

The rights of Canadian children of incarcerated parents

Alternative report to the United Nations Committee on the Rights of the Child, for Canada's Periodic Review (5th/6th)

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Thank you for the opportunity to submit this alternative report to the Committee on the Rights of the Child, on the occasion of the 5/6 periodic review of Canada under the Convention of the Rights of the Child (UNCRC).¹ I seek to bring the Committee's attention to the issue of children of incarcerated parents in Canada.

The rights of children of incarcerated parents are well established as an area of particular importance in child rights, both in Article 9 of the UNCRC and as evidenced by the Committee devoting the 2011 Day of Discussion to this topic. However parental incarceration remains poorly understood and largely neglected from a policy and service provision perspective in Canada. While the experiences, outcomes and needs of these children and youth have begun to be recognized in other countries in recent years, Canadian children of prisoners remain largely 'invisible.'

The following is a brief discussion of several child rights concerns related to parental incarceration that deserve attention and action by Canada, and a series of recommendations. I would be pleased to provide the Committee with any further information, on request.

Data about children of incarcerated parents

There is a growing body of data from other countries which suggests that parental incarceration is associated with and causes a variety of negative experiences and outcomes (Murray et al., 2009; Wildeman et al., 2018), and parental incarceration has been added to the list of Adverse Childhood Experiences (ACEs), a list of negative experiences in childhood that are associated with a variety of adult health concerns (Felitti 2017). However parental incarceration is nonetheless broadly neglected by policy and service provision in children's mental health, child welfare and criminal justice systems in Canada (Knudsen, 2019).

A foremost issue that prevents parental incarceration from being the subject of more research, policy attention or bespoke service provision is the complete lack of any available data about these children (Knudsen, 2019). While provincial and federal carceral institutions collect a great deal of quantitative information about each new prisoner on admission, no information is regularly collected about the number of children they have, the number of children for whom they were providing care prior to their arrest, and which person or system is caring for those children now. While such qualitative information might be collected on an ad hoc basis, there is no quantitative information that allows for data analysis, comparisons, or further research into this topic.

¹ Prepared by Else Marie Knudsen. I am an academic at Trent University in Canada, and my research is focused on the experiences and policy context of parental incarceration. I am a founding member of the Canadian Coalition for Children with Incarcerated Parents (CCCIP) and the Oxford Global Prisoners' Families Research Group, a member of the Child Rights Academic Network at the Landon Pearson Centre for the Study of Childhood, and a former social worker.

The result is that it is simply unknown how many children annually or on any given day have a parent in prison, and our only estimates are crudely constructed. One estimate based on the annual incarceration rate (which will likely include many repeat prisoners) suggests that there are 350,000 Canadian children annually who experience parental incarceration (Withers and Folsom 2007), and I have estimated that there are 16,000 children with a parent currently in prison on any given night in Ontario (Knudsen, 2017). Nothing whatsoever is known about the age, race, or Indigenous status of prisoners' children (Bayes, 2002; Cunningham & Baker, 2003). Further, no data exists on the number of children who enter the care of state child welfare systems due to the incarcerated of a parent, nor how many have a change in primary caregiver as a result.

This lack of data is not innocuous; their systemic invisibility allows their persistent neglect from policy and service provision in Canada (Knudsen, 2019). Clear data about these children would allow civil society and those with lived experience to advocate for funding, service provision, accountability, and better realization of these children's rights.

The Committee requires that states collect disaggregated statistical data in order that a rich pictures of children's conditions be developed (Ruggiero, 2022). The Committee has noted that:

Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation [of the UNCRC].... It is essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children.

(2003, para. VI(f))

Recommendations

- ➔ **It is recommend that parental incarceration be added to the disaggregated data about which the Committee seeks more information from Canada in the 'List of Issues' for this 5/6 Periodic Review**
- ➔ **It is recommend that information about parenting should be collected from each prisoners on their admission to any new carceral institution, including: the number and ages of any biological children under 18; the number and ages of any child for whom they were providing primary care immediately prior to that period of incarceration; the type of caregiver who is now caring for each of those children in the community (e.g. mother, grandparent, child welfare system); the distance from the residence of each child to the prison.**
- ➔ **It is recommend that both federal and provincial prison services allow academic researchers to conduct ethical research into parental incarceration, including parenting from prison, demographics of prisoners' children, and prison visitation.**

Children’s views and best interests considered in parents’ sentencing decisions

In Canada, judges undertaking sentencing of a person convicted of a crime must take into account all relevant circumstances in their decision, which can include whether the person was caring for children before their arrest and the best interests of their children (CFSC, 2018). Judges and justices of the peace may similarly take caregiving responsibilities and children’s best interests into consideration when making decisions about whether to hold an accused person on remand. While this discretion exists, Canadian law does not require nor explicitly encourage judicial decisions to take into consideration the best interests of a person’s children when making bail or sentencing decision (CFSC, 2018).

This would appear inconsistent with the UNCRC, which states that “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” (Article 3(1)). Moreover, Article 9 indicates that children’s best interests must be “upheld as *the determining factor* in decisions involving a separation” or other decisions that affect children (Whalen 2022, p. 127, emphasis mine), and states that children shall be “given the opportunity to participate in proceedings and make their views known” (Article 9(1)). These articles have been interpreted by the Committee on the Rights of the Child to include the right of children of prisoners to have their best interests considered in decisions made about their incarcerated parents’ placement (Donson & Parkes, 2018).

Advocates in Canada have found that Canada “is lagging behind other common law countries and emerging international standards that prioritize the best interests of the child when dealing with individuals with parental responsibilities” (CFSC, 2018, p. 4).

To address this and other child rights concerns in Canada, several bodies, including the Standing Senate Committee on Human Rights, representatives of several leading civil society organizations and youth advocates have called for the establishment of a Canadian Commissioner for Children and Youth Rights (National NGO Sector Forum, 2015). This call is even more relevant today, as the independent Child Advocate’s Office of Ontario, the largest province in Canada, was closed by the provincial government in 2018.

Recommendations

- ➔ It is recommend that Canada establish a process for including children’s views and consideration of their best interests in sentencing and bail decisions about their parents**
- ➔ It is recommend that Canada establish a national Commissioner for Children and Youth Rights**
- ➔ It is recommend that an independent provincial Child Advocate’s Office be re-established in Ontario**

Parenting support and education for incarcerated parents

Children have the right to be known and cared for by their parents as far as possible (UNCRC Article 9) and prisoners do not lose their right to a family life as a result of a sentence to incarceration, and the right to family (UNDHR Article 16(3), and ICCPR Articles 17 and 23(1)). Parents in prison face a variety of barriers to maintaining relationships with their children and undertake of their child-rearing responsibilities, but while some are of these barriers are a natural function of their being housed away from their children, others are not.

Parents in prison have the potential to carry out important caregiving and relationship-maintaining activities by phone or video call, such as regular conversations, reviewing schoolwork, or reading books. They could participate in meetings by phone with community caregivers, such as schools, health providers and child welfare system, to be involved in child-rearing processes and decisions.

However, this potential is prevented by a telephone system within prisons, and particularly provincial institutions, that is expensive and difficult to access. Phone calls are extremely expensive from Canadian prisons, at rates much higher than in the community, and access to telephones is severely limited by institutional rules and interpersonal power structures (Knudsen, 2017). As an illustration, one parent in my research study described a complex and time-consuming system of trading sugar packets and bribing a range-cleaner in order to ensure he would be able to telephone his children regularly while on remand (Knudsen, 2017). Video call systems exist within some Canadian institutions but virtually all involve the family visiting from the lobby of the institutions itself (not from their homes or own devices), aside from a small pilot trial currently being conducted by the federal correctional service (CSC, 2021)

Further, there is virtually no bespoke support available to prisoners to facilitate or learn about positive parenting. While a few institutions run or allow in stand-alone programs that support parenting (such as storybook recording programs, and a fathering program is run by the NGO Child and Family Corrections Network in five federal institutions (CFCN 2017)), these are the exception and far from broadly available and accessible.

This lack of parenting support and education to all incarcerated parents would appear inconsistent with Article 18(2): “For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.” (UNCRC). Canadian institutions have an obligation to support parents in their caregiving responsibilities through the implements policies and services with this goal (Whalen, 2022).

Recommendations

- ➔ **It is recommended that all incarcerated parents, regardless of gender and in both provincial and federal institutions, have access to educational programs and support around positive parenting**
- ➔ **It is recommended that all incarcerated parents have access to free phone calls in order to speak with child welfare workers, teachers, and other community care providers about their child's needs and well-being, regardless of where and how they are incarcerated**

Conditions of child contact and visitation with their incarcerated parent

While family visits are virtually always associated with positive outcomes for prisoners, Poehlmann's (2005) research shows that visits to prisons can be associated with negative outcomes for children, particularly if the visits are not well supported or not child-friendly. Others have shown a variety of negative or challenging reactions by children in response to negative visits (Dallaire, Ciccone & Wilson, 2010). In my research, I found that children were strongly ambivalent about their prison visiting experiences in Ontario, reporting positive experiences with their parent but also fear, anger, confusion, and frustration about the conditions, processes and treatment they experienced at the prison (Knudsen, 2017).

Children in Canada virtually all visit their incarcerated parents in the same visiting rooms and under the same conditions as other visitors. For children whose parents are incarcerated on remand, this virtually always means visiting a parent behind glass and without the opportunity to touch them, conditions that children and their caregivers in my own study found to be extremely negative for children (Knudsen, 2017). The majority of incarcerated adults in Canada are held on remand and these provincial jurisdiction settings hold remand under maximum security by default (in contravention to the UNSMRTP, the 'Nelson Mandela Rules'). Children visiting federal institutions complained about treatment by correctional staff that they found inconsistent and unnecessarily harsh, fear about the dogs and other security assessments used, and anger and fear about the treatment they witnessed of their caregivers.

