

Rethinking prison visitation for children with incarcerated parents: Lessons from the Australian Capital Territory

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Abstract

Children of incarcerated parents experience a range of vulnerabilities which have led to them being dubbed the ‘invisible victims’ of the criminal justice system. This article discusses the needs of children with incarcerated parents using recent literature describing children’s experiences during prison visitation suspensions caused by the COVID-19 pandemic. We then critically examine the human rights-based communications framework, as well as the challenges faced by children of incarcerated parents, in the Australian Capital Territory (ACT). We recommend corrective services around Australia retain alternative contact methods and consider introducing in-cell communication technology.

Keywords

Children of prisoners, parental incarceration, human rights, in-cell communication, COVID-19

The children of incarcerated parents are often dubbed ‘invisible victims’ of the criminal justice system, given that policy tends to overlook their unique needs.¹ Recently, the inadequacy of policies to support children of incarcerated

parents has been acknowledged through parliamentary inquiries in New South Wales (NSW)² and Victoria³ and through the Commissioner for Children and Young People in South Australia.⁴ In this article, we discuss how the

¹See Chris Trotter et al, *The Impact of Incarceration on Children’s Care: A Strategic Framework for Good Care Planning* (2016) 5, 19–25, 40–50; Vicky Saunders, “‘Sins of our Fathers’: The Lived Experiences of Children and Young People with a Parent in Prison” (PhD thesis, University of Adelaide, 2018) 63–80, 132–134.

²Committee on Children and Young People, Parliament of New South Wales, *Support for Children of Imprisoned Parents in New South Wales* (Report No 4/57, June 2022).

³Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Children Affected by Parental Incarceration* (PP No 360, 4 August 2022).

⁴Helen Connolly, Commissioner for Children and Young People, South Australia, *Join the Dots: Considering the impact of parental incarceration on children and young people* (Project Report No 29, April 2022).

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COVID-19 pandemic had a significant impact on prison communication due to the suspension of face-to-face contact visits and the introduction of non-contact audio-visual link (AVL) 'visits'.⁵ But the pandemic also presented an opportunity for corrective services to see how visits can be adapted in a post COVID-19 world. We argue that correctional service departments should use lessons learnt during the COVID-19 pandemic to make permanent changes to visits to address some of the challenges children face visiting an incarcerated parent and to ultimately address these 'invisible victims' of the criminal justice system.

This article is structured as follows. First, we discuss the challenges faced by children who experience parental incarceration, focusing on recent and primarily Australian-based literature including research on children's experiences during the COVID-19 pandemic. Second, we move to our case study of the Australian Capital Territory (ACT), Australia's only jurisdiction committed to a human rights framework in the operation of its prison,⁶ to examine the visits program at the Alexander Maconochie Centre ('AMC'), the ACT's adult correctional centre. We reviewed independent reports and qualitative research against publicly available policy documents to identify challenges faced by children of incarcerated parents in this jurisdiction and identify areas of improvement within the visits program. Finally, we recommend that corrective services retain alternative contact methods and also consider introducing in-cell communication technology to address some of the challenges children with incarcerated parents can face.

Impacts of COVID-19 on children with incarcerated parents

Existing research has established the unique vulnerabilities faced by children who experience parental incarceration. They can experience a range of challenges such as poor mental and physical health outcomes⁷ and are at greater risk of experiencing socioeconomic disadvantage

and exposure to adverse childhood experiences including violence and household abuse.⁸ Aboriginal and Torres Strait Islander children are more likely to experience parental incarceration than non-Aboriginal and Torres Strait Islander children,⁹ and are thus particularly at risk. For example, when primary carers, usually mothers, are imprisoned, Aboriginal and Torres Strait Islander children are more likely than non-Aboriginal and Torres Strait Islander children to be taken into out-of-home care and be involved in child protection and youth justice systems.¹⁰

