

# PRISONER MOTHERS




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### Introduction

There can be few more emotional issues in penology than female prisoners' relationships with their children. Two situations need to be considered. Firstly, when the child is an infant, say, up to three years of age, there are problems concerning mother and child living together during mother's imprisonment.

Secondly, when the child is older but not yet mature, there are problems concerning the child's access to mother, and the extent of decision making with respect to the child, allowed to mother while she resides in prison.

Consideration of these situations raises issues including the effects of the prison situation on the mother, her maternal skill and her rights. Additionally, the child's possible traumatising and bonding to an adult are important. Overseas literature encompasses these issues and is reviewed here with reference to the Victorian situation. The various

alternative ways of dealing with prisoner-mothers and their children must be considered in order to reach the best decision for mothers and children.

### Extent of Child's Trauma

McGowan and Blumenthal (1978) indicate through eleven case summaries the range of traumas suffered by children ranging from infants to adolescents. The traumas can commence with the initial police intervention (which the child may witness), and then continue through the pre-trial, trial, sentencing and imprisonment phases. A child can experience increasing levels of trauma through this process, and actual separation of mother and child when mother goes off to prison may push the child's overall anxiety to some sort of peak.

That all children will not react to these phases in the same way is obvious and supported by the literature. McGowan and Blumenthal relate that "Angela" went to her mother's trial but found the ordeal "too painful" (p.32) while Sack et al (1976) report that

There was no indication of any specific adverse effects on children as a result of being in court. In fact, the experience seemed to help some of the older children in their adjustment to the parent's imprisonment. (p.620)

This last conclusion however is based on a very small sample of children who actually attended their parents' trial. Those who do not, might be too young or too anxious to attend, or might have been prevented from attending by some concerned adult wishing to spare them some trauma or upholding the parents' wish that the children not know the truth of the situation.

Support for this last comment can be found when the various explanations given to children for a parent's absence are considered. Sack et al point out that when the painful task of telling the child "could no longer be avoided. . . an element of deception was a frequent ingredient" (p.621). Thus the prison is referred to as an army camp, hospital or school. This sort of deception is also mentioned by Daehlin and Hynes (1974) although they say that mothers who thought that they and their children were able to face the truth did explain honestly. An interesting sidelight is provided in Sack et al's (1976) study of 31 prisoner-parents in that even when it was mother who was being imprisoned, in the majority of cases, she had to do the explaining. This indicates an additional strain on a mother-prisoner on top of facing up to the reality of her sentence and coming to grips with separation from her family. The immediate effect of

all this on her children must be considerable.

Further, the extent of this effect can be far-reaching. Friedman and Esselsytrn's (1965) work claims to show that "committing a father to jail is soon accompanied by a depression in the school performance of his children" (p.59). But that is not a convincing result as the previous educational performance of those children is not considered in that article. Clinical studies by Sack et al (1976) and Sack (1977) reveal a high percentage of children showing short-term behavioural symptoms, such as mild disruptions, and withdrawal or lack of interest at school, just after a parent's imprisonment.

McGowan and Blumenthal (1978) document more of the range of difficulties faced by prisoners' children, but many of these can similarly be faced by children who are permanently deserted by parents, temporarily separated by hospitalisation or left orphans by accident. The extent to which imprisonment has its own particularly damaging effects is difficult to disentangle.

### **The Prisoner As Mother Outside**

One important feature in the literature relates to the prisoner-mother's prior mothering behaviour. McCarthy (1980) reports that 25% of her sample of prisoner-mothers "did not have their minor children living with them at the time of their offence" (p.201). Gibbs (1971) showed only 51% of 504 dependent children had been living with their mothers immediately prior to mothers' imprisonment. And McGowan et al's (1978) data show 46% of the 96 children in their study were not living with mother prior to arrest.

The importance of this is that these figures suggest that in a large percentage of cases, imprisonment of a mother may have no effect at all on her child's living situation. (Gibbs (1971) found this to be 41% in her study.)

