

Children separated from a parent in prison

Preliminary Report and ideas for Council of Europe Draft Recommendation

Summary

Research indicates that dependent children with a parent in prison are at significantly greater risk of suffering multiple adverse effects if support interventions are lacking.¹ Evidence-based studies suggest that regular quality contact with an imprisoned mother or father can help promote healthy development and resilience in children (Coping 2012, Poehlmann 2010, Murray 2005). Studies also point to the need for positive interventions for imprisoned parents to foster agency as a parent during their incarceration. Most European prisons do not provide appropriate facilities for children to spend quality time with their imprisoned parent, and children's best interests often are secondary to security concerns.

The impact of a parent's incarceration on children's lives is affected by the operation of prisons and criminal justice systems. This report argues that children's rights and needs should not be subservient to security concerns, and that provisions for quality contact between children and their imprisoned parent need to be systematised throughout Europe using a holistic approach. This includes:

1. Taking non-custodial remand measures and sentences in appropriate cases wherever possible when a child's sole or primary carer may be imprisoned as a result of preventive detention or sentencing decisions.
2. