

**Submission
No 28**

INQUIRY INTO CHILDREN AFFECTED BY PARENTAL INCARCERATION

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Keeping an eye on the kids

VCOSS Submission to the *Inquiry into Children Affected by Parental Incarceration*

April 2022

VCOSS is the peak body for Victoria's social and community sector, and the state's premier social advocacy body.

We work towards a Victoria free from poverty and disadvantage, where all people and communities are supported to thrive. We champion wellbeing and inclusive growth. VCOSS supports and advocates on behalf of its members.

We respect the unique perspectives of people with experience of poverty or inequality, and seek to strengthen and elevate their voices.

VCOSS is independent and impartial. We are not affiliated with any political party.

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VCOSS acknowledges the Traditional Owners of Country and pays respects to Elders past and present, and to emerging leaders.

This document was prepared on the on sovereign, unceded lands of the Kulin Nation.



Contents

Introduction	4
<i>Statement on Aboriginal self-determination</i>	5
Prevent criminalisation and incarceration of parents.....	6
Develop a better understanding of children affected by parental incarceration	8
Establish a coordinated response to families affected by criminal justice involvement.....	9
Provide supports to ensure family connection and child wellbeing.....	12

Introduction

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to make this submission to the Legal and Social Issues Committee's *Inquiry into Children Affected by Parental Incarceration*.

While the terms of reference for this Inquiry focus on the effects of parental *incarceration* on children, VCOSS notes that children are also affected by forms of parental involvement with the criminal justice system that precede incarceration – for example, interaction with police, courts and corrections, and forms of custody that separate parents from children and families, we encourage the Committee to consider this context as part of its inquiry process.

As the Committee heard in its recent *Inquiry into Victoria's Criminal Justice System*, prison has been found to be an ineffective and expensive way to respond to criminal behaviour or to keep communities safe. Further, imprisoning people who are parents also punishes their children and families, both in the short term through separation, as well as effects of long-term trauma arising from separation – for example, statistically, children of parents who have been incarcerated are more likely to experience mental health issues, or be involved in the criminal justice system themselves.¹

The Committee's Final Report of the *Inquiry into Victoria's Criminal Justice System* laid the foundations for an approach that prioritises prevention and early intervention as part of a transformed system. This new, complementary Inquiry provides an opportunity to advance prevention and earlier intervention by making recommendations that prevent parents from being incarcerated in the first place.

In the body of this submission we highlight opportunities such as broader use of non-custodial sentences, reform to bail laws, and sentencing practices that explicitly recognise the impact of sentencing on children and families.

¹ V Saunders & M McArthur, *Children of Prisoners: Exploring the needs of children and young people who have a parent incarcerated in the Australian Capital Territory*, October 2013, p 15.

While our key focus is on the prevention of incarceration and the preservation of families, for children affected by parental incarceration, VCOSS advocates for:

- Explicit recognition of the rights of children in this system.
- A coordinated response across government to families affected by criminal justice involvement.
- An investment in research and application of that evidence to interventions that support children affected by parental incarceration, including evidence-informed, sustainably-funded supports to ensure family connection and child wellbeing.

Statement on Aboriginal self-determination

Aboriginal and Torres Strait Islander peoples continue to experience the ongoing impacts of colonisation, trauma, dispossession and racism. The over-incarceration of Aboriginal and Torres Strait Islander peoples is both a result of this ongoing trauma and exacerbates it.

Planning, design and implementation of responses to address this should be community-led.

Prevent criminalisation and incarceration of parents

Reform to Victoria's criminal justice system is necessary, both to prevent individuals from criminalisation and the harms associated with justice system involvement, as well as to protect their children and families from both direct and long-term harms.

VCOSS commends this Committee's Final Report of the *Inquiry into Victoria's Criminal Justice System*. In particular, we welcome the range of recommendations aimed at prioritising early intervention, and providing social supports to divert people away from the system.