Another relevant work is that by Stanton (1980). She set out to measure the effects of separation due to imprisonment, and controlled for mothers' criminal involvement by comparing prisoner-mothers with mothers placed on probation for offences. She discovered that prisoner-mothers knew much less about their own children than did mothers on probation. For instance, only 4% of prisoner-mothers interviewed just after starting their prison sentence knew what school their child was attending, whether the child had changed school since arrest,

what grade the child was in and the name of the child's teacher. By contrast 44% of mothers on probation knew these details. Further, 58% of prisoner-mothers compared with 33% of mothers on probation could not name any of their children's friends.

It is true that mothers who themselves have a poor opinion of schooling in general may not have much interest in their own children's schooling experience. Further it could be argued that supervision of a child's friends is a middle-class concern. However if a prisoner-mother is uninterested in her children prior to going to prison, that fact is certainly relevant in considering what, if any, action to take after the separation by imprisonment of mother and child.

Alternatively it is certainly true that during imprisonment a mother could devote most of her time and energy towards her parenting role, and, with appropriate instruction and oversight might develop into a "good" and therefore "interested" mother. Several American prisons for women have ongoing educational programmes in child-care, involving children's overnight visits to the institution (Stanton, p.124). The problem is, of course, that on release, a prisoner-mother's interest in her child may not continue, or that in embarking upon such a course the mother may simply be reacting to the following (subtle) pressures.

### **Particular Pressures on Mothers in Prison**

It is not one of the stated aims of imprisonment to try and produce a "good" mother from an uninterested one. However as Zalba (1964) points out: "the inmate mother may be exposed to pressures to accept or resume the parental role upon her release" (McCarthy (1980) p.201). Most obviously those pressures relate to gaining release on parole, and it seems that child-caring is the feminine equivalent of a job for a male prisoner seeking parole. McCarthy also points out that "a desire to undertake parental responsibilities may in itself be interpreted by correctional staff as evidence of rehabilitation". (p.201).

Such subtle pressures can be counter-productive in that the mother's own situation may become the focus of attention, to the possible detriment of the child. And this is not in keeping with the general criterion for deciding the fate of (especially infant) children of prisoners.

*In addition to these 'institutional'*

pressures there are over-riding psychological pressures which emanate from simply being a mother in prison. These include a concern about re-establishing a relationship or regaining older children's trust in the future, worrying about being unable to form a relationship with younger children, worrying that their children may be confused by having two mothers or that the caretaker will turn their children against them, and worrying whether their children were really getting appropriate care. (See McGowan and Blumenthal (1976) pp. 49-52).

### **The General Criterion for Deciding the Fate of Prisoner-Mothers' Children**

The general consensus of the literature is that unnecessary harm to children should be avoided. McGowan and Blumenthal's (1976) primary recommendation is that "insofar as possible, women should be diverted from the criminal justice system" in order to prevent any harm to their children. However realising the impossibility of that, they argue for the following five principles:

1. The child's welfare should be considered at each point in the criminal justice system.
2. Although the correctional system may not have the capacity to improve poor mother-child relationships, it has a responsibility to protect existing family ties and to engage in efforts to minimize any potential damage to the child resulting from the mother's incarceration.
3. If the state deprives the child of parental care by incarcerating the mother, it has a responsibility to ensure the welfare of the child during the mother's imprisonment.
4. Inmate mothers should be treated not simply as individuals in need of training and rehabilitation but also as members of family units with specific parental rights and responsibilities.
5. The criminal justice and social welfare systems must develop closer policy co-ordination and service integration to meet the needs of inmate mothers and their children. (McGowan and Blumenthal, pp.87-88).

The over-riding concern of most writers is that any decision is made with the interests of the child being foremost. Sametz (1980) puts it realistically by talking of the "least detrimental interests of the child" rather than his best interests. And in the United States where a large percentage of prisoners' children are still apparently placed under State guardianship the decision as to where to place a prisoner's child has been decided by the Court as follows:

The dominant considerations for making this determination (about where to place the child) are the moral, intellectual and material welfare of the child to which the parental relationship must be subordinate (Palmer, p.130).

The general concern with the child's material well-being and the issue of whether imprisonment per se makes a mother unfit to be a parent are recurring themes in the American legal literature

(Palmer 1972, Yale Law Journal 1978). The difficulties of a released prisoner-mother regaining parental rights over a child are also well discussed. (Sametz 1980, Haley 1977) As Palmer points out mother's incarceration itself is not evidence of a lack of desire for parental duties. But it seems that the American system is still fairly rigid both with regard to visiting opportunities for older children, or in-prison facilities for younger children. There has however been a notable change from the belief that "the prisoner-mother obviously cannot have actual physical custody of her children", (Palmer, p.129) and in numerous States, young children can now be housed with their mothers.

