

Rendering them Visible: a review of progress towards increasing awareness and support of prisoners' families

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in brief

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Key Points

- Families and children of prisoners suffer multiple hardships and require support for both their role in supporting the prisoner, and in respect of their own distinct needs.
- Developments within policy and practice indicate increasing awareness of the interests of families and children of prisoners, but there remains a lack of accountability and decisive policy response in respect of this population.
- Thus far there has been no agency or government department accountable for the families or children of prisoners, nor any cohesive system of data collection in respect of this group.
- Stigma attached to families of prisoners results in both reluctance of those families to engage with support services, and in political hesitancy to address their problems directly.
- To ensure the interests of families and children of prisoners are appropriately reflected within policy and practice, it is imperative that the stigma surrounding this population is addressed.

Background

A literature review carried out over a decade ago (Loucks 2004) identified a vast knowledge vacuum in relation to the support needs of prisoners' families in Scotland and, in particular, children. The review indicated that, while research recognised the importance of the role played by families in supporting prisoners during their sentence and in reducing their likelihood of reoffending post-release, there existed limited understanding of the support needs of these families in their own right.

Since that review, the profile of families and children of prisoners has been growing in debates around criminal justice, and their interests have received increasing attention within academic material, and within information produced by government agencies and interest groups.

In order to identify specific developments within both research and policy and practice, Families Outside commissioned a review of the more current literature in this field. This briefing highlights its main findings.

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Impact of Imprisonment

Scotland's prison population has grown in recent years and, with it, the number of families and children affected by a relative's imprisonment. Recent estimates indicate that around 27,000 children in Scotland experience the imprisonment of a parent each year.

It is well established within the literature that families suffer multiple hardships as a result of a family member's imprisonment. The effect of imprisonment on children is particularly severe and may not only impact negatively on their short-term emotional

wellbeing, but also adversely influence their long-term health and social prospects.

Despite increasing evidence of the growing numbers of children experiencing the imprisonment of a parent, and the detrimental effects of parental incarceration upon the lives of those children, the literature highlights a striking lack of research and statutory provision in respect of this population. In order to mitigate adverse outcomes for these children, it is imperative that they receive significantly increased research attention and evidence-based support. Moreover, the profile of the rights and interests of children must be raised within penal policy.

“Criminal justice is not dispensed in isolation from the other spheres of society. It affects not only victims, offenders, and the protagonists of the criminal justice system, but – directly or indirectly – it also affects others who do not have a strong voice in the system, including the children of offenders”. (Scotland’s Commissioner for Children and Young People, 2011)

Children’s Rights

“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 both by the criminal action of their parent and by the state’s response to it in the name of justice.” (Marshall 2008: 8)

In 2008, Scotland's Commissioner for Children and Young People highlighted the profound and often devastating effect of the administration of justice upon the lives of children of offenders and called for children's rights to be made a central consideration within criminal justice debates and judicial decision-making. The report was based upon the child's best interests principle contained in the United Nations Convention on the Rights of the Child (UNCRC), which makes it explicit that in all actions concerning children, the rights and best interests of the child must be a primary consideration. This includes decisions involving the imprisonment or release of a parent. The 'best interest' principle has earned significant currency in recent years within UK case law, most notably in the UK Supreme Court case, ZH (Tanzania) (2011).

“...in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests. This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all other considerations. It is a factor, however, that must rank higher than any other...Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them.” ZH (Tanzania), para. 46

The emphasis on the primacy of the rights of the child was somewhat diluted by a subsequent Supreme Court judgment in R (HH) and R (PH) v Genoa (2012). The court in this case indicated that, while the best interests of the child are a primary consideration under the UNCRC, “these interests are not the primary or the paramount consideration”. This interpretation of the relevance of a dependent child's interests to the sentence of an offender was reflected by the judgment in a Scottish High Court Appeal, Stuart Gorrie v. Procurator Fiscal, Haddington (2014).

Developments in Policy and Practice

The Children and Young People (Scotland) Act 2014

The Children and Young People (Scotland) Act 2014 is a significant step towards addressing the absence of coherent support systems identified for children of prisoners. A key section of the Act provides for a Named Person to be appointed for all children and young people from birth to 18 years old (and for some 'Looked After' children, up to age 26). The Named Person is the first point of contact for parents or anyone with a concern related to the child's wellbeing and, in the event it is required, all concerned agencies are required to cooperate, and share information regarding the child, with this individual. In the event a child is deemed in need of additional support or intervention, the Act put

in place a planning process involving input from representatives of all relevant services and public bodies.

The Criminal Justice (Scotland) Act 2016

The Criminal Justice (Scotland) Act established a duty on Scottish Ministers that all prisoners be asked for details of the Criminal Justice (Scotland) Act established a duty on Scottish Ministers that all prisoners be asked for details of any dependent children they have. The information will then be passed to the Named Person, who will assess and address any impact and subsequent need. The mechanism for this has yet to be established but will be researched and implemented in the near future.

Both of these Acts represent a significant step forward in terms of opportunities for identification of, and provision of appropriate support to, children of prisoners.

Family and Child-Focused Prison Policies

The research shows that children cope better with a parent's imprisonment when they have the opportunity to visit. However, the expense and logistical problems involved in travel to prisons, restrictive prison rules and procedures, institutional visiting settings, negative attitudes of some prison staff, and fear of other prisoners, all discourage families from visiting an imprisoned family member.

To mitigate the strain of prison visits on families and promote quality family interaction, the Scottish Prison Service produced Good Practice Guidelines for Working with Children and Families of Prisoners in 2009, and updated them in 2013.

