Chapter # - Children First: Putting the Rights of Children Visiting Prisons at the Heart of Policy and Practice

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Abstract

In English and Welsh prison policy, the children of imprisoned parents are all too frequently discussed in terms of their utility to the prison as a means of reducing re-offending and maintaining order by way of the Incentives and Earned Privileges scheme. Further, while being viewed as the solution to the prisons’ problems, these children are also viewed as a problem in themselves, in particular the male children of male prisoners due to their purported potential for intergenerational offending. This chapter argues that the rationales for the positioning of children of imprisoned parents as both problem and solution are empirically unsound, and actively work to obfuscate the position of children of imprisoned parents as rights holders in contradistinction to the principle of the best interests of the child under Article 3(1) CRC. I then further argue that this framing could lead to discriminatory outcomes in contravention of Article 2 CRC for the children of prisoners with mental health problems and Black prisoners especially. Finally, the chapter considers how security measures imposed on visits have implications for the right of the child to engage in play and recreational activities, more commonly known as the right to play under Article 31 CRC.

Introduction

In comparison to other family members, such as the parents of prisoners (Hutton, 2019b), there is now a well-established, and much welcomed, corpus of research on the lived experiences of the children of imprisoned parents (see inter alia Sack (1977); Hagan and Dinovitzer (1999); Gibbs (1971); Boswell and Wedge (2002); Brooks-Gordon (2003); Hairston (2003); Murray et al. (2009); Murray et al. (2012); Morgan et al. (2014); Baldwin and Epstein (2017); Knudsen (2018)). In addition, the important transnational COPING project focussed on the impact of parental imprisonment on the mental health of children of imprisoned parents (Jones et al., 2013; Sharratt, 2014). A body of work on the human rights considerations for children of imprisoned parents is also emerging, alongside more generalist texts (Codd, 2008; van Zyl Smit and Snacken, 2009). Scharff Smith’s (2014) important book, When the Innocent are Punished, specifically draws on European Court of Human Rights jurisprudence to consider the rights of children of imprisoned parents in the Danish context. Recent work by Donson and Parkes has paid close, and necessary, attention to the rights and lived experiences of children with imprisoned parents in the Republic of Ireland (Parkes and Donson, 2018; Donson and Parkes, 2018; Parkes and Donson, 2019). A further consideration has been the extent to which the human rights of children who will be impacted by their parents’ imprisonment should be
considered in sentencing practices (Minson, 2015; Donson and Parkes, 2016). However, while the literature on prisoners’ families is very much centred around what can be done to highlight, and eventually lessen, the impact on the children of imprisoned parents, this rights of the child-focused approach is not necessarily replicated in visits policy or practice in England and Wales. Instead the children of imprisoned parents are all too frequently discussed in terms of their utility to maintaining order in prison establishments and longer term aims around reducing re-offending.

This focus on the utility of family contact was front and centre of the recent Farmer Review (Farmer, 2017), a high-profile government inquiry headed by Lord Farmer. Indeed, whilst acknowledging that family contact is not a panacea, the underlying question for the review team was around what could be done to support men in prison to engage with their families and reduce their chances of re-offending. In the report, Lord Farmer not only acknowledges that families are utilised by prisons but positively encourages it, opining thus:

> In this era of ongoing constriction on public spending, family ties are themselves a resource that newly empowered governors can, and must, deploy in the interest not just of reducing reoffending rates, but also of creating a more settled regime. (Farmer, 2017: 5)

Lord Farmer condones the use of the Incentives and Earned privileges scheme that determines prisoners’ entitlements to visits according to how successfully they comply with the prisons’ regime, essentially framing the children of imprisoned parents as a mechanism for controlling their parents’ behaviour during imprisonment. Lord Farmer explicitly reduces the families of prisoners, including their children, to ‘resources’ to be deployed, ergo flagrantly adopting the narrative that it is acceptable to frame the children of imprisoned parents as objects of utility. However, Lord Farmer goes further, specifically drawing attention to the apparent urgency of reducing inter-generational offending by the children of imprisoned parents. Accordingly, the Farmer Review was subtitled ‘The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime’. The Farmer Review (2017) while vigorously encouraging the utility of prisoners’ families, including their children, only mentions the rights of prisoners’ families a negligible couple of times in a report spanning, a not inconsiderable, 57 pages.