### The Victorian Situation

Prisoner-mothers in Victoria's Fairlea Prison have reasonable access to their older children. Saturday afternoons are set aside for 2 hours for visits from children only. This allows mothers their own time alone with their children but does not disqualify children from visiting again on Sunday with other visitors.

The extent of prisoner-mothers' not wishing their children to visit them at Fairlea is not known. Sack et al (1976) found this not uncommon with short sentenced prisoners.

The mother's day-to-day decision making with respect to their children's welfare is virtually non-existent. There is a very strong argument for installing a telephone for prisoners' use in this regard. There are obvious logistical problems in this suggestion but that is not reason to deparachute it out of hand. Incoming calls from children seeking advice or consolation from their mothers should be encouraged, and allowing mothers to make reverse-charges calls to their children is also desirable. The possible conflicts between prisoner-mothers and those caring for their children outside concerning the latter's treatment of their children could however pose a problem if children used this facility to "see what Mum thinks" about particular problems already resolved by the caretaker.

Communication between the child's caretaker and mother may not be good anyway. In America, prisoner-mothers "frequently find they are not provided adequate information about their children's development, school problems and health needs" (McGowan and Blumenthal, p.18). In addition Eyman (1971) points out that if family-oriented future planning for the prisoner's children did take place, it "seldom involved the mother nor was she consulted about it" (p.124). And as

McGowan and Blumenthal found, many foster parents, relatives and friends caring for a prisoner's child opposed bringing the child to the prison, telephone contact might be the only way in which some families might remain in contact.

While there are improvements that can be made with respect to the situation of older children it is the infant child who poses a more pressing issue in Victoria at present.

In particular the question of whether prisoner-mothers should have their infant with them at Fairlea Prison, and if so, for how long, is currently under discussion. There are two extreme views with respect to this issue. On the one hand it is thought that it is basically wrong to imprison an infant with its mother. On the other hand, it is thought that an infant must be placed with its mother no matter what. Plainly the solution lies between these two extremes and the following issues relating to the problem have to be considered in working towards a solution.

### Legislation

An important issue is whether or not legislation needs to be passed giving any prisoner-mother the right to have her infant child with her in prison. The British Prison Rules state

"The Secretary of State may, subject to any conditions he thinks fit, *permit* a woman prisoner to have her baby with her in prison, and everything necessary for the baby's maintenance and care may be provided there." (My emphasis).

The literature indicates that the most likely situation for an American prisoner-mother in 1978 was that her child would have been "routinely separated from her parent when the parent is imprisoned", (Yale Law Journal, p.1409) despite the existence of some American legislation enabling prisoner-mothers to keep their children with them. Stanton (1980) points out that

"California has long had legislation allowing young children to remain with their imprisoned mothers. . . (but the Court had) held that a prison superintendent may use reasonable discretion to deny an incarcerated mother the right to keep her child with her in prison" (p.125).

Thus one has the situation of having appropriate legislation, which gives the illusion of progressiveness, but which in practice is not utilised.

Each of these pieces of legislation *allows* a prisoner-mother to keep a child with her, subject to some official decision. And this is precisely the current Victorian situation. In a recent undated Press Release the Minister announced the following Departmental guideline:

"Provided all advice indicates that the (prisoner-) mother is providing satisfactory care and attention she be *permitted* to retain her child with her, if she so desires, while serving a term of imprisonment, subject to the environment in which the child is raised after its first birthday being suitable for normal maturational processes. The foregoing is subject at all times to consideration of particular circumstances which might require the child to be either retained by or removed from the care of its mother." (My emphasis).

This guideline is not enshrined in any formal legislation, but is not operationally weaker because of that. It establishes that a mother may retain a child, subject to "all advice" being positive, a "suitable environment" and "consideration of particular circumstances". Undoubtedly lawyers could argue at length about these terms, but as these sorts of decisions will have to be made fairly rapidly it seems quite necessary for flexibility to be possible. Palmer's (1972) suggestion that courts alone should determine a mother's parental fitness and thus whether she should have her child in prison with her, is completely unacceptable because it would probably entail a lengthy delay and an adversarial investigation.