The Committee's findings identify a range of factors that contribute to the risk of criminalisation and involvement with the justice system – including poverty, housing instability, trauma, discrimination, unmet health and social support needs, and exclusion from education and employment.

We support the Committee's recommendations that government should provide long-term funding for community legal assistance and health justice partnerships and strengthen investment in community-based social, health, legal and forensic services that address risk factors for criminalisation.

These recommendations, if adopted by government, can build on the Early Intervention Investment Framework introduced in the 2021-22 State Budget, as well as the Crime Prevention Strategy and the common clients reforms.

While the Committee's terms of reference for this current Inquiry focus on the effect of parental incarceration on children, VCOSS notes that children and families can be affected by any involvement with the criminal justice system, including interaction with police, courts, and corrections, and any form of custody throughout this process.

Given this, we welcome a range of recommendations the Committee has previously made to intervene early and prevent parents from entering custody, including:

- That the Department of Justice and Committee Safety review Victoria's Police's use of cautions, with a view to expanding the use of and improving the consistency of cautions across the community.
- Improving the use of community corrections orders and supporting individuals to address causes of offending and comply with orders. In the context of this current Inquiry, VCOSS considers the Committee could expand on its earlier recommendation to ensure that, where children are affected, supports are provided to strengthen family wellbeing and resilience.
- That the Victorian Government investigate the introduction of a presumption against short terms of imprisonment in favour of community-based sentences or other therapeutic alternatives

Our position remains that the following **RECOMMENDATIONS** we made to the *Inquiry into Victoria's Criminal Justice System* should be adopted to prevent parental criminal justice involvement and reduce harms for families:

- Encourage police and prosecutions to use diversion where possible.
- Make use of non-custodial options for low-level offending or bail offences.
- Base bail decision-making on a single test (that of, 'unacceptable risk').
- Reform sentencing to increase the use of non-custodial options, and include a person's caring responsibilities as a specific consideration in sentencing, requiring decision makers to consider the impact of a sentence on dependent children.

Develop a better understanding of children affected by parental incarceration

Currently, there is limited official data on the nature, frequency and impact on children affected by incarceration and the parenting or care status of individuals involved with the justice system when arrested, sentenced, entering or leaving prison.

There are currently no formal requirements for police, courts and corrections to enquire and record the parenting status or the status of any affected children, while child and family services do not, as a matter of course, enquire about parental justice involvement.

While service providers and academics have sought to fill this information gap through research, systems-wide data is needed to develop effective services, support and policy.

Our **RECOMMENDATION** is that the Victorian Government improve data collection processes in both the criminal justice and child and family service systems.

Establish a coordinated response to families affected by criminal justice involvement

Currently, there is no government department that has a clear mandate or lead responsibility to support families of individuals involved with the justice system.

There is no formal requirement for police, courts or corrections to enquire about parenting status or the status of any affected children. Therefore, at a systems level, the needs of the families of justice-involved persons are invisible to police, courts and corrections.

At an individual level, VCOSS members note that justice system representatives *may sometimes* enquire about parenting status in certain circumstances (for example, where an arrest is made at home, or where the representative is a parent themselves), but this is ad hoc. There is no consistent, systemic approach. Furthermore, in circumstances where children **are** identified, the criminal justice system has no formal responsibility. Affected third parties are not recognised as “clients” of justice services, acquitting police, courts and corrections of any responsibility for or to children and families.

This problem is compounded by the absence of mandated data collection on justice-involved families in adjacent systems, such as child and family services.

This constrains the capacity of child and family services – and, indeed, the broader social services system – to respond to the specific support needs of children and families with a parent who is justice-involved.

Our **RECOMMENDATIONS** are that the Victorian Government establish a systemic response to families affected by justice involvement, that comprises:

Requirements for **Victoria Police, courts and corrections** to enquire about parenting status and any care or support needs for children, and to make necessary accommodations for parents (for example, allowing parents to make their own care arrangements for children), and facilitate referrals to and information sharing with support services where required.

