



SHINE for Kids



Submission to Queensland Productivity Commission Inquiry into Imprisonment and Recidivism

SHINE for Kids Cooperative Ltd

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ABOUT SHINE FOR KIDS

Founded in 1982, SHINE for Kids provides crucial support to children and young people with incarcerated parents. The invisible victims of crime, children experience significant psychological trauma and impact on their emotional and social development as a result of their parents' imprisonment. At any one time, there are more than 75,000 Australian children who have experienced parental incarceration.

Our programs provide positive opportunities and trauma-informed support to reduce the likelihood of these children transitioning into child protection and justice systems, help avoid family fragmentation and intergenerational offending, and to reduce both juvenile and adult recidivism.

The only national charity to provide services to support children and young people from infancy to adulthood, SHINE for Kids programs operate in secure, open custody, and transitional correctional facilities throughout NSW, ACT, VIC and QLD, and encompass:

- Mentoring
- Children's Supported Transport
- Education Support
- Aboriginal Programs
- Onsite Engagement Facilitation including Child and Family Centres and supported prison visits
- Casework, Parenting and Carer Support

The children of prisoners are the invisible victims of crime and the penal system. They have done no wrong, yet they suffer the stigma of criminality. Their rights to nurture are affected by both the criminal action of their parent and by the state's response to it in the name of justice.



EXECUTIVE SUMMARY

SHINE for Kids welcomes the review and is pleased to provide a submission. Our submission will draw on over 30 years of practice, research and advocacy experience on the needs of children of prisoners and the role integrated family support and case management plays in reducing recidivism.

SHINE is making this submission because the criminal justice system in Queensland is not a system achieving its objectives. As it is well noted, imprisonment rates are rising, despite falling crime rates. As outlined in the Productivity Commission's *Inquiry on current trends, investment of 5.2 billion to 6.5 billion will be required to ensure that prison capacity is able to meet demand in 2025*¹. Most concerning is the high rate of reoffending and little evidence that the increases in imprisonment benefits the community. In fact, SHINE for Kids practice experience demonstrates an increase in imprisonment continues to harm children, families and communities far beyond the prison walls long into a child's future.

When a parent spends time in prison, away from their family and community, it creates an adverse childhood experience for children which has lifelong impact. To fully understand the harmful effects of incarceration on the parent-child relationship, we must first recognise the importance of that relationship to a child's healthy development, which is underscored by attachment theory. Attachment theory is rooted in the knowledge that children should experience warm, intimate, and continuous connections with their parents or parental figures in a way that produces satisfaction and enjoyment². These relationships are crucial to a child's lifelong physical and psychological well-being. Research suggests that children of incarcerated parents are more likely to have insecure attachments to their incarcerated parents and primary caregivers³.

The Adverse Childhood Experience Study confirms that growing up experiencing an incarcerated household member - especially a parent - prior to age 18 leads to many negative health and behavioural outcomes. Parental incarceration is more than a temporary separation of child and parent, and incarceration affects children differently than other forms of parental loss (eg. divorce or death) because of the associated social stigma and the uncertainty surrounding the length of the separation⁴.

Successive government have acknowledged that adverse childhood experiences have a lifelong impact on children. This has been recognised with a number of national apologies including the 2008 Apology to Stolen generation, the 2009 Apology to the Forgotten Australians and the 2018 National Apology to Victims and Survivors of Institutional Child Abuse⁵.

Families affected by parental incarceration experience more trauma than most families, which can manifest as depression, anxiety, irritability, aggression, social isolation, difficulty sleeping, behavioural regression and an inability to regulate emotions and behaviours⁶. As a result, partners, parents and children of prisoners need the support of society, not just because of the key role they can play in offender rehabilitation, but also because of the hidden sentence they are serving, without having committed any crime themselves. Family members need to be

¹ Inquiry into Imprisonment and Recidivism Summary Report February 2019 p.16.

² Bowlby, J (1951) "Maternal Care and Mental Health." Bulletin of the World Health Organization 3 p355–534.

³ Poehlmann, J, (2005) "Representation of Attachment Relationships in Children of Incarcerated Mothers." Child Development 76 (3) p.679–96.

⁴ Arditti, Joyce, and Savla (2015) "Parental Incarceration and Child Trauma Symptoms in Single Caregiver Homes." Journal of Child and Family Studies 24 (3) p 551–61.

⁵ McFarlane, Kath (2019) Submission: Queensland Productivity Commission Inquiry: Imprisonment and Recidivism p.2

⁶ Sack, William, and Seidler (1978) "Should Children Visit Their Parents in Prison?" Law and Human Behavior 2 (3): 261–66.

acknowledged as potential assets who are essential to making prisons places of purpose, but they must also be treated with respect and decency by all staff in prisons.

Aboriginal and Torres Strait children experience parental incarceration at a greater rate than non-Indigenous Australians. Aboriginal and Torres Strait Islander children are placed in out of home care at a greater rate than non-Indigenous Australians. The over-representation of Aboriginal and Torres Strait Islander women within the female prison population is of serious concern. Over one third (36%) of female prisoners in Queensland are Aboriginal and Torres Strait Islander women. As stated by the Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar *“when there is a systems failure as there currently is with our incarceration system, First Australians always suffer a disproportionate impact. And the most vulnerable to this failure, the latest victims, are our women. The trajectory of incarceration in this nation shines a glaring light on the systemic inequality experienced by Aboriginal and Torres Strait Islander peoples”*.⁷

Continued silence on this issue is costly - we cannot afford to ignore the link that multiple systems have and are continuing to fail the most vulnerable people in our community. Nationally and internationally decades of research and advocacy have described the school to prison pipeline⁸, abuse to prison pipeline⁹ and foster-care to prison pipeline¹⁰. The incarceration of primary care givers and the placement of children of prisoners into out of home care continues this cycle and ultimately results in today’s most vulnerable children being placed on a trajectory of being tomorrow’s criminals. As stated by Dr Kath Farlane, *“many of the children taken into care following parental imprisonment will follow the same path, with young women in care likely to become pregnant and then have their child removed while they themselves are still in the care system. The risk is exacerbated if the young woman is involved in the justice system while in care. Research also indicates that for many women, the removal of their child precipitates their incarceration, rather than the incarceration leading to child removal, as is often assumed. It is the intersection of these systems that has the most significant and negative impact on children of prisoners”*¹¹.

