

Children of Prisoners: Passive victims or humans with rights?

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Abstract

Over the past few decades, the phenomenon of children of prisoners has produced a small but growing body of literature, much of which focuses on the lack of affirmative action by governments in Western countries (including Australia) to support the children. There are a number of key areas where appropriate levels of intervention are deficient – resulting in there being no clear lines of accountability and specific state agencies have not been identified and given a mandate to respond to the needs of this very vulnerable population. They are consistently ‘falling through the cracks’. This study asks whether the rights of the children are being met as assessed in relation to relevant articles of the United Nations Convention of the Rights of the Child (CRC).

Historically these children have been overlooked, especially by the criminal justice system, resulting in them being labelled as an invisible population, forgotten victims of crime, and collateral damage of the legal system – presenting a picture of the children as marginalised and socially excluded.

This thesis describes the phenomenon of ‘children of prisoners’ by looking at their own (and their parent’s) circumstances before, during and after the state’s intervention resulting in the parent’s imprisonment. It argues that children of prisoners should be recognised as a unique group with complex needs. It also acknowledges that the children and their families are often a difficult group to work with. It looks at common themes which emerge across jurisdictions, especially the impacts on the children, as various stakeholders respond (or fail to respond) to their needs. It also examines international and domestic human rights instruments, conventions, declarations, petitions and proposals concerning the rights of the children. Finally, it lists key findings and the difficulties of global ideals regarding the children finding their way into state legislation and policy to augment the human rights of the children of prisoners.

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1. INTRODUCTION

The true measure of a nation's standing is how well it attends to its children – their health and safety, their material security, their education and socialization, and their sense of being loved, valued, and included in the families and societies into which they are born (UNICEF, 2007).

The majority of children identified as having a parent in prison are at risk of missing out on those attributes mentioned above which constitute and maintain caring communities. This chapter introduces the thesis and discusses the phenomenon of children of prisoners, and emphasises that they do have rights under international conventions. The scope of the thesis is outlined, then a description of the theoretical perspective. This is followed by a description of the methodology. Finally a local account highlighting some of the more salient issues facing the children of prisoners is included.

Children of prisoners

When offenders are removed from society and placed behind bars, often their families, and especially their children, suffer as well. In recent times the circumstances of the children have become the subject of a small but growing body of literature, particularly from an advocacy standpoint. The increasing prison population and incarceration rates (especially of women, who are in many cases primary care givers) in many Western countries including Australia have prompted a closer look at this phenomenon in terms of the long term outcomes for the children (Larman & Aungles, 1991; Robinson, 2008; Bocknek et al, 2009; Cassidy et al, 2010; Convery & Moore, 2011 & Murray et al, 2007). Other studies and reports have looked at the specific consequences for the children, adverse or otherwise, as a result of parental separation through incarceration; for example, the increased risk of delinquency (Murray, 2007; Farrington et al, 2001; Bayes, 2008). Convery and Moore (2011:14) argue that children of prisoners are 'frequently overlooked as comprising a group in its own right' and have unique vulnerabilities which call for specific interventions. .

While the rights of the children of prisoners are central to the present discussion, it is worth noting that the rights of all children were put firmly on the international agenda in 1959 with the United Nation's Declaration of the Rights of the Child and more recently the

Convention on the Rights of the Child (CRC) in 1989 (Walther 2003). The latter international instrument is ‘the most widely ratified human rights treaty in the world. It contains a full range of human rights – civil, cultural, economic, political and social rights. Australia ratified the CRC in December 1990’ (Australian Human Rights Commission, 2012). The definition of a child in the context of this discussion is that which is articulated by the United Nations in Article 1 of the CRC (Definition of the child):

The Convention defines a ‘child’ as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18 (UNICEF n/d).

In practice, jurisdictions vary greatly in terms of how ‘child’ is defined in relation to criminal justice and other social institutions.

Since 1989, concerns specific to the needs of children of prisoners have continued to be aired within the United Nations and in other forums. A day of general discussion concerning the children of incarcerated parents was held by a United Nations Committee on the Rights of the Child on 30 September 2011. Following these discussions, in March 2012, The United Nations Human Rights Council held a full day meeting to discuss the rights of children deprived of their liberty as well as those who have incarcerated parents (United Nations, 2012). Comment on the report of meeting will be detailed later in this thesis as part of a broader human rights discussion.

The phenomenon of children of prisoners, while attracting increasing attention in recent times is still very much under researched. Recent commentary supports the notion; this vulnerable group deserves formal recognition and support. Unfortunately, this is generally not the case and this cohort continue to be labeled as victims who are forgotten, invisible and hidden (Flynn, 2011; Hoffman et al, 2010; Shillingford, & Edwards, 2008). This has also been noted by a range of organizations and commentators:

For example, in 1995 The Tennessee Department of Correction Planning and Research stated:

It seems strange that society fails to give any thought whatsoever to the prisoner's family when he is summarily locked up. His dependants are the real sufferers. It is likewise strange that so little research has been done concerning this group and their status (1995 p: 3).

Jeffries et al (quoted in Eddy and Reid, 2002: 1) have observed that:

The children of incarcerated parents have been a relatively invisible population. Corrections systems have tended to view male and female inmates as neither deserving of nor desiring contact with their children. Further, while a proportion of the children of inmates are in foster care, the children of incarcerated parents per se have not been considered the responsibility of any traditional governmental entity, such as child welfare, mental health, or the juvenile court.

Eddy and Reid go on to reaffirm what many commentators have been stating:

In terms of scientific questions, the amount of information that is lacking on the children of incarcerated parents is staggering. Epidemiological studies are needed to gather information about the development of these children across the lifespan. Vital questions such as what are the characteristics of families who succeed in the face of incarceration versus the characteristics of those who do not need to be answered (2002:18).

Further more, in 2007 Murray lamented that:

Unfortunately, prisoners' families have been little studied in their own right. The effects of imprisonment on families and children of prisoners are almost entirely neglected in academic research, prison statistics, public policy and media coverage. However, we can infer from prisoners' backgrounds that their families are a highly vulnerable group (2007: 442).

In recent decades, there has been a greater recognition of the needs of children of prisoners and what remains clear is they are certainly victims caught up in a state initiated process responding to the criminal activities of their parents. However, there is little evidence that the needs of children of prisoners have been assigned to any particular government agency; indicating that these children are no one's responsibility.

Scope

This study draws from research in Australia as well as from a number of overseas jurisdictions which have reported on the problems of children of prisoners. It does not include the small percentage of children who are able to live in custody with their parents.

The study:

- ☐ explores the phenomenon of children of prisoners from an historical perspective by examining the circumstances of their parents;
- ☐ argues that children of prisoners should be recognised as a vulnerable group which has special needs;
- ☐ examines some of the complex issues faced by children of prisoners;
- ☐ asks why the needs of children of prisoners seem to be constantly overlooked;
- ☐ looks at common themes which emerge across jurisdictions as various stakeholders respond to the needs of the children;
- ☐ examines international human rights instruments, conventions, declarations and petitions and proposals, and

Theoretical perspective

If all child rights abuses were identified then listed from the most heinous to those with least impact, the rights of children of prisoners may not be particularly high on the list. For example in developing countries they would be less likely to appear on the country's human rights agenda.

In 2007, for instance, a Bolivian report indicated that:

Only five out of 10 children are born in a health care centre or with the help of a doctor, nurse or midwife; 54 out of 1000 born die before they are 1 year old; three out of 10 have chronic malnutrition and are below the average size for their age; four out of 10 suffer from an acute respiratory illness; two out of 10 have no birth certificate; eight out of 10 have received their pentavalent vaccinations; 75 out of 1000 die before the age of five; and only four out of 10 children aged four to five years receive initial education (UNICEF 2007:3). (Pentavalent vaccine is a combination of five vaccines-in-one that prevents diphtheria, tetanus, whooping cough, hepatitis b and haemophilus influenza type b, all through a single dose (World Health Organisation 2012).

And in Burma, a recent media release informs us:

The Burmese military continues to violate international humanitarian law through the use of anti-personnel landmines, forced labor, torture, beatings, and pillaging of property. Sexual violence against women and girls remains a serious problem and perpetrators are rarely brought to justice. The army continues to actively recruit and use child soldiers, even as the government cooperates with the International Labour Organization on demobilizing child soldiers (Human Rights Watch 2012).

On the other hand, countries that enjoy a high standard of living are more able and ought to be willing to focus their attention on issues such as children of prisoners. Nonetheless the emergence of strong advocacy groups such as Eurochips in the European Union, San Francisco Children of Incarcerated Parents Partnership in the United States, Barnardo's in the UK and VACRO and Shine for Kids in Australia indicate the continued pressing nature of the problem.

This does however raise an interesting question. Is the United Nations Human Rights Council the appropriate vehicle to advocate for the rights of children of prisoners, given the number and extremities of far more contentious child's rights issues? Or should advocacy groups focus their attention on a collaborative effort to inform policy and improve work practices independently of the UN? Possibly a question for another day!

Methodology

The study is principally based on thematic analysis of the literature on children of prisoners and to a lesser extent incorporates comparative analyses which look at commonalities and differences in experiences of the children based on reports from different countries and interventions across jurisdictions.

It draws together some early research on the phenomenon which discuss issues faced by prisoners, their children and carers, for example; longitudinal studies from England (see Farrington et al, 2001) and the United States (see McCord, 1991). Both of these studies lean more toward the links between criminality, intergenerational factors and incarceration on delinquency outcomes, rather than a specific focus on the phenomenon of children of prisoners. The present study draws attention to the scarcity of literature on the subject and presents a case for further research - especially longitudinal studies (see Eddy and Reid, 2002 & Murray, 2007).

In their discussion on social research and data analysis in Australia, Graetz and McAllister assert 'the data are used both to quantify the magnitude of the various individual attributes, group characteristics and social processes, and to generalise sample findings to the broader Australian population (1988, p.3)'. Applying this principle to the case at hand, and given the lack of baseline data, researchers and policy makers are certainly at a loss to provide evidence to inform policy specific to the needs of this cohort. Calls for an approach by governments, both in Australia and overseas to begin the process of gathering data on the parental status of prisoners have been numerous (Parliament of NSW 1997; South Australian Attorney General's Department 2005; La Vigne et al 2008 & Ayre et al 2011). Until these calls are heeded, only estimates of the numbers and vague descriptions of the attributes, characteristics and social processes will be available to support and encourage discourse on appropriate interventions and policy direction.

As it became evident there was a paucity of data and research on the phenomenon of children of prisoners, the search for information moved to government reports, journal articles, literature describing interventions, conference presentations, human rights

documents, data bases (on population and prison statistics), submissions and reports provided by advocacy organisations.

By looking at the gap between the human rights of the children as set down in the Convention on the Rights of the Child and other specific resolutions, declarations and recommendations, and the outcomes being realised at the coalface, conclusions are drawn as to the efficacy of current interventions and what the future might hold for the children.

