

Executive Summary

Children: Unintended Victims of Legal Process

Discussion Paper June 2006

Aims and Objectives

The project 'Children: Unintended Victims of Legal Process' was developed from the realisation that considerable research was available detailing the adverse effects of parental imprisonment on children, but that very little information was available about the policy and legislative context in which these adverse effects occurred. There is also very little data about the *impact* of criminal legal policy and legislation on dependent children in Victoria.

The aim of the project is to examine the current criminal-legal legislative and policy environment, and its impact on children that currently have a primary caregiver in prison. The research involved a series of interviews with the adults that have been involved with prisoner's children, either in a personal or an official capacity. The interviews included sentenced mothers, arresting police officers, the mother's solicitors, the sentencing magistrate/judge, and the interim caregiver/s.

The objective of the study is to portray a complete picture of the children's experiences, providing a realistic idea of the financial and social costs involved in the care of children whose parents are incarcerated. Under present sentencing principles relating to the sentencing of primary carers, particularly mothers, the effect of sentencing upon children appears to be a largely disregarded factor.

The focus of this Discussion Paper is on ways in which the lives of prisoners' children could be significantly improved, and their costs to the community reduced, by legislation, policy and court processes that acknowledged their existence with a planned approach to their new situation.

The second phase of 'Children: Unintended Victims of Legal Process' will be a collaborative consultation aimed at developing and presenting alternative processes that seek to reduce the impact of parental arrest and prison terms on dependent children.

Research Process

The research phase of the project involved interviewing 15 mothers in prison or in the first 18 months of post-release. They were invited to discuss their experiences, as parents, from the time of their arrest. With their permission and assistance, their police informant, their solicitor or barrister, their judge, and the carer of their children while they were in prison, were also interviewed.

The findings from the research revealed that the trauma and symptomology experienced by the children and their carers (both primary and interim) in Victoria reflects the international research about the children of prisoners. Many of their experiences, such as truancy, self-harm and anti-authoritarianism, are accepted precursors for intergenerational recidivism. Furthermore, it appears that the people who are responsible for enacting current policies and legislation – police officers, solicitors, and judges – are also negatively affected by their involvement with primary carers and their children in the current legal context.

From the time of their primary carer's arrest until after their release, a number of Victorian policies and laws directly affect the experience of dependent children. The findings from the review of these policies suggest that these children are rarely acknowledged in legal processes and are consequently often left at risk in various ways by their primary carer's removal to prison.

Some of the research findings

How many children are involved?

- Australia wide, approximately 38,000 children experience parental incarceration each year, while 145,000 children have ever experienced this loss. This is nearly 5% of all Australian children, and 20% of Indigenous children (Quilty, 2005). According to the VACRO study in 2000, *Doing it Hard*, extrapolated figures suggested approximately 3,000 Victorian children were affected by parental imprisonment at any time.
- Significant increases in recent prison populations have led to a related increase in the numbers of children affected since *Doing it Hard* was published. The Corrections Victoria's 'Mother and Children Program Interim Policy' (2004) states:

The 84 per cent increase in female prisoner numbers in the last five years since 1998, however, has seen an unprecedented rise in the number of women with dependent children applying to have their infants or young children reside with them in prison.

These figures imply that at least 4,000 children in Victoria are currently affected.

In this research project, 35 children were associated with the 15 mothers interviewed.

Policies for children during arrest of a primary carer:

- The Victoria Police have no guidelines for officers, or policies covering the apprehension, arrest, charging or detention of primary carers with dependent children; nor does it appear that various issues related to prisoners' children, such as their care, holding, transference of legal responsibility, or the trauma children may experience are given adequate consideration. Similarly, the report suggests that reconsideration of the planning and execution of property search warrants may be due where dependent children are present or returning to the family.
- DHS has no protocols with Victoria Police concerning this group of children.
- Court search and arrest warrants make no reference to the special circumstances and legal protective requirements primary carers may have for their dependent children.

Bail/Remand:

- Bail laws make no reference to the needs of this group in terms of the above point. When mothers are unable to obtain bail and are remanded in custody, there are no laws, policies, or guidelines, with the courts, the police, the prisons, or DHS regarding who takes responsibility for the children, or how this responsibility is transferred from the mother. Nor are there any protocols alerting any department that a potentially neglected child may be unidentified.

In this study, ten of the fifteen mothers interviewed were refused bail, affecting 25 of the 35 children concerned.

Sentencing:

- Despite many precedents and instructions otherwise, custodial sentences are not always used as a last resort when mothers are sentenced.