It is obviously more sensible and is the Department's current intention, to gather advice about each case from a wide variety of persons including paediatricians, psychiatrists, social workers and mothers. However one professional whose advice should be particularly noted is the Governor of Fairlea Prison who is responsible for the day to day running of Fairlea and is therefore in the best position to predict the likely effect of the arrival of a (particular prisoner's) child on the prison as a whole. If the general prison climate is likely to deteriorate, it is obviously going to be a very unhealthy place in which to raise a child, as it would be if the physical conditions were unduly strained.

It is suggested that within a set of guidelines, rather than legislation, each case of a prison-mother seeking to keep her child with her *has* to be judged on its own merits. Further, the Fairlea Governor's advice would have to be positive before the final decision is made. Any negative decision by the Governor would obviously have to be strongly justified to the Director. This effective power of veto is not suggested lightly. Nor is it intended to increase all Governors' autonomy or their independence from the Directorate. Prisoner-mothers and their children constitute unique situations which need constant monitoring. That monitoring *cannot* be conducted from an office building or hospital some miles away, or

by a visitor checking mother and child every week or so. The preservation of the welfare of the child and its mother can best be effected by the continuous oversight of the Governor and prison staff.

The argument against this effective veto is that the Governor may for petty or personal reasons deliberately misuse his power. But this can equally well be argued with respect to many other matters the Governor currently has to decide upon. As the Director oversees all the Governor's decisions and the Ombudsman can be asked to review particular decisions, it is unlikely that the power will be abused. Governors readily accept Departmental policy when the rationale for it is soundly presented and there is no reason why the Director and Fairlea Governor should find themselves at cross purposes with respect to particular cases.

### **The Infant and Bonding**

Bonding is probably the major psychological/developmental issue relating to a prisoner-mother keeping her baby with her, and there is no doubt that a baby needs a continuing caring relationship with an adult in order to develop adequately. As it is possible for bonding to occur with other than a natural parent, in the case of a prisoner-mother serving a long term, bonding with a person who is likely to be caring for that child during say its first five years of life would possibly be most beneficial for the child's overall development. As it is counter to all the literature on child development for a child to be confined in a closed prison until that age, a separation of a child from a prisoner-mother with a long sentence is inevitable. The issue of bonding is surprisingly well summarised in the Yale Law Journal (1978) and other relevant issues relating to separation are examined in Stanton (1980).

While it might be argued that the mother herself has a right to bond with her child, even if later separation is inevitable, that view places the mother's welfare above that of the child (irrespective of whether it is a right or not). Recent incidents of adopted children searching out their natural mothers would seem to indicate that not bonding with the natural mother does not mean that the child will lose all interest in, or affection for, that person, or that the child has necessarily suffered as a result of separation.

Thus the mother's sentence of imprisonment and the age of the child in turn become most important. It is not hard to foresee a situation where one

professional advises separation, and another argues equally strongly for continued maternal care for a prisoner's baby. Ultimately the decision may be made on consideration of the time factor discussed below.

### **Duration of In-Prison Care**

It is implicit in the Victorian guideline reproduced earlier that children up to the age of 12 months may be housed at Fairlea almost as a matter of course. In England the Home Office does not normally consider it advisable to keep babies older than 9 months in a closed prison. The recent Yale Law Review (1978) article indicates that in some American prisons infants can remain up to the age of 18 months, however it goes on to state that

"a child above the age of two or three however should not remain in prison with the parent. By this time the parent-child bond is well-established and the child's physical and emotional needs require freedom of movement and contact with other children that may not be available in the prison setting."  
(Yale Law Journal, p.1425).

That suggestion acknowledges that chronological age may not be a very sensitive index of the child's maturity and needs, and that is the very reason why it is folly to try and define the duration of time for which all children should be allowed to remain with their prisoner-mothers. This leads back to the necessity for considering each case on its merits. Mother's sentence length, her personality and that of the child, are all basic to any decision that has to be made for the child's benefit, and constant monitoring of the situation is the only feasible way of ensuring the best is being done for the child.