The majority of the literature found describes children of prisoners and their issues in developed western societies giving the study a distinctive western flavor. However some information has been captured in other jurisdictions via international fora on children's rights and this too will be discussed.

A Tasmanian story

In 2007 in Tasmania, the author was one of two practitioners developing a post release program for ex offenders. During a visit to a primary school, at the invitation of the school principal, we were told of six students aged between 7 to 10 years, whom he and his teaching staff had identified as children of prisoners. There were signs of sleep deprivation and hunger among this cohort and regular school attendance was a problem. Further, there were the tell tale signs of psychological problems such as contact disorder and acting out behaviour (see Shillingford & Edwards, 2008). The school principal concluded; the trauma resulting from the events leading up to and including parental incarceration had left the children unable to properly participate in lessons. Thus, the school's central aim, to educate the children, had become secondary to providing them with food, support and a safe environment (when they did attend). The teaching staff would regularly assist these children outside of school hours and were occasionally faced with the dilemma of having to report suspected cases of abuse and neglect to the authorities.

Paradoxically, this case highlights the following. Firstly, the plight of the children was in part a result of state sanctions resulting in the incarceration of the parents. Secondly, the school (a state run institution) had a responsibility to notify the state's child protection agency of cases of neglect under mandatory reporting regulations (Children, Young Persons and their Families Act 1997), and finally the school's dilemma, as it lacked

confidence in the state's ability to adequately respond to the needs of the children due to serious shortfalls in the state run child protection agency where 'almost two-thirds of children in state care don't have a proper plan to manage their health and welfare (ABC, 2010).

Within this context, the frustrations being experienced by the school principal and his staff led them to seek external counsel as there were no means available within their own department to assist them in this specialized area. This notion is supported in a recent study of schools in England where 'the majority of schools stated that they did not have access to information about the effects of imprisonment on children and how to support them. Some schools stated that they may be able to find some information but it was not to hand (Morgan et al 2011:7)'. Lewis et al also inform us from their research that there are resources available for school staff but for the most part they remain unused (2008:7).

The visit to the school and discussions with the principal raised a number of issues, not least of which was the diminution of life opportunities for these children through their reduced access to education. Added to this is the stigma and social isolation caused through having a parent (and in particular a primary caregiver) incarcerated, the trauma suffered during the process and the longer term psychological and social issues faced by the children. These outcomes are well supported in the literature (see Flynne 2011; Shillingford & Edwards 2008; Robinson 2008). Concerns were also raised about the heightened risk of delinquency for the children (see Murray et al 2007; McCord 1991; Farrington et al, 2001).

The significant issue which emerged during the visit and subsequent discussion was - the children seemed to fit many of the criteria which would qualify them for support however their special needs were not within the scope of one agency. Murray describes this phenomenon as 'administrative invisibility' (2007:55). Ironically, had these events occurred three years earlier, help was available via the Good Beginnings Prisoners and their Families Program which was designed and piloted in Tasmania in 1998, and later funded by the Australian Government's Attorney General's Department. Unfortunately, this program was discontinued in 2004 due to a lack of recurrent funding, despite an

evaluation (commissioned by the Attorney General's Department) which recommended that funding be continued (King 2005).

To summarise, and to place this story into an historical context:

- In 1989 -Australia ratified the International Convention on the Rights of the Child (Australian Human Rights Commission 2012).
- During the mid 1990s -a need was identified in Tasmania to support families and children of prisoners with a specific program targeted at their special needs.
- In 1998 –The Good Beginnings Prisoners and their Families Program commenced as a pilot in Tasmania (Prichard & Polglase, 2001)
- This program was late extended nationally in a limited capacity funded by the Australian Government and realised a favorable evaluation but was discontinued in June 2004 due to a lack of available funding(Child's Right's Taskforce 2011).

The Tasmanian experience certainly emphasises the need for a pragmatic and ongoing approach to addressing the needs of children of prisoners in the community. It highlights a number of issues which have been raised in other jurisdictions including the position of the state's commitment to the children. Murray (2007) remarks how the UK Government's failure to support children of prisoners 'reflects an era of punitive penal policy and a lack of commitment to reduce social exclusion' (p.55).

Summary

The issues faced by children of prisoners are not insignificant and have recently been recognised as a social problem and a human rights issue. However the human rights discussion is a complex one. The Tasmanian Story identified the impact of parental incarceration at local school level and gave us a glimpse of the structural barriers to an appropriate response from the state. The next chapter takes a closer look at the circumstances of prisoners, and their children.

2. THE PRISONERS AND THEIR CHILDREN

This chapter looks at the beginnings of the modern prison as we know it and provides an analysis of the prison population from an historical perspective. Its focus is on who is being locked up and why, as this is central to the discussion. Then follows a portrayal of the phenomenon under investigation, which is the children of prisoners. This requires an appreciation of the demographic variables including race, social status, education and how they correlate with the risk factors exposing children to familial criminal activity and parental incarceration. Of particular attention is the number of children affected. The circumstances of the children are examined as well as the impact that parental incarceration has on them and their carers. Of particular interest is female incarceration.

A profile of the prison population

In the middle of the sixteenth century, European society witnessed the early development of a penal system with the establishment of institutional houses of correction in England, initially at London's Bridewell in 1555, and later in other provincial English cities. Eventually, similar institutions were established on the continent - in Amsterdam in 1596, Copenhagen in 1605 and followed by Germany and France during the remainder of the seventeenth century (Munck, 1997). Ultimately, the concept gained wide acceptance. Munck reminds us - 'the original purpose of the house of correction was to remove beggars, idlers and vagrants, especially from the urban scene' (1997:1). His 'brief survey' focuses mainly on the development of 'workhouses and detention centres in early modern Denmark' (p:4) and contains numerous references to the children themselves being incarcerated; indicating that parental separation was not as significant an issue in the early development of houses of correction - as the children were often incarcerated along with the parents.

During the seventeenth and eighteenth century, prisons as distinct from workhouses, poorhouses or detention centres emerged in a form similar to that of today and, as the need for imprisonment outgrew the capacity of the existing prisons, transportation to the colonies from England followed, initially to America, but also to Canada, Rhodesia and

other British colonies. Transportation to America ceased in 1775 but later continued to Australia where between 1787 and 1868, 160,000 convicts were transported (Brown 2008).

Modern society supports the use of prisons to remove dangerous offenders from our community. However contemporary literature rarely refers to ‘a need to remove beggars, vagrants and idlers’ as such. The majority of inmates housed in modern prisons are similar in character and circumstance to those of the sixteenth century and generally take on additional labels to that of ‘offender’ which include, but are not limited to drug addicted, mentally impaired, homeless, unemployed, poor and uneducated. Also, many minority groups – such as Indigenous people – are overrepresented in the prison population (Baldry, 2008 & Cassidy et al, 2010).

The significance of placing an historical lens on a discussion on children of prisoners and their parents is twofold. Firstly, to highlight that the phenomenon has been in existence for centuries and secondly, to emphasize how the profile of those incarcerated, when the houses of corrections were established in the sixteenth century, closely resemble the prisoners of today (discussed in more detail under the next heading). In fact, it has been argued that recent trends of longer sentences have combined with harsher state sanctions (which often criminalize the poor) resulting in a prisoner profile which resembles that of the sixteenth century more closely now than it did a few decades ago (Baldry, 2008; Blower & Nagaraj, 2010).

An example is a modern day leader promoting the case for more punitive approaches to street disorders. It was British Prime Minister Tony Blair who in 2005, prior to the introduction of harsher sanctions for anti social behaviour, wrote in the “The Observer”:

‘The choice was stark; either we accepted that nothing could be done, that we would allow the rights of victims routinely to be trampled on, or we granted new powers to local authorities and the police. This was, and is, the rationale for all the so-called summary powers that we have introduced’ (11th Dec).

In this case, the Prime Minister was keen to defend his ‘tough on crime’ approach with the introduction of Anti Social Behaviour Orders (ASBO’S) and wider summary powers to the police to; clamp down on anti-social behaviour (primed principally through drug abuse)

and with the introduction of sanctions to be applied to pubs and clubs for fostering drunken violence. This approach can lead to a net widening effect or criminalisation of a wider section of the community; a strategy which targets people who might otherwise benefit from community based sanctions such as referrals to therapeutic programs or through court mandated diversion programs, to address their addictions and behaviour. Often these people are parents who, as a result of punitive measures join the prison population thus leaving their children on the outside - resulting in multiple impacts on them and their carers. McLaughlin (2002), commenting on the introduction of ASBO'S in the UK state these orders 'enable police forces and local authorities to crack down on *noisy neighbourhoods and families from hell* who engage in chronic criminal, anti-social, threatening or disruptive behaviour' (p.57).

The Criminalisation of Poverty

Blair was not alone in advocating for tougher sanctions. The following, from a report published by the International Council on Human Rights Policy, illustrates some examples of recent statutes which are certainly widening the criminal justice net on those less fortunate in our community, referring to this phenomenon as the 'Criminalisation of Poverty' (Blower & Nagaraj, 2010)':

In the city of Winnipeg, Canada, a 1995 by-law provided for the imposition of a \$1,000 fine or six months in jail for offences of public begging. In 1999, Ottawa passed a Safe Streets Act, which forbade acts of "aggressive panhandling", soliciting money near vehicles or ATMs or washing car windows in the roadway. Three years after the Act's introduction, an impact assessment found no firm evidence that the streets had been made safer but concluded that income-generating opportunities for homeless youth had declined, that their shelter was demonstrably worse and that "squeegee boys" had merely been displaced to less desirable areas of the city. British Columbia subsequently passed its own Safe Streets Act, which included the following offences: walking on the roadway when a sidewalk is available, walking on the right hand side of the roadway when no sidewalk is available and approaching a vehicle with the aim of offering a service or commodity.

In Australia, vagrancy has been identified as “a significant pathway” into the prison system. Under Darwin’s bylaw 103, it became an offence to sleep in public at any time between sunrise and sunset. New South Wales repealed its “means of support” Act in 1979, which had criminalised vagrancy, but its Summary Offences Act 1988 gave police powers to “give a direction” to a person in a public space if that person’s presence “is likely to cause fear to another person”. During the run-up to the 2000 Sydney Olympics, the police acquired additional powers to move on anyone who caused an “annoyance or inconvenience” to other persons.

In the United States, reports by the National Coalition for the Homeless³ and the Conference of City Mayors have concluded that the trend towards criminalising homelessness appears to be growing. They have documented a number of regulations that prohibit “camping” in public spaces and other activities, including lying on benches.

Swiss courts have ruled that “begging is not a right” and that cantonal laws against it are permissible in the interests of public safety and “tranquility”. As of April 2008, police have authority to enforce spot fines drawn directly from a beggar’s takings. Swiss law also provides for deportation of foreigners who lack the means to support themselves.