Four of the fifteen mothers interviewed in this study, were in prison for their first offence.

- Again, there are no laws, policies, or guidelines with the courts, the Victoria Police, Corrections, or DHS regarding who takes responsibility for the children when their primary carers receive prison sentences, or how this responsibility is transferred from the primary carer.

In this study, four children were left abandoned and neglected as a result of three mothers' arrests and imprisonment, and were still uncared for well after sentencing. A further three were abandoned during their mother's sentence; no-one was notified.

Prisons

Corrections Victoria takes no information from prisoners at reception regarding their status as a primary carer with dependent children, or regarding the current risk status of those children. Consequently it is difficult to know basic statistics such as: *how many children are actually involved?*

- DHS has no protocols with Corrections Victoria regarding the children of primary carers who are entering prison. Policies concerning the comparatively small number of children who are eligible to reside with their mothers in custody are a clear exception.

In this study, one mother did not know where her children were for 45 days; both children were under two years old. In prison, DHS were only able to bring her children to visit twice in three months. In another case DHS were unable to bring three children to visit their mother during her 18 month sentence.

Visits

- Children will spend the majority of their time with their imprisoned primary carer in prison visit centres which have not been designed to meet their needs, or those of their interim carers.

- Victorian prisons do not have visitor centres for families visiting prisoners; these centres have been considered a national standard for prisons in the U.K. since 1994 and are a consistent feature of American prisons.

Education

- Many children will start school, change schools, move to high school, or drop out of school during their primary carer's prison sentence. Many of these children will also bring their trauma symptoms to school, including declines in academic performance, truancy, anti-authoritarianism and bullying. However, there are no protocols between the Department of Education and Corrections regarding either the imprisoned primary carers or their children.

This study found that three out of eight teenagers left school and ten children changed schools as a direct result of their mother's incarceration. In addition, four children started school, two children were in transition to high school and a further three will enter high school – all without their mothers' support

Pre and post release programs

- Prison programs are not designed to specifically address the issues facing primary carers and their pre and post-release challenges. These concerns may include: reunification, dealing with traumatised children, renegotiating broader family roles, setting up housing and material necessities, re-establishing contact with schools etc; all while coping with their own anxieties and readjustments.
- Corrections have no policy covering the release of primary carers in terms of the needs of the primary carers, their children or the interim carers.
- Interim carers are not informed of a primary carer's imminent release. Provisions are not often made for interim and primary carers to plan together for the handover of children.

The effects of policy inadequacies:

- The current lack of policies both within and between the departments whose decisions affect these children and those who care for them has led to numerous cases of systemic neglect.

- When children go into foster care as a result of their mother going into prison, they are likely to experience post traumatic stress disorder, anxiety, guilt, shame, and insecurity. If it is state foster care, they are also likely to be separated from siblings; schools, and friends; have at least two placements, experience at least four caseworkers; reside in homes that are financially and socially disadvantaged as a result of their presence. They have only a thirty per cent chance of successfully reunifying with their mother post release (Department of Human Services Victoria, 2003). A further concern relates to the possibility of prisoner's children ending up in residential care unsuitable to their age or needs, simply because they have too many siblings, or have become too difficult to place in home care.
- When people receive children of imprisoned primary carers into their homes, they are likely to suffer financial, social, and personal losses, feel unsupported and exploited, unheard by caseworkers and disempowered by prison protocols, have unsatisfactory relationships with the primary carers, and be expected to support and sustain her reintegration post-release.
- When mothers leave prison they face homelessness, loss of material possessions, loneliness, unemployment, parole conditions, DHS conditions, drug addiction, culture shock, and strained relationships with emotionally damaged children.

The costs of policy inadequacies:

- The financial cost to the community of keeping a woman in prison in 2002-2003 was \$147.20/day, or \$53,728/annum (Council of Australian Governments, 2004). The financial cost to the community of keeping a child in foster care is \$67,000 over a three year period, or \$22,333/annum (Public Parenting, 2003). This adds up to a total expense of \$76,000/annum (\$1,500 a week) to keep a mother, with one child, in prison. This does not include the hidden costs carers pay in terms of loss of employment and training, time, and opportunities.
- Offenders with community corrections cost the community \$13/day in 2001-2002 or \$4,745/annum (Council of Australian Governments, 2004).

