

By Professor Thalia Anthony and Gemma Sentence

'The system doesn't about our Aboriginal First Nations mothers in prison

Warning:

This article contains
some distressing material
and may trigger trauma,
especially for First
Nations women.

Systemic discrimination results in the disproportionate imprisonment of First Nations mothers. Their incarceration undermines family bonds and cultural nurturing roles, and causes grief, loss and trauma for their children. Although First Nations mothers tend to be remanded for short periods or sentenced to short terms in prison, their imprisonment can have lifelong and intergenerational impacts.



care children'¹

First Nations mothering extends to relationships that include grandmothers, aunts, cousins and big sisters.² As the Deadly Connections Aboriginal organisation notes, the profound effects of imprisonment on Aboriginal children are not only derived from 'parental incarceration', but also from the imprisonment of carers in extended family and kin relations.³ In this article the terms 'mother' and 'mothering' refer to all these relationships.

This article is informed by the voices of 160 women from approximately 20 First Nations, which were recorded as part of an Australian Research Council project. We yarned with these women individually and in groups, and conducted surveys across six regional and metropolitan prisons over 13 visits while the women were remanded or serving prison sentences. The great majority of these women were mothers, primary carers and/or pregnant. The scale of this research with First Nations women in NSW prisons is unprecedented but builds on the strengths of the research model of the Social and Cultural Resilience and Emotional Wellbeing of Aboriginal Mothers in Prison (SCREAM) project.⁴ SCREAM surveyed 77 First Nations mothers in NSW prisons and 84 in Western Australia.⁵ Similar to SCREAM, we developed a First Nations women's advisory group (sista2sista). Sista2sista additionally supports First Nations women in prison and when they are released.

A key finding is that the foremost concern of First Nations mothers in prison was for their children (*jarjum*)⁶ and the well-being of their families. Evidence overwhelmingly indicates that the social, cultural, emotional and physical well-being of First Nations women and their children is best achieved by avoiding incarceration altogether. As of 1 July 2020, there is an ongoing NSW Parliamentary Inquiry into Support for Children of Imprisoned Parents that we hope will listen to the voices of First Nations women and heed the unique needs of First Nations mothers and their children.⁷

SYSTEMIC DISCRIMINATION AGAINST FIRST NATIONS WOMEN

First Nations women in Australia comprise one-third (33 per cent) of the female prison population, yet only 1.29 per cent of the general adult female population.⁸ In NSW, the figure is 32 per cent, and NSW imprisons more First Nations women (306) than anywhere else in the country.⁹ First Nations women are the fastest growing prison demographic, with rates doubling between 2009 and 2019.¹⁰ Since 2013, First Nations women sentenced to prison increased by 49 per cent, compared with a 6 per cent increase among non-First Nations women.¹¹ The vast majority of these women are imprisoned because they are denied bail and are awaiting a trial or have been sentenced for minor matters and for short terms.¹²

First Nations mothers, including those with extended mothering responsibilities, comprise 80 per cent of women in prisons.¹³ Of those, 54 per cent have children who depend on them for their basic needs.¹⁴ Two per cent of First Nations women in Australian prisons are pregnant.¹⁵ These statistics are approximately reflected in our research with the First Nations women whom we surveyed in prison. Many of the

First Nations women are single mothers. They had multiple children – some with up to ten – indicating that for every mother imprisoned, multiple children are affected.

The over-representation of First Nations mothers in prison has deep roots in a colonial system that has separated mothers from their children since its inception. From the early 1800s, First Nations mothers were taken from their families to live and work on missions, homesteads, ration depots, cattle stations and government settlements. Mothers who were not extricated from their communities and families endured the forced removal of their children, culminating in the Stolen Generations.¹⁶ Penal incarceration extends this 'colonial matrix of power' in the lives of First Nations mothers.¹⁷

THE IMPORTANCE OF FIRST NATIONS MOTHERING TO CHILDREN, CULTURE AND COMMUNITY

First Nations families suffer from being denied their mothers, sisters, aunties, daughters and grandmothers. Removing First Nations women, especially mothers, from their families and communities through imprisonment has enduring consequences for their own health and well-being and that of their families, especially their children. Mothers are not only primary caregivers, but also children's mentors, knowledge holders, cultural teachers and storytellers. One First Nations mother in a NSW prison told us that she was 'the most important person in my children's lives',¹⁸ which resonates with the role of many of the mothers we spoke with in prisons. Another mother described her role as 'necessary for holding my family together and for my children learning their culture'.¹⁹

