr>
<tr>
<td>&lt;1 day - 42.4%</td>
<td></td>
</tr>
<tr>
<td>1&lt;7 days - 27.1%</td>
<td></td>
</tr>
<tr>
<td>7&lt;14 days - 4.9%</td>
<td></td>
</tr>
<tr>
<td>14&lt;28 days - 4.2%</td>
<td></td>
</tr>
<tr>
<td>≥28 days - 5.6%</td>
<td></td>
</tr>
<tr>
<td><strong>Remanded into custody this term of imprisonment</strong></td>
<td>71.5%</td>
</tr>
<tr>
<td><strong>Sentencing status at interview</strong></td>
<td></td>
</tr>
<tr>
<td>Sentenced</td>
<td>84.6%</td>
</tr>
<tr>
<td>Remanded</td>
<td>15.4%</td>
</tr>
<tr>
<td><strong>Sentence length (months)</strong></td>
<td></td>
</tr>
<tr>
<td>Mean = 50.6 Median = 24.5</td>
<td></td>
</tr>
<tr>
<td><strong>Estimate of time spent in prison during current sentence (months, range [min-max])</strong></td>
<td>Mean = 25.9 Median = 14 [0.5 – 216]</td>
</tr>
<tr>
<td><strong>Most serious offence or charge</strong></td>
<td></td>
</tr>
<tr>
<td>Illicit drug offences</td>
<td>21.8%</td>
</tr>
<tr>
<td>Homicide and related offences</td>
<td>14.5%</td>
</tr>
<tr>
<td>Acts intended to cause injury</td>
<td>10.5%</td>
</tr>
<tr>
<td>Fraud and misappropriation</td>
<td>10.5%</td>
</tr>
<tr>
<td>Robbery, extortion and related offences</td>
<td>8.1%</td>
</tr>
<tr>
<td>Other property offences</td>
<td>7.3%</td>
</tr>
<tr>
<td>Traffic and vehicle regulatory offences</td>
<td>6.5%</td>
</tr>
<tr>
<td>Offences against government procedures</td>
<td></td>
</tr>
<tr>
<td>(breach parole etc.)</td>
<td>4.8%</td>
</tr>
<tr>
<td>Other offences</td>
<td>16.0%</td>
</tr>
</tbody>
</table>

The study sample reported a total of 437 children, 87.5% (n=384) of whom were dependent children aged less than 18 years. In 76.3% of cases (293 children) interviewees indicated that they were the primary carer of the dependent child prior to imprisonment, while in 9.9% of cases (38 children) the child was being cared for by the interviewee and others in shared care arrangements. The remaining 53 dependent children were not living with the interviewee prior to imprisonment; these children were most frequently residing with the other parent (69.1%), in out of home care (18.2%) or with one or more
grandparents (9.1%). The average age of all children of the interviewees was 8.8 years, and the number of children per prisoner varied from one to nine, as shown in Figure 1 below. In most cases (90.3%), the interviewee reported that they were the biological parent of the dependent child, while 9.5% were step-parents and in one instance the respondent reported they were the adoptive parent of a dependent child.

![Figure 1 Number of children per prisoner](image)

When comparing the study sample to the most recent data on Victorian and NSW prisoner populations, the mean age of parent participants is broadly similar to the wider prison population at around 37 years of age (37.5 in Victoria and 36.4 in NSW). The proportion of participants born in Australia (80.1%) is slightly higher than that in the general prison populations in each state (74.1% in VIC and 75.0% in NSW).

When examining the Indigenous status of participants, it is evident that in NSW, Indigenous parents are underrepresented in the sample: they make up 17.6% of the study sample in that state, compared to 23.6% of the prison population. In Victoria, however, Indigenous participants are overrepresented (13.0% compared to a broader representation in the prison population of 7.8%).

No comparison can be made regarding children of incarcerated primary carers as no comparable data set exists, nationally or by state.

3.3 Accounting for children

3.3.1 Secondary data: overview

Secondary data was sought from all partner organisations with direct service provision: Department of Justice (DOJ); Department of Human Services (DHS) – Child Protection; Victorian Association for the
Care and Resettlement of Offenders (VACRO); Prison Fellowship - Victoria (PF); and SHINE for Kids (SHINE). Data were also obtained from supporting organisations in NSW: Family and Community Services and the Department of Correctional Services (DCS).

The purpose of this secondary data collection was twofold (1) to provide estimates: of how many imprisoned parents have dependent children, and the likely numbers of these children, as well as some beginning estimates on how many children are known to non-government partner organisations (Victoria); and (2) to consider and inform how data is collected on this group of children and parents.

Data were sought from adult statutory correctional services in relation to prisoners who identify as parents/carers at reception. Data were sought from statutory child protection services about the numbers of children subject to child protection intervention who have a parent in prison. DHS Victoria, unfortunately does not keep this information. Data from non-government organisations was sought about the numbers of children known to their services and any relevant demographic and family/social characteristics. Each organisation had varied ways of recording data which presented considerable challenges to the research team.

3.3.2 Estimates of parents and children

Secondary data: justice departments

The DoJ and DCS both provided reception data over a five year period (2009 – 2014).

Victorian data were provided in relation to adults who identified:

- having children
- being a primary carer prior to prison
- having legal custody of children

Indigenous status of adults was also provided. For the purposes of this discussion we focus on data about parenting and caring status.

NSW data were provided in relation to adults who identified:

- children living with them prior to prison (both own children and other children in their care)
- children living elsewhere
- who is caring for children during parental imprisonment

Indigenous status and COB of adults was also provided. For the purposes of this discussion, we focus on data about the caring status of the parent and who is caring for children.

Victoria

During the period 2009 – 2014, it is clear that the number of adults who identify as having children has increased steadily (See Figure 2 below). This is despite the overall percentage of adults who identify as

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17 Because this data is based on information provided when individuals are received into the prison, parents may be counted more than once, depending on how often they re-entered custody in the 5 year period. The figures, however, do provide a clear indication of the number of individual episodes of parental imprisonment.
parents remaining reasonably stable (between 51.7 – 53.3% for men and 65.64 - 67.86% over the past four years for women), and is likely the result of general increases in the prison population.

**Figure 2 Numbers of adults identifying as parents at reception into Victorian prisons:**

![Figure 2](image_url)

During the period 2009 – 2014 the number of adults who identify as being primary carers of children has also tended to increase steadily (See Figure 3 below), although in 2013/14 the number of men identifying as such decreased. In relation to the overall prison population, the percentage of men who identify as primary carers has tended to remain reasonably stable (between 10.14 – 11.23% over the five year period examined). Of some interest is the trend amongst women who identify as primary carers; this has shown some fluctuations over the past five years (and a range from 39.80% - 26.43% of the overall women’s prison population), with a general decline until 2012 followed by an increase.

One clear limitation of this data is that it is not known how this question is phrased or interpreted by staff or by inmates at reception. It is also important to mention that the reliability of the data is also affected by inmates’ willingness to voluntarily disclose this information at reception. The variable perceptions of what defines primary care (e.g. direct day to day care; sole care; division of labour; hours of care etc.) mean that the validity of these data are questionable. The numbers, therefore, cannot be assumed to correspond to the study’s definition of ‘primary care’, which was based on outcomes for children, as noted previously. It is not clear from the data collected at reception which parents had a direct caring role for any dependent children prior to imprisonment.
Participants in the current study had an average of 2.19 dependent children each, for whom they were primary or shared carer. This average number of children is reflective of older, but consistent estimates of around 2.2 – 2.4 children per prisoner (e.g. see Johnston, 1995; Tomaino, Ryan, Markatic & Gladwell, 2005).

On the basis of these figures, we can estimate that for the most recent year (2013/2014) some 8,800 children experienced the imprisonment of a parent in Victoria. Of these, 1,086 will have experienced the loss of their primary carer; the latter figure is likely to be an underestimate for the definitional reasons outlined above.

It is important to also note here that whilst a range of other questions are asked of adults being received into the prison setting about their children, these are not recorded consistently, leaving the data difficult to access in a usable way. For example, adults are asked how many children they have, but it is not clear if this includes children over the age of 18 years. Prisoners are also asked who is currently caring for their children; the responses to this are recorded in free text, and are therefore recorded inconsistently and are not able to be easily collated or compared. The researchers were unable to access any of this data.

**NSW**

Data from NSW Department of Corrective Services (DCS) does not permit simple calculation of the number of adults who identify as parents or the number of children involved. It is advised that the number of children parents have can be recorded in a free text box, but is recorded inconsistently and is therefore difficult to collate and also difficult to use. Whilst data is also provided about (1) the number of adults who identify as having their children living with them prior to prison and (2) the number of adults who identify as having children living elsewhere, individual parents may identify and be counted as having children in both of these circumstances (indeed, this was a common feature of the
parents who directly participated in the current study). Therefore the two figures cannot simply be summed, as this would likely result in an overestimation of the numbers of imprisoned parents. An accurate count of the number of children affected by parental imprisonment in NSW therefore remains elusive.

Data were provided about the number of adults who identify as having children (both their own and other children) living with them prior to prison. These figures are presented in Figure 4 below. The specific caring role of these adults in relation to these children is unable to be commented on.

**Figure 4 Numbers of adults identifying as having children living with them\(^\text{18}\) at reception into NSW prisons: 2009/10-2013/14**

As can be seen in Figure 4 the number of fathers identifying as having children living with them reduced slightly between 2009 -2012, with small increases since that time; mothers show a more constant figure, with minor fluctuations. This may simply be reflective of the slow decline in the overall NSW prison population during this period. Whilst the children reported on include both their own and other people’s children, adults predominantly report these to be their own children. For women, over this period, the percentage of other children for whom they were caring remained less than 10% (ranging from 5.5% - 8.8%). For men, the figure was consistently between 20 – 25%.

Additional DCS data obtained indicates that over the same period the number of adults who identify as having children who do not live with them has increased steadily (from 675 women in 2009/10 to 887 women in 2013/14 and from 3911 men in 2009/10 to 7050 in 2013/14). It is a consistent pattern for more fathers and mothers to report having children living elsewhere than living at home with them.

We can estimate that for the most recent year (2013/2014), **6758** children in NSW will have experienced the imprisonment of a live-in parent figure\(^{19}\); for some **5449** children, this will be a biological parent.

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\(^{18}\) This number includes both their own children as well as other children.