Lord Farmer’s report is by no means the first ‘official endorsement’ of this notion that prisoners’ families are to be utilised. Similar sentiments were expressed in a 2014 Criminal Justice Joint Inspection report on accommodation and education, training, and employment outcomes for those leaving custody in England and Wales that described prisoners’ families as ‘the most effective resettlement agency’ (HM Inspectorate of Prisons et al., 2014: 5). Further, the families of prisoners, and accordingly the children of imprisoned parents, are also frequently positioned as such within policy documents as the following excerpt from a National Offender Management Service (now Her Majesty’s Prison and Probation Service) Prison Service Instruction demonstrates. Although the rights obligations of prisons, for example under the European Convention on Human Rights are acknowledged in this policy document,
there is nevertheless an emphasis on the utility of prisoners’ families in maintain order in establishments and reducing re-offending:

Regular and good quality contact time between an offending parent and their children/partner provides an incentive not to re-offend, and helps prisoners arrange accommodation and employment/training on release. . . . Visits also assist in maintaining good order. Good quality visits in a relaxed environment make a significant contribution to the well-being and attitude of prisoners and generally help to build better relationships between families and staff to the point where families are encouraged to share sensitive information which may have an impact on the welfare of the prisoner.² (Prison Service Instruction 16-2011, Providing Visits and Services to Visitors)

Here, a key prison service document that provides guidance to establishments, firmly frames ongoing contact between children of imprisoned parents and their imprisoned loved one as part of the solution to the problem of reoffending and the maintenance of order in prisons by way of incentive prisoners to behave. Thus, improving the frequency and quality of visits for the children of imprisoned parents is not presented as a worthy aim in and of itself. Even where the emotional worth of visiting is recognised, it is simultaneously presented as a means to the end of the prison gathering sensitive information.Crudely put the clear message here is that making visits ‘better’ means prisoners will be less likely to offend and more likely to behave behind prison walls; a win, win for all concerned. Thus, facilitating family contact is not just a matter of fulfilling prisons obligations to uphold the rights of prisoners’ and their families, they are also a resource for prisons to draw on to assist their penal endeavours echoing the Farmer Review above.

This strong emphasis on the utility of prisoners’ families is somewhat problematic, especially when one considers the significance of human rights discourse in England and Wales which has only intensified post the coming into force of the Human Rights Act 1998 in October 2000. Prisons, designated public authorities under the Act, were obliged to adapt their policies to better recognise their obligations not to act in contravention of the European Convention on Human Rights 1950 (ECHR). In relation to family contact in prisons, this particularly applies to Article 8 ECHR, the right to respect for one’s private and family life. The children of imprisoned parents are bestowed further rights post the UK’s adoption of the Convention on the Rights of the Child 1989 (CRC), albeit adherence to and enforcement of the obligations under the CRC has been far from consistent in England and Wales (Taylor, 2016). In particular, Article 9(3) CRC grants children the right to maintain personal relations and direct contact with a parent from whom they are separated if it is in their best interests. Underpinning, and speaking to, all of these rights is the important principle found under Article 3(1) of the CRC that decrees:

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.
Lagoutte (2016) argues convincingly that it is rare for a right to contact with an imprisoned parent to be seen solely, or mainly, from the perspective of the child (although see Scharff Smith (2014) for important exceptions). Instead, all too often, the rights of children of imprisoned parents under the CRC, are rarely, if ever, considered to be a primary consideration and are instead subsumed by discussions relating to the rights of their imprisoned parent under Article 8 ECHR, the right to respect for private and family life. Consequently, the rights of children of imprisoned parents under the CRC are subjugated and as Taylor (2016) argues, often the best interests principle is treated as if it were “founded on Article 8 rights alone” (Taylor, 2016: 54) and not derived from the CRC at all. As Lagoutte (2016) contends, engaging with children’s rights indirectly under Article 8 ECHR, (as opposed to directly under the CRC) frequently leads to the interests of children of imprisoned parents being balanced equally against the public interest of maintaining prison security. In this chapter I argue that this balancing act invariably leads to a highly problematic focus on the utility of the children of imprisoned parents to the prison and wider society, much of which is done in the name of security considerations, to the detriment of their position as rights holders.