Removing a First Nations mother or caregiver from her children can have a detrimental impact on her child's identity, well-being and relationship with family, community and culture. The loss of mothering can be especially devastating to children who are placed in out-of-home care, possibly permanently, as a result of their mother's imprisonment.²⁰ Yued-Kanyigang woman and researcher, Dorinda Cox, explains the critical effect of prison for First Nations women in terms of interrupting 'attachment to their children resulting in transmission of intergenerational trauma and further entrenching cycles of disempowerment, sometimes resulting in multiple generations of Aboriginal women from the same families incarcerated at the same time'.²¹

IMPACT OF IMPRISONMENT ON FIRST NATIONS MOTHERS AND MOTHERING

Mothers' grief, anxiety and trauma

Imprisoned First Nations mothers mourned the loss of their children and collectively described separation from their children as traumatising. Removal from their families caused them anxiety, fear and grief. They worried about their children and this fear was exacerbated for mothers whose children were taken into state care, had become involved in the youth justice system or had dropped out of school.

Fractured family and cultural relationships

Aware that their children were distressed and unsettled as a result of their imprisonment, mothers expressed grave

concern for their children and feelings of helplessness due to their inability to provide for their needs while in prison. One mother shared her concerns: 'It has affected my husband and children really bad, my husband was put on sleeping tablets, my children haven't been sleeping, missing a lot of school, my older daughter had to leave her job in [removed] to help her father'.²² Imprisoned mothers whose children had been placed in state care often did not know the whereabouts of their children or how to contact them. First Nations mothers 'grow up' the next generation, and many imprisoned mothers conveyed their worry, or experience, that their children would be taken into state care and permanently placed in out-of-home care, which occurs at disproportionate rates for First Nations mothers.²³

Intergenerational trauma was raised by mothers who fear that they would never have their children returned to them, given the state's reputation for stealing First Nations children, and that their children would end up imprisoned. One mother commented that without support her own children would end up in prison: '[we want] to get the right help and support within the community, especially so that we don't have to be concerned or worried that the next time in jail we could be sharing a cell with our kids'.²⁴

Undermining mothers' health and well-being

The experience of imprisonment is particularly harsh for First Nations mothers. They suffer from alienation from Country, community and family, confinement and lack of access to fresh air and natural landscapes, and inadequate healthcare, well-being and support services. Many have untreated physical and mental health issues, including untreated infections and self-harming as a result of imprisonment, and were unable to access their routine medication. This is reflected in stories told by First Nations women in multiple correctional centres across NSW: 'mental health only come here once a month',²⁵ and '[y]ou could be going through excruciating pain and nearly dying and they don't care'.²⁶ One First Nations woman told us that she had miscarried in prison and was not offered support by staff.²⁷

First Nations mothers felt their mothering would be affected by structural issues that would confront them on their release, including the loss of their homes, jobs and training opportunities, accumulating bills and the involvement of child protection authorities in their families. First Nations mothers told us about losing their homes and all their contents. One First Nations mother wrote: '... I lost everything my kids, my father passed away, my house, my belongings'.²⁸ We heard two stories of partners taking their lives while the First Nations mother was inside, resulting in their children being placed in out-of-home care. One partner took his life after his stepchild (the child of the imprisoned mother) was taken into state care.²⁹

DIFFICULTIES FOR FIRST NATIONS CHILDREN IN VISITING THEIR MUMS

First Nations mothers had mixed experiences and feelings about prison visits. Those who received visits from their children relished these occasions. While some enjoyed

regular visits, others were denied visits. Some women had been transported to prisons hundreds of kilometres from their family homes and were unable to receive visits or were otherwise cut off because of a lack of support or funds to transport children to prisons, which are generally not accessible by public transport. For these First Nations mothers, incarceration took them far away from their families. Yet, evidence suggests that regular contact with family significantly improves the well-being of parents.³⁰ A handful of mothers did not want to have their children visit them because of the shame associated with being in prison. The lack of designated spaces appropriate for First Nations children, including areas with play equipment and natural environments, exacerbated this reluctance. Corrective Services NSW data shows that First Nations women are the least likely to receive visits from their children.³¹

The ability of incarcerated mothers to phone their families is limited due to the payment system. Restrictions on family visits imposed in March 2020 to safeguard prisons against COVID-19 has led to the introduction of Audio Visual Link (AVL) technology to facilitate communication with families, as well as with lawyers and other supports. At the time of writing, the extent to which this technology is available to First Nations women in NSW prisons or how long it will remain in prisons is unknown. However, it is unlikely to be a substitute for physical contact between First Nations mothers and their bubs.