### **Peculiarities of Prison Life**

The very artificiality of life in prison raises more problems with respect to children being housed there. Not least of these are the necessity for routine and for decision-making to be primarily the province of prison staff. Thus, fixed meal and muster times for example, are necessary and staffing levels determine the extent of movement or activity within the prison at any particular time.

A child who becomes sick in the middle of the night can create a management crisis. At Fairlea a call for urgent attention for a child during the night would involve the Senior Officer being called, unlocking the wing, agreeing that medical attention was needed, and arranging an escort (with accompanying staffing shortfall) for a hospital visit. That staff shortage would place the whole prison in a tenuous, if not vulnerable, position if further problems should arise. Conversely, if the prisoner-mother herself falls ill, how is

the baby to be cared for? Even if the sickness only lasts for a few days, that is a period for which some other person (prisoner?) has to care for the child. And what recourse has the mother if something should go amiss with her child during her own hospitalization? Requiring that a prisoner-mother sign some sort of indemnity may solve the legal problem, but the moral problem remains.

Both these situations would put undue strain on the Fairlea staff. Certainly the staff have considerable strengths and would overcome the temporary problems instanced. But is it fair to place this additional burden on them?

There are more problems for staff. How do they handle the situation of a prisoner-mother breaching regulations? Had the mother not had her child with her, it may be that she would be placed in the Fairlea cells following such a breach. But having a child with her would give her additional moral weaponry to resist that fate. Indeed it is not hard to imagine a mother deliberately using her child to manipulate her situation to her (as distinct from her child's) advantage. There is sufficient in the literature on adaptation to prison to indicate that this is a real possibility. And it needs to be considered.

While exceptions to routine can be made for some prisoners there is a distinct risk of causing dissent amongst the remaining prisoners. On the face of it, it could be expected that women may be more kindly disposed towards others who are caring for infants, but in the prison community that cannot be assumed to be the case. The same treatment or routine for all prisoners thus becomes important, and that may have an effect on children that should be appreciated.

The English prison system is often quoted as one whose practices Victoria might follow in this area. There they have about 24 mother and baby units within closed prisons but, as a recent book points out,

"life in those units is as regulated for the babies as it is for the women. Mothers, for example, cannot decide feeding times, and no one picks up the babies between feeds. There are also no provisions for children in prison to be taken on outside visits."  
(Fitzgerald and Sim, 1979, p.84).

There are few mothers who nowadays would believe that to be the best way to rear a baby. Yet, the practical considerations of life in a closed prison might make this sort of procedure necessary. Is it possible to weigh the effects of that sort of environment against the benefits to the child of being with its mother?

### Appropriate Accommodation

The Victorian Government in its 1978 White Paper "The Future of Social Welfare in Victoria" pledged to move towards Victorian Prisons meeting the standards laid down in the United Nations' Standard Minimum Rules for the Treatment of Prisoners. Rule 23 (2) of those (and the recent "Minimum Standard Guidelines of Australian Prisons") states,

"Where nursing infants are allowed to remain in the institution with their mothers, provisions shall be made for a nursery staffed by qualified persons, where the infant shall be placed when they are not in the care of their mothers."

In addition those rules lay down accommodation standards including adequate sanitary and bathing arrangements, appropriate space and heating and single accommodation for prisoners.

Up until October 1981 the arrangements for prisoner-mothers and babies at Fairlea failed to meet either these minimum standards, or the Minister's own guidelines with respect to "adequate accommodation and facilities". Three mothers and babies occupied a fairly dismal area in which all six slept in the same room, the bath was in the kitchen-cum-laundry, and a portable chemical toilet was provided for night-time use.

After the opening of the new 18 prisoner unit "Yarra Brae" each mother and child have their own room with toilet and shower—but no bath. The unit is fully air-conditioned with sealed windows and kitchen facilities are situated in the centre of the unit, and used by all inmates housed there. Thus, mothers and babies are provided with improved physical accommodation but have lost fresh air and exclusive use of cooking and bathing facilities.

Each of these facilities could be called "adequate" but neither reaches the U.N. standard in providing a nursery for the children while their mothers work. Further, each is firmly established within a security setting—that is, a closed prison.