I identify three ‘lenses’ through which these children are viewed in prisons policy and research as either a problem to fix or the solution to the prison’s and wider society’s concerns. I first discuss ‘The Problem of the Criminogenic Son’ focussing in particular on the male children of male prisoners due to the purported dangers around their potential for intergenerational offending. I then discuss how children of imprisoned parents are utilised by establishments as mechanisms of control over their parents as access to them is governed by the Incentive and Earned Privilege’s scheme. The third lens critiques the ways in which children of imprisoned parents are framed as the ‘solution’ to the broader issue of reducing re-offending. Finally, I explore visiting conditions and the extent to which security and operational measures across the prison estate usurp the rights of the child who is visiting and are not in the best interests of the child. I am arguing here that these lenses through which the children of prisoners are viewed by the prison system obscure, and in some cases outright contradict, the position of prisoners’ children as rights holders under Article 3(1) CRC first and foremost in their own right. I argue further, that they are also potentially discriminatory under Article 2 CRC to be free from discrimination irrespective of the child’s or his or her parent’s or legal guardian’s race, colour…sex…national, ethnic or social origin, property, disability, birth or other status. I will also consider the implications for the right of the child I then go on to consider how visits practices, whilst paying lip service to the rights of children of imprisoned parents, instead treat security considerations as paramount, paying special attention to the implications for the right of the child to engage in play and recreational activities, more commonly known as the right to play under Article 31 CRC. Lagoutte (2016: 206) implores that the time has come “to shift the focus, and place children at the centre of the public authorities’ concerns”. The remit of this chapter then is to address how this shift in focus to centre the rights of children visiting prisons should be enacted in the context of visiting policy and practice in the English and Welsh prison system.
Finally, a note on terminology. The focus of the literature above tends to be on the rights of children of imprisoned parents, not the experiences of children who visit prisons in any other relational capacity. As I have discussed elsewhere I spent much of my early childhood visiting a relative in prison (Hutton, 2018). They were not my parent and yet those visits were important to mine and my relative’s emotional well-being. Further, my human rights, under the CRC and the ECHR, were engaged every time I visited despite their not being a parent-child relationship. So, this chapter sometimes uses the terminology of ‘children who visit prisons’ to recognise that the concerns raised here are not always exclusive to those children with an imprisoned parent and that the human rights of every child who visits a prison are engaged upon entry to prisons and should be fully respected.

**Research Context**

This chapter is informed by my doctoral research that explored the lived experience of family contact in prisons and the ‘empirical realities…and doctrinal technicalities’ (Murphy and Whitty, 2013: 13) of the operation of the Article 8 ECHR right to respect for private and family life. In two English medium security prisons, over nine months, I conducted 61 semi-structured interviews with prisoners and a range of their adult family members, alongside extensive observations of visiting practices. All my interviewees provided informed consent, all interviews were recorded, transcribed, analysed and coded thematically and the data presented here has been anonymised to ensure participant confidentiality. Whilst I aimed to cover as wide a range of family members as possible, there was one significant omission; I did not speak directly to any of the participant’s children. The decision not to conduct interviews with prisoners’ children was both practical and ethical because as Griffin et al. (2016) note, conducting interviews with children requires a methodological approach tailored to them, not an unfortunate re-hash of one’s research instruments. And yet, despite the fact that I did not interview the children of the people I met, it was inevitable that I heard about them constantly during my research. Indeed, I was often introduced to them whilst I was in the visiting centre, or the visits hall by their proud fathers. Many of the men I spoke to reported having close relationships with and being deeply involved with their children’s’ lives pre-imprisonment (Hutton, 2019a). They also described the deleterious effects of their imprisonment on their children. Although most of their children had remained in the family home with their mother post imprisonment, that did not lessen the profundity of the impact of the separation from their fathers and many described how deeply affected their children were. Billy described how his son appeared ‘lost’ without his Dad and would not leave his side during visits:

> First five minutes of every visit, he’ll run up and sling his arms around me my neck and not let go for a good five minutes till he’s got it out of his system, it’s horrible, it is, it’s horrible to see…..some people say he’s got his mom so he’s all right, a child’s always got his Mom. In my eyes a child gets scarred when owt like this happens and it’s a scar
they never forget cos kids never forget; they’re like elephants aren’t they? (Billy, HMP Anon)

Here Billy echoes the findings of the COPING project that:

…..against expectation and findings from previous research, children of imprisoned parents missed their fathers equally as much as their mothers when they were in prison. (Jones et al., 2013: :303)

Therefore, despite not interviewing the children of imprisoned parents directly, the impact of imprisonment on their lives was a recurring theme, albeit indirectly. This led me to consider the issues that dominate this chapter here, how children are placed and utilised in visits policy and who exactly prison visits are supposed to work for.