Recently, a study of over 20,000 children in Western Australia (WA) found that parental incarceration significantly raised the likelihood of vulnerability in early development compared with both children whose parents served community orders and children whose parents had no convictions, suggesting that parental incarceration is an independent risk factor for children's maladjustment.¹¹ Despite these challenges, there remains a lack of government oversight and recognition of these children in policymaking and judicial decision-making, leading to them being dubbed 'invisible' or 'forgotten victims'.¹²

By maintaining communication during imprisonment, such as via telephone, email, mail, or face-to-face visits, children are able to maintain familial ties which have been linked to stronger adjustment outcomes and can be a protective factor against the harms caused by parental imprisonment.¹³ Maintaining the familial relationship during incarceration also helps promote parental rehabilitation by reconnecting people in prison with their parenting role and encouraging effective post-release transition.¹⁴ For example, research conducted with Aboriginal and Torres Strait Islander mothers, in NSW and WA prisons, highlighted the importance of maintaining mothering and caregiving responsibilities towards the cultural identity, wellbeing and relationships of both mothers and children.¹⁵ Mothers described the significance of children in shaping their rehabilitation and post-release plans, as well as the trauma of

⁵For example, Catherine Flynn et al, 'Contact Experiences and Needs of Children of Prisoners before and during COVID-19: Findings from an Australian survey' (2022) 27(1) *Child & Family Social Work* 67; Shona Minson and Catherine Flynn, 'Symbiotic harms of imprisonment and the effect on children's right to family life' (2021) 29 *International Journal of Children's Rights* 305.

⁶Lorana Bartels and Jeremy Boland, 'Human Rights and Prison: A Case Study from the Australian Capital Territory' in Leanne Weber, Elaine Fishwick and Marinella Marmo (eds), *The Routledge International Handbook of Criminology and Human Rights* (Routledge, 2016) 556, 561; Anita Mackay, *Towards Human Rights Compliance in Australian Prisons* (ANU Press, 2020) 194–196, 299, 310–313.

⁷Daragh Bradshaw et al, 'Longitudinal Associations between Parental Incarceration and Children's Emotional and Behavioural Development: Results from a Population Cohort Study' (2020) 46(2) *Child Care Health and Development* 195; Ram Sundaresh et al, 'Exposure to Family Member Incarceration and Adult Well-being in the United States' (2021) 4(5) *JAMA Network Open* e2111821: 1–12.

⁸Kristin Turney, 'Adverse Childhood Experiences among Children of Incarcerated Parents' (2018) 89 *Children and Youth Services Review* 218.

⁹Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (Cat No PHE 246, 2019) 14.

¹⁰Human Rights Law Centre/Change the Record Coalition, *Over-represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-imprisonment* (2017) 13; Elizabeth Sullivan et al, 'Aboriginal Mothers in Prison in Australia: A Study of Social, Emotional and Physical Wellbeing' (2019) 43(3) *Australian and New Zealand Journal of Public Health* 241.

¹¹Megan Bell et al, 'Using Linked Data to Investigate Developmental Vulnerabilities in Children of Convicted Parents' (2018) 54(7) *Developmental Psychology* 1219.

¹²See Trotter et al (n 1); Saunders (n 1).

¹³Friedrich Lösel, *Risk and Protective Factors Associated with the Resettlement of Imprisoned Fathers & their Families* (Final Report, January 2012) 82–9, 97, 111–113.

¹⁴For example, Jonathon J Beckmeyer and Joyce A Arditti, 'Implications of In-Person Visits for Incarcerated Parents' Family Relationships and Parenting Experience' (2014) 53(2) *Journal of Offender Rehabilitation* 129; Meghan M Mitchell et al, 'The Effect of Prison Visitation on Reentry Success: A Meta-Analysis' (2016) 47 *Journal of Criminal Justice* 74.