In Brazil, police may arrest individuals who do not have identity cards on them for “vagrancy” and may hold such individuals in custody almost indefinitely.

In India, “ostensible poverty” continues to be grounds for arrest, especially of beggars but also of homeless working populations. In Mumbai, India’s commercial capital, almost 80% of persons arrested under the Bombay Prevention of Beggary Act 1959 come from homeless working populations. Their only crime is to have been found sleeping on the pavements or in other public places.

Trends in imprisonment rates over recent years, suggest a strong association with tough on crime approaches and the criminalisation of the poor. As part of a discussion on comparative criminology in 2008, Nelkin reports the increasing incarceration rates of twelve countries (see table 3). The data suggest a correlation between those countries pursuing a tough on crime agenda and those with increasing rates of imprisonment. Significantly, the countries from where the majority of research supporting this study has come, reveal a trend toward increasing incarceration rates compared to the others suggesting better human rights outcomes for children of prisoners in those countries with

little or negligible incarceration growth - if for no other reason that there are fewer children affected. This suggestion would, of course need to be tested - hence a comparative analysis using this data could be useful in measuring outcomes for children of prisoners across jurisdictions.

Table 1: Imprisonment rates per 100,000 in 12 countries, 2002/3 and 2008

Neo-liberal countries	2002/3	2008
USA	701	756
South Africa	402	334
New Zealand	155	185
England and Wales	141	152
Australia	115	129
Conservative-corporatist countries		
Italy	100	92
Germany	98	89
Netherlands	100	100
France	93	96
Social democracies		
Sweden	73	74
Finland	70	64
Oriental-corporatist countries		

Japan	53	63
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Nelkin, (2008:295)

If there is indeed a trend to criminalise the poor, the demographic of Australia’s prison population provides an insight into what might be typical of a modern western democracy. Vinson, using 25 indicators to chart the distribution of disadvantage throughout Australia, found that ‘after taking into account the size of the eligible populations, the most disadvantaged 3 per cent of Australia’s localities (68 places in all) have:

- ❑ double the rate of unemployment and
- ❑ more than 2.5 times the rate of long term unemployment of the remaining places in Australia
- ❑ almost double the rate of disability support and psychiatric admissions
- ❑ more than double the rate of criminal convictions
- ❑ approaching three times the rate of imprisonment.
- ❑ their proportion of confirmed child maltreatment cases is more than 3.5 times that of the remaining localities (Vinson 2007:4)’.

Two studies from the United States are also relevant to this discussion. The first from Connecticut revealed:

Demographic mapping and cost analysis in the United States has identified ‘million dollar blocks’ where literally millions of dollars are being spent on imprisoning people from certain neighbourhoods. For instance, in one neighbourhood, ‘The Hill’ in Connecticut, \$20 million was spent in one year to imprison 387 people. The Hill is disproportionately made up of low income, African Americans (Australian Human Rights Commission, 2009).

The second report was from Chicago and, as part of a discussion on the efficacy of mass incarceration. It noted

...that roughly two-thirds of the 35,000 prisoners who are released from Illinois prisons each year return to just seven zip codes on the West and South sides of Chicago, where black male unemployment is over 40 percent. In 1950, 70 percent of those behind bars were white, by 1990, the ratio had flipped: 70 percent were African American and Latino. One 2008 study found that, in Illinois, 68 percent of those imprisoned are African American, and of the drug offenders who are returning to Chicago after release, 92 percent are African American (Vogel, 2012).

Baldry presents the following profile of Australia's prison population which shows:

The prison population consists of men and women, who are, on average, of lower socioeconomic status, of poorer health and of lower levels of education than the rest of the population. For example:

- ☐ 60% of inmates are not functionally literate or numerate
- ☐ 60% did not complete year 10
- ☐ 64% have no stable family
- ☐ 60% of males and 70% of females had a history of illicit drug use.

Indigenous men and women and those with an intellectual disability or a mental illness are significantly over represented. The majority of prisoners who pass through the prison system each year serve sentences of less than six months. Prisoners come from and go back to a relatively small number of disadvantaged suburbs or towns with a high proportion dependent upon social housing due to disability, unemployment, domestic violence and poverty; at least 60% were not employed when arrested and very few gain employment upon release with a majority being dependent upon government benefits (2008, p.4).

In Australia at 30th June 2011, seven offence types related to 83% of all sentenced prisoners. They are; acts intended to cause injury (16%), sexual assault (14%), unlawful entry with intent (11%), illicit drug offences (11%) and homicide; robbery and extortion; and offences against justice (10% each). For unsentenced prisoners (who accounted for 23% of the total prisoner population), 29% had a most serious charge of acts intended to cause injury, followed by illicit drug offences (13%) and unlawful entry with intent (10%) (Australian Bureau of Statistics 2011:12-14).

The Australian prison population is not dissimilar to other jurisdictions which are characterised by the overrepresentation of minority groups. For example, in the United States:

The prison rate among black men in 2007 (4,618 prisoners per 100,000) was six times that of white men (773), while the rate among Hispanic men (1,747) was more than twice that of white men. Similarly, in Australia in 2008, the prison rate among Indigenous men was 13 times that of non-Indigenous men (ABS 2009).

In trend terms, the world's prison population is increasing which means that an increasing number of children will be affected by parental incarceration. Research by Walmsley (2011a) indicates that prison populations are on the rise in all five continents with prison populations rising in 78% of countries.

Female prisoners

Female incarceration, while only representing a small percentage of the overall numbers of prisoners still equates to many children being separated from their primary caregivers. Are the rights of the children being diluted when this takes place or is society acting responsibly and in the best interest of the children by sending mothers to prison? Most of the literature and indeed human rights advocates argue that maternal incarceration generally and its recent increase is unjustified and alternate approaches need to be investigated. However, in some instances there could be a case supporting prison sentences for mothers and this will be discussed.

Rates of female imprisonment

Prison populations are trending toward a greater representation of females. Given that mothers are generally their children's primary caregivers, more pressure is being applied to extended families, siblings and support groups to provide care for the children. In the case of paternal incarceration, the majority of children are cared for by their mothers but this is not the case in maternal incarceration that fathers assume this role (see Hairston 2007 & Lewis et al 2008). So as female rates of imprisonment increase, more children are being separated from their primary caregiver.

The representation of women (in about 80 per cent of prison systems) varies from between 2 and 9 per cent while the median level is 4.3 per cent (Walmsley 2011b). In Australia, women represent 7 per cent of the prison population (Baldry 2008).

During the five years from 2005 to 2011, the Director of the International Centre for Prison Studies, Peter Bennett comments:

The fact that the female prison population continues to rise, and indeed has risen by a considerable 16% since our last edition of the list in 2006, is a cause for serious concern. Given the high financial and social cost of imprisoning women, the data should prompt policy makers in all countries to consider what they can do to limit the number of women in custody. Excessive use of imprisonment does nothing to improve public safety (Walmsley 2011b).

Hoffman et al report on a doubling of the female prison population in the United States from 63,000 in 1990 to 116,000 in 2008 and reflect on the impact this has on the increased number of children with parents in prison (2010:398).

In 2008, Baldry reported that in Australia, the number of female prisoners has grown by 80 per cent over the preceding decade compared to 40 per cent for males and the imprisonment rate for women rose from 15 to 22 per 100,000 in the same period. She also points this growth appears to be made up largely of Indigenous women and women on remand (p.6).

Bastick & Townhead provide an international snapshot of the parental status of female prisoners:

- In Brazil's largest women's prison, 87% of women prisoners are mothers.
- In the USA, 75% of women in prison are mothers, two-thirds with children under the age of 18.
- In the Russian Federation, 80% of convicted women are mothers.
- In the UK, 66% of women prisoners are mothers, 55% have at least one child under 16 years of age, and 34% were single parents before going into prison.

- In Lebanon, 49% of female inmates have children under 16, including 13% with children under 10 plus a further 19% with children under 5 years of age.
- In Rwanda, 45% of female prisoners have children under 16 years of age, including 15% with children under 10 plus a further 10% with children under 5 years of age (2008:41).

In 2004 Golding, citing research by McGuire in 2000, reported that of all the available research on prisoners, only 3 per cent represented research on females. With the advent of recent reports including Bastick and Townhead (2008), Golding's own report in 2004, Hairston (2007) and others, this deficit may be turning around, especially considering the increasing rates of incarceration of women and with it the pressure on their children.

Specific issues for women

The impact of parental incarceration on children gains added significance as gender roles begin to play a greater part. Women have traditionally, and continue to play, the role of primary caregiver and it is also more likely that a female offender has had sole care of her children prior to incarceration (Hounslow et al 1982; Golding 2004; Baldry, 2008 & Hoffman et al 2010).

Bastick and Townhead (2008), summarise the key problems in women's imprisonment.

Women [serve] their sentences in harsher conditions than men because of their small numbers. They have suffered greater family dislocation than men, because there are so few options for the imprisonment of women. They have been over-classified or, in any event, they have been detained in a facility that does not correspond to their classification. For the same reasons, they have been offered fewer programs than men, particularly in the case of women detained under protective custody arrangements... They have had no significant vocational training opportunities... few opportunities for transfer, and very little access to a true minimum security institution (2008:7).

Due to the much smaller numbers of female prisoners there are fewer female prisons, therefore women are often imprisoned great distances from their homes putting added pressure on the parent/child relationship as the children are faced with having to travel long distances to visit. In Tasmania in 2012 there were renewed calls for the state government to adopt the recommendations of the 1999 Legislative Council select committee's report into

the state' correctional services which recommended the construction of two prisons, one in the north and one in the south (Examiner 20th Oct 2012). At present, families from places like Burnie or Stanley in the Northwest of the state are faced with a six to seven hour round trip to visit prisoners in the state's only female prison in Hobart.

A Canadian study found:

In the vast Correction Service Canada's Prairie Region (consisting of Manitoba, Saskatchewan, Alberta, Northwestern Ontario, and the Northwest Territories), there are 11 male institutions and two institutions for women. In that vast geographic region, most women serving more than two-year sentences are sent to Edmonton (CSC Correctional Profiles 2006). Thus, in addition to the disruption of caregiver continuity initiated by a parental prison sentence, the children of incarcerated women often face increased traveling distances and a reduced ability to visit (Bayes 2007:11).

Put simply, and from the child's perspective, having a mother in prison leads to greater and more frequent social repercussions. Not only are women more likely to have had sole care of their children prior to incarceration (as has been discussed), but added to this Larman and Aungles found; 'women are more likely to return on release to a splintered family than are men prisoners (1991:266)'. This phenomenon is due to a number of issues such as women being less likely to have children cared for by the co-parent or other family member, the children are less likely to be in a stable continuous care and have less contact via visits, letters and phone calls (Larman & Aungles 1991).

In summary, the majority of the prison population who are parents of the subjects of this discussion, come from low socioeconomic localities, are poorly educated, and are often prone to a number of pathologies including drug addiction, mental illness and various other disabilities. In the case of women, research shows increasing incarceration rates, much higher levels of mental illness, alcohol and other drug addiction and histories of abuse (Golding 2004). In her Australian study, Golding points to a disturbing lack of resources to screen women entering prison –not only the sentenced population but also those on remand, the latter deemed most at risk of self harm and suicide. It has also been established; where there is a minority group, as is the case in the male prison population, a disproportionate number of them will be represented among the prison population.

It is from this demographic that many of our subjects – the children of prisoners - live their formative years and a salient factor which must remain in the sights of advocates, researchers and policymakers alike as they consider interventions.

The children

Children of prisoners range from infants to 17 year olds in most jurisdictions. Very few studies differentiate the varying circumstances across the age range –except of course, those longitudinal studies which track the circumstances of children of prisoners over time. For example ‘earlier analyses in the Cambridge Study showed that having a convicted parent or a convicted older sibling by the 10th birthday were consistently among the best age 8-10 predictors of the boy’s later offending and antisocial behaviour’ (Farrington et al, 2001:581).

While the numbers of children affected will be discussed later in detail, it is worthwhile at this juncture to examine the Australian situation where it is estimated that up to 38,000 children may have a parent in prison (Robinson, 2011).

Baldry’s prison population profile describes the majority (over 60%) of the Australian prison population who, apart from carrying the label of offender, also has to contend with an added, or a combination of issues. Given this, it would be reasonable to expect that the majority of the children would have a parent in prison who may have engaged (or continues to engage) in illicit drug use, may not be functionally literate or numerate, could have a mental illness or disability, were likely to have been unemployed prior to imprisonment, may not have completed year 10 and most likely has a history of familial instability. Under these circumstances, it would be difficult imagining these children growing up in an ideal environment, so while their parents’ incarceration constitutes a significant event in their lives, their circumstances prior to this event will have had its challenges.

Bocknek et al (2009) remind us: ‘Many children of prisoners experience years of trauma and disruption while their parents are engaged in criminal activity, then are subjected to separation from their parents and potentially additional trauma in witnessing arrests, and finally suffer a lack of support necessary to heal’ (p.324). There is substantial evidence to

support the notion that children of prisoners are not a homogenous group from a broad cross section of society. Much of the literature does however, point to the fact the majority of the children have come from disadvantaged neighbourhoods and have been subject to the social and economic stressors which are synonymous with such locals (Vinson, 2007; Farrington et al, 2001; Australian Human Rights Commission, 2009).

Given the children's familial circumstances, it is not surprising to find many will go on to become offenders. Research has shown that parental criminality is a strong predictor of the children's own criminal behaviour in later life (Murray et al 2007; Robinson 2008; Hoffman et al 2010). A study of working class males in London by Murray and Farrington (commonly referred to as the Cambridge study) found; 'of boys who experienced parental incarceration in their first 10 years of life, 48% were convicted as adults, compared with 25% of boys who were separated from their parents for other reasons' (2005:133).

The proposition that children of prisoners are more likely to go on to be offenders, is referred to in the literature and a number of commentators cite the Cambridge Study. However caution must be taken not to put undue emphasis on parental incarceration as a major predictor of future offending by children. Farrington et al comment on the Cambridge Study, as part of a discussion on intergenerational offending, referring to what they describe as a 'constellation of background family features' including:

- ☐ Poverty
- ☐ Large family size
- ☐ Parental disharmony
- ☐ Poor child rearing
- ☐ Parental criminality.

'...these features leading to a constellation of antisocial features when children grow up, among which criminality is one element' (2001:593).

Therefore the reports interpreting parental incarceration and its impact on the children need to be analysed giving due regard to the wide range of issues and not focusing on parental incarceration as the principal cause of the children's behavior or circumstance. To do so risks undue stigmatizing and labelling of the children which, as will be discussed, figures significantly in the children's circumstances.

In 2011, an Australian report prepared by the Child's Rights Taskforce stated that:

Children who have parents in prison frequently experience chaotic home environments, including separation from siblings and other support networks, as well as instability in their living arrangements (including homelessness in some cases). Children also face social stigma and often feel isolated, angry and confused. Children of prisoners are also three to six times more likely to exhibit violent behaviour and are disproportionately represented in clinical populations. Similarly, they are six times more likely to engage in offending behaviours themselves, unless interventions can be undertaken in a timely manner (2011:25).

The description presents a vivid profile of the children; successfully portraying an accurate description of the circumstance of the children, but then it moves on to describe their attributes and behaviour –promoting them as violent, in fact three to six times more violent [no comparison given], mad [assuming this to mean representation in a clinical population] and six times more likely to engage in offending behaviour [again no comparison].

This type of rhetoric fails to present an accurate profile of children of prisoners and needs to be challenged, especially considering the report's intention to promote the rights of children in Australia and how those rights should align with those set down by the CRC. A policy response based on such reports, might well ensure these children are placed in the 'too hard basket' and secondly for this advice to prepare the way for yet another report or enquiry. A number of wide ranging and comprehensive reports have been conducted in Australia on the specific issue of children of prisoners and will be discussed later along with a summary of recommendations.

A perhaps more reasonable view of the children and their plight was articulated by Nicholson:

Australia as one of the principal protagonists of the United Nations Convention on the Rights of the Child has little to congratulate itself upon its observance of that Convention... VACRO's continuing commitment to seeking real and lasting policy change towards the children of prisoner's remains a vital part of the process of protecting these unintended victims of other's behaviour. While much attention has been given to the victims of crime in recent times, it is all too often forgotten that the children of offenders are just as much victims of crime and that common humanity requires that we recognise this (quoted in Hannon, 2007 p.33).

These words were taken from an afterword in an action paper published by the Victorian Association for the Care & Resettlement of Offenders (VACRO) in 2007 and written by The Honourable Alastair Nicholson who was a Justice of the Supreme Court of Victoria between 1982 and 1988, and Chief Justice of the Family Court of Australia from 1988 until 2004.

How many children are affected?

Evidence supporting the existence of the phenomenon of children of prisoners and their issues is not difficult. However, establishing numbers of children affected has provided some challenges.

Obtaining up-to-date statistical information on prison populations and their demographic characteristics is not a difficult task. As at 30 June 2004, there were 24,171 prisoners in Australia, representing a 3% increase from the previous year. Over the past decade the prison population in Australia has increased by more than 40%. Yet, even with all this readily obtainable data, little to no information is available about the parenting status of those in the prison system (South Australian Attorney General's Department 2005:9).

A determined response to the needs of the children cannot be undertaken without access to reliable data. International literature identifies a disturbing lack of data on the numbers of children affected by parental incarceration. During the recent discussion in the United Nations it was stated: 'A common challenge was the lack of data and statistics on the situation of children in contact with the law, which was a prerequisite for the development of sound policies and programmes'(United Nations 2012). This deficit accounts for much of the criticism directed at state agencies in charge of prisons and correctional institutions

worldwide as rigorous research can be been frustrated by the lack of accurate data without which suitable resources cannot be appropriated to interventions to meet the needs of the children (Eurochips 2011; Lewis et al 2009; Murray et al 2009; La Vigne et al, 2008 & United Nations 2012).

In Australia, it has been estimated that ‘4.3% of all children and 20.1% of indigenous children will be affected by parental incarceration in their lifetime... while approximately 38,000 children experience parental incarceration each year’ (Robinson, 2011).

Estimates from a number of countries indicate the problem is not insignificant as the following table shows.

Table 2: Estimates of the numbers of children with a parent in prison

United States	1,706,600
Ireland	4,400
England & Wales	125,000
France	68,800
Italy	73,500
Sweden	8,500
Portugal	17,100
Spain	79,500
Netherlands	26,100

(Murray et al. 2009:9)

The figures for the United States, which has by far the highest incarceration rates in the world, have been calculated from inmate surveys which indicate that 945,600 children had a parent in prison in 1990. This figure increased to 1,706, 600 in 2007 representing 2.3% of the nation’s children (Murray et al, 2009:9). While this estimate is not disputed, it is important to note a clarification provided by Cassidy et al, as they point out Murray’s data

only represents federal and state prisons and add; it is estimated that millions of additional children have parents in local jails (2010, p:285).

Inmate surveys are one way of collecting data but this method can be problematic, as the surveys tend to be unreliable, given that many prisoners are not be willing to divulge their parental status to prison authorities due to stigma and the repercussions that may result from disclosure. Others have concerns that that the children may come to the attention of the state authorities, removed, and taken in to care (Lewis et al, 2008).

A further problem is that centralized files are often not kept, meaning there is difficulty collecting national data on the parental status of prisoners, especially in those jurisdictions, such as the United States which has a three tiered system – federal prisons, state prisons and local jails. Bocknek et al inform us United States data are only estimates taken from imprisoned parents' reports. 'Although the Bureau of Justice has begun to collect information on incarcerated parents, neither child welfare nor correctional officials systematically track information on prisoner's children' (2008:323).

There does not appear to be a standardised method of estimating the number of children of prisoners. Inmate surveys are used in the United States as previously mentioned. In other countries, estimations are arrived at from formulas which have been devised during research projects. For example; In France a demographic parenting rate of 1.3 offspring per prisoner is used which was devised based on the results of a study conducted by France's national statistics institute (Ayre et al, 2011). In England and Wales, 'provisional estimates suggest that around 125,000 (about 1%) of children under age 18 have a parent in prison' (Murray, 2007).

Despite the vagaries in the established data, Bayes (2008) claims to be able to estimate the number of children of prisoners in Canada with a degree of confidence using a formula devised by The Centre for Incarcerated Parents in the United States.

In Canada, men make up ninety percent of all those incarcerated and of those 56% are fathers with an average of two children each; 66% of women are mothers and they have an average of 2.4 children; the number of children can therefore be estimated. For example, a population of 150 prisoners would have 15 women of whom ten are mothers with 24 children and 74 are fathers with 148 children. Together, they have a combined 172 children. The example shows that for every prisoner, we affect 1.15 more children. In 2005-2006, Stats Canada's Adult Corrections Services in Canada reported that 232,800 were admitted to custody, equating to 337,600 children (p.18).

With this sentiment shown by Bayes in Canada and the fact that the governments of at least two countries, Sweden and Latvia, have recently implemented a process of collecting data on the parental status of prisoners (Ayre et al 2011 p.8), indications are that it may be possible to rely on more than mere estimates and so begin robust research, to better monitor the needs of the children and to link them in with appropriate services.

Given the importance of establishing reliable data to plan for and resource interventions - and to build a strong advocacy case, it is vital that a systematic process be developed to ensure the parental status on all inmates is collected. Throughout the literature there are criticisms of too little data and calls for their systematic collection – resulting in the growing list of descriptors of the children such as invisible, forgotten and of their circumstance as shadow punishment. The responsibility to collect the data must rest with the state and more particularly the prison administration.