In England, prisoner-mothers can keep their children up to the age of 3 years only at the open prison Askham Grange, and the situation seems similar in America. Such practice is consistent with the views of McCarthy who says it is "imperative that live-in programs for inmate-mothers and children are established in facilities that approximate free world housing conditions" (p.202). And the various ways in which this might be done are canvassed in the next section.

Before that however, it is necessary to

come to grips with the writer in the Yale Law Journal (1978) who states:

"only when more concern is shown for the emotional ties between parent and child, and less concern given to the physical surroundings in which a child is raised, will the States truly be servicing the best interests of children." (p.1429).

The relationship between emotional and physical factors is ignored in this particular comment. There is sufficient evidence to point out the considerable strains on a single-mother outside who finds herself in a miserable physical location. To add that to the lack of free movement faced by a prisoner-mother in a closed prison is adding an unnecessary burden to her parenting. The provision of accommodation more akin to that of the 'typical' Victorian mother is needed to ensure the prison baby is not reared in too artificial an environment.

### Alternatives

Many of the difficulties outlined in previous sections can be significantly reduced by various alternatives to closed prison accommodation for prisoner-mothers and babies. It is the development of such alternatives that should be the major task in Victoria today. Some possible programmes that should be considered include the following.

A *special institution* for housing prisoner-mothers and babies is the most obvious alternative. To achieve McCarthy's "approximate free world housing conditions" in Victoria, requires an environment physically and psychologically removed from Fairlea Prison. But an obvious political problem with this is that the establishment of such a facility would probably attract the criticism that prisoners are coddled. Plainly, those Victorians who might make this criticism need to be made aware of the benefit to the children involved. That puts the onus on the Department to convince such critics that amongst other things, prisoners are responsible mothers. Given that a lack of responsibility may explain a mother's presence in prison, this may be difficult to do in some cases.

In addition, it will probably be suggested that prisoners are receiving unfair special treatment. Mothers outside who through lack of resources or unfortunate circumstances lose their children's custody, are not offered the resources which are mooted for prisoner-mothers. This is the principle of less eligibility which argues that prisoners should not be given facilities better than those of the most unfortunate law-abiding members of society. But each of these criticisms

relates to the prisoner-mother rather than the child, who is the focus of this whole issue. That point must be put to, and understood by, the Victorian community.

An example of a separate institution for prisoner-mothers is the oft-referred to 'Kinderheim' in West Germany. The first such facility opened in 1976 (admittedly within the grounds of the Preungesheim prison) and accommodated 20 prisoners and up to 25 children.

"The women prisoners live with their children in spacious, brightly lighted cells that contain windows and modern furniture. Except for their 40-hour workweek in the prison laundry or cardboard factory, mothers are free to play with the children, watch television with them or bake them cookies in the Kinderheim kitchen. Every three months the mother receives a day off to shop and after six months she is entitled to a "vacation" at home with her children." (Newsweek, 1976, p.71).

A recent prototype project from California is not restricted to infants and involves prisoner-mothers being housed in apartments in the community. While the mothers receive job training during the day, their children attend school or day care "The program stresses responsibility and offers guidance and assistance in employment, household management and child care" (Stanton, p.125).

The concept of *mother-release* is another response to the problem. This is equivalent to the male prisoner's work-release and is based on a belief that "the prisoner-mother should... be able to use her work-release time for the achievement of her post-incarceration duties, performing her parental responsibilities" (Palmer, p.141). There is much value in this proposition. Short separations between a normal mother and child are not all that uncommon (Stanton, p.8) yet after release sudden re-unification between the prisoner-mother and child can comprise a conflict between exhilaration of freedom and, "perhaps for the first time, the responsibility of motherhood" (Daehlin, p.468). To reduce separations to shorter periods of time by utilizing regular periods of mother-release would be valuable. Additionally, using mother-release immediately before full release would help ameliorate the crisis mentioned above.

Some detail about *home-furlough* is provided in McCarthy's (1980) study of 46 American prisoner-mothers who participated in such programmes. Only a few prisoners attempted to assume parental responsibilities during their home visits, most viewed them as vacations from incarceration. McCarthy concludes that while such visits

maintain family ties they are unlikely to aid preparation for the assumption of parental responsibilities. She, therefore, recommends associated efforts by professional staff to make the home furlough more meaningful in this regard.