\(^{19}\) This includes children who live with biological and non-biological parent figures (as noted in Figure 4).
NSW DCS also gather data about who cares for those children who had previously been living with their now imprisoned parent; see Figure 5 below.

**Figure 5 Numbers of adults identifying specific care arrangements for their dependent children:**

2013/14

It is clear from this data that while families utilise a range of care for their children, the vast majority of care is provided informally; mothers provide the most care when a parent is imprisoned, largely due to the overwhelming majority of prisoners being male. Grandparents are the next most commonly identified carers; they are described by 494 fathers and 369 mothers as the carer of their child/ren. Grandparents are the most commonly identified carers by mothers, with fathers ranked second (N=233).

Clearly different data are gathered in each state, each with its own benefits and gaps. Given existing knowledge about parental imprisonment and the consequences for children, it would seem useful to know a number of things about parents who enter the prison system: parenting status; resident/non-resident parenting status; caring role. It would also seem useful to know who is caring for these children; this allows better understanding of where the care burden is being distributed and perhaps allows for better targeting of information and support.

**Secondary data: Statutory child welfare services**

The project sought three types of data from both states (DHS – VIC and FaCS – NSW): the numbers and characteristics of children in out-of-home care with a parent in prison, the numbers of children subject to protective intervention who have a parent in prison, and protective apprehensions resulting from parental arrest/remand/imprisonment.
This level of detail was not available from either department. The Department of Human Services do not formally collect data on the parental imprisonment status of children with whom they are in contact, other than in case notes.

FaCS NSW were able to provide some data about children in OOHC. Data indicate that during 2011/12 some 109 children who had a ‘carer in prison’\(^{20}\), were placed in OOHC; these data relate to 97 individual children as children can be reported on multiple times. Thirty-three children were noted to be Aboriginal and the majority of children were aged less than 11 years. The total number of children placed in OOHC in NSW during this period was 3,585 (including 793 re-entries) (Family and Community Services, 2013); children identified as having a carer in prison therefore appear to only make up 0.03% of the total OOHC population. Given previous research, this would seem to be a considerable underestimate of this issue.

Previous evidence indicates that some children whose parents are imprisoned are at greater risk of entering Out of Home Care (this has been particularly noted for Indigenous children whose mothers are imprisoned\(^{21}\) (Victorian Equal Opportunity and Human Rights Commission [VEOHRRC], 2013). A considerable cross over between families in contact with the adult criminal justice system and those in contact with the Children’s Court has also been described (Sheehan, 2010), yet, there is an absence of specific data systematically sought and recorded by child protection services about children’s experience of parental imprisonment.

**Secondary data: NGOs**

A variety of programs is provided by the study’s partner organisation NGOs, ranging from the provision of birthday gifts, to family days and camps, counselling, mentoring and support for visiting (including video visits and onsite facilitated visiting programs).

Despite there being separate recording practices and timelines for the three NGOs involved, overall data from PF, SHINE and VACRO is used here to highlight the number of children known to these services.

At the time of data collection (March-April 2013), there were a total of 1,287 children (0 – 18 years) with incarcerated parents, recorded on all three database systems. The number of children accessing all three services is unknown, as this data is only known by caseworkers and organisation staff and not routinely collected by organisations. No estimation can thus be made on any duplicate children. The majority of these (1,125 children 87.4%) were direct clients of these services, while 132 (10.3%) were indirect clients. For those children whose sex was recorded (N=1220), there is a relatively even spread between boys (N=593, 46.1%) and girls (N=626, 48.6%). The mean access age for children for all

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\(^{20}\) Information about parental imprisonment was not available, but a proxy measure of carer in prison was utilised

\(^{21}\) See specific examination of this issue in Nelsson, J (2015) ‘They asked no questions about my kids’: An exploratory study of care arrangements for Aboriginal children with incarcerated mothers (Honours thesis – circulated to this study’s partner organisations).
NGOs was nine years. Research (e.g. see Mumola, 2000) has consistently indicated that most children whose parents are in prison are aged under 10 years.

This simple estimate shows a considerable gap between the numbers of children likely to be experiencing parental imprisonment and the numbers of children accessing support services; service uptake is 14.6%.

We sought to examine 16 variables across all three organisations (as seen in Figure 6 below): these included key demographic variables (age, CALD and Indigenous status) as well as family features (including information about the status of the family member in prison – parent/primary carer etc.), care arrangements as well as any involvement with child protective services – OOHCP.

As can be seen in the figure below, for 13 of these variables over 50 per cent of the data is unknown, as it is not officially recorded. Whilst this may reflect the nature of the programs themselves and how much information they feel they need to have about children and families, it also highlights the limited data available for this specific group as well as any formal oversight. Of particular concern is the limited data relating to the primary carer status of parents, which once again highlights the limited existence of any formal records relating to children affected by parental imprisonment.

These patterns are reflective of what is known more widely about the limited communication and connection between adult-child services (e.g. see Scott, 2009).

Figure 6 Percentage of ‘unknown’ information across key variables

![Bar chart showing percentage of unknown variables from SHINE, PF and VACRO](chart.png)
What remains clear is that these records provide limited data about children who are coming into contact with service providers when their parents are incarcerated. In order to respond adequately to this group of children, service providers must ensure that gathering of systematic data becomes a crucial function of their organisations.

See Appendix 3 for detailed secondary data from NGOs.

Despite considerable numbers in both states, little clear data are gathered by either statutory or non-government bodies at the point of imprisonment or subsequently about imprisoned parents or their children. Our understanding of the scope and nature of this problem and capacity to respond systematically is therefore limited.

3.4 Arrest

3.4.1 Arrest: parent experiences

As indicated in Table 7 most parent participants reported that the arresting officer(s) was aware of their status as a primary carer of dependent children. However, discussion regarding the child/ren’s care was reported to have occurred in less than half of these cases; even less frequent discussion regarding care planning with station sergeants was noted. In total, 41.0% of respondents reported that either the arresting officer or the station sergeant discussed the care of their dependent child/ren. This was significantly more likely to occur where the participant was female (52.4%) rather than male (25.0%) (2-tailed \( p < .005 \)). There are also within group variations, which we will report on in subsequent publications.

### Table 7 Police awareness of dependent children at arrest

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Cannot remember</th>
<th>Unsure</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Was the arresting police officer aware you were the primary carer of dependent children?’ (N=146)</td>
<td>78.9%</td>
<td>19.0%</td>
<td>-</td>
<td>2.0%</td>
</tr>
<tr>
<td>‘Did the arresting officer discuss if there was a suitable person to care for the child/children?’ (N=143)</td>
<td>34.0%</td>
<td>63.2%</td>
<td>2.1%</td>
<td>0.7%</td>
</tr>
<tr>
<td>‘Did the station sergeant discuss with you your primary carer responsibilities and how these could be managed and the child/ren’s safety ensured?’ (N=143)</td>
<td>18.8%</td>
<td>80.6%</td>
<td>0.7%</td>
<td>-</td>
</tr>
</tbody>
</table>

3.4.2 Arrest: professional stakeholder observations

It was common for stakeholders in NSW and Victoria to describe a lack of formal protocols and mechanisms for responding to children whose parents were being arrested. When describing these processes in Victoria, data reveal a limited understanding by Victorian Police of any broader obligations.
for officers to respond to children when arresting their parent/s, despite some attention in both the Victoria Police Manual and in the protocol with DHS Child Protection:

There’s no clear steps or guidelines in place. (Police, VIC)

I don’t know if it is a policy or guidelines. (Police, VIC)

In Victoria, the 2012 Protocol with Child Protection, outlined in 3.1.2, provides general information about responding to children in need of protection, but leaves considerable room for interpretation and intervention when considering the parenting status of those in custody. The extent to which any developments in protocols have been incorporated into officer training or ongoing professional development is unknown. The lack of specific understanding about responding to children at arrest reinforces their invisibility, and cements their place as ‘not core’ business. Our data indicate that this also seems to be highly influenced by physical presence:

“We naturally assume that if they don’t have custody of the children at the time [at arrest] then it’s, then there’s no issue” (Police).

In the absence of children, police maintain focus on their narrow “core” role (Scott, 2009). These findings also importantly indicate that it is not sufficient to have guidelines or protocols about children, unless there is follow up and embedding of this in staff development and training.

Similarly, while the NSW Police Force Handbook outlines specific guidelines for responding to children in arrest situations (as discussed in 3.1.2) this was not emphasised by participants:

But there’s no real set … You kind of just gauge it. (Police, NSW)

None of the police participants (n=15) made reference to any formal responsibilities in relation to children. Interestingly, responses indicate an informal expectation that at arrest police officers will enquire about children. This, however, was constructed as an unwritten duty of care, a part of their overall community responsibility:

We’ve got to ensure that they’re safe. That’s our role, to make sure that they’re safe and that they’re looked after … I think it’s part of our duty, not to babysit, but we’ve still got to look after the kids – we’ve got to look after the offenders. (Police, VIC)

You’ve certainly got a duty of care, you still have to do the immediate things first and try to prioritise. (Police, NSW)

It is unclear how informal expectations or knowledge are transmitted. While the key role played by police supervisors to new recruits was described, what guidance they provide, and what is prioritised, was quite dependent on the individual supervisor as well as on the culture of the police station; the age and experience of recruits was noted:

... you might get a different response ... if I put in a trainee that had six months experience that had to arrest... you don’t have the experience ... ‘my job is to arrest the person and charge them with theft’ ... They want to make sure they fill out the right
forms, you know? That’s because at the academy, that’s what they’re taught. (Police, VIC)

I think so given their experience because some officers don’t even have – like they’re 17 or 18 or however old they are, they might be very young and they might not have that knowledge. (Police, NSW)

3.4.3 Arrest leading to remand

Most participants (71.5%) were remanded into custody following arrest, where three quarters (75.7%) indicated that they were able to maintain contact with their children. Nearly one third (30.8%) of those held on remand were held for between one and two years, as shown in Figure 7.

Figure 7 Time spent on remand (current term of imprisonment)

The remanded parents had a total of 228 dependent children between them, of whom the majority (68.0%) moved placements (see Figure 8 below). Children who remained at home tended to be cared for by their other parent, while those who moved homes were most often cared for by a grandparent or placed in out-of-home care (OOHC).
Both parents and professionals, including police participants themselves, report limited attention to the needs of dependent children when their primary carer is arrested.