¹⁵Sullivan et al (n 10); Thalia Anthony, Gemma Sentance and Larissa Behrendt, "'We're Not Being Treated Like Mothers': Listening to the Stories of First Nations Mothers in Prison' (2021) 10(3) *Laws* 74, 76, 81–86.

separation and their concerns over their children's well-being while they were incarcerated.¹⁶

The declaration of the COVID-19 pandemic in March 2020 saw prisons worldwide implement restrictions that banned or limited social contact visits to control the spread of COVID-19.¹⁷ Many Australian jurisdictions responded by temporarily ceasing contact visits and implementing interim alternatives such as AVL visits, increased telephone access and, in some cases, socially distanced visits.

Emerging research on the impacts of the pandemic on children with incarcerated parents, while limited, has revealed children's broadly negative responses to the suspension of prison contact visits. For example, children received less contact time with their parents in prison, and telephone and video visits were not suitable for some children's needs, particularly for younger children and children with disabilities.¹⁸ Flynn et al's Australian study of 84 caregivers of children with incarcerated parents identified how almost 95 per cent of respondents believed the visiting restrictions had resulted in negative consequences for children.¹⁹

Yet COVID-19 also served as an opportunity for prisons to adapt to new challenges and implement positive changes. The rapid and widespread introduction of AVL visits, while explored by some Australian jurisdictions prior to COVID-19,²⁰ has been a significant development brought on by the pandemic. Reports on the uptake of AVL visits across Australia have generally been positive, with researchers identifying some challenges, such as issues in accessing appropriate devices and internet connectivity.²¹ AVL visits can reduce the time, stress and financial costs of travelling to prison and may even build parenting skills in a manner more developmentally appropriate for children than written or audio-only communication.²²

As we have shown, both research and children's experiences before and during the COVID-19 pandemic reinforced the importance of prisons having an appropriate visits program to support children with an incarcerated parent. We now move to the ACT to show some of the

issues children have experienced visiting an incarcerated parent in this jurisdiction and how the visits program was adapted during the COVID-19 pandemic.

The Alexander Maconochie Centre

Opened in 2009, the AMC was intended to be a 'human rights' prison with a focus on human rights promotion and rehabilitation.²³ The AMC serves as a unique case study as the first, and only, prison in Australia designed to follow a human rights framework, with regularly reviewed and publicly available reports on its compliance with human rights benchmarks. With a clear intention and commitment towards rehabilitation within legislative and policy instruments, the AMC has been described as having the potential to become a 'national benchmark for correctional services'²⁴ and a model which other jurisdictions may learn from and work toward.²⁵

Encouraging connections with family are benchmarks of rehabilitation and release-preparation under the *ACT Standards for Adult Correctional Services*, published by the ACT Inspector of Correctional Services.²⁶ Despite this, there has been little movement towards recognising the experiences of children in the ACT when compared with other jurisdictions.

The AMC holds both male and female prisoners, known as detainees, at different classification levels, sentenced and unsentenced (ie, on remand).²⁷ While the number of children who have a parent in the AMC is unknown, a 2016 *Detainee Health and Wellbeing Survey* found that, of 98 respondents, 71 per cent reported having children.²⁸

Research on the experiences of children with an incarcerated parent in the AMC is found in the studies by Saunders and McArthur,²⁹ Pridmore, Levy and McArthur,³⁰ and Saunders.³¹ Saunders and McArthur interviewed 16 ACT children and young people who had experienced the incarceration of at least one parent. Children self-identified a range of vulnerabilities which they experienced such as housing instability, domestic

¹⁶Anthony, Sentance and Behrendt (n 15) 81–86, 89.

¹⁷World Health Organization, 'Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention' (Interim guidance, 15 March 2020).

¹⁸Flynn et al (n 5) 71, 73–76; Minson and Flynn (n 5) 312–315.

¹⁹Flynn et al (n 5) 73.

²⁰ACT Inspector of Correctional Services, *The Care and Management of Remandees at the Alexander Maconochie Centre 2018* (2019) 64 ('Remand Report').

²¹Committee on Children and Young People (n 2) 41–42; Legal and Social Issues Committee (n 3) 160–164.