A prescribed role for the **Department of Families, Fairness and Housing (DFFH)**, in which DFFH takes lead responsibility for the systems response to children and families,

acknowledges the unique needs of this cohort, and resources community services to provide fit-for-purpose supports. Noting that families affected by parental incarceration are likely to also face a range of other issues, DFFH is the appropriate agency to lead this response, as DFFH has expertise coordinating and commissioning social services to support families with complex needs. DFFH also has a history working with Department of Education and Training (DET) to provide support to vulnerable children in schools and other education settings, an approach that could be expanded to meet the specific needs of children affected by parental justice involvement.

VCOSS wishes to emphasise that we are **not** recommending that the Victorian Government establish universal statutory interventions for children whose parents are incarcerated. We understand that most children affected by parental justice involvement are cared for informally by their families and kin ('non-statutory kinship care'). We seek to support and strengthen care arrangements that enable children's connection to family, culture and community. Therefore, in recommending DFFH "responsibility" for affected children, we envisage an approach that:

- Accords formal recognition to this group of children.
- Builds an understanding across DFFH of their unique needs via improved data collection and analysis. (This data could then be used to design and target resources – for example, for children and families in non-statutory kinship care arrangements).
- Leverages DFFH resources and coordinates with other parts of government (such as DET) to provide supportive child and family-centred responses that meet children's individual wellbeing needs.
- Is voluntary. Where families/carers choose to engage and/or access support, this engagement should not give rise to obligations.

In designing this approach, DFFH should look to child and family-centred work that is happening in the mental health service system. In that system, increased awareness of the needs of children of parents with a mental illness has led to the development of specific services, interventions and programs being to meet the needs of this group.² A particular aspect of this practice is extending the individual case management model to include family care plans, and the provision of support to affected family members, as well as supports for the whole family.

Similarly, the Safe and Together Model in the specialist family violence system also highlights the need to recognise and assess children, parenting and family functioning as part of any family violence intervention. Findings from this model indicate better outcomes

² C Trotter, C Flynn, B Naylor, P Collier, D Baer, K McCauley & Bianca Blanch, *The Impact of Incarceration on Children's Care: A Strategic Framework for Good Care Planning*, Monash University, July 2015, p 9.

for children and families experiencing family violence, mental health and alcohol and other drug issues where visibility of children and families was central to practice.³

Although we note some ideological differences between the criminal justice system and the social services service system, a similar approach could be adopted for children affected by parental incarceration.

VCOSS believes DFFH is well-placed to lead the development of this new approach, the design and implementation of which should involve deep engagement with community and people with lived experience.

³ C Humphreys, M Kertesz, A Parolini , J Isobe, S Heward-Belle, M Tsantefski, L Healey, *Safe & Together Addressing ComplexitY for Children (STACY for Children) – Research Report*, ANROWS, October 2020.

Provide supports to ensure family connection and child wellbeing

Although research and insights indicate that maintaining connection with children promotes wellbeing of parents while incarcerated, and is a protective factor against recidivism when released, there are significant barriers to maintaining parent-child connection while in prison.

VCOSS members note a range of practical challenges associated with maintaining connection with parents in prison, including:

- Costs (both in prison and in the community) associated with contact and visits, such as the cost of phone calls and travel to and from prison.
- Difficulties with locating parents in the prison system, and barriers imposed by corrections staff referring to “privacy issues”.
- The prison environment can be intimidating and sometimes traumatising for children. In some circumstances, children’s carers may choose not to facilitate visits to protect children from these environments.
- While remote visits (using phone and video calls) allows for flexibility and removes some of the issues associated with physical visits, phone and video calls are not be an effective form of contact for younger children, and should not replace physical visits.
- Where connections have been maintained in prison, those connections may be placed at risk when the parent leaves prison, due to a lack of housing options, as well as other crises that arise during this period of stress and uncertainty.