We can either perpetuate or disrupt this cycle. To disrupt this cycle we must provide support for these children and their families more effectively and earlier.

SHINE for Kids would be pleased to discuss any aspect of this submission including the programs we currently deliver with you at your convenience.

⁷ Imprisonment rates of Indigenous women a national shame (2018)

<https://www.humanrights.gov.au/news/stories/imprisonment-rates-indigenous-women-national-shame>

⁸ Crawley and Hirschfield (2018) “Examining the School-to-Prison Pipeline Metaphor” in Oxford Research Encyclopedia of Criminology

<http://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-346?print=pdf>.

⁹ Saada Saar, Epstein, Rosenthal and Vafa (2015) “The sexual abuse to prison pipeline: the girls story”. Human Rights Project for Girls Georgetown Law Center on Poverty and Inequality Ms. Foundation for Women

http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf.

¹⁰ Lowenstein, K., (2018) “Shutting Down the Trauma to Prison Pipeline Early”, Appropriate Care for Child-Welfare Involved Youth, Citizens for Juvenile Justice.

¹¹ McFarlane, Kath (2019) Submission: Queensland Productivity Commission Inquiry: Imprisonment and Recidivism p.8

This submission is endorsed by SHINE For Kids Practice, Research and Advocacy Members including:

Community Restorative Justice Centre

The Community Restorative Centre (CRC) provides a range of services to people involved in the criminal justice system and their families. CRC is the lead provider of specialist through care, post-release, and reintegration programs for people transitioning from prison into the community in NSW. All CRC programs aim to reduce crime and break entrenched cycles of disadvantage, offending and imprisonment.

Dr Kath McFarlane

Professor Lorana Bartels

Dr Danielle Tracey

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

The Attorney- General takes steps to amend the *Penalties and Sentences Act 1992* to include the principle that the best interests of the child be a factor to be considered when sentencing a person with a dependent child, avoiding, as far as possible sentences for parents which lead to their being separated from their children¹².

RECOMMENDATION 2

The best interests of the child must be the primary consideration in relation to all actions that may affect children whose parents are in conflict with the law, whether directly or indirectly. The Attorney –General should implement laws and policies to ensure this at all states of judicial and administrative decision-making during the criminal justice process, including arrest, pre-trial measures, trial and sentencing, imprisonment, release and reintegration into the family and community.

RECOMMENDATION 3

Alternatives to detention should be made available and applied on a case-by-case basis, with full consideration of the likely impacts of different sentences on the best interests of the affected children. Increase the range of non-custodial sentences for primary care-givers.

RECOMMENDATION 4

Bangkok Rule 64¹³ should be implemented; this states: “*non-custodial sentences for women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taken into account the best interests of the child or children, while ensuring the appropriate provision has been made for the care of such children*”. The application of the Bangkok Rules was limited to women because the mandate for these Rules only covered women, but the preamble recognised that the Rules should be applied equally to men in an equivalent position¹⁴. The scope should cover all parents and all sole or primary caregivers that the children have a right to maintain contact with parents.

RECOMMENDATION 5

Pregnant women and parents who are primary caregivers of young children or of people with disabilities should not be remanded unless they are charged with a serious offences, such as murder, manslaughter or rape.

RECOMMENDATION 6

Encourage and facilitate child friendly visits to all Queensland correctional centres. This includes a dedicated inside and outside children’s area with age appropriate furniture and activities facilitated by a qualified early childhood and children services practitioner.

¹² Women in Prison 2019: A Human Rights Consultation Report Recommendation 18: Family and Parenting

¹³ United Nations, Standard Minimum Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

¹⁴ Brett, R. (2018) “Best Interest of the Child when Sentencing a Parent: Some reflections on international and regional standards and practice” p.3.

RECOMMENDATION 7

Introduce arrangements to encourage effective through care and post-prison support for inmates with children and their families. This is an appropriate starting point for through care in the adult corrections system.

RECOMMENDATION 8

Extend evidenced-based parenting program “*Bringing Up Great Kids*” to male complexes in Queensland.

RECOMMENDATION 9

Invest in early years’ cultural, psychological and social support for Children of Prisoners. Investing in primary educational support for the children of prisoners as an appropriate place to start prevention and early intervention work.

RECOMMENDATION 10

The Queensland Government should support the establishment of an independent justice reinvestment body. The justice reinvestment body should be overseen by a board with Aboriginal and Torres Strait Islander leadership. A starting point for justice reinvestment is supporting children of prisoners who are at risk of intergenerational offending.

RECOMMENDATION 11

Capital expenditure on building new corrections centres or modifying existing facilities prioritises infrastructure that supports family integration and child-friendly visiting areas including a dedicated Child and Family Centre.

RECOMMENDATION 12

Queensland Corrective Services should invest in supported transport services for children with a parent in prison due to parents being imprisoned a long distance from their children.

RECOMMENDATION 13

Queensland Corrective Services should increase the number of telephones available for prisoners’ use and investigate opportunities for Skyping capability to enhance prisoners’ contact with approved family members.