Relevant professional stakeholders indicate limited knowledge of any broader responsibilities to children.

Without clear and formalised guidance, findings indicate that front line responders typically rely on personal frameworks or experiences to shape their decision making. Whilst data reported elsewhere indicate some good practice from individual staff\textsuperscript{22}, lack of agreed responses to children whose parents are arrested and face imprisonment can result in inconsistent, and sometimes unsafe, outcomes for children; this has particular impact when parents are remanded into custody.

3.4.4 Stability of children’s care arrangements

Figure 9 below shows the placement of children at parental remand (n=228) compared to sentenced imprisonment (n=316). Interestingly, whilst children were slightly more likely to be residing with the other parent or other family members, and less likely to be with grandparents or in OOHC at sentenced imprisonment compared to remand, these differences were not statistically significant.

![Figure 9 Children's care arrangements at remand and sentenced imprisonment](image)

3.5 Sentencing

3.5.1 Sentencing: parent experiences

Nearly one third of participants (30.4%, n=45) reported that they were on a community corrections order prior to imprisonment. Of these, the majority (72.4%) stated that the community corrections officer did not discuss likelihood of a prison sentence with them, while 24.1% stated that this was discussed; one participant stated they could not recall whether or not this was discussed. Around one half of the interviewees (n=82) responded to questions regarding preparation of pre-sentence reports. Of these, 39.0% stated that a report was prepared, while 57.3% stated that a report was not prepared and 3.7% were unsure. At sentencing, 38% of participants reported that they had legal aid, 13% had private legal representation, and 7% had been with legal aid and had changed to private legal representative or vice versa. Participants were more likely to report being prepared for their sentence when they had private representation.
Time spent with legal representatives varied, with 32% of participants reporting that they spent between 0-4 hours with their legal representation. Some participants who had less time with their representative reported:

...because it’s legal aid they changed my barrister two days before my court date and she didn’t fight. (VDP23 Mother)

I have had different lawyers and they have been unprepared. I will see how it goes on the day. (NEP04 Mother)

Yet while 18% of participants reported they had “a lot” of time with their lawyer, or more than four weeks, this did not necessarily equate with being more prepared:

They discussed sentence length. I think they were quite wrong about it, they suggested two to two and a half years max on the bottom. So ended up getting three years nine months on the bottom. Through legal aid. They were on the case for at least 12 months if not more. (VPP12 Father)

While legal representation varied, overall, participants do have discussions about sentence length, however it does not always leave them prepared for their sentence. Sixty percent of participants indicated that their legal representative presented a case for ‘hardship’ to third parties, such as the participants’ children. Hardship was equally likely to be presented during sentencing for males and females (62.3% and 58.6% respectively).

3.5.2 Sentencing: family-carer experiences

Twenty carers provided data on their observations and experiences of the court process. While six participants described a positive experience (with four noting specific attention to children) almost one-half (n=9) describe a negative experience or impact. A range of sometimes overlapping difficulties was described. Families identified problems with the court process itself, for some this was the perceived slowness of the court; for others, legal representation and the ability for parents and families to be better prepared was significant. One couple who were caring for a grandchild noted:

My daughter had legal aid – terrible. They don’t prepare you properly or tell you anything. My daughter was bailed to her house and was going to go to rehab – she was on a wait list – for a number of months. Didn’t hear from the lawyer, didn’t do much. The day before court he briefed another barrister, so we met him on the morning – so that’s fairly bad. Quite anxiety provoking, trying to minimise harm.” (VPO01CarerB) ... I’m not sure that with preparing the outcome would have been different. It certainly didn’t leave you feeling like you’d had a good just process. (VPO01CarerA)

23 Note, the poor response from carers in NSW to this study; this data reflects primarily experiences from Victoria, with just one participant from NSW.
Five carers, all from Victoria, specifically noted that no attention was paid to the needs of dependent children in the process, in the sentencing process:

I don’t believe the court takes into account the welfare of any dependent children in their decision. Provocation – that’s taken into account … but the fact that a child is not taken into account seems to fly in the face of good sense and humanity. (VPO01CarerA)

... the children don’t actually have a voice in the matter. The older girl was there and she got very distressed. (VT03Carer)

Carers also highlighted the limited attention from the adult courts to children’s practical needs:

Don’t know what would happen if the kids had nobody. Maybe there is a fail-safe that identifies kids at risk … I couldn’t see it. Not one question was asked whether we were fit to look after a kid … But again, that’s circumstance – nobody questioned it. The court – sentencing judge – nobody asked any question about who would be suitable to care for the child. (VL01CarerA)

Once when the fifteen year old was younger I had nowhere to leave her so she had to come and she got quite excited at seeing her mum and the Magistrate just blasted her … It’s really difficult for people who don’t have someone to look after the kids because there’s no child minding there, but they make it clear they don’t want the kids there. (VDP24Carer)

or, in the follow up to the court-sentencing process:

As far as court system goes – when we left the court we were gone. There’s been no follow up with how my son’s kids are going. There could be something in place – a social worker – to find out how they’re doing. At court we said we’d have [the child], but other people in these situations it may be needed that they check up on what does happen with the kids. Legally my son has custody of two of the kids (for six years) so in that respect ... the kids have been lost in the system because there’s been no follow ups to find out where they are. If we hadn’t have taken him he would have gone to his mother and I would like to have seen a follow up there because of the amount of care he would have had. (VL01CarerB)

Some carers noted the specific challenges to children when the court case relates to tragic circumstances and the implications of lack of support and follow up:

There was no-one that would talk to us … It would have been good if there had been counselling for the bereaved’s [sic] family about looking after the children … So if they could have counselling for the bereaved … they can cause immense damage to the children of … there’s books out there about ‘When Father Kills Mother’ … there’s no book we could find ‘When Mother Kills Father’, there’s no support for this. It gives the children immensely complicated grief. (VT03Carer)
3.5.3 Sentencing: professional stakeholder observations

As with arrest, participants, in this instance notably Magistrates, reported a lack of direction to guide them in responding to the children of parents before the court. Further, data from respondents makes clear that there are three core issues which need attention when seeking to understand the responses of the court and the implications for children. Firstly, the extent to which impact on children should be a factor in parents’ sentencing; secondly how to take account of caring responsibilities in sentencing, and finally, dealing with children in actuality, either present in court, or perhaps at home or at school. These core areas reflect the concerns noted by carers.

On the first point, it is evident that variation is a recognised feature of usual court practice, with a clear awareness that this is influenced by a magistrate’s gender, age, and personal experiences. Subsequently, the extent to which hardship to children is, or should be, incorporated into sentencing decisions varies widely amongst magistrate participants, with no guidelines as to assessing or applying hardship (Crimes Act, 1914; Crimes Act (Sentencing Procedure), 1999) or for deciding what makes circumstances ‘exceptional’. Some respondents, who see sentencing and the consequences of this more broadly, incorporate this as core issue for consideration:

> Obviously, if you’re incarcerating a primary carer, usually a woman with children, that’s something that you take, I would take into account as a very significant factor, in making the decision whether or not to incarcerate, or whether there’s some other alternative way of dealing with her offending. (Magistrate, VIC)

Others, however, maintain a focus solely on the individual and their crime:

> I don’t give any consideration [to defendants’ children] … Generally when they committed the offence, they were a parent at the time; they disregarded and abrogated that responsibility, and it’s not part of the sentencing option, it’s not part of the principles. (Magistrate, NSW)

The result can be inconsistent and unpredictable outcomes for children and families, despite calls for standardisation over the past decade, including recommendations for the inclusion of family impact statements in sentencing.

Secondly, even if a magistrate is inclined to examine a primary carer defendant’s family circumstances and consider this as factor in sentencing, it cannot be assumed that they will either have or receive this information. Some participant magistrates described their role as clearly one of seeking information, asking relevant questions; and then acting upon this:

> I’ll adjourn sentence for a day so that the arrangements can be made for the child as well. (Magistrate, VIC)

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While others, however, maintain a focus solely on the individual and their crime, as noted in the comment from the NSW Magistrate above.

Thirdly, in relation to the courts dealing with practical issues and children, either in the courtroom or at home, there remains a similar lack of guidelines to assist magistrates, of which all were aware:

No, I don’t think there’s any systems ... I’ve got no idea. I wouldn’t have a clue. Here’s the thing – I think the fact that we don’t know is interesting in and of itself. (Magistrate, VIC)

Others, mindful of the possible trauma to children present in the court, will take informal action to ‘protect’ children; this typically involves removing children from the courtroom. Any responsibility then for the care of the child, outside of the court room is unclear:

The Court Network says that they’re not childcare people, but we have a good relationship with our Court Network people and because we don’t ask them to do it often, if we’re in a bind, they will look after a child. Or sometimes we’ll have Police informants who are around and who’ll sit outside and... amuse the child for a while but it’s not satisfactory. (Magistrate, VIC)

Data from parents, carers and magistrates indicate that the children of defendants have a complex relationship with the adult court. Whilst they are not direct recipients, they indirectly benefit or suffer from the process and decisions. There is agreement among stakeholder groups that the court currently pays limited attention to children in sentencing decisions. In responding practically to children – either present in the court or elsewhere - the responses are more varied. Outcomes for children, however, remain inconsistent. Parents often seem ill-prepared for court and the current stresses on the legal system may mean that people have little contact with their legal representative, who then has limited time to grasp the family circumstances and present this effectively to the magistrate.

3.6 Imprisonment

3.6.1 Imprisonment: Parent experiences

The interviewees responded to questions regarding their child/ren’s care arrangements and planning following their imprisonment (children’s care arrangements are shown in Figures 8 and 9).

Only around one third of participants (33.1%) stated that they were asked about the safety of their children when they were received into prison, with the majority (61.5%) stating that they were not asked; a further 5.4% could not recall whether or not they were so asked.