LACK OF JUDICIAL RECOGNITION OF THE COSTS OF IMPRISONING FIRST NATIONS MOTHERS

First Nations women consistently told us that bail and sentencing courts do not recognise or take into account their role as mothers and carers. First Nations women said that criminal courts processed them as ‘statistics’, making them feel ‘worthless’ and ‘belittled’. They described sentencing as upsetting. They felt silenced and unheard. One woman articulated the feeling as ‘suffering in silence’. Another woman described in a survey that sentencing was so horrible that she attempted to take her life afterwards. Women felt that their circumstances were not considered by courts because they were seen as ‘just another Aboriginal woman’. This brush of patriarchal racism contributed to a widespread view among First Nations women that the courts did not care about them or their children.

First Nations women in prison overwhelmingly felt that their roles as mothers were not accounted for by courts. One First Nations mother recalled her court experience: ‘Didn’t care that my kids are struggling and I was doing everything in my power to get the right help for them.’³² We heard from mothers with five, seven and ten children; women who were pregnant; mothers with toddlers and early primary school children; and grandmothers with children from several families to care of. None of them felt that either the needs of their children or their strength as primary carers were acknowledged by the courts. One mother with a terminally ill child felt that her child’s needs were being disregarded. She said that the ‘system don’t care’ that ‘my eight-year-old daughter has just been diagnosed with cancer, my other three

out of five are special needs and my youngest has autism.’³³ Courts, according to one woman, should have ‘[e]mpathy towards the impact on the women and their close family aka children and parents’. Courts, we were told by First Nations single mothers, did not help them to arrange care of their children before locking them up for the first time.

A constraint on courts exercising leniency is that any hardship to third parties must be ‘exceptional hardship’,³⁴ a benchmark that a First Nations mother rarely meets, despite her role as a cultural mentor and the foundation of her children’s lives. This legal principle has not accounted for the particular vulnerabilities and histories of First Nations mothers and children due to systemic racism in both the criminal justice and out-of-home care systems.

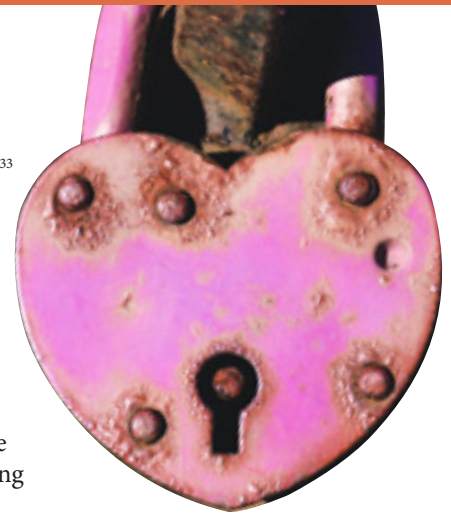
WHAT IS NEEDED?

Decriminalisation

Our research findings point to an urgent need to return First Nations mothers in prison to their families and to divert them away from the criminal justice system. Fundamentally, this requires decriminalisation of certain activities. Actions and behaviours that result in the disproportionate criminalisation of First Nations mothers – including traffic wrongs (for example, driving without a licence and unregistered vehicles), public disorder, offensive language, shoplifting and breach of orders³⁵ – should be dealt with through rehabilitative programs, the civil system and police diversion. These minor crimes target First Nations women through racial profiling and result in First Nations mothers cycling in and out of prison while the underlying issues (including poverty, housing, discriminatory policing and trauma) remain unaddressed.³⁶ Any parole or bail conditions need to account for the caring responsibilities of First Nations mothers – including taking children to school and appointments and connecting them with culture, family, community and Country – so as not to set them up to breach conditions due to a conflict of obligations.

Bail and sentencing reform

Bail legislation should be passed to ensure that courts are required to grant bail to First Nations mothers. This will remove the burden on families whose mothers are unnecessarily remanded for minor crimes and in circumstances where they will otherwise be safe. Sentencing legislation should promote non-custodial sentences, including by providing that courts incarcerate First Nations mothers only in exceptional circumstances. This would reverse the onus that is currently on mothers to prove exceptional circumstances for sentencing mitigation under the ‘hardship for third parties’ principle, and instead require the prosecution to prove that exceptional circumstances warrant imprisonment.