RECOMMENDATION 14

Queensland Corrective Services should take a lead role in working with other relevant departments to improve the collection of data about the number of children in Queensland affected by imprisonment of a parent.

RECOMMENDATION 15

Queensland Corrective Services should work with Australian state and territory governments to develop an annual national survey on parenthood to ensure early prevention services and support can be appropriately allocated.

REDUCING REMAND

Prison should be an absolute last resort and certain offences should never lead to prison. Queensland's Commissioner of Police, Mr Ian Stewart, has recently stated: *arresting more people and putting more people in jail is not the answer to making Australia a great nation...as a community we've got to look at smarter ways of dealing with people who make minor errors and ones that can be perhaps diverted from the criminal justice system rather than being subsumed by it.*¹⁵

The number of women and men in custody in Queensland are on remand and this has increased steeply over the past five years. The Sofronoff Review stated:

Queensland's remand population is consistent with other Australian jurisdictions, with 31 per cent of all prisoners held in Australia being unsentenced. In 2015-16 the flow of prisoners on remand through the system in Queensland was examined by QCS and it was found that a total of 5,568 prisoners were admitted on remand in that year. Approximately 48 per cent of the prisoners spent less than two months on remand, almost 30 per cent were released from remand to freedom or to a non-custodial sanction, with 70 per cent sentenced to imprisonment. It was found 43 per cent of the prisoners sentenced to imprisonment were released on the same day to court ordered parole.

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A significant number are imprisoned for relatively minor offences and many have dependent children. People remanded to custody are innocent until proven guilty. As outlined in the Sofronoff Review, many remand prisoners are released when they appear before the court without having to serve further time in prison, because they are found not guilty, are given a community order, or deemed to have served their time¹⁷.

Time on remand is a punishment with harmful effects that go beyond the loss of liberty. Imprisonment of a parent even for a short period of time involves the forcible separation of parent and child and interferes with the rights of the child by depriving the child of parental care.

Unnecessary remands are a waste of public funds. Current practices impose a punishment, before conviction, which is often disproportionate to the alleged offence. Moreover, remanding primary caregivers in custody creates wider, long-term costs, such as the cost of children being placed into out of home care and the detrimental impact on children's wellbeing and education.

Concerns raised by courts include the risk that the defendant will fail to attend trial, interfere with witnesses, or commit an offence while on bail. However, courts have the power to impose bail conditions to address these concerns, rather than remanding a primary-caregiver to custody whose charges would not lead to a custodial sentence.

SHINE for Kids recommends:

- Pregnant women and parents who are primary caregivers of young children or of people with a disability should not be remanded

¹⁵ 'Top Cop says Jail not the answer to crime', The Courier Mail (Brisbane), 1 August 2017.

¹⁶ Queensland Parole System Review Final Report 2016 <https://parolereview.premiers.qld.gov.au/assets/queensland-parole-system-review-final-report.pdf>

¹⁷ Ibid.

- Bangkok Rule 64 should be implemented which states “*non-custodial sentences for women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taken into account the best interests of the child or children, while ensuring the appropriate provision has been made for the care of such children.* The Provision of the Bangkok Rules were limited to women because the mandate for these Rules only covered women, but the preamble recognised that the Rules should be applied equally to men in an equivalent position. The scope should cover all parents and all sole or primary care givers that the children have a right to maintain contact with parents.

SENTENCING AND THE BEST-INTEREST OF THE CHILD

There is an international legal obligation on States Parties to the *Convention on the Rights of the Child* to take account of the best interests of the child when sentencing parents or primary carers.

Article 3 (1) of the CRC reads as follows: *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. The Committee on the Rights of the Child has indicated that the best interests of the child of a defendant or an imprisoned parent must be considered carefully and independently by 'competent professionals and taken into account in all decisions related to detention, including pre-trial detention and sentencing, and decisions concerning the placement of the child'*

Best practice is to ensure that this is mandatory (not merely guidelines) for courts/judges making such decisions, as all the evidence is that guidelines are not always followed. Courts should be required to set out in their decisions how they have taken this into account, and failure to take account of the best interests of the child in such circumstances is grounds for leave to appeal such decisions; and that this requirement applies to all measures, not only in relation to custody (detention or imprisonment)¹⁸.

Taking children’s best interest into account does not mean that parents and primary caregivers cannot be detained or imprisoned. Judicial officers should weigh the best interest of the child versus the gravity of the offence and public security when considering incarceration of a mother/primary care-giver¹⁹.

The scope in Queensland should cover all parents and all sole or primary carers, given that the child has a right to maintain contact with both parents even when they are not acting as primary carers (provided it is not contrary to the child's best interests to do so). How the child's best interests are affected will be different depending on the nature of the existing relationship.

In Slovenia, if both parents are sentenced to prison, it is possible for them to alternate serving their sentences in order to provide continuity for their child and limit the amount of children that are then placed in out of home care²⁰.

¹⁸ Brett, R. (2018) “Best Interest of the Child when Sentencing a Parent: Some reflections on international and regional standards and practice”

¹⁹ Brett, R. (2018) “Best Interest of the Child when Sentencing a Parent: Some reflections on international and regional standards and practice” p.3.

²⁰ Ibid.

SHINE for Kids recommends:

- The Attorney- General takes steps to amend the *Penalties and Sentences Act 1992* to include the principle that the best-interest of the child be a factor to be considered when sentencing a person with a dependent child, avoiding, as far as possible sentences for parents which lead to their being separated from their children.
- The best interest of the child must be the primary consideration in relation to all actions that may affect children whose parents are in conflict with the law, whether directly or indirectly. The Attorney –General should implement laws and policies to ensure this at all states of judicial and administrative decision-making during the criminal justice process, including arrest, pre-trial measures, trial and sentencing, imprisonment, release and reintegration into the family and community.
- Alternatives to detention should be made available and applied on a case-by-case basis, with full consideration of the likely impacts of different sentences on the best interest of the affected children. Increase the range of non-custodial sentences for primary care-givers.