Females were significantly more likely to report being asked about the safety of their children upon imprisonment compared to males (42.0% and 20.0%) (chi square 2-tailed $p < .01$).
3.6.2 Imprisonment: carer experiences

Nine carers raised a number of issues in relation to challenges experienced with imprisonment, as well as suggestions for improvement. These suggestions focused specifically on the need for greater oversight of children’s lives after the parent has been imprisoned, and for follow up and support for children and families, in relation to issues ranging from children’s well-being to accessing financial support for carers:

It would be really nice if there was some sort of social worker or some government department person to come and check out if the kids are being looked after, like, how do they really know? How do they really know? It would be good if there was someone who could sit down with the kid and ask them how they’re feeling and counsel them. Are you angry? Are you happy with your nan and pop? We’re happy to take him and look after him, but we could be doing anything. They’re just assuming that he’s being looked after and that everything’s okay. His school teacher’s said he’s doing better … but that doesn’t mean he doesn’t need help. (VDP24Carer)

Most important thing is that each situation is looked at individually to look at history, nature of crime, relationships. Would be good if there was a central ability to get the right counsellor the first time. Problem with regionalisation is that the breadth of people is very general … in cases were children are deeply traumatised it’s a very specific thing and it would be useful if there was someone who had skills in that area where they could be for those families … It would be good if there was someone who understood the funding process who could walk you through … I had never been to Centrelink in my life so I had no idea. Most people I talked to didn’t know either. (VT03CarerA)

3.6.3 Imprisonment: professional stakeholder observations

At the point of imprisonment, stakeholder data indicate there is a lack of communication and appropriate sharing of information between prisons and outside agencies, which is detrimental to the care of children. Community based participants reported that there is often a lot of time spent trying to acquire information or to locate people ‘in the system’:

… this is difficult when working with the gaols … things move slowly and there have been times where hospitals want to switch off life support - who to talk to in these situations is difficult and seems to differ between gaols. (Child Protection, NSW)

But DHS couldn’t give us the information and there was no one that could actually provide the information because of the confidentiality and privacy issue so it was actually like solving a huge puzzle and when he finally got the information about which prison he was in and contact was made which the social worker did, they said ‘oh no, he’s actually been transferred somewhere else.’ (NGO, VIC)

The lack of communication seems to be exacerbated when people are on remand, a factor that is further compounded by the failure to follow up with children and families at this time:
I found the most difficult times to try and facilitate those relationships with the prisons is when the prisoners are still in assessment… so they’re not really sure where they’re going off to and it’s just facilitating that. If you do facilitate something it all gets lost once they go to their other facility. (Child Protection, VIC)

I think it reinforces though the whole thing that each program doesn’t actually have any recognition that this is a family and there are connections that need to be maintained that will be beneficial not only for the child but also to the person who’s in prison. (NGO, VIC)

While there are protocols in place during the prison reception process for assessing individual prisoners, this process is problematic as prisons are reliant on the prisoner voluntarily advising of the location, care arrangements, and wellbeing of their children. There are no processes in place to respond to problems disclosed in relation to children, and data are not gathered in a systematic way. Subsequently, there is very little accurate data captured relating to children whose parents are entering the prison system, and little knowledge about their outcomes.

At such a critical time, when a parent is being physically taken away from family and enters the prison setting, there are no consistent processes that focus specifically on children; enquiring about their location and ensuring their safety. So too is there limited communication between prisons, organisations, and the community, which only compromises children’s safety and wellbeing. At such a pivotal time, children and families require assistance and support, yet this is also largely absent.

3.7 Care planning for children whose parents are facing imprisonment

3.7.1 Care planning: parent experiences

Participants responded to a series of questions regarding the process of care-planning for each of their children following their own imprisonment. Nearly two thirds of respondents (63.6%) indicated that they had no time to organise care for their children upon incarceration, which is unsurprising given the high level of remand in this study sample; although, as noted earlier, most parents report that they were able to maintain contact with their children. Only around 17% of respondents indicated that care had already been organised prior to imprisonment, 6.4% had between 2 days and 3 months and 12.7% of respondents stated that they had four months or longer to plan for the care of their child/ren (including those who had been granted bail prior to imprisonment).

A range of decision-makers were reportedly involved in care planning for children, as shown in Figure 10. Overall, 37.2% of participants indicated that they were the sole or joint decision-maker for the care planning of their children following their own imprisonment.
Participants indicated a range of levels of involvement in the care-planning of their children whilst they were imprisoned, as shown in Figure 11 below; more than one half of respondents agreed or strongly agreed that they were fully involved in their children’s care planning.

**Figure 10 Care planning decision-maker**

**Figure 11 Level of self-reported involvement in care planning**

I was fully involved in planning the placement of my child while I was in prison.
### 3.7.1.1 Parent satisfaction with care planning

Participants were asked to rate their satisfaction with each child’s living arrangements. While most indicated that they were either happy (35.5%) or very happy (38.3%) with their child’s living arrangements, others expressed a neutral response (5.9%) or stated that they were unhappy (7.0%) or very unhappy (13.2%) with these arrangements. Care planning processes overall were considered good or excellent by the largest group of participants (43.3%), however, it is important to note that around one third described the process as poor (Figure 12 below). No significant gender differences emerged in this regard.

![Figure 12 Ratings of care-planning process](image)

### 3.7.1.2 Factors relating to stability of care arrangements and prisoner satisfaction with care arrangements and care planning

Factors related to the stability of care arrangements (number of reported movements) for children included the time the parent had spent in prison ($r = .349$, $n = 255$, $p < .001$), and placement type. In relation to placement type, children who were currently in OOHC ($n=38$) had a significantly greater number of reported movements compared to children who were not in OOHC at the time of the interview ($n=277$) ($m = 2.69$ vs 1.19 respectively, $p < .001$). This association remained, even after the time spent in prison by the parent was taken into account in a linear regression ($p < .001$). Furthermore, those children who were placed in OOHC were significantly younger than those not in OOHC placements (6.8 vs 4.1 years, $p < .05$). In the majority of cases (37/38), children placed in OOHC were reportedly residing with their parent prior to their incarceration.

Female prisoners reported a higher average number of movements for their children compared to male prisoners ($m= 1.41$ vs 1.21 movements), and children who were residing with the participant prior to imprisonment had a higher number of reported movements compared to those who were not living with
the prisoner or were in shared care arrangements prior to imprisonment (m=1.45 vs 0.67 movements, \( p = .055 \)), however neither of these differences was statistically significant at the \( p < .05 \) level. Finally, the number of reported movements of children was negatively correlated with participants’ self-reported level of involvement, satisfaction with current care arrangements, and ratings of care planning processes overall (all \( p < .001 \)). That is, the more placements children experienced, the less involved primary carers felt they were in decision-making, and the less satisfied primary carers were with the care arrangements and care planning processes.

Aside from the number of movements experienced by their children, various other factors were found to be significantly associated with participants’ level of satisfaction with current care arrangements and care planning processes for their children. Regression analyses revealed that satisfaction with children’s current living arrangements was significantly associated the prisoner’s self-reported level of involvement with care planning (\( p < .001 \)), and that this factor had a greater contribution to explaining variations in the respondents’ level of satisfaction with care arrangements than the number of moves experienced by their child/ren (standardized beta regression coefficients = .413 and -.131 respectively).

Overall satisfaction with care planning processes was significantly associated with children’s care and welfare being discussed at any of four specified points of interaction with the criminal justice system (i.e. discussions with arresting officers, station sergeants, being raised at court in discussions regarding hardship, and being inquired about upon entry into prison), as well as prisoners’ self-reported level of involvement with care planning (both \( p < .05 \)). A small but significant correlation was also found between the number of these four points at which children’s care arrangements and welfare was raised, and prisoners’ satisfaction with care planning processes overall (\( r = .244, n = 439, p < .01 \)). Finally, prisoners’ level of involvement in care planning processes had the greatest contribution to variations in satisfaction with care planning processes overall (standardized beta regression coefficient = .506), compared to the number of moves experienced by the child (standardized beta regression coefficient = -.155), or the level of discussion concerning their child/ren at various points in the criminal justice system of the four points identified (standardized beta regression coefficient = .129).

### 3.7.2 Care planning: carer experiences

Twenty-six carers provided data on the circumstances leading to their caring role. These respondents indicate that they assumed care of children at all three points leading up to the parent entering prison (arrest, sentencing and imprisonment), although it is more typical for this to occur at arrest and imprisonment; in the majority of instances this is unplanned and in response to a crisis.

> [When she was sentenced] There was no one else. She was homeless with the kids prior to custody. (NPO06Carer)

> Because of the imprisonment I’d look after her [child] full time. Cost you the house for solicitor’s bills. (VL16Carer)

The financial burden of this was noted, along with the challenges for six families of having to negotiate with multiple systems, notably child protective services. This was often experienced as coercion or pressure rather than support:
We didn’t get told much. Had to go to her [daughter]. We took him [child] because otherwise he would have had to go into care – didn’t want that to happen. I had to take leave from my job. (VPO01CarerB)

Child protection said if we didn’t take him [the child] they will, so we made the choice as [daughter] was in a psych ward after an attempted suicide and his father was in gaol. (VPO05CarerB)

Some carers observed however, that crisis can be reduced by staff/systems creating ‘space’:

When my partner went to court his matters were adjourned for sentence for 1 week so we had a pretty good idea that he was going to gaol. (NPO01Carer)

3.7.3 Care planning: professional stakeholder observations

When data from the 124 stakeholders was examined in relation to their overall observations about current responses to children whose parents are facing imprisonment, two core and intersecting themes were identified: displaced responsibility (staff role and attitude) and challenges to information sharing. Both themes are seen to be the result of lack of clear and specific guidelines for practice.

3.7.3.1 Displaced responsibility

A current lack of guidelines for practice and protocols can be seen to influence professionals’ sense of responsibility toward children, with no one group or organisation in either state identified as the ‘go-to’ organisation. Hence, children all too easily fall through the gaps. As has been suggested previously, in relation to COPMI, all relevant parties being invested and having a clear sense of their role and responsibility is vital for planning and any subsequent responses to be successful (Reupert et al., 2008). Although stakeholders articulate the joint responsibility needed to plan and appropriately respond to children:

I think there’s a philosophical responsibility or a community responsibility that goes beyond any legal responsibilities. (Legal, VIC)

It was more common for them to place that responsibility on others:

They don’t want to put their hand up and say, ‘That’s our responsibility. We’ll deal with it.’ They try and palm it off to someone else and there usually is no one else. (Police, NSW)

Everyone needs to work together … a lot of passing the buck. Service providers call and say the family’s [here], what is DoCS [child protective services] going to do? (Child Protection, NSW).

With no clear responsible body, it is often left to crisis or emergency services to intervene and take action. Police stakeholders felt that they were sometimes left ‘holding the baby’, usually without the resources required:
Yeah, quite often we bring kids to the [police] station, or at times we leave someone at the house. We had a four year old at the station for about 10 hours the other day because the father was involved in offending... While the child is at the station... usually the only person that can look after them is the watch-house keeper, who's also managing the phones, doing the front counter. There's just no-one else available, especially on weekends. (Police, VIC)

A lot of the onus just tends to be dumped on police. Like there's such a lot of work for us to do when we – because we're the first responders we're the ones that get lumped with doing everything. (Police, NSW)

Child protection workers expressed similar concerns:

The frustration is that we're the child protection workers, we're not the criminal justice workers, we're not the family support workers, we're not this, we're not the other, but the responsibility still all comes back onto us for everything. (Child Protection, VIC)

3.7.3.2 Limited information sharing

Displaced responsibility and current lack of clear protocols also have an influence on information sharing, and on both what information staff seek, or consider can and should be shared. Concerns about privacy were raised as barriers to communication. It was common for participants to describe their organisation as lacking in information about children and to see it as the responsibility of other individuals or groups to offer that information voluntarily:

... it's only if they raise it with us that they've left children unattended we'd be aware of it. (Police, VIC)

The lack of information shared with the school is a big problem because we're the ones who are picking up the pieces for the majority of the time ... but we're the ones who are kept in the dark the most. (Education, VIC)

Less commonly did individuals see it as necessary to seek out information about children. When this occurred, it was perceived as being dependant on the professional involved. A lack of agreement as to what information about children needs to be shared, when, how and with whom, indicates a lack of attention to children; with each organisation having its own focus and priorities, which are typically mutually exclusive:

... lawyers have a job to do... to obviously protect their client's interest ... you don't necessarily get all the information. (Magistrate, VIC)

Our (Child Protection) legislation says that you can give us any information that's relevant to the investigation in relation to the safety and wellbeing of a child. They [prisons] argue it's not relevant because this person is incarcerated. (Child Protection, VIC)
A very small number of mothers who participated in the study (n=4) had their children reside with them in prison; as such, it was an issue which featured little in the accounts of parents, carers or professional stakeholders.

The more placements children experienced, the less involved primary carers felt they were in decision-making, and the less satisfied they were with the care arrangements and care planning processes. Overall satisfaction with care planning processes was significantly associated with children’s care and welfare being discussed at any of four specified points of interaction with the criminal justice system.

When children are seen and/or asked about at the point of arrest, sentencing and imprisonment, better outcomes result: Children experience more stability and parents feel more satisfied with care arrangements when they are involved in decision making.

3.8 Planning for release

3.8.1 Parents’ access to pre-release services

The challenges of re-entry to the community after prison have been well-documented (Travis, 2005); these cover the broad domains of housing, family, health/mental health and employment. A focus on preparation is important in understanding how this transition is supported. Parents were asked at the follow up interview what services and support they had received in preparation for their return to the community. Their responses are provided in Table 8 below. As is evident in the information presented below, a clear limitation of this sub-set of data is that only a small number of participants had been released from prison and were still in the community at the follow up interview (n=9). Around 30% of participants were able to provide data on pre-release processes, including some who were either nearing the end of their sentence, or had been released and re-imprisoned. The small number of released participants at the second interview is largely influenced by the practical time constraints of the project. To ensure consistent and comparable data across participants and complete the project in a timely fashion, all follow up interviews were conducted approximately six months after the initial interview; this increased the likelihood that participants were still in prison. These small numbers limit the strength and broader application of the findings, but indicate trends which would benefit from specific examination.
Twenty-eight participants responded to this question, reflecting that 70 per cent of the respondents (n=56) were in prison at follow up and may not have yet engaged in pre-release planning. The majority of respondents (n=21) indicated that they had not received any services/supports to assist them with their return to the community.

Fourteen participants provided extended responses (qualitative data); the need for a holistic approach to pre-release was evident, but was seen to be lacking:

None, there was a counsellor that you can talk to, but nothing else relating to housing, employment. I struggled towards my release date. I hadn’t seen my husband and was worried things would be different. Like were we going to be different? Would we stay together? There was no preparation before I left. I now suffer from PTSD and have a lot of anxiety attacks, little things like the jingling of keys or walkie talkies in shopping centres they bring back a lot of feelings. I often have to stop and compose myself before I can go on. I am seeing a doctor about it. (NEP17 Mother)

When asked about any specific preparation to reconnect with their families, a similar pattern is evident, with 90% of the 20 respondents indicating that they received no support in this area. The need for families to also be supported was noted:

I haven’t been offered any support, but I am doing leaves at the moment … I think they really should structure it differently so you can get back and spend time with family. I’ve done seven years gaol, but my kids have done seven years in gaol because they haven’t had that contact. (VL09 Father)
The lack of integration between the prison institution and the community is clear, as is the challenge to connect services across sectors; this is relevant as many parents and families are involved not only with correctional services, but also child protection, mental health, AOD, housing, etc.

Given their primary carer status, participants were also asked about what parenting support services were offered to them during imprisonment.

3.8.2 Parents’ access to parenting support services during imprisonment

At the follow up interview, parent participants were asked to describe the parenting support programs they had been offered and accessed during their imprisonment. Parenting support was framed very generally to capture sufficient breadth of information (See Table 9). Note that some prisoners accessed multiple services.

<table>
<thead>
<tr>
<th>Parenting services – prison (group)</th>
<th>Responses</th>
<th>Percentage of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group parent education</td>
<td>15</td>
<td>20.0%</td>
</tr>
<tr>
<td>Family support worker</td>
<td>9</td>
<td>12.0%</td>
</tr>
<tr>
<td>Counselling re: parenting</td>
<td>1</td>
<td>1.3%</td>
</tr>
<tr>
<td>Video visits</td>
<td>1</td>
<td>1.3%</td>
</tr>
<tr>
<td>None</td>
<td>34</td>
<td>45.3%</td>
</tr>
<tr>
<td>Prison Network Ministries</td>
<td>3</td>
<td>4.0%</td>
</tr>
<tr>
<td>Psychiatric nurses</td>
<td>1</td>
<td>1.3%</td>
</tr>
<tr>
<td>Mother baby unit</td>
<td>1</td>
<td>1.3%</td>
</tr>
<tr>
<td>Tweddle</td>
<td>2</td>
<td>2.7%</td>
</tr>
<tr>
<td>SHINE</td>
<td>6</td>
<td>8.0%</td>
</tr>
<tr>
<td>DHS</td>
<td>1</td>
<td>1.3%</td>
</tr>
<tr>
<td>School holidays</td>
<td>1</td>
<td>1.3%</td>
</tr>
<tr>
<td>Total</td>
<td>75</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

For the 71 respondents who participated in a follow up interview, while access to a range of programs is clear, and some 20% report accessing group parent education, more than half report not being offered any parenting support programs. These trends were also examined, taking gender into account. See Figure 13 below.
As can be seen in Figure 13, while around two-thirds of primary carer mothers were offered and participated in at least one parenting program during their period of imprisonment, the same approximate percentage of primary carer fathers were not offered any such programs and had no participation. We will address this specific issue of fathering in a pending publication (See Appendix 1 for details). There are clearly challenges in working with imprisoned fathers, with some research indicating that these men are more likely to have engaged in violent behaviour, have less education and be prone to alcohol and drug abuse than those in the general population (Kjellstrand, Cearley, Eddy, Foney & Martinez Jr., 2012). In the overall sample of 60 men, a total of 11 (18%) disclosed that either the offence for which they were imprisoned had been committed against a member of their family, or that they were subject to current legal intervention, prohibiting contact with particular family members because of violent behaviour. How this affects the provision of parenting support has not been considered, but it is clear that staff with specialised skills and expertise are required to engage with these fathers in ways which foster positive parenting skills and a safe environment for children.

Flynn and Field-Pimm (2014: 14) have recently argued that although “this target group [children and families of prisoners] does sit clearly within the realm of child and family services”, cross-sector collaborations must be fostered to ensure better responses in all sectors with which these families intersect. It would also seem timely for a specific investigation of the needs and experiences of imprisoned fathers, building on recent research in Queensland by Dennison, Stewart and Freiberg (2013) which found reduced visiting, poor quality of visiting and perhaps less attention to these families in the community.

Data were also sought about barriers to community transition; responses are shown in Table 10 below; this reflects the small number of participants who were interviewed in the community at second interview.

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25 A doctoral study, with a thesis including published works, which focuses on responding to imprisoned fathers and their parenting role, is about to be embarked upon by Tess Bartlett.
Table 10 Challenges to returning home

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of support</td>
<td>2</td>
<td>.4</td>
<td>20.0</td>
<td>20.0</td>
</tr>
<tr>
<td>Contact</td>
<td>2</td>
<td>.4</td>
<td>20.0</td>
<td>40.0</td>
</tr>
<tr>
<td>Time</td>
<td>1</td>
<td>.2</td>
<td>10.0</td>
<td>50.0</td>
</tr>
<tr>
<td>money</td>
<td>2</td>
<td>.4</td>
<td>20.0</td>
<td>70.0</td>
</tr>
<tr>
<td>Lack of services</td>
<td>1</td>
<td>.2</td>
<td>10.0</td>
<td>80.0</td>
</tr>
<tr>
<td>Being away from my children</td>
<td>2</td>
<td>.4</td>
<td>20.0</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>10</td>
<td>1.9</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>

3.8.3 Pre-release supports: parent experiences

Participants were asked more generally who had supported them, formally and informally, in preparing to return to their role as parents, with 26 individuals responding to this question. The trends in the data are clear: 11 participants indicated that they had no support, while one-half identified their family as providing the primary support to them: this included partners, parents, siblings and other extended family:

My mother has been a great support to me. (NDW10 Mother)

Worked really hard for that link to not be broken, Mum was a big help the whole way through and now. (VDP11 Mother)

Mother, always there, helped me get a house, went guarantor for me. (VDP14 Mother)

My partner, the Nanna and myself really. And the children, like, I've always been a big part of their life. (VPP10 Father)

This trend fits with much previous research, albeit conducted with mothers (e.g. see Arditti & Few, 2006), which indicates that on release from prison, parents tend to rely on friends and family for support.

3.8.4 Preparation for release: stakeholder observations

Stakeholders identified two key challenges to parents reconnecting with children and families post-release: managing the transition back to a parenting role in the community (including parole and other expectations), and negotiating structural barriers (notably housing); all whilst managing a range of their
own personal difficulties. Interestingly, participants focused much more evidently on parents and the issues they confront than on the children specifically.