**Problem and Solution**

I am arguing here that the children of imprisoned parents are more commonly lauded as the potential solution to the problem of re-offending by their imprisoned parents’ post-release and/or also utilised by the prison system as mechanisms for exercising control over their imprisoned parents’ behaviour while incarcerated. Concurrently, alongside their role as potential saviours, the male children of imprisoned parents especially, are simultaneously framed as a potential problem predicated on their supposedly higher risk of becoming offenders themselves (thereby presenting a present or future security risk). In what follows, I will be examining the three ‘lenses’ through which the children of imprisoned parents are often framed as either a problem or solution in prisons policy and research. I am arguing here that these lenses through which the children of prisoners are viewed by the prison system obscure, and in some cases outright contradict, the position of prisoners’ children as rights holders first and foremost in their own right. I argue further, that they are also potentially discriminatory and often act against the principle of the best interests of the child.

**The Problem of the Criminogenic Son:**

For the male children of male prisoners, this rhetoric around the potential for inter-generational offending takes on a special significance – their labelling as the ‘criminogenic son’ because of the much quoted figure that 65% of prisoners’ sons go on to offend themselves. Indeed, one prison I visited had this figure emblazoned on the wall of the area leading into the visits hall. Similarly, Barnardos utilises this figure as a ‘key statistic’ in their widely-read report ‘Every Night You Cry’ (Glover, 2009). What is interesting is about Barnardos reliance on this statistic is that the report attributes it to the influential Social Exclusion Report from 2002 (Social Exclusion Unit, 2002). However, the Social Exclusion Report does not refer to any figure remotely close to 65%; instead the report cites an article by Farrington (1995) that draws on the 1991 National Prison Survey:
The 1991 National Prison Survey found that 43 per cent of convicted prisoners had a family member who had also been convicted of a criminal offence, compared to 16 per cent of the general population. 35 per cent had a family member who had been imprisoned. For 32 per cent of these, it was a parent. (Farrington (1995) cited in Social Exclusion Unit, 2002:117)

Importantly Knudsen (2016) observes that all too frequently organisations such as Barnardos that purport to work on behalf of prisoners’ families, although well-intentioned, over-emphasise the risk of inter-generational offending without being mindful of Murray et al. (2012) important conclusion that ultimately:

the only outcome that remains associated with parental incarceration after adjustment for covariates is children’s antisocial behaviour (Murray, Farrington et al., 2012: 191).

Murray et al’s finding was echoed by the men I spoke to during my research. Although they worried about their children misbehaving while imprisoned, these men were not concerned that their children were inherently more likely to be criminal. Instead their concerns centred on how their absence in their children’s lives had profoundly affected their children, especially as they had often acted as the main disciplinarian in their families. As Knudsen (2016) also makes clear, the parent who remains outside is also often struggling to survive the effects of imprisonment that can leave them in poverty and adjusting to life as a lone parent. Thus, the worry for these men was that their absence had left their children vulnerable to bad influences, as Barry explained:

Like 14, 15-year-old lads, he could be getting the wrong impression of what is to be a man from them and I am not there to contradict him or say. I still pick it up on visits but it's not the right time….

A few men did mention that their children spoke of gaining kudos in their friendship groups because of their father’s imprisonment but they actively attempted to counteract that effect, and frequently advised their children that they should not ‘end up’ like them professing a deep shame that their children had to see them in prison.

Instead of challenging this rhetoric or at least looking more closely at its basis, it has instead been embraced by many organisations and the Farmer Review. What Knudsen (2016:363) emphasises is that correlation does not equate to causation. Whilst acknowledging that parental imprisonment is undoubtedly ‘a potentially very negative and challenging experience’, Knudsen hopes:

to discourage charities and practitioners from framing parental incarceration as causing a dramatic risk of children engaging in delinquent behaviour and inadvertently further stigmatizing this vulnerable group. (Knudsen, 2016:364)
What Knudsen (2016) is highlighting here is that prison personnel and the organisations that support prisoners’ families may be complicit in enhancing the stigma that prisoners’ children face thereby adding to any problems they face, as opposed to alleviating them. The sign in the prison highlighting the 65% figure mentioned above was clearly well-intentioned but one has to wonder about the emotional impact on the male children entering that visits hall. Thus, the legitimacy of perpetuating the rhetoric of inter-generational offending is questionable as it cannot be in the best interests of the children of imprisoned parents to add succour to their stigmatisation. Further, I argue that the focus on their role as a potential future problem is misguided as it detracts from their present, and more compelling status as rights holders which should be the priority for prisons.