To address these issues, VCOSS **RECOMMENDS** implementing the following initiatives as part of the systems response to children and families recommended in the previous sections:

- Provide financial and practical supports to carers to facilitate physical visits.
- Maintain video conferencing to complement physical visits (and ensure all parties are supported to address potential barriers to take-up – for example, assistance with digital literacy, access to devices and data).
- Provide phone calls to children from parents in prison for free.

Should DFFH take lead responsibility for responses to families affected by incarceration, an element of this approach could be establishing Family Liaison Officers in Victoria Police, courts and corrections. Similar to Aboriginal Liaison Officers in the corrections system, these Family Liaison Officers could provide assistance to the parent, affected children and families/carers. The Family Liaison Officers could also liaise with the relevant justice agency. Given the ideological and practice differences between the criminal justice system and

DFFH, this approach would ensure that liaison officers have capability to provide trauma-informed support to families, as well as prevent families from having to navigate the justice system unnecessarily.

It is crucial that a gender lens is applied to this Inquiry process.

It is estimated that more than half of all women in prison are the primary carers of children,⁴ and 80 per cent of Aboriginal and Torres Strait Islander women in prison are mothers.⁵

There are specific challenges for mothers in prison and their children.

For example:

- There is a higher incidence of mothers in prison being the primary carer of children compared with fathers. Additionally, many mothers in prison are not only the primary carer, but the sole parent. This means that while fathers in prison may have visits facilitated by a child's mother as the primary carer, the children of single-parent mothers in prison are more likely miss out. Where children are in state care, mothers and children may be reliant on workers from the DFFH to arrange visits and maintain contact. The lack of in-reach services for mothers in prison who are reliant on DFFH to maintain this contact is damaging for mothers and their children. Further, it renders many mothers in prison invisible, particularly where legal proceedings in relation to child protection matters are concerned.
- These factors heighten the risk of their child entering child protection or the criminal justice system.⁴

Barriers for mothers maintaining connecting with children in prison also has specific impacts on family reunification. Parents are required to demonstrate their interest in maintaining contact with their children to meet the requirements of child protection. The barriers to maintaining contact noted above make it difficult for mothers to comply with current requirements and put family reunification at risk.

VCOSS **RECOMMENDS** that current time-limits for Family Reunification Orders be reviewed, and that there are appropriate supports to enable mothers to meet Family Reunification Order requirements. Recognising that a majority of women who become justice-involved have experienced trauma, including childhood and adult victimisation, sexual abuse, involvement with child protection, and family violence,⁶ community services must be

⁴ Rachel Carbonell 'When mum goes to prison' ABC, 23 June 2017.

⁵ J Sherwood & S Kendall, *Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison*, 2013, p 85.

⁶ Centre for Innovative Justice, *Leaving Custody Behind – Issues Paper*, July 2021, p 23.

resourced to deliver timely, adequate supports that enable women to seek help and access help. A current barrier to help-seeking is women's experiences of stigma and discrimination and lack of trust in the service system. Providing frontline workers with funded training to enhance their knowledge and capability in trauma-informed and intersectional approaches should be part of a multi-faceted strategy that increases the confidence of criminalised women to seek assistance.

The other critical barrier to help-seeking is service access. As the Committee's *Inquiry into Victoria's Criminal Justice System* found access to appropriate social support services can prevent contact with the justice system. We welcome the Committee's recommendation to increase funding for social services to provide therapeutic supports for women that prioritise early and voluntary support, is gender-specific, trauma-informed and culturally safe, and enhances collaborative practice between providers to meet women's needs holistically.

We agree with this Committee's findings in the *Inquiry into Victoria's Criminal Justice System* that transitional support is critical to reducing adverse health outcomes, supporting successful reintegration into the community and facilitating family reunification and wellbeing. While our position remains that the Department of Health should take lead responsibility for coordinating transition supports, we welcome the Committee's recommendation that the Victorian Government increasing funding and resources for pre-release planning and community-based services, including specific supports for housing. We eagerly await the Victorian Government's response to both the *Inquiry into Victoria's Criminal Justice System* and the *Inquiry into Homelessness in Victoria* to address these issues.



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