3.8.4.1 Managing transition back to a parenting role

This issue of transitioning from a highly structured environment back to the community was commented on by professional stakeholders. They observed that parents in prison/secure hospitals can become used to routine and having their lives managed for them, and so become dependent on this.

There’s lots of, I guess lots of contradictions in all of those things, too, about places of security and containment can be real places of security and containment for families too. (Thomas Embling Hospital, VIC)

They note that on release, it is not uncommon for an individual’s situation to ‘fall apart’ unless there is a support system to help manage that transition. Prison is considered a somewhat safe environment, if life in the community is chaotic. This complements the parent data which indicates poor support for release and limited transition-focused services.

One core challenge noted, was that even if parents have accessed relevant services and supports whilst in prison, they tend to return to communities and networks that remain unchanged. With little community support for parents, participants observed that some ‘fall into the same habits’, which then have a flow-on effect to the children. Some stakeholders further noted that for some parents their focus is not necessarily on the child/ren when exiting prison, rather on their own networks, friends, and the same lifestyle they had before imprisonment. Participants were of the view that specific attention then needs to be placed on pre-release and conversations about children; parents are in need of stable and ongoing support when exiting the prison system in order to prepare them for parenting, planning, and living.

The issue of unresolved child trauma was indicated by some stakeholders as a further challenge to family reconnection after imprisonment. A lot of children are traumatised by their experiences of parental arrest and imprisonment, but this is often not acknowledged; upon release children may be re-traumatised if issues in the family have not been resolved and there is not adequate support. Particular challenges were seen to be posed where there has been minimal contact between child and parent during incarceration. Family violence was noted as a particular issue by some stakeholders:

Expectations of when this person comes out things are going to be different, and they talk about domestic violence, and you've seen the guys come out, you've seen the guys come back to the home that they left, there's a honeymoon period, down the track he's back in the justice system again. And all that's happening for the children is re-trauma. (Multi-Agency, NSW)

One related issue identified was for families in contact with child protective services, particularly the assessment of parenting capacity to ensure child safety and wellbeing. A key challenge identified was balancing the timeliness of assessments with realistic and well-informed assessments. Beginning the assessment process prior to release was seen to be useful in terms of time:
It’s an ideal, but we talked about those assessments in prison not meaning much upon release … so you know what would be ‘ideal world’ stuff would be that they would have their forensic psychosocial assessments whilst incarcerated … So we know prior to their release… Because what’s happening now – they get released, we do that assessment about six, 12 months later – they’re higher risk of re-offending. (Child Protection, NSW)

However, this was often challenged by prison-community communication, for example, child protective services needing to be informed of prisoners’ release dates and other corresponding information before any action can proceed. Professional stakeholders also noted a need to plan/communicate with parents in the pre-release phase, to better prepare them and for the process to run smoothly.

The accuracy of parenting assessments conducted in prison was, however, questioned. As noted above, stakeholders often described the ‘safety net’ provided by the prison. They described observing parents managing their lives, addictions and relationships whilst in prison, but being unable to do so when returned to the community, without the necessary ‘tools’, security or support systems in place.

You can only assess somebody who is out and who is functioning as an adult in the community before you can start considering them as a suitable carer and a suitable parent. (Child Protection, NSW)

Stakeholders also clearly described their observations of parents struggling to meet all the requirements they have upon release, such as parole, alcohol and drug screening or counselling, organising money, and parenting. They were of the view that post-release is a time when parents are under considerable scrutiny and stress. Some were of the view that it is unrealistic to expect people to meet such a range of complex requirements

[We] don't really communicate very well, so you've got to do all these things that the prison's telling you to do or your parole officer or whatever, and then we’re saying "and you need to do this, this, this, this and this before we even consider giving your children back. (Foster Care Regional, Victoria)

particularly when the systems they are working with have limited coordination and co-operation

At the moment I've got a mum's partner that we are giving drug screens to and alcohol screens to because he's going to be supervising access. We've got child protection involved with his family down in [regional area] - no, down in Melbourne, and they're sending him to drugs screens but the two child protection systems don't meet, they don't talk. (Foster Care Regional, Victoria)

As well as coordinating appointments, family, and parole requirements, parents are also dealing with difficulties around housing.

3.8.4.2 Housing as a barrier to transition and reconnection

Lack of housing for parents exiting prison was of considerable concern to the professional stakeholders for a number of reasons, partly because of the relationship between access to housing and child
custody. The ‘catch 22’ of needing housing to get your children back, but needing to have your children in your care to obtain housing:

You’ve got to be able to prove it [housing] before you can have the kids restored. (Women’s Legal Aid, NSW)

Lack of suitable housing was also seen to have implications for how or if parents can manage their own difficulties. Stakeholders described how lack of housing means that some parents are then placed in unsuitable accommodation, which exacerbates their problems:

Absolutely, they’ve got nowhere to go. I mean our current referrals, like in the [regional VIC] area, if somebody wants to stay locally or they can get Office of Housing straight away, which no-one can get Office of Housing straight away, and they can’t get private rental, we had one boarding house which was so dodgy you wouldn’t put a dog in it. (NGO, Victoria)

Participants are also being placed back in communities or circumstances where their offences took place or where alcohol and drugs are prevalent or in the same networks.

And sometimes I’ve had experiences where women are housed in St Kilda when they start using again, get back into the street prostitution and they’re almost setting people up to fail in a sense but that’s the only place you can get accommodation. (Centrelink Justice Interest Group, Victoria)

The challenges with public housing were also noted. Of particular concern was about how or if parents access the Department of Housing’s rent reduction scheme. The Department of Housing has to agree before someone’s rent can be reduced to $5 while they’re incarcerated; some stakeholders noted that if the sentence is for less than three months, sometimes this does not take place. As a consequence, the parent continues to be on the lease – rental payment, where they incur ongoing debt. Parents are then released from prison with a considerable debt and sometimes nowhere to live.

Data indicate that imprisoned parents have limited formal supports to assist them in preparing for and transitioning back to their role as a parent in the community upon release. Pre-existing parental problems are seen to be further compounded by lack of access to safe and stable housing in the community. Parents and children are reliant on support from extended families, who may already be under considerable emotional and financial strain.
4. Conclusion

Care planning, understood as a systemic approach to the immediate and longer term safety and care of children, has had limited attention from researchers concerned with better understanding and responding to the needs of children of prisoners. General research in the area of parental imprisonment has tended to focus on intergenerational links in offending, the behavioural and emotional impact of imprisonment on children and describing who cares for them once a parent has gone to prison.

One of the reasons there is little interest thus far may be due to the assumption that the criminal justice system, and the associated services that come with it, is an exclusively adult system that has little, or nothing, to do with children. Yet recent moves towards ‘Child Aware’ approaches and wrap-around services for vulnerable families challenge this (e.g. see Department of Human Services, 2015; Hunter & Price-Robertson, 2014). Children are as much the recipients, albeit indirectly, of ‘justice’ as the adults who are arrested, sentenced and incarcerated. Recognition of dependent children as part of the adult service system is beginning to take hold across different locations and in services including mental health, alcohol and drug services and Family Violence in Australia.

Our evidence is clear: from a parent and family perspective, along with professional stakeholder viewpoints, and as indicated via a review of current policy and other frameworks, children are typically not seen or responded to as their parent moves into, through and out of the criminal justice system, including at key crisis points. Our evidence shows that in relation to children whose parents are facing imprisonment or are in prison, the focus is haphazard and relies heavily on individualised approaches and the strength of the stakeholder’s professional networks. Such an atomised approach is related to a lack of specific protocols or directions, poor communication amongst service providers, and a generalised sense that children are someone else’s responsibility.

Attention to children remains poor when parents are in prison, and when they are released. Whilst many children in this study were cared for by their non-imprisoned parent, these were often complex arrangements, including previous family breakdown and acrimonious relationships between parents; a considerable number of children were required to move from their home, typically in an unplanned way; many were cared for by grandparents and other members of their extended family. A small percentage of typically younger children were placed into OOHC. Whilst children and parents were typically able to maintain some level of contact during imprisonment, parents reported being under-prepared for release and return to their parenting role; this was affected by pre-release tending to focus on individual, rather than family matters. It is important to highlight that there were considerable gender differences in participants’ access to parenting support services during imprisonment; the majority of fathers were not offered or given access to parenting support.

What is required are holistic services with a ‘no wrong door’ policy at each stage of the prison trajectory, where potential clients could look for assistance if, and when, it is needed.

Whilst recognising that such action will require a significant paradigm shift for some organisations, one only needs to look to other jurisdictions to see that this is possible. The development of the ‘Think Family’ framework in the UK is an example of one such initiative. Within this framework, action is being taken to implement cross-organisational staff training: to ensure staff consider the family situation of the client; to encourage and support staff to work with other agencies to meet the needs of the wider family,
not just their client; to initiate information sharing to identify those at risk and provide them with support; and to prioritise the wellbeing of children within the family environment. Such an approach could be actioned in Victoria or NSW. This will go further towards ensuring children are seen as significant and central figures within the criminal justice system, who are responded to promptly, and adequately.

By taking a child-focused approach to dealing with the impact of incarceration on the family, and where safe, supported and ongoing care plans for children are implemented from the point of arrest, the shortcomings that have become commonplace today can be minimised. This will require recognition from government departments, state-run providers, and NGOs that planning for the care of children whose parents are faced with incarceration is a shared responsibility. The development of child-centred guidelines or policies that involve all relevant parties would be a positive step forward. Current cross-government coordinating boards would seem well placed to lead the way with this pivotal phase. The inclusion of children impacted by parental imprisonment into these guidelines would ensure official oversight at the government level and would formally recognise these children as a vulnerable group in need of support. Taking a ‘holistic approach’ to service delivery, placing the client and the family at the centre of service delivery, will ensure ‘vulnerable’ groups are prioritised: this is the ideal time to take action by formalising responses to children impacted by parental imprisonment.
5. Recommendations

In both Victoria and NSW, the distinct needs of children and young people are recognised. Each state has a Commissioner/Advocate for Children and Young People; each have also sought to bring together key decision-makers to better coordinate cross-government policies and programs which impact on the wellbeing and safety of children and young people. In Victoria, this is the Children’s Services Coordination Board, while in NSW, this is has been under the umbrella of the ‘Keep Them Safe...’ action plan, although the latter focuses more specifically on child protection. To affect change, strong leadership and a commitment to collaboration is vital.