**Mechanisms of Control: Children as Incentive and Earned Privilege**

What follows is an examination of the Incentive and Earned Privileges Scheme (IEP). As I have discussed in detail elsewhere (Hutton, 2017), under the IEP scheme access to family contact is framed not as a right but as a ‘key earnable privilege’ on a level with other aspects of prison life such as; access to private cash, higher rates of pay, whether prisoners can wear their own clothes and how much time they are allowed out of their cell. Prisoners are assigned to either basic (the lowest), standard or enhanced (the highest) levels contingent on how well they engage with, and adhere to, the prisons’ regime which in turn determines their visits entitlement. In short, the better behaved the prisoner, the higher the level, the more access to their children they are entitled to. This can lead to considerable differences in how much access the children of imprisoned parents can have to their parents, even when on the same ‘level’ as the table below demonstrates:

<table>
<thead>
<tr>
<th>VISITS ALLOWANCE</th>
<th>HMP ANON</th>
<th>HMP FERMINGTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>BASIC</td>
<td>6 hours per month</td>
<td>2 hours per month</td>
</tr>
<tr>
<td>STANDARD</td>
<td>12 hours per month</td>
<td>4 hours per month</td>
</tr>
<tr>
<td>ENHANCED</td>
<td>18 hours per month</td>
<td>6 hours per month</td>
</tr>
</tbody>
</table>

Table of visiting allowances at research prisons

Although recent changes have now eliminated the application of the IEP system to the more coveted family days (which allow for less regulated contact between prisoners and their children), it nevertheless dominates entitlement to ‘standard’ visits which take place in often crowded visits hall that allow for no possibility of private communications due to surveillance by staff, cameras and other visitors.

Troublingly, the Farmer Review, appeared to endorse this utilisation of prisoners’ children, accepting somewhat uncritically that for prisons in ‘crisis’ access to family contact is a crucial tool in a prisons arsenal; describing IEP as one of the ‘levers at their disposal’ as a means to control the prisoners behaviour (Farmer, 2017: 66). However, any correlation between the ratio of visits and the number of infractions committed by prisoners is disputable. Although it has been much examined (see for example Lembo (1969); Casey-Acevedo et al. (2004);
Siennick et al. (2013)), a recent systematic review by De Claire and Dixon (2017) showed that although there was some evidence of a reduced incidence of rule-breaking associated with family contact, it was by no means conclusive. Further research by Liebling (2008) challenged the effectiveness of such a rational choice based model although this research does not appear to have been considered by the Farmer Review. Adding succour to Liebling’s conclusion, this author found that success under the IEP system was more easily achievable for prisoners fortunate enough to have high levels of social capital (Hutton, 2017). Where it did incentivise prisoners to conform, its effect was to frequently inhibit prisoners from raising legitimate complaints and risk losing favour with prison staff who had power over their IEP status, rather than preventing their perpetrating violence or generally breaking prison rules (Hutton, 2017).

The IEP system can also operate to discriminate against prisoners with mental health conditions and learning disabilities, as contemplated by the Prison Service Instruction on Equality (PSI-2011-32) and IEP is utilised in a disproportionately negative manner against Black prisoners (Lammy, 2017). Clearly under the IEP system any curtailment of prisoners’ access to visits by implication limits their children’s access, for reasons beyond the child’s control. If IEP disproportionately impacts on Black prisoners and prisoners with mental health conditions and learning disabilities, then it follows that their children will be disproportionately impacted by its operation as well. This raises the possibility that the IEP system can operate in contravention of Article 2 of the CRC that children should not be discriminated against on the basis of their parents’ race, colour…national or ethnic origin…or disability.

Under the IEP system I argue that the level of contact children can receive with their imprisoned parent is reduced to a game of chance determined by the establishment their parent is placed in, and whether they are fortunate enough to have a parent who can conform to the norms that rule the IEP system. Additionally, the utilisation of family contact in the IEP system is arguably immoral. The formal framing of contact with children of imprisoned parents as a privilege to be earned by their parents is deeply dehumanising and flies in the face of the very human function that visits perform, as discussed above. Similarly, justifying this policy on the grounds that it helps under-resourced prisons control prisoners is deeply problematic as it inadvertently responsibilises children of imprisoned parents and effectively punishes them for their parents’ behaviour, echoing the rhetoric around reducing visits as a means of reducing re-offending.