While family visiting systems are necessarily subject to a variety of safety measures, there are many ways these visits could be improved in Canadian institutions to better meet Canada's responsibility under Article 9(3) of the UNCRC to respect the rights and best interests of children to maintain relationship and contact with their incarcerated parent. For example, in some jurisdictions in the United States, children are able to visit their incarcerated parent in separate, child-friendly settings, in rooms with age-appropriate toys and games, or with education and support prior to the visit (Poehlmann et al, 2010; Codd, 2008). In the United Kingdom, the organization PACT is funded to provide a child-friendly 'way station' outside the prison for families to rest, have a snack after their journey to the prison and to receive support

and information before and after their visit; they will even accompany families through their first experience of the security systems (PACT 2022).

A significant barrier and challenge to children visiting their incarcerated parents in Canada is the extremely high indirect costs of visiting prisoners, who are disproportionately likely to be living in poverty. The combination of long distances to prisons, particularly federal institutions, a poor public transport infrastructure and a lack of prison transportation services means that families without cars are left taking buses to nearby cities and then expensive taxis rides to the institutions (Knudsen, 2017). Inside the institutions, families must pay for lockers to keep their items while they visit, and pay for expensive snacks foods from vending machines during their visits, as no food may be brought in. All of these costs meant that visits to the prison was a significant financial burden to the families in my study, taken directly from their budgets for food and shelter (Knudsen, 2017). These high indirect costs to maintain relationship with an incarcerated parent appear contrary to Articles 3, 9, and 23(3) of the UNCRC.

Phone calls are a method of maintaining contact and relationship with incarcerated parents that can be more frequent and have fewer time and emotional costs for families. Unfortunately, phone calls are extremely expensive and may be difficult to access for incarcerated parent (who must initiate calls with family) in Canada. As noted, phone calls from both federal and provincial institutions in Canada are vastly more expensive than calls in the community, and the phone call system is operated by a for-profit provider contracted as a sole provider by each prison service. These costs are often borne by prisoners' families in the community, who send money in to the prison for these calls while being disproportionately likely to be living in poverty (Knudsen, 2019).

All of these high costs to maintaining family life could be lessened dramatically by the institutions themselves providing basic, low-cost or free in-kind support. Carceral institutions often own buses and vans which they could use to transport families to the institution for local bus stations on weekends, and always house full catering facilities, from which basic cold food and drinks could be provided to visitors. While providing crackers, fruit and a cup of milk to a child visitor during a long visit would have minimal cost to the institution, this would be both a significant cost savings and an example of child-friendly practices to visiting families.

As a further example of possible financial supports for visitation, families in receipt of state welfare benefits in the United Kingdom are able to eligible to receive additional funds to cover the cost of transportation to visit a parent in prison (including those on remand) every 14 days. The costs of phone calls could very be reduced or made free for child calls if Canadian institutions regulating how their contracted service providers charge for these calls.

Recommendations

- ➔ **It is recommended that children of incarcerated parents at both federal and provincial institution have the opportunity to regularly meet with their incarcerated parent in a safe, child-friendly, accessible, and supported environment**

- ➔ **It is recommended that children of prisoners, who are more likely to be living in poverty, be provided no-cost options for regularly visiting with their incarcerated parents, such that costs of transportation and food are the responsibility of the visited prison, whether financially or in-kind**

- ➔ **It is recommended that children are provided regular, free or low-cost phone calls to their incarcerated parent, regardless of whether their parent is incarcerated federally or provincially, or on a sentences or on remand.**

Summary of Recommendations

1. It is recommend that parental incarceration be added to the disaggregated data about which the Committee seeks more information from Canada in the ‘List of Issues’ for this 5/6 Periodic Review
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3. It is recommend that both federal and provincial prison services allow academic researchers to conduct ethical research into parental incarceration, including parenting from prison, demographics of prisoners’ children, and prison visitation.
4. It is recommend that Canada establish a process for including children’s views and consideration of their best interests in sentencing and bail decisions about their parents
5. It is recommend that Canada establish a national Commissioner for Children and Youth Rights
6. It is recommend that an independent provincial Child Advocate’s Office be re-established in Ontario
7. It is recommended that all incarcerated parents, regardless of gender and in both provincial and federal institutions, have access to educational programs and support around positive parenting

8. It is recommended that all incarcerated parents have access to free phone calls in order to speak with child welfare workers, teachers, and other community care providers about their child's needs and well-being, regardless of where and how they are incarcerated
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11. It is recommended that children are provided regular, free or low-cost phone calls to their incarcerated parent, regardless of whether their parent is incarcerated federally or provincially, or on a sentences or on remand.

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