

Remember the Children of Prisoners

December 1999

What should be the rights of children of women in prison?

The children of prisoners have the same rights as any other child to 'know' and have contact with their biological parents where this is not contrary to their best interests. This includes fathers as well as mothers although there may be particular issues in relation to young children being closely attached to their mothers. This is in line with Article 9(3) of the UN Convention on the Rights of the Child which states that

'State parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests'.

While the security requirements of the prison have to be satisfied, the main issue should be the safety and well-being of the child. Children are, however, more likely to suffer harm from feeling isolated from and abandoned by their imprisoned parent than from seeing their parent in a prison environment.

Where children are old enough to ask, they should be involved in decisions about the frequency and conditions attached to that contact. For babies and very young children, mothers who wish to care for their children should be given support to do so; they may, however, decide that the best interests of the child determine that they should be cared for by another family member. The needs of older children require community links and experience at school that cannot and should not be provided in the closed system.

The high levels of indigenous women in prison also raises "stolen generations" issues and the need to have special attention to cultural meaning of separation for both parents and children.

What obligation should governments have when a parent is imprisoned in terms of access, other care for children and visiting rights?

State authorities have a responsibility to ensure that the 'best interests of the child' are a primary consideration in providing for children's contact with their imprisoned parents. The responsible authorities have an obligation to fund and provide regular safe contact including extra staff and appropriate facilities. See also the point below about the need for a safe environment for children living or visiting prison.

The arguments for ensuring regular safe contact for children with their imprisoned parents relate not only to children's right to such contact but also to the long-term social and economic benefits in most cases of maintaining a strong bond between the offender and his/her chil-

dren. The benefits flow from the incentives for reform for the prisoner and from the effects on children of not being separated from and feeling abandoned by their parents.

In many cases a period of remand or time sentenced to jail severs the link between imprisoned parents and their children, with parents becoming depressed and involved in drug use. This is likely to increase their risk of self-harm and suicide. Where parents can maintain a link with their children and their carers, and have some say and responsibility for their care even while they themselves are in prison, the parents are more likely to be motivated to minimise their prison term by good behaviour.

In addition, where parents can maintain a link with their children and their carers, and have some say and responsibility for their care even though they cannot provide that care, it is likely to mean that their children are also less likely to enter out-of-home care. Where friends and extended family are unable to care for the child or require some support, the state has some responsibility to ensure that this is available. The state's interest, in addition to its obligation to do so, lies in reducing the risk of delinquency and future offending for these children if they do not receive adequate care and they feel deserted by their imprisoned parent.

Needs of child in sentencing

Sentencing involves taking a range of factors into account in relation to each particular case. Judges may take the impact on children into account in sentencing a parent. This factor may be introduced by the defence in arguing the impact upon the offenders' rehabilitation if the link with the child is severed, the onerous burden that the sentence will have upon the prisoner as a result of being separated from the child, and the anxiety about the level of care of the child.

A more important priority is the need to provide alternative community-based sentences and diversion schemes in relation to treatment for drug use because of the high proportion of prisoners, and especially women in prison for drug-related offences. Alternatives to remand are also of critical importance given that success and progress while on bail is more likely to lead to a non-custodial sentence.

Taking account of the needs of an offender's child in sentencing where that offender may be incarcerated is also linked to the stance taken by prosecutors. The prevalence of women in prison due to offences associated with social security reflects an approach taken by prosecuting authorities that is not seen to the same degree in "private" theft cases or in respect to men and white collar

crime or tax fraud. In many cases, such as welfare fraud or breach of community orders, women are in prison precisely because of a concern to provide for their children as best they can with limited resources.

How much information should be made available to courts and whose responsibility should this be?

It is always open to the offender to lead evidence of this impact in the terms outlined above. If the courts were to take such information into account, in all cases the material should be put forward by the offender and where the court is left in doubt a pre-sentence report could be ordered.

The cuts in legal aid and the capacity of defendants to make these arguments is however an increasingly significant issue given the typical dependence on legal aid of the majority of offending women and cut backs in availability.

The need for a safe environment for children visiting or living in the prison

Children's safety and wellbeing within the prison environment are paramount considerations. While it may be argued that children have a right to contact with their parents and that such contact may provide an incentive for their parents to reform, children's safety and wellbeing should not be compromised. Their need and wishes for such contact should be major factors in this consideration. Where children do not wish to have contact with their parent, this should be respected. If their reasons are gently explored, conditions may be found to satisfy the child's concerns. The right to remain in contact with parents should not, however, over-ride children's right to 'have a say' about how and when this should occur.

An appropriate and safe environment means one that allows appropriate physical contact--preventing contact or having to talk to their parents through screens is not in the best interests of the children, though security and prevention of drug smuggling must also be taken into account.

The state child protection authority together with the prison authority must make individual assessments of the

safety, welfare and wellbeing of children visiting or living within the prison. This means taking into account concerns about violence within the family, between the partners, or other family members and friends who may accompany the child on visits.

The state child protection authority also has a responsibility to ensure that children are adequately cared for if there is no other family or appropriate carer available to care for the children.

Childcare for women in periodic detention

A pilot program incorporating childcare facilities in prison with parenting programs within or in conjunction with these facilities would allow the feasibility and benefits of such a scheme to be tested. The New Beginnings project in Risdon Prison in Hobart has shown some positive results for male inmates who increased or resumed contact with their children, were more prepared to be involved in family mediation, and were more aware of the impact of their violence and drug use on their children and more motivated to address these problems.¹

Providing parenting support and education for imprisoned parents may have long-term benefits for both the prisoners and their children, and is likely to provide a much more constructive role for the prison than simply detaining prisoners.

There is also some evidence that the change in dynamics as a result of involving children and providing for positive contact with their parents is usually positive for those running the prison, with the additional duty of care issues for children who live in and visit more than compensated for by the lessened demands of managing the prisoners' behaviour.

The value of 'childcare nearby' seems dubious and is likely to be the worst solution. If being nearby means that children are disconnected from their familiar environment, family and significant others, and their local community, this will have few benefits but significant costs for the child.

¹ Wellesley, 1999 at www.aifs.org.au/external/nch/nlaut99.html at page 16.

Film Night: Preview of 42nd Street

A successful fundraising film night was held in Canberra on 2 December, with the reprinted version of the 1954 black and white film musical "42nd Street." It was a night of fabulous singing and dancing, sweet romance, old-fashioned humour, extravagant sets and spectacular cinematography! Guests were treated to ACT wines, juice and nibbles before the film.

Proceeds will go to supporting the costs of maintaining the National Office. Special thanks to the Staff of Child Care Studies, Canberra Institute of Technology, who organised the event and sold many of the tickets.

Pictured: Leslie Ralph, Helen Bayes and Simona Bobei

