1. Introduction

1.1 Families Outside is a national independent charity that works on behalf of children and families affected by imprisonment in Scotland. We do this through provision of a national freephone helpline for families and for the professionals who work with them, as well as through face-to-face support, delivery of training, and development of policy and practice. Children and young people are central to our work, as the impact of a family member’s imprisonment equates with bereavement and increases a child’s risk of poverty, failure in school, victimisation, mental health issues, and subsequent offending, among other risks.

1.2 Families Outside welcomes the compatibility with the Data Protection Act in relation to information sharing highlighted in the Children and Young People (Information Sharing) (Scotland) Bill. However, the Bill raises some fundamental questions for our work that require clarification. We are happy to discuss these concerns in more detail, should the Committee require additional information.

2. Criminal Justice (Scotland) Act 2016

2.1 Paragraphs 2 and 3 of section 107 of the Criminal Justice (Scotland) Act 2016 states that, when someone goes to prison, Scottish Ministers must ensure that the person is asked about any children they have, and that Ministers must share this information with the service provider. Paragraph 4 further requires the service provider to be notified of the identity of any other children.

2.2 The requirement in the legislation to share information about a parent’s imprisonment with the child’s Named Person stemmed from evidence gathered in a Private Member’s Bill from Mary Fee MSP.¹ This evidence included acknowledgment that the Named Person was well-placed to assess the likely

impact on a child when a parent goes to prison and to provide or arrange support accordingly, whereas prison staff and other justice professionals – who would have relatively limited (if any) contact with the rest of the family - were not best suited to make such an assessment. The legislation therefore imposed a requirement on Scottish Ministers to share information about a parent’s imprisonment so that the Named Person could use this information to determine the appropriate response, or indeed whether a response were needed.

2.3 At first glance, this mandatory requirement in the Criminal Justice (Scotland) Act 2016 to share information with the Named Person appears to be incompatible with the revised provisions in the Children and Young People (Information Sharing) (Scotland) Bill. It also contradicts the spirit of the change to sections 23 and 26 of the Children & Young People (Scotland) Act 2014, no longer to impose duties to share information. The question is whether a parent’s imprisonment qualifies under section 26, paragraph 3 as information that could “promote, support or safeguard the wellbeing of the child or young person” and therefore passes the “wellbeing test” conferred in sections 23 and 26.

3. The particular case of children with a family member in prison

3.1 Imprisonment of a household member is one of ten Adverse Childhood Experiences (ACEs) known to have long-term negative effects on health and wellbeing. The short-term, immediate impact of a family member’s imprisonment – the loss of income, risk to housing, possible change in carer necessitating a change of school, victimisation from others, vilification in the press, the traumatic and sudden loss of a family member akin to bereavement but without support – is enough to cause concern for a child’s wellbeing. Despite this, no agency has responsibility for the wellbeing of children as a whole who experience this. No one currently asks about them on a systematic basis, and no local authority can provide definitive information about how many children in their area have experience of a family member in prison.

3.2 The consequences of a household member’s imprisonment, despite being an ACE, do not necessarily make them a child protection issue. It does however make them a potential wellbeing issue. Justice professionals are not best placed to assess whether a person’s imprisonment is likely to be detrimental to a child’s wellbeing. They would therefore need to share the information with someone in a position to make that assessment.

3.3 A number of questions arise regarding how or if this information should be shared. Justice professionals in a position to gather and share this information may struggle 1) to elicit enough information from the person in prison to identify

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the relevant Named Person (many of whom have significant trust issues and will not be keen to share detailed information about their children to a state authority), and 2) to contact the child for consent. Further, ownership of the information in order to obtain consent is not clear.

4. **Whose information is it?**

4.1 Our understanding is that decisions in court are technically a matter of public record, and cases are often reported in the press. The fact of someone’s imprisonment is therefore information that is likely to be publically available.

4.2 This does not mean, however, that someone in prison, or their family, would wish to share this information with others. The stigma of imprisonment remains considerable, and families often work hard to keep the fact of the imprisonment from others – often especially from their children. Research consistently shows that children cope better when they know the truth (in age-appropriate terms) about their family member’s imprisonment, so that they can ask questions and receive information and support. The difficulty is that parents and carers commonly withhold this information, with the best of intentions but possibly contrary to the child’s best interest. Again, the Named Person is well placed to assess the likely impact of a family member’s imprisonment on a child, and to discuss this with the remaining family.

4.3 An important question about the sharing of information with the Named Person in this case is whether the information belongs to the person in prison, or whether the information also belongs to the child. Imprisonment of an adult is information about the adult rather than about a child, but it is information that may affect a child. Article 2 of the UN Convention on the Rights of the Child prevents a child being discriminated against on the basis of the status of the parent, but the fact of a parent’s imprisonment is information pertaining to that child, and potentially to the child’s wellbeing. So, who is the “data subject” who needs to give consent to the processing of the information?

4.4 The question of ownership of data is not specific to children of prisoners. Children of prisoners do however provide an important test case for how information sharing under the Bill might work. Professionals in the adult justice system are unlikely to consider, or to be in a position to determine, whether a child requires a child’s plan as a result of a family member’s imprisonment. If they did, they would need to consult with the Named Person – by definition

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4 The Scottish Court Service is not a listed authority under the terms of the Children & Young People (Scotland) Act 2014. However, Police Scotland and the Scottish Prison Service are.
requiring the sharing of information about the person’s imprisonment. With the impact of imprisonment so serious as to qualify as an Adverse Childhood Experience, ignoring the fact that someone has a child is not an acceptable way around this.

5. **Conclusion**

5.1 As an organisation with a very specific remit in relation to children and families affected by imprisonment, we recognise that our evidence is similarly specific. In saying this, the broader principles and concerns around the sharing of information are particularly pertinent to this group, with the question of ownership of data and challenges around consent at the fore.

5.2 With so much potentially at risk when the wellbeing needs of children affected by imprisonment are missed, Families Outside is keen to support the Committee, alongside the Scottish Government, to identify a way forward that ensures the best interests of children with the least possible interference with their (and their family’s) right to privacy. We commend the subject of children of prisoners as a test case for this discussion.

5.3 We appreciate the opportunity to comment and are happy to engage in further discussion where this would be helpful.

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