²²Elizabeth Skora Horgan and Julie Poehlmann-Tynan, 'In-Home Video Chat for Young Children and their Incarcerated Parents' (2020) 14(3) *Journal of Children and Media* 400; Jacqueline Singer and David Brodzinsky, 'Virtual Parent-Child Visitation in Support of Family Reunification in the time of COVID-19' (2020) 2(3) *Developmental Child Welfare* 153.

²³Bartels and Boland (n 6).

²⁴Remand Report (n 20) 11.

²⁵Bartels and Boland (n 6) 564; Mackay (n 6) 202–3, 310–13.

²⁶ACT Inspector of Correctional Services, *ACT Standards for Adult Correctional Services* (2019) 6.

²⁷In the September 2022 quarter, there were 390 detainees in the AMC, with the majority being men (93.1%): Australian Bureau of Statistics, *Corrective Services, Australia, September Quarter 2022* (Catalogue No 4512.0).

²⁸Jesse T Young et al, *ACT Detainee Health and Wellbeing Survey 2016: Summary Results* (ACT government, 2017) 22–24.

²⁹Vicky Saunders and Morag McArthur, *Children of Prisoners: Exploring the Needs of Children and Young People who have a Parent Incarcerated in the Australian Capital Territory* (SHINE for Kids, 2013).

³⁰William Pridmore, Michael H Levy and Morag McArthur, 'Slipping Through the Cracks: Examining the Realities of a Child-Friendly Prison System' (2017) 83 *Children and Youth Services Review* 226.

³¹Saunders (n 1).

violence, low educational achievement, mental illness and financial insecurity.³²

Prior to COVID-19 restrictions, the AMC visits policy allowed each detainee two one-hour visits per week.³³ However, research conducted before COVID-19 restrictions identified existing issues with the visits program which had been raised by detainees and their families. For example, detainees raised that the visits schedule was often incompatible with children's school times, meaning children were forced to choose between visiting parents or participating in extra-curricular activities on weekends.³⁴ The geographic location of the prison also poses challenges. Children reported travel inaccessibility, noting the limited frequency of buses, indirect routes and inconvenient scheduling.³⁵

While social telephone calls have and continue to operate as an important non-contact option, research conducted both before and after COVID-19 have identified that prohibitive call rates restrict the number of phone calls that detainees can afford.³⁶ While the ACT government had agreed to undertake a comparative jurisdictional review of phone service providers for better call rates,³⁷ the review has failed to achieve a more affordable call fee for detainees.³⁸

In March 2020, social visits to the AMC were suspended and AVL visits were introduced. These were limited to one 60-minute visit per week for each detainee, and subject to conditions including behaviour, language, volume, clothing and location.³⁹

Physically distanced, non-contact social visits were introduced in September 2020 on a limited basis, with one adult and one child permitted per visit and restricted to immediate family and partners. Over the following months, restrictions were eased and then tightened again due to increasing cases of COVID-19 in the ACT. As of November 2022, visitors were required to arrive at least an hour before their scheduled visit to undergo rapid antigen testing on-site. This has meant some families must spend a significant portion of the day to attend a visit and some families have been refused visits due to lateness.⁴⁰ The public transport route has not been updated to reflect these new entry requirements, meaning visitors may wait almost two hours before their visit and exclude public transport as an option for families attending the earliest visits. The limited AVL availability and lack of alternative communication methods, such as accessible telephone calls or in-cell communication alternatives, continue to pose limitations for

family contact during the periods where in-person visits are unavailable.

Discussion and conclusion

Previous research has acknowledged the harms suffered by children who experience parental incarceration, and the need for policies to support them and protect the family unit. COVID-19 visitation constraints created new challenges and highlighted existing issues, such as restrictive and unsuitable contact schedules and other communication methods being inaccessible. Despite some issues with implementation, the positive responses to AVL visits demonstrate its potential as a long-term contact option. The COVID-19 pandemic has shown how prisons can adapt to alternative contact methods and the potential of AVL visits as a permanent supplementary option.