Who is left to look after the children?

The focus of this discussion so far has been on the prisoners and responses to the needs of their children. However their ongoing rights and welfare cannot be disassociated from those members of the family, the extended family and also the friends and supporters, for it is they who will have also been impacted by the incarceration of their relative or friend, but more importantly, in the majority of cases, they are called upon to care for the children. In an American study, Hairston reported on the living arrangements for children of prisons from a survey of inmates from state and federal correctional facilities.

Table 3: Children's living arrangements during parental incarceration (US facilities)

Incarcerated fathers report their children are living:	State	Fed
With mothers	90%	92%
In foster care	2%	1%
With grandparents	13%	10%
With other relatives	5%	5%
With friends or others	4%	6%

Incarcerated mothers report their children are living:	State	Fed
With fathers	28%	31%
In foster care	10%	3%
With grandparents	53%	45%
With other relatives	26%	34%
With friends or others	10%	12%

Percentages add to more than 100% because some prisoners had multiple children living with multiple caregivers (Hairston 2007).

A similar British study on female prisoners in the UK HM Prisons Inspectorate found that:

- ☐ 25 per cent of female prisoners had their children's father or partner caring for their children
- ☐ 25 per cent were cared for by their grandmothers
- ☐ 29 per cent were cared for by other family members or friends

- 12 per cent were in care, with foster parents, or had been adopted. (Lewis et al 2008:7)

The 12 per cent referred to above - where female prisoners had children in foster care or had been adopted - compared to 'two per cent of the children of male prisoners. Overall, only five per cent of women prisoners' children remain in their own home once their mother has been sentenced (Lewis et al 2008:30). The dynamic of far more children of female prisoners ending up in foster care is borne out in both studies and adds weight to the concerns of rising imprisonment for women. This also confirms the status of women as primary caregivers.

Grandparents

Increasing rates of imprisonment, puts more pressure on grandparents who take up the role of primary caregivers, especially with increasing rates of female imprisonment. In fact, many have had to leave the workforce to take up this role causing financial, physical and emotional stress (Hairston & Addams 2001). Convery & Moore (2011) report that over 40 per cent of grandparents in the role of carers, suffer with depressive symptoms. The phenomenon of grandparent stepping into the carer's role has encouraged the establishment of support groups. One such group is Grandparents as Parents Again (GAPA) which operates in New South Wales, Australia. Their website reports:

- An Australian Bureau of Statistics survey in 2004 found there were 22,500 families across Australia where grandparents are the sole carers.
- A total of 31,000 children live in families headed by grandparents with an estimated 10,000 children living with grandparents in NSW.
- Many grandparents provide care for their grandchildren with limited or no financial support (GAPA 2012).

The following is a sentiment expressed by grandparents caring for the child of a prisoner:

That my husband and I in our eightieth year should be putting our feet up – reading and all the things we used to do, cinema, dining...days away etc. I did not think we would be rearing another child at this age (South Australian Attorney General's Department 2005:36).

Conversely, in the same report another grandparent as carer responded;

The child feels safe and comfortable and has now begun to ask to have friends stay over. Doing well at school (p.37).

Summary

The majority of the prison population has for centuries, been drawn from a population with a range of issues including poverty, educational deficiencies, addictions and mental illness. Most come from poor neighbourhoods and many are members of minority groups. Trends in prison populations show an increase in most countries which means more children are being affected by parental incarceration. The prison population is predominantly male however recent years have seen an increasing number of females joining the population. This is especially concerning as mothers are in most cases primary caregivers. Their children are generally poorly equipped to deal with the trauma of parental imprisonment and need support. However, there is little evidence of any coordinated response to their needs. When parents are in prison, it is often the extended family (including grandparents), who care for the children. The following chapter looks at some of the unique and complex issues affecting children of prisoners.

3. COMPLEX ISSUES FACED BY CHILDREN OF PRISONERS

There are a number of issues which are unique to children of prisoners. Firstly, the trauma experienced during the arrest and subsequent processing prior to incarceration, the difficulties encountered visiting parents in prison and finally, dealing with the stigma of having a parent who is imprisoned. Other issues which may not be unique yet relevant include; loss, abandonment, confusion, grief and social exclusion. Bundled together, these issues can create a situation which may be beyond the capabilities of a child to deal with, leading to a number of reactions including but not limited to; acting out behavior, depression, withdrawal, self harm and drug use and delinquency. Some issues will be included as part of a discussion titled 'The Continuum' while others will be discussed separately. The nature of these issues, their impact on the children and the response by the state are discussed, particularly from a human rights perspective.

The continuum

The Oxford dictionary defines continuum as 'a continuous sequence in which adjacent elements are not perceptibly different from each other, although the extremes are quite distinct'. From the point of view of the child / parent relationship in this discussion, the definition has legitimacy as the elements have a commonality of purpose – that is the arrest, charging, court and sentencing and finally imprisonment of the offender, are all part of systematic approach designed to punish the offender.

As the offender moves along the continuum, those significant others (in this case the children) are generally not considered nor is the impact of the process on their lives. This chapter describes experiences which are exclusive to children of prisoners and impact on their rights.

Four of those have been used as headings for this chapter: Arrest, Bail / Remand, Courts/ Sentencing and Visits.

Arrest

When a parent is arrested, children often witness the event and can, depending on the approach of the police, suffer trauma as a result. In 1982, Hounslow et al describe the process and the potential for lack of due process – resulting in poor outcomes for the children in far too many cases. The police, as arresting officers, have the ability to consider how the arrest might affect the children and take the necessary action.

In the first instance they may lessen its potentially traumatic effects by conducting the necessary procedures taking a sympathetic approach by:

- ☐ Making enquiries about friends and relatives who could care for the children while considering the parents' input.
- ☐ Give the parent the opportunity to explain to the children what is happening is as much privacy as possible.

On the other hand, an unsympathetic approach might increase the shock of arrest by:

- ☐ Opposing bail.
- ☐ Charging both parents (one as principal and usually the mother as accessory).
- ☐ Lay a complaint to the appropriate authorities that the child is neglected or uncontrollable.
- ☐ Withhold information about children from their parents while in custody and,
- ☐ Exploit the vulnerability of parents who are dependant on them for information about their children (Hounslow et al: 151–152).

As part of the latter approach, the police have the power to render the children far more vulnerable and increase rather than lessen the trauma associated with the arrest. However it is important to take into account the circumstances of the arrest and the variables that exist. For example, in a number of European studies, police were asked whether they are aware of and comply with set procedures when dealing with children during the arrest. Some reported that although there are guidelines, the majority of cases rely on the experience of the individual police officers and their knowledge of the offenders and their families to

determine how they dealt with the children (Scharff Smith & Jakobsen 2011). This is supported by Hannon who found that in South Australia, the lack of policy or clear guidelines meant that consideration for the circumstances of the children in relation to the arrest were dependant on decisions made by individual police officers (2006).

In addition to the lack of clear guidelines for the police, consideration needs to be given to the circumstances surrounding the arrest. For example; was the offender apprehended while committing a crime in the company of the child or children? Did the arrest require use of force? What was the mental state of the offender or was he or she affected by alcohol or other drugs? All of these variables are often unknown and put added pressure on the police during the arrest process. For the children, there will always be trauma even in a peaceful arrest, so from a child's right perspective, strategies need to be put in place to minimise the risk of trauma.

Scharff Smith & Jakobsen's Danish case study revealed that of the police officers surveyed, '82 per cent responded that they found that the police, generally speaking, have a great deal of focus on the children in connection with the arrest of parents. The issue, which the majority emphasise as crucial, is whether the police knew beforehand that children would be present' (2011:70).

In a number of European studies there are accounts of unfavorable outcomes for the children during the arrest of their parents and there are many accounts which describe the trauma experienced by the children. The following are fairly typical and may help to elucidate an expected outcome for the children.

I remember going out to see a girl one time and she had seven children, and the police came out and arrested her husband at half-five, teatime with all her kids in the house. All the police cars in the driveway – came out, took him and away they went and she hadn't a clue where he was going, where he was away to. There was hardly any communication. The children were stood out the front in their sock soles while they [the police] searched the house, no support whatsoever. She hadn't a clue where he was ... and that really affected that whole family. An NGO-worker (Northern Ireland) about the insufficient information at the time of arrest (Ayre et al 2011:3).

And from the police perspective in a Danish case study:

Impressions of the arrest burned on the child's mind and are likely to return at night: the violence of the police, yelling and crying of the mother, the faces of the curious neighbours and, above all, the way the father was removed in handcuffs or with a bag over his head, are sensations the child will never forget (Scharff Smith & Jakobsen 2011:68).

To minimise the risk of children becoming collateral damage of the process, recommendations, such as those proposed by VACRO in Victoria, could be adopted, such as identifying primary carers before the arrest process and factoring this into arrest scenarios (Hannon 2007). This approach addresses similar concerns in the Danish case study discussed.

There is no doubt the arrest of a parent can have severe and long lasting effects on a child. Therefore, so far as the arrest of parents is concerned, how are the human rights of the child protected? Lagoutte informs us; 'There is no specific human rights standard that applies to the situation of parents and children at the moment of arrest' (2011:39). However in March 2012, during the nineteenth session of the United Nations Human Rights Council, Item 69(b) calls on States to:

Recognize, promote and protect the rights of the child affected by parental incarceration, in particular the right to have their best interests included as an important consideration in decisions relating to their parent's involvement with the criminal justice system, as well as the right not to be discriminated against because of the actions or alleged actions of their parent (United Nations 2012).

While this does not specifically refer to the arrest, it refers to the 'best interests of the child' relating to their parent's 'involvement with the criminal justice system'.

Further, the San Francisco Children of Incarcerated Parents, Bill of Rights has as its first item 'I have the right to be kept safe and informed at the time of my parent's arrest' (Khanzhina 2011).

The arrest of an offender from the perspective of the police is a crucial stage in securing a conviction and often follows investigation which includes the gathering of evidence and

surveillance or in some cases may be simply a response to a crime. It is difficult to imagine a police officer approaching an arrest with the mindset that he or she is representing the state and as such, needs to ensure the process is handled to ensure minimum trauma on those minors present (whether or not they are related to the offender). Arrests can be ugly, traumatic and brutal events with the possibility of fatal outcomes. It is not the sort of thing for children to be exposed to however it is in the best interests of all concerned to minimise the trauma on children.

Bail / Remand

Following the arrest and while consideration is given to the freedom of the accused (that is whether they are bailed or remanded in custody), there is little evidence in the literature that would suggest the children's rights are considered. Where there is reference to the subject matter, it is primarily focused on the issue of females who have been taken into custody as far fewer males identify as primary carers. For example, in Victoria,

Bail laws make no reference to this target group. When mothers are unable to obtain bail and are remanded in custody, there is no legislation, policy or guidelines (with the courts, police, 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 of any concerns (Hannon 2007:12).