IMPROVE REHABILITATION AND REINTEGRATION

Where incarceration is deemed necessary for the protection of society, it is important that family are engaged in the rehabilitation of prisoners. Without the insights these interactions with families afford, offender management is often a far more hit and miss affair than it needs to be. In the worst-case scenario, important information relating to a prisoner’s emotional and mental state is not communicated and their safety can be compromised. Positive family relationships are associated with reduced risk of reoffending. Research shows that for a prisoner who receives visits from a family member the odds of reoffending are 39% lower than for those who do not²¹. Family members need to be acknowledged as potential assets who are essential to making prisons places of discipline and purpose, but they must also be treated with respect and decency by all staff in prisons. There needs to be an understanding of the negative consequences inflicted on them by imprisonment and the potentially harmful effects of the individual’s offences.

It is important that Queensland Corrective Services introduce arrangements to encourage effective through care for inmates with children and their families. It is essential that through-care programs be delivered by an independent organisation that collaborates with the existing service systems in community. The establishment of meaningful social relations and a sense of belonging to wider society plays a critical part in the prevention of offending and in the process of desistance from crime²². This is an appropriate starting point for throughcare in the adult corrections system. It is critical that throughcare engages with family and focuses on the best interests of the child from the point of incarceration through to release and encourages family involvement. Prisoners’ responsibilities to their families should be seen as an important lever for change and their families are often significant assets for offender management during and at the end of sentences.²³

The SHINE for Kids Belonging to Family program model is provided as best practice. The Belonging to Family Program has been running in Kempsey New South Wales since 2011 and is currently being developed for delivery in Townsville Women’s Correctional Centre. The Program has been endorsed by Queensland Corrective Services

²¹ Lord Farmer (2017) “The Importance of Strengthening Prisoners’ Family Ties to Prevent Reoffending and Reduce Intergenerational Crime” Ministry of Justice.

²² Jacobson, J. and Fair, H. (2016), Family Connections: a review of learning from the Winston Churchill Memorial Trust Prison Reform Fellowships – Part II, Institute for Criminal Policy Research, Birkbeck, University of London p.4

²³ Lord Farmer (2017) “The Importance of Strengthening Prisoners’ Family Ties to Prevent Reoffending and Reduce Intergenerational Crime” Ministry of Justice.

Offender Programs and Services Accreditation Panel. This program is for Aboriginal and Torres Strait Islander parents with 6 to 12 months to serve. Over several weeks this program uses group work to maintain and strengthen the connections between Aboriginal inmates and their partners, children, children's carers, extended family and/or community Elders. The program aims to reduce recidivism by providing the inmates with a closer bond with their children; healthier family relationships; and support during and after release. They are invited to consider their importance to, and responsibility for, their children's wellbeing and their future, as well as that of their partner – and increasing their self-knowledge in the process.

In Scotland, the Integrated Case Management (ICM) Case Conference provides a mechanism for involving a prisoner's family in release planning²⁴. An ICM Case Conference is a meeting held at set intervals during a prisoner's sentence between the ICM case coordinator, prison- and community-based social workers and the prisoner. The prisoner may invite his or her family to these meetings²⁵. The ICM Case Conference provides an important opportunity to prepare and advise families about the issues arising on a prisoner's release, thereby supporting them in their own right, as well as preventing offending.

At one men's prison in Louisiana USA, families are involved as soon as the individual arrives at the prison. The Director of Re-entry invites a family member, or someone close to the prisoner, to the prison for an informal meeting, allowing the Director to learn about the prisoner's background and how s/he can be best supported²⁶.

SHINE for Kids currently delivers the evidence based parenting program *Bringing Up Great Kids*²⁷ in Brisbane Women's Correctional Centre, Helena Jones and Numinbah. This program should be extended to male complexes. A mixed method evaluation was conducted across 16 Australian sites and included 94 parent participants. Participants reported having a greater awareness of how their upbringing impacted on their responses and behaviours towards their children and of being more mindful, calm and better listening in their interactions. Parents reported positive changes in their lives such as less conflict and greater calmness in their homes and more positive interactions with their children²⁸.

SHINE For Kids Recommends:

- Invest in integrated family case managers to provide assistance and support to family members at the point of incarceration through to release planning.
- Investing in throughcare for inmates with children and their families by expanding the *Belonging to Family Program* to male prisons in Queensland.
- Extend evidenced-based parenting program *Bringing Up Great Kids* to male complexes in Queensland.

As emphasised by Lord Farmer²⁹

²⁴ Scottish Prisoner Services <http://www.sps.gov.uk/Families/HowCanIbeInvolved/Integrated-Case-Management.aspx>

²⁵ <https://www.familiesoutside.org.uk/content/uploads/2012/02/no11-ICM-March-2012.pdf>

²⁶ Jacobson, J. and Fair, H. (2016), Family Connections: a review of learning from the Winston Churchill Memorial Trust Prison Reform Fellowships – Part II, Institute for Criminal Policy Research, Birkbeck, University of London

²⁷ <https://apps.aifs.gov.au/cfca/guidebook/programs/bringing-up-great-kids>

²⁸ Hunter, C., Meredith, V. (2014). The utility of a reflective parenting program for parents with complex needs: An evaluation of Bringing Up Great Kids. Melbourne: Australian Institute of Family Studies.

²⁹ Lord Farmer (2017) "The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime" Ministry of Justice p.4.

