



Doing Time v's Spending Time

There is now a presumption under the Family Law Act 1975 that both parents have shared parental responsibility regarding the long term care and welfare of the children. Once that presumption is established, the Court must consider whether it is in the best interests of the children for them to spend equal or significant and substantial time with each parent.

That presumption will not always apply however. In the recent case of Granger & Clinton, the father of three young children (born 1998 and the twins in 2005) was serving a sentence of imprisonment until November 2012. The Court held that the mother should have sole responsibility for the children and that the children were not to visit their father in prison.

In Granger & Clinton the Court banned visits because –

- the father had spent most of his adult life in prison and had only one brief visit with the children in the last four years since separation;
- in relation to the two youngest children, the bond between them and their father was non-existent; and
- it would be difficult to develop a relationship between the children and their father particularly as the children would be subject to the trauma of body searches and sniffer dogs when visiting their father in prison.

With issues relating to children, the most important question always is - what is in the best interests of the children? Weighing up all the factors, the Court in Granger & Clinton felt that the emotional and psychological damage to the children of visiting their father in prison would outweigh any benefit to them of visiting him.

This decision does not mean that children will no longer be able to visit a separated parent in prison. In every case the Court look will look at a range of factors including-

- the crime and whether it involved violence to a family member;
- the length of the sentence;
- the particular prison and its environment and policies;
- the views of the children; and
- what the relationship was like between the children and the parent before prison.

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