The Guidelines contain provisions aimed at making prison visits more family and child-friendly; these include emphasis on flexibility within prisons with regard to visiting timings, and the requirement for prisons to offer a range of visiting opportunities based upon the needs of the child and the family. A number of different daily visiting options are now offered across the prison estate, including: "Children's Visits", which allow prisoners to move freely around the visiting room with their child; homework clubs; and seasonal family events.

Furthermore, a directive by the Scottish Prison Service in 2013 emphasised the principle derived from the UNCRC, that parent-child visits operate on the basis of the rights of the child, and should not be linked to disciplinary issues in prisons.

Further Progress

Various other positive policy and practice developments are apparent within the literature.

The announcement by the Scottish Government in early 2015 of a halt to plans for the construction of HMP Inverclyde offers evidence of increasing recognition by policy-makers of the unsuitability of imprisonment as a sanction for most female offenders. The Cabinet Secretary for Justice confirmed that the Government will instead focus on the establishment of smaller, community-based facilities for women.

The announcement in late 2015 of core funding for prison visitors' centres from Scottish Government Community Justice, Health, and Children & Families also shows new commitment to support for families affected by imprisonment.

Provision of training for professionals working with children of prisoners by charities such as Families Outside and Barnardo's offer a promising approach to increasing awareness among public bodies of the impact of imprisonment on children and families, better enabling them to support this population.

Finally, third sector support for prisoners' families and children in the community has grown considerably in recent years. These sources of support are invaluable, given the evidence of the absence of other support networks available to them. Services that address the needs of the prisoner and the whole family, such as Circle Scotland's Families Affected by Imprisonment (FABI) project, have proven to be particularly beneficial.



Ongoing Lack of Support

While the progress described above is encouraging, the literature also evinces an ongoing lack of accountability and adequate provision for families and children of prisoners.

Crucially, there has been a continuing shortage of official data on the number of children and families affected by a relative's imprisonment. This impedes the development of effective interventions and support services for this population. The 2016 Criminal Justice Act makes some steps to fill this gap, though much will depend on which children will be identified; the willingness of parents to divulge such information; the extent to which the information is collated and analysed; and the extent to which the sharing of information leads to additional support.

Children and families of prisoners are only sporadically identified as a specific group within national or local policies, and no agency or government department has overall responsibility for supporting them. This results in many vulnerable families and children falling through the net. The more recent legislation may go some way towards addressing the situation, however the lack of overall accountability for this population is likely to continue to hamper the provision of effective support.

A further issue is the striking lack of public sector services for the children and families of prisoners in the community. Although there has been considerable growth in third sector support for this group, public sector provision remains poor and impedes families accessing a full package of support.

Finally, despite the increased profile of the rights of the child within international legislation and UK case law, the literature indicates that these rights are still not consistently taken into account by the judiciary in respect of the sentencing of people who are parents. Various reports have therefore recommended the introduction of separate Child & Family Impact Assessments at the point of sentencing. The Criminal Justice (Scotland) Act 2016 specifically avoided reference to sentencing, making practice in Scotland notably different from the (few) other jurisdictions that take the impact on children into account when a parent is imprisoned.

Social Exclusion and Stigma

The literature suggests that the continuing political and social ambivalence in respect of the entitlement of families of prisoners to support reflects the persistence of social stigma in relation to this population.

The stigma attached to the families and children of prisoners has devastating consequences: it acts as a significant barrier to their support, through both dampening social and political will to address their problems, and discouraging those families themselves from engaging with services, and has a direct detrimental effect on their health and wellbeing. Perhaps most concerning of all is evidence within more recent literature of a specific connection

between associative stigma experienced by children of imprisoned parents and the onset of offending.

The literature suggests that stigma attached to prisoners and their families derives primarily from an ethos of exclusion underlying the operation of our criminal justice system. The emphasis of penal policy on the separation of people who offend not only has the effect of compounding the existing marginalisation of this group, but also contributes to the social exclusion and stigmatisation of their families and children. Bringing about a significant shift in social and political support of prisoners' families, must therefore begin with a change in focus of criminal justice policy, from exclusion to inclusion of people who commit offences.

Conclusions

Recognition is growing among academics, practitioners, and policy makers of the injustice inflicted on families and children of prisoners by the penal system. However, the literature also evinces the absence of a consistent and decisive policy response in respect of the needs of this group.

The present review suggests that social exclusion of prisoners and their families, and the concomitant stigma surrounding them, is the underlying cause of ongoing social and political ambivalence in respect of their entitlement to support. To ensure that the interests and rights of the children and families of prisoners are taken appropriate account of within policy and practice, the stigma surrounding this population must urgently be addressed. This needs to begin with a re-examination of the tenet of exclusion upon which our present justice system is based.

References

Marshall, K. (2008) *Not Seen, Not Heard, Not Guilty: The Rights and Status of the Children of Prisoners in Scotland*. Edinburgh: Scotland's Commissioner for Children and Young People.

Scotland's Commissioner for Children and Young People (2011) UN Committee on the Rights of the Child, 58th Session Day of General Discussion 2011: 'Children of Incarcerated Parents'. Submission from Scotland's Commissioner for Children and Young People, August 2011.

For additional references and the full version of this literature review, see www.familiesoutside.org.uk.

Families Outside is the only national charity that works solely to support the families of people affected by imprisonment in Scotland. Our purpose is to improve outcomes for children and families affected by imprisonment so they can live healthy, active lives free from stigma and impediment.



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voicing the needs
of families affected
by imprisonment



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