I do want to hammer home a very simple principle of reform that needs to be a golden thread running through the prison system and the agencies that surround it. That principle is that relationships are fundamentally important if people are to change.

INTERGENERATIONAL IMPACT OF PLACEMENT IN OUT-OF-HOME CARE AND ABORIGINAL AND TORRES STRAIT ISLANDER OVERREPRESENTATION

The over-representation of Aboriginal and Torres Strait Islander women within the female prison population is of serious concern. Over one third (36%) of female prisoners are Aboriginal and Torres Strait Islander women. Not only are they statistically more likely to be incarcerated, Aboriginal and Torres Strait Islander women fare worse in prison than their non-Indigenous counterparts. They are more likely than non-Indigenous women to be held in high security prisons, make up almost half of the female prisoners on safety orders or separate confinements, and are more likely to return to prison for breach of parole³⁰. It is clear that the system is not designed with Indigenous women in mind, and does not respond well to the complex and specific needs of Aboriginal and Torres Strait Islander women in prison³¹. Statistics from 2016 show that Aboriginal and Torres Strait Islander women accounted for:

- 35% of women in prison;
- 33% of women on remand;
- 40% of women held in high security prisons;
- 49% of all Breaches of Discipline;
- 48% of separate confinements;
- 44% of safety orders; and
- were more likely than non-Indigenous women to return to prison for breach of parole.

Childhood prevalence of maternal incarceration was 26-times higher for Indigenous children born 1992-1996 with 9% of Indigenous children and 0.7% non-Indigenous children affected while aged 0-17 years. On average 1,544 children were affected each year across 2003-2011, at rates of 2,929 per 100,000 Indigenous children and 108 per 100,000 non-Indigenous children³².

Aboriginal and Torres Strait Islander children are over presented in the Queensland OOHC system. In 2016, Aboriginal and Torres Strait Islander children were 9.8 times more likely than non-Indigenous children to be in out-of-home care nationally. For Aboriginal and Torres Strait Islander children in OOHC, the policies of official government, church and non-government interference demonstrated in the forced removal of children have caused immeasurable harm, including involvement in the criminal justice system.³³ There is a well-established connection between children's involvement with child protection services, their overrepresentation in the youth justice system and their likelihood of contact with the criminal justice system as an adult. The Australian Law Reform Commission

³⁰ Women in Prison (2019) A Human right Consultation report Anti-Discrimination Commission Queensland p.63.

³¹ Women in Prison (2019): A Human right Consultation report Anti-Discrimination Commission Queensland p. 10.

³² Dowell, C (2017) 'Quantifying Maternal Incarceration: A Whole-population Linked Data Study of Western Australian Children Born 1985-2011' 41 Australian and New Zealand Journal of Public Health 151.

³³ Queensland Family and Children's Commissioner "Child protection and Aboriginal and Torres Strait Islander children" (2017) <https://www.qfcc.qld.gov.au/knowledge-and-resource-hub/child-protection-and-aboriginal-and-torres-strait-islander-children>

has stated that “the link between these systems is so strong that child removal into out of home care and juvenile detention could be considered as key drivers of adult incarceration.”³⁴

In Queensland, Department of Justice and Attorney-General (DJAG) data from February 2014 shows that 76% of children known to the Queensland youth justice system were also known to Child Safety Services. Similarly, in 2015-16, 32% of children in youth detention in Queensland had a child protection order history³⁵. In 2014-15, Aboriginal and Torres Strait Islander children in Queensland were 18.2 times more likely to be in youth detention than their non-Indigenous peers. Intergenerational trauma and the legacy of colonisation continues to underpin this overrepresentation³⁶.

ADDRESS GAPS IN PREVENTION AND EARLY INTERVENTION

Children of prisoners are more likely than any other group to face significant disadvantages. A landmark study in the UK showed that 63% of prisoners’ sons went on to offend themselves.³⁷ A recent study showed that, among this disadvantaged group, teen crime increased by 18.4%, teen pregnancy increased by 8%, and employment at age 20 decreased by 28%³⁸. Compared with children of never-incarcerated parents, children who experience parental imprisonment have higher rates of unemployment and higher rates of welfare dependency showing a weak connection to the employment sector.³⁹ “Research indicates that many children of prisoners become enmeshed in the justice system once they enter care, with devastating long-term consequences including imprisonment, homeless, disrupted education. etc This is a transgenerational cycle: many of the parents in prison themselves looked after, so too were their grandparents. Many of the children taken into care following parental imprisonment will follow the same path⁴⁰”.

Nearly all children attend school and spend a substantial amount of their time at school. Outside of the family, schools are the next most significant developmental context for children. They provide a safety net and assist in protecting children from circumstances that impact their learning, development and wellbeing. Worryingly, though, teachers do not receive training as part of their pre-service teacher degree, many schools have no policies for this ‘hidden group’ and teachers are unaware of the research on how best to support children with a parent in prison.⁴¹

³⁴ The Australian Law Reform Commission (ALRC) (2018) Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples at 485 <https://www.alrc.gov.au/publications/crossover-out-home-care-detention>

³⁵ <https://www.qfcc.qld.gov.au/sites/default/files/The%20criminalisation%20of%20children%20living%20in%20out%20of%20home%20care%20in%20Queensland.pdf>

³⁶ The State of Queensland (Queensland Family and Child Commission) (2018) The criminalisation of children living in out-of-home care in Queensland <https://www.qfcc.qld.gov.au/sites/default/files/The%20criminalisation%20of%20children%20living%20in%20out%20of%20home%20care%20in%20Queensland.pdf>

³⁷ Farrington, D. P., Barnes, G. and Lambert, S. (1996), 'The concentration of offending in families', *Legal and Criminological Psychology*, 1 (1) p 47–63.