To ensure that the distinctive needs of children whose primary carers are imprisoned are prioritised and responded to adequately, this research highlights the need in each state for:

- an overarching policy which locates responsibility for cross-sectoral cooperation with a relevant agency or board,
- the creation of an interagency working group, with representation from relevant government departments (adult and youth correctional services, child and family support services, education, police) and the judiciary. This body would provide ongoing advice and oversight, and the development of policy guidelines and operating procedures, to cover information to be gathered, best-practice responses, as well as appropriate information sharing.

Specific recommendations about actions required at different stages of criminal justice intervention are as follows:

5.1 Actions

At arrest

Taking the principles espoused by the IACP (2014: 8) that “safeguarding a child’s well-being is the shared responsibility of a number of partner organizations within the community, not only law enforcement” the results of this study are supportive of the following actions:

1. The development, with relevant police departments, of child sensitive arrest procedures. This has been successfully implemented in other jurisdictions (e.g see Puddefoot & Foster, 2007; Mulready-Jones, 2011), supported by a clear relationship with child welfare services. Such procedures should also include:
   - Arresting officers asking about any dependent children during the standard arrest process. The need for police staff to be supported by and work collaboratively with an identified non-government agency, who can support and arrange care for identified children, is emphasised.
2. Consideration for how existing processes, such as the Victoria Police Electronic Referral (VPeR), could be used to refer families of offenders to relevant services at the point of arrest.
3. Police departments, in collaboration with child protective services and relevant non-government specialist organisations, to develop specific guidelines about responding to children when parental arrest is likely to result in immediate removal of the parent; this may involve some amendment to existing protocols between police and child protective services.
At court - sentencing

4. The development, with the judiciary, of specific procedures requiring Magistrates to ask about
dependent children during the sentencing and custody management process, perhaps through
the provision of in-court reminders. (Similar questions are currently asked about a range of
matters, including health and mental health related to the well-being of the person being
sentenced). The need to work collaboratively with relevant non-government organisations to
then support identified children, is emphasised.

5. The provision of court-based family support services, as currently being piloted by VACRO at
Geelong Magistrate’s court (See Appendix 1), to take referrals, provide crisis intervention,
brokerage support, community based outreach, and referral for families of defendants at the
point of the court appearance.

6. Incorporating into Pre-Sentence Reports, the likely consequences to children of parental
incarceration. Although related specifically to women, the Better Pathways Policy (Department
of Justice Victoria, 2005) highlighted the need to improve the effectiveness of sentencing, for
example by providing training for Community Corrections workers to ensure that court advice
and assessment reports are sensitive to the needs of mothers before the court. More broadly,
such a focus would ensure that an assessment of children’s circumstances and needs and the
likely impact of primary carer incarceration were put before the court.

7. Consideration of a range of alternatives to imprisonment; exploration of models, such as the
Family and Offender Sentencing Alternative (FOSA) project in Washington (as discussed in 1.3
and in Appendix 1).

At/during imprisonment

8. To improve the understanding of the scope and nature of children with incarcerated parents
(both male and female), and how to improve service responses, the prison reception process
should seek specific data about the presence of any dependent children, their location, and the
nature of the relationship, including care arrangements.

9. Prison services, in collaboration with child protective services, to develop specific guidelines for
prison staff around reporting to child protection, when concerns about the safety and wellbeing
of a child is indicated during the prison reception process

10. In collaboration with non-government agencies, to develop and provide specific information and
support resources to children/carers/families at the point of parental imprisonment. Further
information on support services that are available during and post prison to be regularly made
available throughout the parent’s term of imprisonment.

11. In collaboration with non-government agencies, the development and provision of relevant
parenting support programs for all imprisoned parents (both male and female).

12. Prison pre-release preparation to specifically address parenting and family issues.

5.2 Data gathering

To be able to respond effectively to this group of children, a more accurate understanding of the scope
of the issue and current responses is required. As such, we would strongly recommend:
1. **Justice departments** in both states to gather usable and systematic data about parents entering the prison system and their dependent children. Questions to be framed in a simple and unambiguous manner, and quantifiable where possible:
   a. Are you the parent of at least one child aged under 18 years? (Y/N)
   b. What are the ages of your dependent children? (Tick box of age groups [ABS categories]: can choose more than one to capture data for each child)
   c. Were you the direct carer of at least one child prior to imprisonment? (Consideration could be given to using the definition developed in this study of primary carer, based on the care outcomes for children: new carer in/out of the home or no carer) (Y/N)
   d. What are the care and accommodation arrangements for your dependent children (Tick box: Consideration could be given to using the care arrangement typology developed for this study, which, in addition to DCS categories includes care by/with friends and self care/independent living; the typology also captures if the care arrangement requires a change in accommodation; can tick more than one)

2. **Child protective services** in both states to include a field in their reporting systems for all children: at apprehension, investigation/assessment, or being placed in OOHC, which asks for parental whereabouts – specifically if parents are in prison.

3. **Non-government support services** to adapt current recording to include:
   a. Demographic information relating to the child/ren, such as age, sex, Indigenous and CALD status, and whether the child/ren has siblings.
   b. Primary carer status and parental status of inmate.
   c. The current carer, including if the child/ren is currently involved with child protective services.
   d. All programs accessed by children. This would give a more accurate representation of the number of children utilising these services and would allow for an improved level of service delivery from both adult and child services.

5.3 Further research

Whilst this study, across two of Australia’s most populous states, has generated clear evidence about the need to ask about and respond to dependent children as their primary carer traverses the criminal justice system, there are also areas which require ongoing or more specific examination as follows:

1. Given that men make up the majority of the prison population, and around one-half of these have dependent children - but do not appear to have access to parenting support programs, a better understanding is required of the specific needs of imprisoned primary carer fathers and their children
2. Both NSW and Victoria provide for some pre-school aged children to be accommodated with their mothers during imprisonment. These were programs which received little attention from this study’s participants, yet it is necessary to understand the impact of these programs on outcomes for children and families
3. The specific experiences of Aboriginal families and children, given the ongoing over-representation of Aboriginal adults in the criminal justice system and Aboriginal children in the OOHC system. (As noted in Footnote 21, the experiences of Aboriginal mothers was examined in an Honours thesis, developed as part of this study)
4. Very little research to date has captured family functioning in the post-release period and what assists adults to resume their parenting role. This study similarly struggled to gather sufficient data during this period. Research which specifically examines family reconnection and caring for children after release from prison is needed.
References


*Bail Act 1977.*


*Child Youth and Families Act 2005.*

Cowling, V. (1996). Meeting the support needs of families with dependent children where the parent has a mental illness. *Family Matters, 45* , 22-25.

*Crimes (Sentencing Procedure) Act 1999 § 21A(1).*

*Crimes Act 1914.*


Markovic, Zoran v R, No. 589 (VSCA 2010).


Memery v R, 495 (VSC 2000).


R v Mitchell, No. 75 (VSC 1974).

Re Mitchell, 59 (VSC 2013).


*Sentencing Act 1999.*


Guiding formal responses to children of primary carers facing imprisonment: some innovative solutions

**Police: United States of America**

**California**

Development of formal protocols in two Californian jurisdictions for responding at all arrests where children are present; these protocols include the requirement that arresting officers ask about children, and document this, when arresting an adult. These developments are part of broader work in these areas, including the co-location of Social Workers in police stations for consultation and assistance with children.

**Connecticut**

The New Haven Child development-Community policing program, a partnership between New Haven City, Police and Yale Child Study Centre. This project provides education about children and child centred practice to police and is a 24 hour consultation service; it requires police to document on the arrest sheet that they enquired about children; and progress and information sharing is maintained via a weekly program meeting.

In 2014, the International Association of Chiefs of Police (IACP) (a US organisation) published *Safeguarding Children of Arrested Parents* (2014). This is a model policy for responding to children. It is based on key principles: parental incarceration is an adverse childhood experience; parental arrest can have a lasting impact on children; and that coordinating and responding to children's needs at the point of parent arrest has benefits for the wellbeing of the child, both in the short and longer term and can support the parent-child relationship. They are clear that the wellbeing of children can be maintained whilst preserving the integrity of the arrest and officer safety. Coordination is vital: “safeguarding a child’s well-being is the shared responsibility of a number of partner organizations within the community, not only law enforcement” (IACP, 2014: 8). Key actions are seen to include: building interagency partnerships; planning, where possible, for arrests; asking about children at arrest; ensuring the appropriate placement of the child; asking about children again when parents are being processed into the prison/remand facility; follow up with the child/carer; and documenting information about children.

**Police: Sweden**

Mulready-Jones (2011:6) reports: ‘[At arrest] all offenders undergo an interview at the police station. This interview includes questions about the existence of and care arrangements for children, in most cases, particularly with male offenders any children are cared for by the other parent, but in the event

__26 G Puddefoot and LK Foster, ‘Keeping Children Safe When Their Parents Are Arrested: Local Approaches That Work’ (California Research Bureau, 2007).__

that this is not the case or that there are no long term arrangements in place for the children, there is a
duty upon the police to inform Children’s Services in the offenders’ Kommun (local authority) about the
children and their situation. This simple questionnaire and referral at the police station provides children
of offenders with a basic minimum standard of care at the moment they need it most. It also provides
the Ministry of Justice and other government agencies with accurate and up to date figures of the
numbers of children of offenders there are at any one time’.

Police – Australia-Victoria
Although not targeted specifically at children and families of offenders, SupportLink (a computer
assisted single referral gateway28), and now the Victoria Police e-referral (VPeR), allows police to make
service referrals for people they come into contact with, including family members and children, when
arresting a parent. VPeR has been referred to as a ‘victim e-referral system … which allows for police
to make a referral for support while submitting a crime report’29. The Victoria Police Annual Report
(2012-13) however, describes two of the key objectives to be ‘Improved facilitation and coordination of
service provision for persons/families engaged by police and who require additional social support in
order to mitigate the risk of future crises and/or further police intervention’ and improving early
intervention30. With key community partners, including VACRO, VPeR has the capacity to facilitate
more holistic responses to the children and families of offenders at arrest.

Court support
Australia-Victoria
VACRO’s Family Links31 pilot project based at the Geelong Magistrate’s Court has been running for
three years, and is being independently evaluated; the report will be available in 2016. The program
provides a family worker at the court.