The use of the children of imprisoned parents to solve the prisons’ problems also raises important questions about the extent to which their status as rights holders is undermined by the IEP system. For children of imprisoned parents’ family contact is transformed into a privilege under IEP, whilst being simultaneously prescribed as a right under the CRC and the ECHR; two contradictory positions as noted by Nelson Mandela who was subjected to a similar system during his own imprisonment:

Communication with one’s family is a human right: it should not be restricted by the artificial gradations of a prison system. (Mandela, 1994: :474)

Even any argument made that the IEP system could be justified on the grounds of maintaining the security of the prison under Article 8(2) ECHR, is undermined by the evidence base and, as I have noted elsewhere, IEP warnings can be issued for sartorial indiscretions and are often
not related to security matters relating to prisoners presenting a danger in the visits hall (Hutton, 2017). Accordingly then, this author maintains that any visits system that places the rights of the child at the forefront and had their best interests in mind, instead of the prisons, would not, indeed should not, include family contact as an earned privilege.

The ‘solution’ to reducing re-offending

Prisoners’ children are frequently positioned in policy as a key factor in reducing their parents’ future re-offending i.e. that visits from their children are a solution to the problem of recidivism. This assumption is predicated on studies that show a decreased risk of offending for prisoners where they receive visits. For example the 2013 Ministry of Justice report that found only 47% of prisoners who had received visits during their sentence re-offended within a year of release, compared to 68% of those prisoners who had not received visits (Brunton-Smith and Hopkins, 2013). This added succour to earlier studies that found a similarly ‘positive’ pattern – see Ditchfield (1994); Harper and Chitty (2005); May et al. (2008). Mears et al. (2012:910) rightly caution against the ‘assumed recidivism-reducing effect’ of visits and I have discussed elsewhere the misguidedness of assuming that every visit by a family member is necessarily a contribution to that prisoners’ future desistance from crime (Hutton, 2017). For some men I spoke to, having children almost certainly motivated them to stop re-offending (Hutton, 2019a) reinforcing the narrative that social attachments contributed to reduced recidivism (Laub and Sampson, 1993) and promoted desistance (Maruna, 2001; Petersilia, 2003). But several the men I interviewed had continued to re-offend despite having children at the time of their offending and consequent imprisonment. I mention this not to denigrate the important work done on desistance from crime but to point out that the assertion that having children is of itself a panacea to reduced recidivism is a simplistic one. In short, the message forwarded is that if visits are improved, prisoners will be less likely to offend; a so-called win, win scenario that does not emphasise enough that correlation does not imply causation.

As Codd and Scott (2010:152) so cogently noted, any narrative based around the usefulness of prisoners’ families to reducing re-offending undoubtedly reduces the children of imprisoned children to ‘tools’ for reducing re-offending or ‘unpaid informal law enforcement personnel’. Such a narrative detracts, if not outright ignores, the fact that the children of imprisoned parents are rights holders in their own right, not a means to an end for prisons. But if the rights of prisoners’ children are to be taken seriously, there is a need to consider what purpose there is in the constant linking of children’s visits to their imprisoned parents and considerations around whether those parents then re-offend or not. On the one hand, the children of prisoners will have a stake in whether their parents re-offend or not but, as noted above, the control they have over any reduced re-offending is minimal. Any narrative that frames prisoners’ children as a solution to the problem of re-offending inevitably burdens them, albeit inadvertently, with a responsibility for the future actions of their parent. A further consideration is what if the correlation between visits and reduced recidivism weakens? Does family contact lose its importance then? Will prisons think there is less purchase in pursuing an improvement of the conditions for family contact? This may of course never happen but if it does, such a pre-occupation with reduced recidivism could not help but reduce the significance of visits if the
trend moved the other way. In essence, I am questioning why it should matter so much whether visits from prisoners’ children make a difference to their parents re-offending or not? Instead, I am suggesting that the fact that prisons have a legal obligation to respect the rights of children of prisoners (and other family members) entering their establishments should be the primary focus. Finally, this pre-occupation with reducing re-offending also does a disservice to the rights of children who visit prisoners who are not necessarily the children of prisoners but other close relatives. Many of the children who visit establishments are the nieces, nephews, grandchildren and siblings of prisoners. The impact of their visits on their imprisoned loved one’s future re-offending is potentially minimal, yet the rights of these children are erased by this narrative that places so much emphasis on the parent-child relationship.

Security First?