³⁸ Dobbie, Will and Grönqvist, Hans and Niknami, Susan and Palme, Marten and Priks, Mikael (2018) The Intergenerational Effects of Parental Incarceration. NBER Working Paper No. w24186. Available at SSRN: <https://ssrn.com/abstract=3101990>

³⁹ Will Dobbie, Jacob Goldin, Crystal S. Yang (2018) The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges *American Economic Review* Vol. 108, NO. 2, (pp. 201-40)

⁴⁰ McFarlane, K (2019) Submission: Queensland Productivity Commission Inquiry: Imprisonment and Recidivism.

⁴¹ Morgan, Leeson, Carter, Wirgman, Needham (2013) “A Hidden Group of Children’: Support in Schools for Children who Experience Parental Imprisonment”.

As outlined by Kristin Turney:⁴²

"I find that parental incarceration is independently associated with learning disabilities, attention deficit disorder and attention deficit hyperactivity disorder, behavioural or conduct problems, developmental delays, and speech or language problems. Additionally, numerous studies indicate a reduction in educational outcomes for children and adolescents with a family member in the justice system by the high school years studies indicate that 'Imprisonment of a household member was associated with significantly greater odds of extended absence from high school and failure to graduate'.

Being subsumed within a 'vulnerable' group overlooks the unique needs of children of prisoners. Of the policies that do exist, most relate to criminal justice rather than welfare needs and have a deficit approach since these children receive attention because of the role of family life in re-offending and their own possible antisocial behaviour.⁴³ A stronger emphasis on the welfare and visibility of this distinct group is necessary in policy and programmatic support.

SHINE for Kids has identified educational difficulties as a significant issue for children with a relative in the justice system. A SHINE for Kids study of children in the Australian Capital Territory found that 'all children and young people described difficulties with school. They highlighted that the chaos at home, distress and extra responsibility they experienced severely impacted the ability to concentrate, meet deadlines and achieve the academic success they aspired to'⁴⁴.

In an internal survey conducted with Townsville Primary School Principals engaged in SHINE's Educational Support Program for students with a parent in prison 80% agreed with the statement that SHINE ensures students whose parents are incarcerated are not further disadvantaged by building a solid educational foundation for them, 70% stated SHINE can help break the cycle of intergenerational offending and learned behaviour by providing positive role models and 90% agreed SHINE can strengthen family and community functioning. In that same survey 72.73% indicated that they observed a reduction in students presenting with challenging behaviour. In a survey conducted with students 96% stated that SHINE helps them feel more supported in the classroom and 69.57% identified that they feel like their school better understands what they are going through and 96% stated that if they had a friend whose parent was in prison they would suggest a SHINE mentor.

Children of prisoners confront a complex range of issues that cross the boundaries of multiple agencies. Consequently, agencies can overlook the consequences of incarceration for children, which span health, social, education, housing and justice-related impacts. A place-based early intervention systems approach provides a preventative measure to support children and increase the capacity of schools to build the children's' protective factors with the goal to improve their long-term employment and contributions to society. Children with a parent in prison are a priority group for early intervention since they tend to come from families with multiple risk factors.

⁴² Turney, K., (2014) "Stress Proliferation across Generations? Examining the Relationship between Parental Incarceration and Childhood Health" *Journal of Health and Social Behavior* 55: 302.

⁴³ Morgan, L (2013) 'A Hidden Group of Children': Support in Schools for Children who Experience Parental Imprisonment.

⁴⁴ Saunders, V., & McArthur, M (2013). *Children of Prisoners: Exploring the needs of children and young people who have a parent incarcerated in the ACT*, Canberra Shine for Kids.

Early interventions are postulated to have long-term benefits and be more cost effective than addressing emotional, behavioural, health, education and financial impacts as they age.

Investing in educational support for children of prisoners is an appropriate place to start prevention and early intervention work. In the United Kingdom, a social return on investment analysis of alternatives to incarceration for women found that, over ten years, for every £1 spent on alternatives to prison, £14 worth of social value was generated to women and their children, victims and society⁴⁵.

SHINE For Kids recommends:

- The Queensland Government should support the establishment of an independent justice reinvestment body to promote the reinvestment of resources from the criminal justice system to community-led, place-based initiatives that address the drivers of crime and incarceration and to provide expertise on the implementation of justice reinvestment.
- The justice reinvestment body should be overseen by a board with Aboriginal and Torres Strait Islander leadership to ensure cultural competency of programs. A starting pointing for Justice Reinvestment is supporting children of prisoners with a focus on mothers. Many female prisoners are mothers and their time in prison can have major consequences for their children and families⁴⁶.
- Invest in SHINE For Kids Education Support Program for children of prisoners which currently operates in Townsville and on Palm Island.

Professor Julie Stubbs has observed that:

While the number of women imprisoned relative to men is small, the potential negative impact it has on society is very large; women's incarceration is very likely to diminish the prospects of future generations since women are an important 'resource' for their communities and families, and especially their children.

38

CAPITAL EXPENDITURE AND CHILD FRIENDLY PRISONS

Parent-child visits are consistent with one of the central tenets of the *Children of Incarcerated Parents Bill of Rights*, specifically that children have the right to speak with, see, and touch their parents. Developed by the San Francisco Children of Incarcerated Parents Partnership in 2003 and based on young people's experiences with parental incarceration, the Bill of Rights identifies a child's need for and right to a relationship with their parent involved in the justice system. The Bill of Rights has been widely accepted and used by several organisations working with children of incarcerated parents and their families including SHINE For Kids.