There is an argument that the police should take the parental status of the accused and his/her care responsibilities to their children into consideration when deciding whether to arrest and charge an offender or whether to issue him or her with a court attendance notice, thus alleviating undue stress and trauma on the children...

The NSW Police Force Code of Practice (updated January 2012) covering custody, rights, investigation, management and evidence has no reference whatsoever to dependant children of parents taken into police custody (NSW Police Force 2012). This is despite discussion during the 1997 Parliamentary report into children of prisoners which recommended the following:

That the Minister for Police provide continuing instruction and training to all police officers throughout New South Wales on the use of court attendance notices, particularly in situations where the accused is a primary carer of dependent children, and the offence in question does not involve violence (Parliament of NSW 1997).

The bail remand issue has not been widely discussed, yet warrants mention as it is another key area which impacts on the rights of the child especially during the custody decisions involving primary carers.

Given that bail is not granted and the accused is remanded in custody, this can be a very difficult period characterised by stress and uncertainty. Some parents choose to keep the remand imprisonment secret from their children while others include the children but try to keep it a family secret.

Many prisoners' children will, regardless of what they are told, feel that something is wrong and those children who have had close and positive contact to the parent concerned will usually experience it as an uncertain and painful time. Some surveys also indicate that many prisoners' children react particularly violently and have behavioural changes in precisely this period (Scharff Smith & Jakobsen 2011).

The evidence so far has confirmed a very real risk of trauma and uncertainty for the children. However the next stage is the most significant of all.

Courts and Sentencing

From the child's perspective the decision in court is the determining factor as to whether and for how long their parent will be taken away. The earlier discussion on the profile of the prison population reflects who is being sentenced and why and it bears acknowledgment that a rising percentage of prisoners have not been sentenced as many incarcerated parents have been remanded in custody awaiting trial or sentencing. Often the status of the imprisoned parent is lost on the child who is only aware that his/her mother or father has been locked up.

Article 3/1 of the CRC states - In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Sentencing, especially in the case of a custodial sentence is the moment when the judicial decision impacts heavily on the children of prisoners. What has occurred up till now, while significant, does not have the stigmatizing and long lasting effect of the custodial sentence.

Possibly the opening sentences of the Belfast Declaration could find relevance here especially as it was formulated by judges and magistrates.

If a decision is taken to send a parent to prison, a well developed care plan must be put in place prior to incarceration, involving the convicted parent, her/his child(ren) and significant others. The care plan must ensure protection of the child (ren) and should provide for continued contact between the child (ren) and the parent (International Association of Youth and Family Judges and Magistrates 2006).

If this could be adopted as a standard consideration in sentencing, the concerns of significant others and especially the children would be considerably reduced.

Visits

Much has been written on children's access to parents in custody. The overwhelming evidence is that most prisons are far from child friendly places. Cited in Larman and Aungles (1991) Smith makes the following observations:

- That the tensions of the first visits to gaol are increased for children because prisons are not child-oriented;
- There is little provision in the maximum security gaols to enable the prisoner parent and their children to have a 'normal' family conversation;
- That children are regarded as nuisances and security risks rather than as people with rights of their own and in need of special care in the potentially traumatic situation of a prison visit;
- That the variations, pettinesses and arbitrariness of rules about prison visiting create uncertainties that increase tensions between prisoners and their children and between prisoners and the outside carers of the children and,
- The spiraling sense of a loss of control that this process creates increases with the increased demands on prison resources.

Since Smith made these observations over 20 years ago, Convery & Moore (2011) refer to a summary of international literature summarizing factors which limit visits citing; geographic distance, transport and financial considerations, the lack of child friendly facilities, harsh and disrespectful treatment by correctional officers and the demanding nature of visits on the time and emotions of children and parents. It seems little has changed.

Stigma and stigmatisation

‘For many children, “support” can be as simple as acknowledging the unique nature of their loss in a manner that accepts rather than stigmatizes’ (La Vigne et al, 2008).

La Vigne, in these few words has quite possibly ‘hit the nail on the head’, by providing a reflective introduction to a discussion on stigma and stigmatisation - a reoccurring theme in much of the literature (La Vigne et al 2008; Herman-Stahl et al 2008; Shillingford & Edwards 2008 & Phillips & Gates 2011). Without the stigmatisation of minority groups it would be difficult to conceptualise a human rights movement. Hence the strong link between the human right status of children of prisoners and the stigma they carry. Phillips & Gates argue it is an area which requires further investigation and point out that people succumb to process of stigmatisation through their association or proximity to members of stigmatized groups. And in this case, the title ‘children of incarcerated parents’ has become more than a benign descriptor; it is now a label delineating a group of children based upon a stigmatized characteristic shared by their parents’ (2011:278). They cite the results of studies of children who have experienced stigma for reasons other than parental imprisonment which has shown that the children worry about others perceptions of them and their parents. This leads them to speculate that similar research about children of prisoners being stigmatized at school may contribute to ‘school phobias and non-attendance, particularly in the first few weeks following a parent’s arrest’. They report that families are seldom given guidance on how to assist the children to cope during the trauma of arrest and incarceration (2011:288).

As stated in the CRC – Article 2.2, ‘the child must be protected against all forms of discriminatory treatment or punishment due to the child’s parents, guardian’s or family members’ position, occupation, expressed views or faith’.

Can parental incarceration have beneficial outcomes for the children?

Children of offenders often experience combined traumas of parental arrest, parent-child separation, loss of family income, changes in childcare arrangements [and] caregivers’ own distress. Many experience low self-esteem and feelings of anxiety, shame, abandonment, grief and guilt. These experiences can lead to depression, self-harm, drug use, eating disorders and other behavioural difficulties. There is increasing recognition that normal brain development of children can be harmed by violence, instability and disruption to care relationships: children of prisoners frequently experience such circumstances. Changes in living arrangements or schooling heighten difficulties forming and maintaining social relationships. Any learning difficulties are compounded by disrupted educational pathways that limit children’s future prospects of educational engagement and employment (Robinson, 2008:10).

The problems highlighted here by Robinson and supported throughout much of the literature gives prominence to the negative effects of parental incarceration on the children. There is however another side to this coin which needs to be acknowledged and that is that in some cases, separation has indeed provided relief for some children who may have been in a less than ideal situation living with a parent prior to incarceration. For example; parental imprisonment can often relieve children of physical and emotional stress removing an aggressive person from the home therefore having a calming effect on a chaotic lifestyle. It is also a means of breaking the cycle of many years of abuse and neglect (Larman & Aungles 2001; Glover 2009 & Bocknek et al 2011). Despite references to this phenomenon in the literature, those making the assertions have not provided supporting data to confirm its frequency. So while it is acknowledged that there may be some positive outcomes for the children during parental imprisonment, research needs to take place with a view to quantifying the outcomes and measuring the efficacy of parenting programs in prison.

There is no doubt for some parents and children, imprisonment might be the only circuit breaker available to break a cycle of abuse and neglect and the only real opportunity for

parents to engage in parenting programs, so the question to be posed here might be; what is the best course of action from the perspective of the rights of the child, given the parent is being removed from society (in the best interests of the community) especially where previous attempts to engage the parent engage in programs or family support have proved futile?

The argument that prison might present an opportunity for parents to engage in worthwhile parenting programs was the genesis of the Good Beginnings Prisoners and Their Families Program.

The Risdon Prison pilot project provided prisoners with individual assistance with parenting issues as well as group-based parenting education programs. These were followed by a special children's visit day at the prison where prisoners and their children were able to visit in a more relaxed way' (King 2005:2).

So while incarceration may not be an ideal outcome, in many cases it is inevitable. Consequently, parental incarceration is viewed by some as an opportunity for the detainees to engage in parenting programs. Given the high incarceration rates experienced in the U.S. and the need to respond to the needs of the children, Eddy and Reid (2002) acknowledge that the important work of parenting will always happen on the outside of the prison walls. However they draw the link between increased participation rates in therapeutic and educational programs and parents being in lock up. Their two year study, which is part of a ten year longitudinal study of high risk males in their local county, provides an insight into the take up of parenting programs in and outside of custody. Unsurprisingly, those in custody do remarkably well in this area. The implication here, especially given the authors suggestive final comment, could be to encourage imprisonment as a net widening strategy, rather than to foster resources in the community to support families.

During this time period, 16% of participants were locked up for the full period, 26% spent some time in lock-up, and 55% spent no time in lock-up. Clearly, when these individuals are in lock-up, they are more likely to participate in both self-help groups and to take classes. This increased participation in programs could be capitalized upon as an opportunity to provide programming to inmates that might prevent the development of antisocial behavior in their children. Further, having a parent in prison could serve as referral source for parenting skill training and support services for caregivers and for children on the outside. In this regard, being in prison could be considered a risk “screen” that does not require a new statewide testing campaign (p: 10–11).

There are two schools of thought here, which are crucial to the debate: Firstly, (as argued by Eddy and Reid) intervention by the state through the criminal justice system is seen as an opportunity to employ parenting programs, in a structured environment such as a prison, as part of a regime of programs to rehabilitate the offender and therefore see the child of the prisoner as a means to this end. Using their words; utilising the prison as a ‘risk screen’ alleviating the need to conduct statewide testing. In other words funneling those people considered at risk of poor parenting into the criminal justice system for therapy.

A counter argument asserts, there is a far more important ideal at stake here; that being the rights of the child and the importance of adhering to the principal of ‘incarceration as a last resort’ when considering the probable impacts of parental incarceration on the child. Baldry argues that prisons do not constitute a therapeutic environment; ‘Prison by its very nature, excludes normal society, promotes prison living skills and actively erodes community living skills, the very skills the deinstitutionalization movement aimed to restore to those with mental health disorders (2009:9).

In some extreme cases, as will be revealed in the following discussion, there is little option but incarceration for some parents while social norms continue to allow young children to be exposed to neglect and abuse.

Where there is a strong argument for parental incarceration

A number of researchers have reported that children who have incarcerated parents are more likely to have been abused and neglected and exposed to parental violence, substance abuse and mental health issues (Shillingford & Edwards 2008; Sheehan 2010). In some

instances, the action of the state has been instrumental in bringing to light serious cases of neglect and abuse during child protection hearings. Sheehan (2010) argues that little is known about children of prisoners whose vulnerability has brought them into contact with child protection and welfare agencies and who have become the subjects of child protection proceedings in the children's courts. Her study in 2006, investigated 156 children whose child protection matters had come before Melbourne's children's court and whose parents were incarcerated. She concluded that despite cases of serious abuse and neglect; 'there was no coordinated response by the child protection and justice systems to managing the children's situations (p.64).