It is not fitting to uphold the sentencing principle that requires courts to consider the impact of a sentence of imprisonment on third parties, such as children, only in exceptional circumstances for First Nations mothers. Their lived experiences are inherently exceptional when compared to those of non-First Nations women, given that they are embedded in histories of extreme discrimination and systemic disadvantage, as well as the unique role they play in maintaining culture in their families. A First Nations mother conveyed that a ‘fair sentence’ would not ‘strip them of their motherhood and [instead] keep them in community’.³⁷

The role of First Nations organisations

In our yarning circles, First Nations women emphasised that they wanted their voices heard and their strengths acknowledged by courts. First Nations Family Reports, based on a similar model to Canadian Gladue Reports and Queensland Murri Court Narrative Reports, should be prepared by First Nations organisations in NSW. Based on interviews with the defendant, her family and community supports, the report should set out the family history, including intergenerational trauma and resilience, the needs of the children and the relationship of the mother to her children, as well as the expected impact that imprisonment and any other sentence, including community corrections orders and fines, will have on the family.

The relevant First Nations organisation tasked with preparing these reports would ideally be resourced to provide follow-up support for the family, which may involve assistance with housing, child protection interventions, visits to Country and referral to healing programs, such as occurs in Queensland and in a model being developed by the Victorian Aboriginal Legal Service in partnership with the University of Technology Sydney. One First Nations woman who was incarcerated wrote, ‘take us back to the bush or to the sea to do more black women stuff, back to the land our old ways’.³⁸ Moreover, a number of women commented that Koori sentencing courts should be available across NSW to provide a forum capable of listening to their stories and accommodating their family needs.

Community-based and owned programs

Sentence diversion and bail should be supported with First Nations women’s programs that enhance family well-being and promote healing and cultural, social and emotional well-being. These programs must be designed, owned and run by local First Nations women, in accordance with the principle of self-determination, to avoid diversion setting up First Nations women to fail in culturally unsafe environments that impose unrealistic institutional requirements.³⁹ Specialist programs for First Nations women experiencing or recovering from family violence, homelessness, trauma and complex needs are essential.⁴⁰

Prison reform

Prisons must be safer and accommodate connections between First Nations mothers and their children. There should be greater access to children in custody through phone calls,

AVL, physical visits and residential stays.⁴¹ First Nations mothers should be placed in prisons that are proximate to children. First Nations organisations should be better resourced to work with mothers in prison and support their release to their families. Families who care for children whose mothers are inside, including the many First Nations grandmothers, aunties and big sisters, also need support from First Nations organisations in regional, remote and metropolitan areas.

CONCLUSION: FIRST NATIONS MOTHERS’ RESILIENCE AND STRENGTHS

First Nations mothers feel that they are judged harshly by courts on their past, irrespective of their attempts to turn their lives around or the minor nature of their wrongful conduct. Courts deny them bail and sentence them to prison without acknowledging their achievements, including how they provide for the cultural, social and emotional needs of their children day-in-day-out.

First Nations mothers and grandmothers told us that their greatest suffering in prison was the denial of their children. At the same time, their bubs give them the most hope for building their lives after prison. Children gave them purpose. Many of their plans for staying out of prison were built on protecting their children’s lives. Children shaped post-release aspirations to reconnect with family and culture, go back to Country, get a job and help other First Nations mums. The challenge is to allow First Nations mothers to harness their strengths through a commitment to decarceration and community-based First Nations women’s supports. This involves an appreciation that First Nations mothers are the solution to promoting the well-being of their families, communities and their cultures. ■