Many experts believe that contact visits conducted in supportive, safe, and child-friendly environments are likely the best option to help most families mitigate the harmful effects of parental incarceration. Further, a growing body of research supports the use of contact visits, which allow children to see that parents are safe and healthy while in prison or jail⁴⁷. When inmates are placed on restrictions i.e. no contact visits, this should not be imposed on child visits. Box visits that prevent any contact are very confronting and traumatic and can affect future visits as they

⁴⁵ Women in Prison 2019: A Human Rights Consultation Report p.32

⁴⁶ Flynn, C., (2011) 'Responding to the children of women in prison: Making the invisible visible', 19 Family Relationships Quarterly.

⁴⁷ Tasca, M., (2016). "The Gatekeepers of Contact: Child-Caregiver Dyads and Parental Prison Visitation." Criminal Justice and Behavior 43 (6): 739–59.

could refuse to attend due to that experience⁴⁸. Spending time together as a family through play, conversation, or sharing a meal can also help mitigate children's feelings of abandonment and anxiety⁴⁹.

Prison visits security should be carried out with courtesy, a customer service mentality and understanding: family members may have come a long way with children and or have health conditions that make the journey difficult. They may also be distressed by news or the lack of it from their loved one inside prison. While understanding of the need for security, families should not be treated as criminals and security checks should not be frightening and stigmatising. Staff training must ensure that staff value the positive role that families play in rehabilitation and understand the specific difficulties facing care leavers in prison. SHINE For Kids currently delivers officer training in NSW with Correctional Officers. The training aims to help correctional officers understand:

- The impact imprisonment has on family members and on relationships between someone in prison and their family member especially children.
- Recognise the key role families can play is risk assessment, case management, recover from substance abuse, crime prevention, child protection and resettlement or reintegration.
- Understand that families and children need support in their own right.
- Understand the role that SHINE For Kids and good quality family contact can play in a prisoner's sentence management.

Queensland Corrective Services should invest in the building of child and family visitor centres that are a base for holistic support for families that provide information and support. In NSW, SHINE for Kids provides services and information that helps with booking visits, support for travel costs, and information about search procedures, appropriate clothing, and the effects of imprisonment on families, drug and alcohol issues and resettlement.

Virtual visits (using video calling technology) should be available for the small percentage of families or individual family members and children who cannot visit frequently or at all due to illness, distance or other factors. It can also be used to supplement face-to-face visits. This should be prioritised in Townsville where families tend to live a long way away from the prison. A room, possibly in an empty cell on each wing, could be made available to enable those prisoners whose family members cannot visit to stay in contact with them. A booking system and application process would mean each prisoner's request to have access to video calling technology had to be cleared by the Governor and prisoners would know that the call could be monitored. Alternatively, tablets could be made available. Virtual video visiting is gradually being made available in prisons in Northern Ireland, and has become particularly embedded in Magilligan Prison. It does not replace face-to-face visits, but supports them by enabling prisoners to 'visit' their own homes and see their family members in situ. Churchill Fellow Mark Goodfellow, from the Northern Ireland Prison Service, describes how it 'acts as a motivator and a reminder of "normality"'⁵⁰.

⁴⁸ Crammer, Goff, Peterson and Sandstrom (2017) "Parent- Child Visiting Practices in Prisons and Jails" A Synthesis of Research and Practice.

⁴⁹ Hairston, Creasie Finney. (1991) "Mothers in Jail: Parent-Child Separation and Jail Visitation." Women and Social Work 6 (2): 9–27.

⁵⁰ Jacobson, J. and Fair, H. (2016), Family Connections: a review of learning from the Winston Churchill Memorial Trust Prison Reform Fellowships – Part II, Institute for Criminal Policy Research, Birkbeck, University of London, p8

Children of Incarcerated Parents Bill of Rights

1. I have the right to be kept safe and informed at the time of my parent's arrest.
2. I have the right to be heard when decisions are made about me.
3. I have the right to be considered when decisions are made about my parent.
4. I have the right to be well cared for in my parent's absence.
5. I have the right to speak with, see, and touch my parent.
6. I have the right to support as I face my parent's incarceration.
7. I have the right not to be judged, blamed or labelled because my parent is incarcerated.
8. I have the right to a lifelong relationship with my parent.

SHINE For Kids Recommends:

- Capital Program for building new corrections centres or modifying existing facilities prioritises infrastructure that supports family integration and child-friendly visiting area. A model for consideration is NSW SHINE Child and Family Centres at 11 prisons in NSW.
- Investing in developing more complexes like Helena Jones where children can reside with mother from birth to school age.
- As there are very few women's prisons in Queensland, women are often imprisoned a long distance from their children. Long-distance imprisonment reduces opportunities for prison visits, and makes it more difficult to maintain relationships, particularly with young children. Funding Supported Transport services for children with a parent in prison should be a priority moving forward. SHINE for Kids has commenced a volunteer transport service in 2019 for Numinbah, Brisbane Women's and Helena Jones. In the ACT, VIC and NSW this critical service is funded by Departments of Corrective Services and Family and Community Services respectively.

DATA COLLECTION

Queensland Corrective Services does not collect data on the number of female prisoners with children under the age of 18, or the number of female prisoners with a child under five years of age. It does not keep data on the care arrangements for dependent children under 18 year of age who have a mother or father in custody. There is no data on whether such children are in state residential care, non-family foster care, or with family (other parent, grandparent, or other family). This data is critical to ensuring the best interests of prisoners' children are considered and should be collected routinely⁵¹.

SHINE For Kids Recommends:

⁵¹ Women in Prison 2019: A Human right consultation report Recommendation 19 p.96

- Queensland Corrective Services should take a lead role in working with other relevant departments to improve the collection of data about the number of children in Queensland affected by imprisonment of a parent⁵².
- Data is not routinely collected on the parental status of prisoners nationally. ⁵³QCS should work with state and territory governments to develop an annual national survey parenthood to ensure early prevention services and support can be appropriately allocated.
- Queensland Corrective Services collect information on the OOHC status of prisoners in correctional facilities to better understand the needs of the cohort and tailor appropriately designed and effective programs to strengthen family and community ties to reduce recidivism⁵⁴.

