



*Most of the solutions to women's offending lie outside prison walls – in treatment for addictions and mental health problems, protection from domestic violence and coercive relationships, secure housing, debt and financial management, employment, education and skills development.<sup>1</sup>*

## KWOOP Position

- Children whose parents are in prison in NSW are a highly vulnerable group whose rights and welfare are affected at every stage of criminal proceedings against their parents, but whose needs are largely unacknowledged. When a parent spends time in prison it has adverse, often lifelong,<sup>2,3</sup> effects on their children.
- Imprisonment carries significant human, cultural, social and economic costs, both short and long term, that are borne by individuals, their children, families and communities, as well as by government and society as a whole.
- Prison is an ineffective sentencing solution for most women who receive custodial sentences. There is an unnecessary over-incarceration of vulnerable women who experience a wide range of social, cultural and economic issues and who pose minimal risk to the community. Much more can be done to tackle these issues before imprisonment becomes the only option.
- The reintegration of women back into society after the end of their custodial sentences is a whole-of-government issue and requires comprehensive community support.

## Rationale

- Every effort should be made to avoid the incarceration of women who are parents because of the trauma created for their children.
- Government agencies tend to overlook the consequences of incarceration on children. There has been little examination of their needs by police, courts, corrective services, juvenile justice, community services or education.
- The UN's Bangkok Rule 64<sup>4</sup> to which Australia is a signatory, 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 taking into account the best interests of the child or children, while ensuring the appropriate provision has been made for the care of such children.'<sup>5</sup>
- Children of prisoners fall through the cracks created by inadequate program funding, ad-hoc service provision and a lack of legal and policy clarity as to how best to respond to them and ensure their rights and needs are met.
- Aboriginal and Torres Strait Islander children are more likely to experience parental incarceration than non-Indigenous children. They are placed in out-of-home care at a greater rate than non-Indigenous children.
- The best interests of the child should be the primary consideration when making any changes or taking any actions that either directly or indirectly affect children whose parents/primary care-givers are in conflict with the law.
- Much more needs to be done to recognise and realise the benefits of maintaining and strengthening parental ties, both for the prisoner and for their children. Maintaining family ties is predictive of more successful parental desistance from offending and of improved social outcomes for their children.
- The Adverse Childhood Experience (ACE) Study confirms that having a household member in prison, 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. It affects children differently than other forms of parental loss (e.g. divorce or death) because of the associated social stigma and uncertainty surrounding the length of the separation.<sup>6</sup>
- Families affected by parental incarceration experience more trauma than most families. This can manifest as depression, anxiety, irritability, aggression, social isolation, difficulty sleeping, behavioural regression and an inability to regulate emotions and behaviour.<sup>7</sup>
- The incarceration of primary care givers, mostly mothers, and the placement of their children in out-of-home care continues the cycle of intergenerational offending. It puts many of today's most vulnerable children on a trajectory of becoming incarcerated themselves in future.
- Children of prisoners confront a complex range of issues that are the responsibility of multiple state and federal agencies spanning health, social, education, housing and justice. As a result, policy is made in isolation and support is typically fragmented, short-term, too narrow and lacking continuity.
- In NSW, support for prisoners' families is mostly provided by community sector services. While individually they deliver excellent services and have built up significant expertise, their presence does not compensate for a failure of public services to offer comprehensive joined-up support.
- There is a lack of robust long-term evaluation of the effectiveness of programs and policies that support children of prisoners and their carers, or that aim to address the intergenerational impact of incarceration.

## KWOOP calls for

- Individualised support for children of prisoners to commence at the time of parental arrest and to continue through sentencing, incarceration and re-entry of the parent into the community.
- All Pre-Sentence Reports, whether oral or written, to include details of an offender's family circumstances, such as any dependents and any mental health or domestic abuse issues. They should set out locally available gender-informed community sentencing options, so that courts are aware of the full range of options for sentencing an offender or diverting them from custody.<sup>8</sup>
- The NSW Attorney General and Ministers for Corrections and for Families, Communities and Disability Services to establish a program to ensure that all options for court diversion and non-custodial penalties are thoroughly exhausted before the incarceration of Aboriginal and Torres Strait Islander primary care-givers is considered.
- The NSW Government to invest in transport services for children with a parent in prison as parents are frequently imprisoned long distances from their children.
- The NSW Minister for Corrections to collect and publish data on the number of people in prison who are parents. Such data should guide the establishment of appropriate policies and practices to facilitate greater contact between imprisoned parents and their children.

## Context – Women in prison in NSW

- There were 946 women in prison in August 2019. It is understood that since then there has been a 20% reduction due to COVID-related changes in policing and court procedures.
- There was a 33% increase in the number of women in prison between 2013 and 2019. This was not due to an increase in criminal activity.
- 58% of imprisoned women were on remand or serving a sentence of 12 months or less.
- 32% of women in custody were Aboriginal. This compares to 2.9% in the population as a whole.
- Around 40% of Aboriginal women were on remand, that is, awaiting court for bail or sentencing.
- 60% of women in prison were mothers.
- Almost 24% of women in prison grew up in care and 14% said their parents had been in care as children. 18% of the children of prisoners in NSW are in out-of-home care.
- It costs approximately \$110,000 to keep a woman in custody for a year compared with approximately \$6,495 for women to receive support services in the community.

*KWOOP Profile of women in prison in NSW, March 2020*

<sup>1</sup> Corston report (2007). A review of women with particular vulnerabilities in the Criminal Justice System. Home Office UK.

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

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

<sup>4</sup> United Nations, Standard Minimum Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)

<sup>5</sup> Indigenous people in Australia and New Zealand and the intergenerational effects of incarceration Research Brief 26, December 2019

<sup>6</sup> 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

<sup>7</sup> Sack, William, and Seidler (1978) "Should Children Visit Their Parents in Prison?" Law and Human Behavior 2 (3):261–66.

<sup>8</sup> UK Ministry of Justice Female Offender Strategy June 2018