The circumstances of the children which featured in Sheehan's study are best related through excerpts of case notes from her report as she illustrates the apparent association between parents' offending and the child protection concerns before the court:

When the child taken into care at 12 months, had an umbilical hernia, nappy rash; child does not respond to noise, coca cola in bottle, will only eat liquid food. Born substance affected. Shows signs of anxiety: floor pacing and trouble sleeping, and is indiscriminate in affection from strangers. (Case 64: child 2 years-old)

Child born substance affected, given Valium by mother to settle. Child cries for hours on end. Child has scratches and bruises. (Case 27: child 2 years-old)

Child not fed, clothed, cleaned properly. Nappy not changed for two days. Child sleeping under mattress because cold. Maternal grandfather said child came to him cold, hungry, sick and with a nappy rash (Case 46: child 2 years-old) (Sheehan 2010:169).

Further qualitative data revealed cases of; untreated spina bifida (10-years-old), testicular hernia and obesity (3-years-old), Hepatitis C and metabolic disorder (4-years-old), cerebral palsy, motor problems, aggressiveness and head banging (4 years-old) and urinary tract infection and slow weight gain (2-years-old) , (p.172). This case is especially concerning as Victoria is one of only two of Australia's states and territories which has a human rights charter (University of New South Wales, 2012), yet children of prisoners who are also victims of significant human rights violations continue to fall through the cracks.

The intersection between child protection and parental incarceration would, on the evidence presented, merit much closer scrutiny. Data in the UK reveal that there are an estimated 160,000 children of prisoners, more than twice the number of children in care and six times the number of children on the child protection register (Glover 2009). Once again the correlation of data to determine how many children of prisoners also constitute the numbers in protection and in care is frustrated by the lack of data collected on the former.

Divorce and other causes of separation

Comparisons have been made in the literature between the impact of separation and divorce on the family dynamic and that of separation following parental imprisonment. The context in which these comparisons have been made is the disproportionate level of research; that is to say there has been far more research conducted on the former (Lewis et al 2008 & Flynne 2011).

Lewis et al (2008) also argue, given the increasing rates of incarceration, especially in the United Kingdom and the United States, a comparable number of large scale longitudinal studies should be undertaken in the case of children of prisoners to investigate child adjustment from before parental imprisonment into adulthood. They go on to identify this deficit as 'reflecting pervasive social exclusion of this vulnerable population (p.16)'.

Flynn also points to an English study which found that there are comparable numbers of children affected by parental incarceration as divorce - where specialist services are available to the children, yet the children of prisoners receive negligible attention (2011). These are both fair calls, given the numbers of children affected and the ongoing social and financial costs through the lack of appropriate intervention.

The situation is well summed up by Phillips and Gates, who say that 'unlike other circumstances in which children are separated from their parents (e.g., divorce, military deployment, death), there are no rituals and no outpouring of support from the community to help children cope with the loss of a parent who is in jail or prison' (2011). This is indeed a salient point which questions community attitudes to the plight of the children and needs further investigation. Most states do not recognise the importance of recurrent

funding for programs for children of prisoners. In the UK, Barnardo's are one of the major providers for the children and their case is well summed up as follows:

'unless a child of a prisoner is known to children's services or presents as a 'child in need' for a different reason, they come very low down the list of priorities and are unlikely to be offered any targeted support. Barnardo's practitioners in each of the four nations report that any funding they secure to support children of prisoners is usually short-term, and any progress that has been made has mainly been driven by the voluntary sector. Many prisons, in partnership with Barnardo's and other charities, have invested in more child-friendly facilities, better visiting centres and family visits, but there is no consistency across the secure estate'(Glover 2009:10).

Summary

Having looked at the processes along the continuum, it is difficult to see how a consistent human rights approach can be maintained in respect of the children of prisoners. The core function of each stage (except pre and post release where applicable) is the apprehension, charging, and detention of the offender. As we have already been reminded in this study, reference is made of an 'increasingly reductionist view of the criminal justice system (which considers security to be its primary goal). Given the obvious vulnerability of the children there is a strong case to ensure the impact of the criminal justice process in dealing with their parents has minimal impact on the children and should be subject to closer scrutiny.

Children of prisoners are indeed a vulnerable group with complex issues. Sheehan's study and research by others present a strong case for further investigation into the plight of children (especially the very young) who are caught up in the criminal activities of their parent(s). This is particularly relevant from a child's rights perspective given the evidence of neglect and abuse. Should the state be giving consideration to a more restorative based approach? In other words, should there be more emphasis on establishing who is being affected by the offending and less on punishing the offender? Once their parents are taken into custody, circumstances can often take a turn for the worst for many children unless timely support is provided. Ultimately, given the state's action has resulted in the separation of parent and child, whose responsibility are the children and what mechanisms need to be put into place to uphold their rights as humans?

4. HUMAN RIGHTS

Human rights discussions within the context of penology often set one camp against another. Those advocating for penal abolition or at least a significant reduction in the prison population and better deal for prisoners are opposed by those representing the rights of the victims and the wider community. Is it possible, there is not enough heat in the debate to accommodate another group of victims – the families, and especially the children of the prisoners? This chapter looks at the human rights of children of prisoners at a global level as well as some national initiatives. Recently, there have been some promising developments. These have been chronologically arranged using content from human rights documents relevant to children of prisoners. Further discussion specific to the Australian response follows and finally, reference to dialogue from an international discussion in 2011 which led to the introduction of a draft resolution in the UN introducing issues specific to the rights of children of prisoners.

The progression of the rights of children of prisoners

If the mark of a civilised society is the treatment of its prisoners, then we must ask ourselves what kind of a society are we condoning when the rights of children of prisoners are continually marginalised and rendered invisible (Larman and Augles 1991).

Despite the years which have elapsed since 1991, advocates for prisoners of children might agree that the last two decades have not seen a significant improvement in the rights of children of prisoners. However this has not weakened the resolve of organisations worldwide to raise the issues and work toward the devolution of international rhetoric into statutes and policy. There is evidence that the case advancing the rights of children of prisoners is gaining traction.

Concerns have been expressed about the impact of imprisonment on prisoners' families for many years. In the United States, a report by the Tennessee Department of Corrections informs us that as early as 1963, criminologists acknowledged the importance of the families in the offender's life and the lack of research into this area stating: 'Because of

their closeness to prisoners, prisoners' families probably bear the largest portion of the extra-mural suffering resulting from imprisonment'(1995:3).

The rights of families and the special needs of children of prisoners, have been advanced consistently to successive Governments in Australia, at least since Hounslow et al presented their report on children of prisoners to the NSW Government in 1982.

The following, is the opening statement of their report:

It is with a sense of deep despair that we present this report. The despair comes from six months of investigation into NSW jails uncovering the desperate struggles of prisoner-parents to maintain viable relationships with their children. It comes from hundreds of hours listening to prisoners, their families and children as they speak of isolation, fear anger and deprivation. It comes most of all from the realization that government departments and public policy seem hell bent on withholding the material resources and support that are vital to ensuring the rights of prisoners' children to adequate care and parenting (1982).

Human right issues, especially those concerning children can indeed evoke an emotive response among the most critical or objective discourse.

Since this report there have been at least 11 published reports written on parental incarceration in Australia (South Australian Attorney Generals Department 2005). Reference has and will be made to a number of these...

The following lists both human rights instruments and recent discourse relevant to rights of children of prisoners.

Declaration of the Rights of the Child – (1959)

The Declaration of the Rights of the Child was proclaimed by General Assembly Resolution 1386(XIV) of 20 November 1959. This was the basis of the Convention of the Rights of the Child (Walther 2003).

The UN Convention on the Rights of the Child (CRC) – (1989)

The CRC came in being in 1989. It contains 54 Articles covering a wide range of issues including; child prostitution, child abuse, child labour, the protection of children in war

zones, discrimination and many others. From a global perspective, the CRC is the human rights instrument often referred to and the most widely ratified.

Up to now, Somalia, South Sudan and the USA are the only three member countries in the United Nations which have not ratified the UN Convention on the Rights of the Child. The newly independent Republic of South Sudan joined the U.N. in July 2011. The difference between Somalia and the USA is that there is widespread support for ratification in Somalia, while in the United States Congress a majority of Republican Senators are opposed to it (Children's Rights 2012).

Those articles which relate to children of prisoners have been assembled by Bastick & Townhead and are listed below:

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents

Article 6(2)

States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child...

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States 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...

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 18(1)

States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

Article 20(1)

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State (2008:44-45).

San Francisco Children of Incarcerated Parents – A Bill of Rights (2005)

One of America's leading advocacy groups for children of prisoners, The San Francisco Children of Incarcerated Parents, proposed a Bill of Rights as a human rights framework specific to the needs of children of prisoners. This bill was adopted in 2005 in California and has also been adopted by a number of other states including Pennsylvania and states:

- ☐ I have the right to be kept safe and informed at the time of my parent's arrest.
- ☐ I have the right to be heard when decisions are made about me.
- ☐ I have the right to be considered when decisions are made about my parent.
- ☐ I have the right to be well cared for in my parent's absence.
- ☐ I have the right to speak with, see and touch my parent.
- ☐ I have the right to support as I struggle with my parent's incarceration.
- ☐ I have the right not be judged, blamed or labeled because of my parent's incarceration.
- ☐ I have the right to a lifelong relationship with my parent.

(Khanzhina 2011).

The Belfast Declaration (2006) – Children with parents in prison

Another instance where the rights of children of prisoners was raised at an international level occurred in 2006 when a group of practitioners, arguably well credentialed, put a case for the rights of children of prisoners. The International Association of Youth and Family Judges and Magistrates 17th World Congress was held in Belfast. During the congress, the issue of parental incarceration was discussed. From these discussions, a declaration was drafted and titled the 'Belfast Declaration'. Item 9 concerns children of prisoners and states:

If a decision is taken to send a parent to prison, a well developed care plan must be put in place prior to incarceration, involving the convicted parent, her/his child(ren) and significant others. The care plan must ensure protection of the child (ren) and should provide for continued contact between the child (ren) and the parent. In the light of the best interest of the child, States should consider the introduction of the rule that pregnant women and mothers with children under the age of one year should not be incarcerated. In this regard it is also recommended that steps be taken to develop protocols for the police and others involved in criminal justice on how parents, in particular mothers, with dependent /young children should be treated within the criminal justice system in order to ensure that the rights and needs of the child (ren) of these parents are well taken care of (International Association of Youth and Family Judges and Magistrates 2006).

UN Committee on the Rights of the Child – General discussion regarding children of incarcerated parents (2011)

On 30th September, 2011 The UN Committee on the Rights of the Child held a Day of General Discussion with regard to children of incarcerated parents. This discussion was a key event in the further development of a human rights agenda for children of prisoners. It held two workshops on babies and children living with or visiting a parent in prison, and on children left “outside” when their parent was incarcerated. The discussion led to the following draft resolution in March 2012 (United Nations 2012).