In the previous section, I described how the children of imprisoned parents are utilised for the prisons’ ends, in a way that is not always in their best interest. In the next section, I will explore visiting conditions and the extent to which security and operational measures across the prison estate usurp the rights of the child who is visiting and are not in the best interests of the child. As discussed above, the Incentives and Earned privileges system dictates the number of visits prisoners are entitled to and ergo, the temporal boundaries of the extent to which their children’s human rights are respected too. Most, visiting times are arranged to fit the core day of the prison, not around the school times that govern the lives of children of imprisoned parents. Therefore, with the exception of school holidays, many children can only see their parents at weekends unless they are fortunate to have a parent imprisoned in an establishment that offers evening visits. Entering the prison can also be traumatic for children with lengthy and awkward administrative and security procedures (such as searching) before they reach the visiting hall, (Hairston, 1988; Richards et al., 1994) including as this author found, at some prisons, children being stamped with ultra-violet lights (Hutton, 2018). ‘Normal’ visitation consists of sitting on chairs in crowded visiting halls that children can find intimidating (Arditti et al., 2005) surrounded by other families, cameras overhead and prison staff observing (Hutton, 2016). There is a longstanding body of literature that details how difficult these visiting conditions, driven by security considerations, can be for children (Nesmith and Ruhland, 2008) reinforcing Murray et al. (2012: 4) observation that: ‘normal visitation environments do not facilitate the close contact that could reassure children of parental availability’. The IEP system can also determine the level of comfort a child may be entitled to during visits. Lord Farmer draws attention to what he describes as ‘good practice’ at HMP Parc where the differences in privilege level are literally carved out in the visiting hall:

Good practice, again at HMP Parc, can steer the careful course necessary to ensure incentives are still there to motivate prisoners. In their visits hall, there are different visit areas with different levels of physical comfort based on behaviour and other considerations. (Farmer, 2017: :66)
Thus, HMP Parc, moves beyond temporal considerations to segregate spatially based on prisoners’ behaviour. It is interesting to hear this practice described by Lord Farmer as ‘good’ as this raises the very interesting question of who is this practice good for exactly? Certainly not the children who are sat in the ‘cheap seats’ because their parent has been unable to conform to the cultural norms that ensure IEP success at the prison. Thus, even the comfort of children who visit is also employed as a mechanism of exercising control over their imprisoned loved one.

Increasingly, prisons will have dedicated ‘play’ areas in their visiting halls where younger children especially can go to play. However, the security driven rules of the prison dictate that prisoners must remain seated at all times during the visit. Accordingly, if their children want to play, they cannot do so with their imprisoned parent. The Right to Play is enshrined in Article 31(1) CRC; States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child. As Colucci and Wright (2015) highlight, this is one of the most neglected rights under the CRC. They also note the centrality of play to the ‘cognitive, social and physical’ development of children (Colucci and Wright, 2015: 97). On the face of it, having play areas in prisons may be seen to satisfy the right to play of children who visit prisons, but the truth is, they are often left in a horrible predicament. They want to be able to play with their imprisoned parents as many did before prison but security measures prevent their parents from doing so. This is a distressing circumstance for many children who do not always understand why they are unable to do so as Benjamin explained:

> just being sat and getting annoyed with myself and him when he’s asking me, ‘Dad come over here’ and I’ve told him, cos after a couple of times of telling ‘em it starts playing in your head and you’re thinking why the fuck can’t I just get up and do it? We’re in a big room, doors are shut, why can’t we walk about with us kids? It’s wrong.
> (Benjamin, father, HMP Anon)

Thus, opportunities for play in the visiting hall can be as much a source of pain as joy for children and their imprisoned loved one. This chapter argues that the standard visiting conditions that predominate above affirm Lagoutte’s (2016) suggestion that visiting practices are driven by security and not the best interests of the child. This chapter argues that the right to play should be interpreted in a more nuanced way that acts in the best interest of the child that facilitates play on standard visits. Accordingly, it is suggested here that in the prison context, the right to play should be interpreted not just to facilitate play per se but to extend to the right to play with their imprisoned parent freely.