- At least 4000 Victorian children under sixteen, most under ten years old, are at risk of the outcomes discussed in this paper, at any one time. Many more children have already suffered because their mothers went to prison.
- Given our willingness to expose their many children to awful, prolonged, and well-documented suffering, at considerable cost to Victorian taxpayers, it would be understandable to think that the crimes their mothers have committed must have been, on the whole, heinous. And yet, in June 2001 less than a third of the female population in prison were there for offences against persons, while the vast majority were in for theft- and drug-related offences (Office of the Correctional Services Commissioner, 2003).

Conclusion

In Victoria, there are no policies or laws in place to protect children when their primary carer is arrested, sentenced, imprisoned and released. The one exception is Correction's policy for the small number of children eligible to reside with their mothers in prison.

This policy vacuum has a profound and negative effect on the thousands of children, primary carers and interim carers caught up in the criminal legal system. And these negative consequences – social, psychological and financial – can extend for long after the prison sentence has been served.

Although many departments and agencies come into contact with children at various stages of their primary carer's legal process, responses to their situation remain inconsistent and ad hoc in nature. In some cases, these inconsistencies have resulted in: laws enacted in some courts being directly contravened in others; rights that are recognised in some courts are being disregarded in others; and some police officers' lack of awareness that they may be breaching child protection laws to comply with criminal laws. In many cases, these inconsistencies result in the unfair and unacceptable treatment of children whose primary carers have been imprisoned.

The findings from this study suggest that the hardships experienced by the children and their carers were similar to those found in the rest of Australia, and in Europe and the U.S.

There are certainly systemic precedents for the courts to overlook the human rights of this particular sub-group of society. Yet within the judiciary there is a reluctance to consider that this oversight may constitute a form of discrimination, let alone a violation of civil rights. Either way the situation is unacceptable in present day Victoria.

As signatories to the CROC treaty, Australia has committed to protecting the rights of *all* children. The articles of that treaty referred to in this paper clearly state how those rights are to be protected in court proceedings, and that the best interests of the child must *always* take priority.

Fortunately, the task of developing a cohesive, interdepartmental policy and legislative safety net for children experiencing parental legal processes is not as daunting as it may seem. The establishment of the Child Safety Commissioner, a role with departmental independence and interdepartmental access, provides an ideal framework to guide this process. The acknowledgement of children in the Family Courts, and the more holistic approaches of the Drug, Koori, and Family Violence Courts, show that effective systems are already in place, and many established practices could be readily incorporated into protocols and law.

It is not the intention of the law to punish innocent people for crimes another adult has committed. It is not the intention of the Victorian legal system to damage the lives of the children it touches. It is, however unintentionally, the end result.

Who is Involved?

The researcher

Terry Hannon (B. Sc., B. Psych. Hons) experienced a period of incarceration more than 10 years ago as the mother of a very young child. Terry was very strongly supported through-out her sentence, however became increasingly concerned observing the level of trauma experienced by mothers and children lacking access to support networks during criminal-legal processes.

More recently, Terry worked for 2 ½ years as a Senior Therapist at Odyssey House Victoria, primarily with residents as they re-integrated with the broader community. Terry has been working full time on this project since November 2004. She can be contacted

at VACRO, Victoria, Australia 3000; telephone 61 (0) 3 9605 1920, mobile 0408 544 082; or email thannon@vacro.org.au .

The reference group

The Reference Group met on a semi regular basis over the time of the project, utilising the expertise of the members for feedback on the direction of the project and input into its content, as well as linking with the broad range of networks that they all brought to the project. A number of members were involved in the editing process of the Discussion paper; however it is important to note that the Discussion Paper is not a product of the Reference Group. The Discussion Paper and its format / contents were signed off by Flat Out Inc and VACRO.

The members of the Reference Group were:

Arie Frieberg:	Monash University, Dean of Law
Catherine Gow:	Formerly Women's Housing Limited
Robyn Hamilton:	Victoria Legal Aid, Children's Representative
Christa Momot:	Reichstein Foundation, Executive Officer
Jelena Popovic	Deputy Chief Magistrate, Victoria

The management body

The Victorian Association for the Care and Resettlement of Offenders is a community based welfare organisation. Its forerunner, the Prisoners' Aid Society, was established in 1872 as the Discharged Prisoners' Aid Society. VACRO has a long and distinguished history of working collaboratively with offenders and their families and has established a strong working relationship with the Department of Justice and all Victorian prisons. VACRO's experience and knowledge has been sought in policy formation.

VACRO is a multifaceted organisation offering prisoner and family welfare support, a Prison Information and Helpline, parenting and relationships programs, post release support and advocacy and community education.

The organisation's experience in providing a range of services in conjunction with its strong connections through the criminal justice system and community networks, position it well to provide a high quality and holistic service.