Notes: **1** First Nations woman who participated in survey and yarning. **2** S Lohar, N Butera and E Kennedy, *Strengths of Australian Aboriginal cultural practices in family life and child rearing*, Child Family Community Australia, Paper No. 25, Australian Institute of Family Studies (September 2014) <<https://aifs.gov.au/cfca/publications/strengths-australian-aboriginal-cultural-practices-family-life-and-child-r->>. **3** Deadly Connections, *Submission No. 17 to the New South Wales Parliamentary Inquiry into Support for Children of Imprisoned Parents*, 28 February 2020, 2. **4** See J Sherwood, S Lighton, K Dundas, T French, D Link-Gordon, K Smith and T Anthony, ‘Who are the experts here? Recognition of Aboriginal women and community workers in research and beyond’, *AlterNative*, Vol. 11(2), 2015, 177–90. **5** EA Sullivan, S Kendall, S Chang, E Baldry, R Zeki, M Gilles, M Wilson, T Butler, M Levy, S Wayland, P Cullen, J Jones and J Sherwood, ‘Aboriginal mothers in prison in Australia: A study of social, emotional and physical wellbeing’, *Australian and New Zealand Journal of Public Health*, Vol. 43(3), 2019, 241–47 at 241. **6** This term was commonly used by First Nations women participants to refer to their children; it is originally derived from Bundjalung language. **7** See <<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2572>>. **8** Australian Bureau of Statistics, *Prisoners in Australia*, Cat. 45170 (2019) Table 21. **9** New South Wales Custody Statistics, *Quarterly Update December 2019*, NSW Bureau of Crime Statistics and Research, 25, Table 2.1.17. **10** Australian Bureau of Statistics, *Prisoners in Australia*, Mo. 451707 (2009–2019). **11** L Phelan, M Sotiri and M Scott, *Profile of women in prison in NSW, Part A: A snapshot, Keeping Women Out of Prison (KWOOP)* Sydney, March 2020, 3. **12** *Ibid.* **13** Sullivan et al, above note 5, 242. **14** Australian Institute of Health and Welfare (2019) *The health of Australia’s prisoners 2018*, Cat. No. PHE 246 (Canberra: AIHW) 14. **15** *Ibid.*, 74.

16 T Anthony, G Sentance and L Bartels, 'Transcending colonial legacies: From criminal justice to Indigenous women's healing' in L George, AN Norris, A Deckert and J Tauri (eds), *Neo-colonial Criminal Justice: The Mass Imprisonment of Indigenous Women* (Palgrave, 2020). 17 W Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Durham, NC: Duke University Press, 2011) 8–9. 18 First Nations mother who participated in survey and yarning. 19 Ibid. 20 Australian Law Reform Commission (ALRC), *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Summary Report No. 133, December 2017, 10. 21 D Cox, *Incarceration of Indigenous women*, Submission No. 120 to the ALRC Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, 2017, 1. 22 First Nations Woman who participated in survey and yarning. 23 First Nations parents are ten times more likely than non-First Nations parents to have their children placed on care and protection orders or in out-of-home care. Australian Institute of Health and Welfare, *Child protection Australia 2016–17*, Cat. CWS 63 (Canberra, 2019). 24 First Nations woman who participated in survey and yarning. 25 Ibid. 26 Ibid. 27 Ibid. 28 Ibid. 29 Ibid. 30 T Bartlett, 'Supporting incarcerated fathers: An exploration of research and practice in Victoria, Australia', *Probation Journal*, Vol. 66(2), 2018, 201–18 at 208, 210. 31 Cited in SHINE for Kids, *Submission No. 10 to the New South Wales Parliamentary Inquiry into Support for Children of Imprisoned Parents*, 28 February 2020, 18. 32 First Nations mother who participated in survey and yarning. 33 Ibid. 34 *R v Caradonna* (2001) 118 A Crim R 312, [25]–[26]; *R v Edwards* (1996) 90 A Crim R 510. 35 P MacGillivray and E Baldry, 'Australian Indigenous Women's Offending Patterns', *Indigenous Justice Clearinghouse*, Brief 19 (2015) 3, 10. 36 ANU, *Racial profiling report provided to Indigenous incarceration inquiry* (10 October 2017) <<https://www.anu.edu.au/news/all-news/racial-profiling-report-provided-to-indigenous-incarceration-inquiry>>; ALRC, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report No. 133, December 2017, 353, 451, <<https://www.alrc.gov.au/wp-content/uploads/2019/08/>

[final_report_133_amended1.pdf](#)>. 37 First Nations woman who participated in survey and yarning. 38 Ibid. 39 Human Rights Law Centre and Change the Record, 2017, 35. 40 Examples of First Nations women's organisations that provide healing and diversion programs include the Waminda South Coast Women's Health and Welfare Aboriginal Corporation and Mudgin-gal ('Women's Place') in inner-city Sydney. Both Waminda and Mudgin-gal have been involved in our sista2sista support group for First Nations women in prison. 41 The Mothers and Children program in NSW is available at Emu Plains and Parramatta prisons, which enables a select number of sentenced mothers to have their children in custody. This should be expanded (including to youth detention) and developed in a more culturally safe framework. See Corrective Services NSW, *Programs for women offenders*, <<https://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/programs/women-offenders/women-programs.aspx>>, viewed 1 June 2020; JR Walker, E Baldry and EA Sullivan, 'Residential programmes for mothers and children in prison: Key themes and concepts', *Criminology & Criminal Justice*, 2019, 1–19.

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