CONCLUSION

Queensland Corrective Services needs to ensure prison facilities support rehabilitation and involve families in the management and rehabilitation of offenders. The importance of contact with families has not yet been prioritised in practice within the Queensland prison system. Despite progress being made, there is still an unacceptable level of inconsistency in family services. The importance of family ties should be a golden thread running through any new policy frameworks. In the main, any progression in family services in prisons has been led, developed and funded by the voluntary sector. This is one reason why provision is patchy and better developed in some areas than others. Government needs appropriately invest in throughcare programs and integrated family case managers. An appropriate starting point is current offenders with children.

Children of prisoners have specific needs. Although they may come to the attention of welfare services, the particular trauma of having a parent in prison may not emerge⁵⁵. Stigma, shame and secrecy may keep them hidden. To minimise the negative impacts of parental imprisonment on children, their needs must be acknowledged and programs specific to their needs implemented and supported.

Children of prisoners and the issues they face have been invisible for too long. The consequence of continuing to ignore these children is to reinforce the generational cycle of crime and disadvantage in which they are enmeshed⁵⁶. Action should be taken to ensure that unnecessary, lasting damage is not done to children who are separated from their parents for no fault of their own.

A long-term solution to the current issues is early prevention and intervention services and working with children who currently have a parent in prison as an appropriate starting point. Recognition should be given to the trauma that can be caused to a child through their parents' involvement in the criminal justice system, and efforts to mitigate such trauma supported.

Numerous reports, studies and reviews have shared the conclusion that unnecessary demand and custodial sentences for primary care-givers simply does not work. It destroys families and can sometimes set whole families on pathways to vulnerability and criminality. It can also throw already vulnerable people, particularly Aboriginal women into cycles of deeper abuse, homelessness and poverty, even when sentences are short.

⁵² Ibid

⁵³ Dennison, Stewart, and Freiberg (2013) 'A prevalence study of children with imprisoned fathers: annual and lifetime estimates' 48(3) Australian Journal of Social Issues p 339.

⁵⁴McFarlane, K., (2019) Submission: Queensland Productivity Commission Inquiry: Imprisonment and Recidivism p10

⁵⁵ Cunningham, A., (2001) 'Forgotten families – the impacts of imprisonment' Families of prisoners - Journal article - Australian Institute of Family Studies (AIFS).

⁵⁶ Ibid. p38

This is not an issue that is the responsibility of one government department, the solution does not sit in one ministerial portfolio a whole of government approach is required if we are to reduce recidivism.

REFERENCES

- Arditti, Joyce. 2008. "Parental Imprisonment and Family Visitation: A Brief Overview and Recommendations for Family Friendly Practice." In *CW360: Children of Incarcerated Parents*, edited by Traci LaLiberte and Elizabeth Snyder, 16. Minneapolis: University of Minnesota.
- Arditti, Joyce, Jennifer Lambert-Shute, and Karen Joest. 2013. "Saturday Morning at the Jail: Implications of Incarceration for Families and Children." *Family Relations* 52 (3): 195–204.
- Arditti, Joyce, and Jyoti Savla. 2015. "Parental Incarceration and Child Trauma Symptoms in Single Caregiver Homes." *Journal of Child and Family Studies* 24 (3): 551–61.
- Cunningham, Ann 'Forgotten families – the impacts of imprisonment' Families of prisoners - Journal article - Australian Institute of Family Studies
- Dennison, Susan, Anna Stewart, and Kate Freiberg, 'A prevalence study of children with imprisoned fathers: annual and lifetime estimates' (2013) 48(3) *Australian Journal of Social Issues* pp 339–362
- Flynn Catherine, 'Responding to the children of women in prison: Making the invisible visible', (2011) 19 *Family Relationships Quarterly*.
- Hairston, Creasia Finney. 1991. "Mothers in Jail: Parent-Child Separation and Jail Visitation." *Women and Social Work* 6 (2): 9–27.
- Lagoutte, S. (2011) 'The human rights framework' in: P. Scharff-Smith and L. Gampell (eds) *Children of Imprisoned Parents*, European Network for Children of Imprisoned Parents, Denmark, p. 34.
- Marshall, Kathleen Not Seen, Not Heard. *Not Guilty: The Rights and Status of Children of Prisoners in Scotland* (Scotland's Commissioner for Children and Young People 2008) 8.
- Poehlmann, Julie. 2005. "Representation of Attachment Relationships in Children of Incarcerated Mothers." *Child Development* 76 (3): 679–96.
- Poehlmann, Julie, Danielle Dallaire, Ann Booker Loper, and Leslie Shear. 2010. "Children's Contact with Their Incarcerated Parents: Research Findings and Recommendations." *American Psychologist* 65 (6): 575–98.
- Poehlmann-Tynan, Julie. 2015. "Children's Contact with Incarcerated Parents." *Focus* 32 (2): 13–17.
- Stubbs Julie, 'Downsizing Prisons in an Age of Austerity? Justice Reinvestment and Women's Imprisonment' [2014] UNSWLRS 46, 18.
- Sack, William, and Jack Seidler. 1978. "Should Children Visit Their Parents in Prison?" *Law and Human Behavior* 2 (3): 261–66.
- Tasca, Melinda. 2016. "The Gatekeepers of Contact: Child-Caregiver Dyads and Parental Prison Visitation." *Criminal Justice and Behavior* 43 (6): 739–59