There are two exceptions to the standard form of visiting described above; enhanced visits/family days, that allow for more relaxed interactions where children and their imprisoned loved one can move around more freely as well as overnight visits. They are closer then to respecting the child’s right to play however, as I have noted elsewhere, (Hutton, 2016), enhanced visits and family days are not a panacea. They are still subject to the constant surveillance of standard visits (and thus do not allow for privacy) and are of limited availability (often, as at my research sites in England and Wales, only able to accommodate between 10
and 20 prisoners at a time on a monthly or bi-monthly basis). Further, the operation of a family day often means that standard visits are cancelled so other children who visit prisons are precluded from visiting due to a lack of space. A further exception to the standard form of visits is an initiative at HMP Askham Grange called Acorn House that is a semi-detached house where the children of imprisoned parents can spend the night together. This facility was set up to specifically address many of the limitations with ‘standard’ visits (Raikes and Lockwood, 2011; Raikes and Lockwood, forthcoming) and emulates practice in other ECHR contracting States where overnight visitation is permitted (see Scharff Smith (2014) for a discussion of this in the Danish context). Clearly, this arrangement allows for more natural interactions, opportunities for play and gives families a chance to re-familiarise with one another pre-release. However, it is important to note this is only available in one prison in the female estate in England and Wales. Therefore, the children of imprisoned fathers are not able to benefit from this arrangement, potentially opening the prison service up to a discrimination claim on the grounds of sex under Article 2 CRC.

Conclusion

The above discussion has critiqued the legitimacy of key rationales that frame the children of imprisoned parents as resources to be utilised or problems to be solved by the prison system they inadvertently become embroiled in as a consequence of their loved ones incarceration. The instrumentalisation of children of imprisoned parents as solutions to the prisons ‘problems’ of reducing re-offending and maintaining order in establishments, via the IEP system, weakens the status of these children as rights holders under the CRC in contradistinction to the principle of the best interests of the child. Put simply, this chapter argues that the entitlement to respect for the human rights of children who visit prison should be the primary consideration for establishments, not their utility to the prison. Furthermore, as well as arguably reinforcing and fuelling the stigmatisation of children of imprisoned parents, there is an inherent misstep in the logic of prisons attempting to reduce inter-generational offending. It is essentially a case of an institution trying to fix an (alleged) problem it has had a hand in causing; if prison as a punishment was used more discriminately, then less children would be left with a gaping hole where their parent used to be. Thus, ultimately this chapter calls for the rhetoric around reducing re-offending and inter-generational offending to be minimised and instead for there to be an enhanced focus on respecting the rights of children visiting prison first and foremost. Putting aside the human rights concerns that are ignored or undermined by these rationales, the fact that the children of imprisoned parents are so readily utilised by prisons is deeply disturbing and de-humanising. What is consistently missed is the ultimate point of visits; to spend time with the imprisoned parent and/or relative that they love. A deeply human endeavour that is undermined by narratives that lose sight of that ‘aim’ and predominantly focus on how useful or potentially dangerous the children of imprisoned parents are to establishments. It is interesting that in other contexts, such as divorce, parents who try to use their children to gain control over the other parent, are widely condemned and yet, this same tactic is employed with impunity by one of the most powerful institutions in our society.
In addition to the ideological concerns raised above, this chapter argues that current ‘standard’ visiting practices confirm Prout’s (2003) assertion that adult systems expect children to bend to them and not the other way round. That standard visiting conditions are driven by security and the operational needs of prisons means there is much room for improvement before visiting practices can be truly deemed to place the best interests of the child first. In particular, I call for the abolition of the use of IEP in determining visits allowances, not least because it may have the further consequence of discriminating against the children of Black prisoners and prisoners with a disability especially. Further, there is a need for prisons to engage more meaningfully with the right to play and make play areas accessible to children and their imprisoned parents. Notwithstanding that a wider use of release on temporary Licence, or indeed not gratuitously imprisoning their loved ones in the first place would be the preferred option for this author, I call for more family days but more pertinently the extension of overnight visits across the entire prison estate adopting the model introduced as HMP Askham Grange. Encouragingly, the recent opening of an inquiry by the Joint Committee on Human Rights into the right to family life of children whose mothers are in prison represents a move in the right direction. However, that this focuses solely on the children of imprisoned mothers’ means there is still a long way to go before the rights of children of imprisoned fathers and the rights of children who visit those with whom they have a non-parent child relationship with are respected by prisons. Thus, this chapter implores prison administrations to respect the human rights of all children who visit prisons by putting the needs of children first, not prison administrations.

Notes

1 Prison Service Instructions are important policy documents that contain the ‘rules, regulations and guidelines by which prisons are run’ alongside guidance and examples of ‘best’ practice. Justice Mo. (2018) Prison Service Instructions (PSIs). Available at: https://www.justice.gov.uk/offenders/psis.

2 Emphasis added.

3 ‘anything’

4 In private discussions, it has been suggested to me that the reason for the vigour in embracing this rhetoric is not based on its empirical reality, it is instead a convenient ‘hook’ to assist organisations in gaining funding that allows them to get on with the ‘real’ work.

5 Prison Service Instruction 30-2013.

Bibliography