The ACT, Australia's only jurisdiction committed to a human rights framework in the operation of the prison, has the potential to lead other states and territories in following an approach that recognises the experiences of children, protects family contact and promotes reintegration. Our discussion of the visiting framework in the ACT shows there are significant opportunities for improvement within this jurisdiction, including expanding the accessibility of AVL and the availability of alternative contact methods such as in-cell communication devices for detainees. We see that alternative contact methods would not only contribute to the policy goals of effective detainee reintegration through family contact but would also address some of the challenges that children experience with visiting an incarcerated parent, such as inaccessible visiting times and limited public transport options. Improving access to alternative contact methods would bring the AMC in line with its stated policy goals of promoting human rights and rehabilitation and raise the national standard for corrective services.

On a national level, we recommend corrective services see the benefit of in-cell communications technology, such as tablets. The use of tablets is being trialled in NSW prisons with 'overwhelmingly positive' feedback from both detainees and prison staff.⁴¹ In-cell technology has also been trialled and supported in Victoria, although this technology is limited to instant messaging services only and not for calls or AVL.⁴² Tablets provide opportunities for continuous engagement with family through calls outside standard visiting periods. Together with the benefits of regular communication, tablets

³²Saunders and McArthur (n 29); Saunders (n 1).

³³Remand Report (n 20) 59.

³⁴Ibid 60-61; ACT Inspector of Correctional Services, *Healthy Prison Review of the Alexander Maconochie Centre 2019* (November 2019) ('Healthy Prison Review 2019') 139-140.

³⁵Saunders (n 1) 217; Pridmore, Levy and McArthur (n 30).

³⁶Healthy Prison Review 2019 (n 34) 163; Remand Report (n 20) 54; ACT Inspector of Correctional Services, *Healthy Prison Review of the Alexander Maconochie Centre 2022* (November 2022) ('Healthy Prison Review 2022') 199-200.

³⁷Legislative Assembly for the Australian Capital Territory, 'Government Response to the Report of a Review of a Correctional Centre by the ACT Inspector of Correctional Services: *Healthy Prison Review of the Alexander Maconochie Centre 2019*' (2020).

³⁸Standing Committee on Justice and Community Safety, Legislative Assembly for the Australian Capital Territory, *Inquiry into referred 2019-20 Annual and Financial Reports and Budget Estimates 2020-21 Answer to Question on Notice* (JACS No 111, 18 March 2021).

³⁹ACT Corrective Services, *Notice to Visitors: COVID-19* (26 March 2020).

⁴⁰Healthy Prison Review 2022 (n 35) 205.

⁴¹Bridget Fitzgerald, 'Tablet Computers have Kept Prisoners in Touch with Family during COVID-19', ABC News (online, 21 November 2020) <https://www.abc.net.au/news/2020-11-21/tablet-computers-to-prisoners-during-covid-19/12895870>.

⁴²Legal and Social Issues Committee (n 3) 171.

can also offer opportunities to support detainees' post-release transition and re-entry into the community.⁴³

Now, nearly three years since COVID-19 first shut down prison visits, it remains clear that COVID-19 concerns are continuing to cause ongoing disruptions. In-cell communication is an important tool in maintaining family connections during times where access to visits may be disrupted with short notice by outbreaks of COVID-19 within the prison.

The COVID-19 pandemic has presented an opportunity for corrective services to reconsider the needs of children and to address some of the issues experienced both before and during the pandemic. We acknowledge, however, that improving the accessibility to prison communication is only the first step in reconnecting families and supporting children. As the recent parliamentary inquiries have shown, there is significant scope for structural change, such as in decision-making, access to support, and collection of data on parents in prison. Our recommendations on the retention and expansion of alternative contact methods are therefore only initial steps towards improving contact between the 'invisible victims' of the criminal justice system and their incarcerated parents.

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⁴³Aysha Kerr and Matthew Willis, 'Prisoner Use of Information and Communications Technology' (2018) 560 *Trends and Issues in Crime and Criminal Justice* 1, 7–10.