It could be that allowing prisoner-mothers every weekend at home might provide some sort of answer. The regularity of this leave might require some *modification of sentence*, thus, a one year sentence might be 'converted' to say a 15 month sentence with regular weekends at home, allowing the mother to maintain her parenting responsibilities. Such a sacrifice on the mother's part would certainly indicate real concern for her child's welfare. A variation of the sentence-modification concept could also allow the prisoner-mother to select her sentence starting date, thus giving her time to arrange her children's placement to her own satisfaction.

The Purdy Treatment Centre in Washington, utilizes *foster care based programmes* for its inmate mothers. Thus prisoners' children are placed in foster homes near to the prison. Mothers participate in selection of these homes, regularly visit them and discuss their children's progress with the foster parents. The programme follows from the working premise that prisoner-mothers "cannot take full responsibility for their children", but they do retain responsibility for such matters as authorising medical care, deciding children's vacations and schooling. Children are encouraged to visit their mothers in prison and a nursery school is run within the prison for prisoners' and neighbourhood children (although apparently as separate groups). (Stanton p.124, McGowan and Blumenthal pp.27-28). Free-world nurseries staffed by prisoner-mothers have been found to develop their self-worth as well as improving their parenting skills (McCarthy p.202).

Prisoner-mothers could also benefit from the chance to discuss child-rearing with mothers from outside the prison in a "playgroup" situation. If toddlers are to be housed at Fairlea it would be highly stimulating for them to be incorporated into a free-world group that met at Fairlea regularly.

A *community-treatment* alternative which keeps mothers of young children out of the prison environment altogether, is possibly the best alternative for the majority of cases. In Victoria, use of attendance centres and (when they become operational) Community Service Orders are obvious choices for many offender-mothers as

they allow continuing mother-child contact at home. Increased use of community-oriented sentences will not render prison inappropriate for all offender-mothers, rather it should ensure that prison is only used as a last resort for that group. A 1980 Californian statute requires their Department of Corrections to establish and run a programme specifically for "mother inmates who (were the primary caretakers of their children and) have one or more children under the age of two years and two months" (Stanton, p.181-186). This legislation has been criticized for being restrictive and limited. But it is based on "a legislative finding that the separation of infants from their mothers, while their mothers are in prison, can cause serious psychological damage to such infants". (Stanton p.125). That is not a universally held belief, but, is the fundamental issue to be faced in Victoria.

#### **Making the Best Decision**

It should not be assumed that it will always be best for a prisoner-mother to have primary care of her child. The Yale Law Journal (1978) suggests that a prisoner's parental rights could be permanently terminated by a Court on two particular grounds. That is if:

1. the past behaviour of the parent is as "sufficiently harmful", or
2. the child's need for a permanent home is so urgent as to require that termination. This in turn involves consideration of the length of sentence and the age of the child involved, as both would determine whether a normal parent-child relationship could be maintained. It would also be necessary for there to be a suitable alternative permanent placement.

These grounds are based on the consideration of the child's welfare, and it has earlier been pointed out that that should be our prime consideration. In Victoria decisions of this sort could be made in the Children's Court, though in practice, prisoners' children rarely appear there for such a determination.

It is, therefore, assumed that most Victorian prisoner-mothers will still have responsibility for their children, so it is necessary to consider the appropriateness of the alternatives provided above. Obviously these alternatives could not be considered for all prisoner-mothers. For instance, a decision about mother-release would have to be made carefully, as indeed a work-release decision has to be treated. And a community treatment decision also has to be solidly grounded.

It is important that Victoria should

develop a series of ways in which to handle the case of a prisoner-mother and her child, rather than restrict our options. This approach would allow particular prisoners and indeed particular children, to be placed optimally within the system. While this might "fragment" the female prison population in Victoria, the welfare of the children is an interest that should override such logistical difficulties. Doubtless, in some instances, prisoners would complain about the particular programme they might be placed in, but these sort of complaints are scarcely new to correctional administrators.

Flexibility is the key to dealing with this issue, and to tie down the Victorian Correctional Services Division by developing rigid legislation, or one facility, or one method or proceeding, will sorely reduce its operation. But worse it may additionally cause harmful decisions to be made about children in the absence of suitable alternatives. And it is precisely the reduction of harm rather than its perpetration that has to be our object.

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