UN General Assembly of the Human Rights Council – Children of Incarcerated Parents (2012)

On 20th March 2012, a draft resolution was submitted to the United Nations General Assembly Human Rights Council’s nineteenth session on behalf of 52 countries. Included in this draft (items 66 thru to 69) issues specific to children of incarcerated parents are addressed. [Australia was not included].

Children of incarcerated parents

66. Welcomes the day of general discussion on children of incarcerated parents, held by the Committee on the Rights of the Child on 30 September 2011, and the outcomes thereon, and calls upon States to take the recommendations made at the discussion fully into account;

67. Emphasizes that, when sentencing or deciding on pretrial measures for a pregnant woman or a child's sole or primary carer, priority should be given to non-custodial measures, bearing in mind the gravity of the offence and after taking into account the best interests of the child;

68. Recalls that the best interests of the child should be a primary consideration in relation to the question of whether and how long children of imprisoned mothers should stay with them in prison, and emphasizing the responsibility of the State to provide adequate care for women in prison and their children;

69. Calls upon States:

(a) To provide children of persons accused or convicted of offences with access to their incarcerated parents or parental caregivers throughout judicial proceedings and the period of detention, including regular and private meetings with the prisoners, and wherever possible contact visits for younger children, subject to the best interests of the child, taking into account the need to ensure the administration of justice;

(b) To recognize, promote and protect the rights of the child affected by parental incarceration, in particular the right to have their best interests included as an important consideration in decisions relating to their parent's involvement with the criminal justice system, as well as the right not to be discriminated against because of the actions or alleged actions of their parent;

(c) Bearing in mind the best interests of the child, to keep children or their legal guardians fully informed of the place of imprisonment of their incarcerated parents or parental caregivers and, in advance, of any transfer, as well as of the progress of petitions for pardons, reports presented to bodies such as clemency commissions, and the reasoning behind the recommendations of these bodies to support or reject petitions;

(d) To ensure that children whose parents or parental caregivers are on death row, the inmates themselves, their families and their legal representatives, are provided, in advance, with adequate information about a pending execution, its date, time and location, to allow a last visit or communication with the prisoner, the return of the body to the family for burial or to inform on where the body is located (United Nations 2012:13).

From an Australian perspective, two recent documents look at this country's performance in the area.

Australian Human Rights Commission submission – The Rights of the Child – 2011.

In August, 2011 the Australian Human Rights Commission presented a submission to the United Nations Committee on the Rights of the Child. The intention of this report, akin to a self reporting report card, was to 'provide information to the Committee on the Rights of the Child on Australia's implementation of the International Convention on the Rights of the Child (the Convention) with reference to the Australian Government's 4th periodic report' The Commission states in its introduction 'It does not aim to provide a comprehensive overview of all child rights issues in Australia (p.4)'. One issue which was canvassed was that of 35,895 children in out of home care at June 2010, an increase of 51 per cent since June 2005 (p.20). Given that there is an estimated 38,000 children of prisoners in Australia (Robinson 2011), the plight of all of these children seems not to have registered on the Commission's radar as children of prisoners are not mentioned in the report. Of interest, would certainly be the commonality of individuals who were both children in out of home care and children of prisoners, but as no data is gathered on the latter that question remains unanswered.

Clearly the Human Rights Commission, intentionally or not have neglected to include children of prisoners. As part of an NGO Report in the same year, children of prisoners were recognised.

'Listen to Children' – 2011 Child Rights NGO Report

In 2011, a report by the Child's Rights Taskforce was critical of the Australian Government in terms of its human rights record. As part of its opening statement it remarked 'Australia is a wonderful place for most of its children. This is largely despite, rather than because of, the efforts of successive Australian Governments to implement the United Nations Convention on the Rights of the Child (p.2)'. In the concluding observations of the report, reference was made to children of prisoners followed by two recommendations;

1. That Australia review all judicial and administrative arrangements where parents are incarcerated and separated from their children to consider and minimise the impact on the person's children and,
2. That Australia work with state and territory governments to resource and support the implementation of programs which facilitate the maintenance of the relationship between children and their incarcerated parents, where it is in the child's best interests to do so (Child's Rights Taskforce 2011:25–26).

Summary

Despite the plight of children of prisoners being reported since at least 1963, the subject has not gained any real traction from a global perspective until recent times.

Discourse in the United Nations is encouraging as it is from those international and national agencies advocating for the rights of children of prisoners, however the translation of the various charters into law and policy seems to be the challenge.

The fact that the United States, with an estimated 1.3 million children of prisoners, has not ratified the CRC and is not likely to do so due to strong political opposition is concerning, however strong advocacy, especially with the adoption of the San Francisco Children of Incarcerated Parents' Bill of Rights being adopted in a number of states is promising. In general the heavy lifting is being done by advocacy groups, not-for-profits and faith-based institutions, often with little or no state resources.

CONCLUSION

The phenomenon which is children of prisoners, according to most commentators, requires far more research. The numbers of children affected is determined by estimates in the great majority of cases and this is a cause for concern from the researcher's standpoint as well as from that of the advocate. Despite this, there is a range of publications borne out of concerns of their increasing numbers, consistent with rising rates of incarceration of their parents (especially of mothers; being primary caregivers) and also because of the extensive numbers of issues the children have to contend with and their complex natures.

Key findings

The following are key findings from the research:

1. Children of prisoners are a vulnerable group with complex issues and very special needs.
2. There is a distinct lack of data on the numbers of children affected by parental imprisonment and therefore a deficit of research on the phenomenon.
3. There are a number of systemic problems which make the collection of data difficult and as a rule, state agencies especially prisons, do not collect information on the parental status of inmates.
4. State initiatives and government funded programs targeting children of prisoners are at best ad hoc and often non-existent.
5. The circumstances of children of prisoners are brought about principally by the state's response to crime.
6. There is evidence that the suffering of children of prisoners is often at their parent's hand.
7. Initiatives and programs by the state (and indeed non government services) which include the children generally have a stronger focus on the rehabilitation of the prisoner than the rights of the child.
8. The plight of the children has been mostly ignored by policymakers.

9. Practical support for prisoners' children is generally delivered by volunteers and non government agencies.
10. There are a number of local, national and international bodies which have been established and have mobilised to advocate for the children of prisoners.
11. In recent years, international organisations have recognised children of prisoners as a distinct group with special needs.
12. Human rights expectations have been clearly spelled out, however few are adopted.

Commitment to research and program development

A common theme in the research is the lack of reliable data on the number of children affected and the need for further and ongoing research. An exception was found in two European countries –Sweden and Latvia whose governments recently implemented a process of collecting data on the parental status of prisoners. Monitoring of the process and outcomes of this initiative should be considered to inform similar approaches by other governments.

In 1991, Larman and Aungles commented on the difficulty of estimating the numbers of children affected by the imprisonment of a parent, referring to this difficulty as 'an integral aspect of the shadow punishment experienced by prisoners and their outside carers'. They assert the neglect of the children is no accident, quoting Smith: 'It would be political suicide to build up one picture of crime and criminals to the voting public, instilling fear and prejudice and present a law and order platform and then contravene it by aiding prisoners' families' (Smith 1986, in Larman and Aungles 1991 p: 264).

Evidence that might go some way to support Smith's assertion can be found in the Australian context. Despite a number of enquiries into children of prisoners including two lengthy Australian reports; The Parliament of NSW Legislative Council Standing Committee on Social Issues – A report into Children of Imprisoned Parents – 1997 and the South Australian Government's 'Children of Prisoners Project - 2005, little affirmative action has been forthcoming from the states responding to the recommendations of the reports. In other words, governments are more than willing to investigate the problem and

to fund pilot programs based on the findings of such reports but seem inept at ensuring the rights of the children are embraced in legislation.

The Australian Government's decision to fund the Prisoners and their Families Program was a welcome initiative but was only a pilot program which did not attract recurrent funding despite a favorable evaluation – the baton was effectively passed on to the states to progress the initiative. Current programs to assist children of prisoners are being delivered by charities and other non government agencies.

Summing up

As a consequence of the criminal justice system's response to their parent(s) criminality, many children suffer trauma and significant disadvantage. Ultimately the question has to be asked: are the rights of the children being violated and, if so, who should step in to restore them? State-based sanctions play a significant role in the circumstances of children of prisoners. Right along the continuum of state interventions from arrest of their parents, court processes (including hearings and sentencing), incarceration and all of the issues that go along with it (including communication and visiting rights) there is little in the way of a structured or integrated response by to state to the needs of the children given the psychological, economic and social problems experienced by children of prisoners. There is scant evidence of the state taking a lead role to develop strategies to address the problem. This has been left, for all intents and purposes to the children's families and extended families and friends, non government agencies, faith-based agencies and advocacy groups. Despite what might seem an adequate pool of resources to draw upon, research suggests these children are still missing out on many of the basic human rights enjoyed by their peers.

For some time now, Murray has been publishing in the area of children of prisoners, independently and in collaboration with others. He, along with some colleagues, states the obvious in 2009:

An obvious option for preventing harmful effects of parental imprisonment on children is to imprison fewer parents. This could be achieved by increasing the use of alternative forms of criminal punishment, such as probation, intensive supervision, house arrest, electronic monitoring, community service, and day fines (Murray et al 2009:58).

Further to suggesting alternate approaches to punishment than incarceration they go on to suggest the implementation of programs based on what has been learned about the effects of parental imprisonment on the children. Most importantly is the need for more stable care arrangements, advice to caregivers on how to provide clear and honest advice to the children, counseling and therapeutic intervention and above all quality contact with incarcerated parents (Murray et al 2009:58).

This discussion on children of prisoners and their human rights has identified a range of issues which impact negatively on the children. Many have inherited the stigma carried by their parents. In the main, the children come from highly disadvantaged communities meaning that the incarceration of their parent(s) is a compounding dynamic on an already stressful existence. Advocates look to a state for answers, but it seems the state has continually let these children down. It is encouraging to see their case is being discussed in the United Nations Human Rights Commission as well as a number of other international forums and organisations including; Eurochips in the European Union, San Francisco Children of Incarcerated Parents Partnership in the United States, Barnardo's in the UK and VACRO and Shine for Kids in Australia supporting them in the community and advocating strongly for their rights.

The children's circumstance prior to the arrest, while not strictly related, is nevertheless a significant factor, especially as many may have been children of prisoners in the past. Also, an insight into the lifestyle of some begs the question; should it always be necessary to wait until a parent is in custody before intervention is warranted?

One can only speculate on what might ultimately bring the rights of children of prisoners into line with those of their peers. The complexity of the issues brought to light by the limited amount of literature on the phenomenon represents the views and experience of many who have worked in and researched this complex area. Over and above that, it may be useful to once again reflect on the words of La Vigne et al;

‘For many children, “support” can be as simple as acknowledging the unique nature of their loss in a manner that accepts rather than stigmatizes’ (La Vigne et al, 2008).

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