‘Taking referrals from court-based support services as well as community-based services, the family
worker provides crisis intervention, brokerage support, community based outreach, and assisted
referral to families of defendants:

▪ with dependent children aged 0-17 years;
▪ residing in the area serviced by Geelong Magistrate’s Court;
▪ appearing on the criminal list
▪ facing serious charges which could lead to incarceration; and
▪ who are unable or reluctant to access ongoing support services independently.

The model uses criminal court as an opportunity to intervene before crisis escalation and to refer
families to treatment and support’.

html/page27.html
Sentencing
United States of America
In 2010 in Washington a new sentencing option was introduced to respond to parents and children. The Family and Offender Sentencing Alternative (FOSA) targets parents of dependent children, who are found guilty of non-violent offences. Essentially it allows these parents, who must meet other criteria, to serve a 12 month period of community custody – with conditions and regular monitoring by the court - as an alternative to imprisonment. Although it is argued to be showing benefits in terms of recidivism trends and successful completion of orders, there has been no formal evaluation to date.

Scotland
Whilst mandatory assessments for children of parents facing imprisonment are not required, Fee (2015) indicates that the Scottish charity Circle has been providing brief written assessments to the Sheriffs about their service users, outlining the consequences for children should their parents be imprisoned.

Prison - Scotland
Family Contact and Development Officer: Family Contact and Development Officer (FCDO) - prison officers who have responsibility for working with prisoners and their families in all prisons in Scotland. There are family contact officers are based in most prisons in Scotland. Their number and the time dedicated to family work varies from prison to prison, depending upon the governor. There is a national induction programme for new prison staff that includes the role of family contact officers and how to refer.

All prisoners and families are given a leaflet in court to inform them about services available to them. When a prisoner enters prison both the prisoner and their family are supplied with induction packs outlining their rights and access to and availability of services. Leaflets accessible to children are available and there is also a ‘Families Outside’ DVD aimed at children and teenagers about visiting prisons. Families Outside, in conjunction with the prison service, operate a national helpline where families can seek information about any aspect of family contact with prisoners, ranging from visits to release.

The family contact officers coordinate father-and-son bonding visits, in some prisons, for long-term prisoners and families. These happen before the main visits commence and the rest of the family comes in. They also organise enhanced visits and themed family days.

36 http://www.familiesoutside.org.uk/
**Prison – Northern Ireland**

Family Links: Family Links is run by NIACRO (*Northern Ireland Association for the Care and Resettlement of Offenders*). Family Links is run in with probation services staff based within prisons. Probation Board for Northern Ireland (PBNi) staff send details of all prisoners’ family contacts on committal. The organisation then contacts families within 24 hours of receiving the referral, to offer practical and emotional support. Family Links will offer information and ongoing support to families and children who require a service through home visits, benefits advice, transport, groups and referrals to other agencies.

**Prison – Sweden**

‘In Sweden the children of offenders have a right to contact with their absent parent and there are a range of measures in place to facilitate this, including:

- Prisoners are allowed free weekly phone calls home to their children
- Kommuns [local authorities] will pay the costs of children visiting their parent in prison
- Each prison has a children’s ombudsman who has responsibility for improving the facilities and process for children visiting the prison
- Private visiting rooms are the norm across the prison estate and visiting apartments are present in many prisons
- Some prisons offer overnight accommodation for visitors not using the visiting apartments
- There is no limit on the number of visits children can have
- There is regular use of temporary release for offenders to make home visits
- There is consistent authoritative advice to parents in prison to be honest with their children about their situation
- There are parenting groups in each prison’ (Mulready-Jones, 2011: 8)
## The impact of imprisonment on children's care: a strategic framework for good care planning

### Publications

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<td>1  Law in Context – Special edition: Children of prisoners</td>
<td>Law in context</td>
<td>Book (Special Issue of Law in Context)</td>
<td>A Eriksson &amp; C Flynn: Special editors</td>
<td>Published March 2015</td>
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<td>2  Responding to children when their parents are incarcerated: Exploring the responses in Victoria and New South Wales, Australia</td>
<td>Law in context</td>
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<td>C Flynn, T Bartlett, P Fernandez Arias, P Evans &amp; A Burgess</td>
<td>Published March 2015</td>
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<td>3  Responding to the needs of children of parents arrested in Victoria, Australia. The role of the adult criminal justice system</td>
<td>ANZ Journal of Criminology</td>
<td>Article in peer reviewed journal</td>
<td>C Flynn, B Naylor &amp; P Fernandez Arias</td>
<td>Published May 2015</td>
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<td>4  Collateral damage – highlighting the needs of children of imprisoned parents</td>
<td>Children and Families in Focus, 1, PP. 12 – 15. CFECFW. ISBN 2203-627X</td>
<td>Article in editor reviewed magazine from the CFECFW</td>
<td>C Flynn &amp; M Field-Pimm</td>
<td>Published May 2014</td>
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<td>8</td>
<td>The impact of parental incarceration on children’s care: Identifying good practice principles from the perspective of imprisoned primary carer parents</td>
<td>Child and Family Social Work</td>
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<td>C Trotter, C Flynn, S Baidawi, P Evans</td>
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<td>Understanding masculinity and fatherhood in the prison setting</td>
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<td>Peer reviewed journal</td>
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# Conference presentations

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<td>1 Waiting for mum: The needs of children who have an incarcerated mother with a mental illness</td>
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<td>2 Responding to the care needs of the children of imprisoned parents: learning from practice</td>
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<td>5 Interactive panel discussion: Children of imprisoned parents – research, policy and practice</td>
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Appendix 3

Secondary Data: Prison Fellowship

As of March 2013 there are 542 children under the age of 18 on the PF database (Children range in age from 0 to 17 years with a mean date of birth at access of approximately nine years). While this incorporates all service users on the system, the period of time in which these children have been using services is unknown due to the following limitations: children remain on the database regardless of whether the child’s parent has exited the system, until a child opts out of the program, or it is known that the child is over sixteen years of age. As a result, some of the children may no longer have family members in the prison system and a timeline for the data is unknown. Prison Fellowship is an organisation that supports families of incarcerated people as well as children. It is likely, then, that some children are accessing services who have other family members in the prison system, rather than a parent. When it is known that clients are children, or other family members, the data has been excluded. Data on primary carer incarceration, CALD, indigenous status, and care arrangements is unavailable from PF. A final limitation is that the data represent children with a parent in prison in Victoria, yet children themselves may live outside Victoria.

When examining program delivery at PF, data provide an overview of the programs children have nominated to take part in. Children may enrol in as many programs as they choose and programs proceed if there are enough resources available and if enough children have enrolled. Data, therefore, represents the total number of children who have registered for programs and are eligible to take part, rather than the number of children accessing programs. Of the children enrolled in programs, the largest group of children are registered for one program (N=223, 41.1%). The main program children are enrolled in is the Birthday program (n=507, 93.5%), where children receive gifts organised by PF from the imprisoned parent. While there are five other programs available (Angel Tree, Camps, Teen Camps, Family Day Out, and Mentoring), as has been noted, these programs are only delivered if enough children enrol to take part. Data indicate that at the time of writing only a small portion of children were enrolled in these programs. Programs are also only targeted at children or family members who visit inmates (as this is where registration forms are filled out), this excludes children or families who do not visit the incarcerated parent and research indicates that approximately 50% of parents do not receive visits (Flynn, 2014). While PF data does not represent accessibility, it does highlight the level of need for children with incarcerated parents, as portrayed by the number of children recorded in the system.

Secondary data: SHINE for Kids

Official data from SHINE (Victoria) dated from 2011 to April 2013 and indicate that 519 children were utilising services. Children ranged in age from 0 to 17 years (with one child yet to be born) and a mean date of birth of approximately nine years. Just over half of children (N=276, 53.2%) accessing SHINE programs in Victoria are female, while 230 (44.3%) are male. Indigenous status was provided for around 80 per cent of children (N=421), with 50 (11.9%) of these children identified as Indigenous.

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37 Data were collected from SHINE early in 2013. More recent data provided by the organisation indicate that by the end of 2013, 556 children had accessed services.
The SHINE for Kids Annual Report 2012-2013 reveals the total number of children attending the Prison Invisits' Program (PIP) and receiving supports is 1,208. This number is twice as many as ‘official’ records that indicate only 484 children. This discrepancy may be explained by how official data are recorded, which only include children who have attended to the PIP and filled out the enrolment form in its entirety including the child/ren’s name, date of birth, address and carer details. It excludes children who do not fill out these fields. Due to the sensitive nature of the program environment, where children are spending intimate time with their incarcerated parent, Program staff indicate that it is not always possible or desirable to obtain this data. Official data also show a small number of children (n=39) have accessed a range of other programs including the mentoring program, financial assistance, and diversionary programs. While official data and annual report data differ, what can be determined is the need for such programs as well as for an official data recording system.

Approximately half of the data relating to CALD status is unknown (n=236, 45.5%) as well as data relating to imprisoned parents (N=483, 93.1%). One mother and three fathers are deceased. Most of the data (n=492, 94.8%) on primary carer mothers is unknown as well as primary carer fathers (n=498, 96%). The care arrangements of children are known for only a small portion of children accessing SHINE services (N=35, 6.7%). It is also unknown how many children are accessing multiple programs.

**Secondary data: VACRO**

VACRO data date from 2010 to 2013 and indicate there were 227 children under the age of 18 who accessed VACRO programs from 2010 to December 2013, with a mean access age of nine years. Data indicate that 115 (50.7%) children who access VACRO services are male, and 86 (37.9%) are female, while the remaining data is unknown. The majority of children (n=161, 81.7%) had incarcerated fathers, while 49 children (23.4%) had incarcerated mothers. Three mothers and five fathers are deceased. There were 21 children (10.2%) who identified as Indigenous, while 74 (36.1%) identified as CALD. At least 29 (59.2%) of the 49 mothers in prison are primary carers and at least 89 (55.3%) of the fathers in prison are primary carers (data on primary care was unknown for 15 mothers and 40 fathers). With regard to programs: 159 children (70.0%) accessed SKY Counselling and 68 (30.0%) accessed Video Visits. There may be the occasional cross over in children accessing these services, however the exact number is unknown as it is not recorded on the system. Furthermore, 42 children (18.5%) accessed other programs aside from SKY counselling and Video Visits. No further data was available for these programs.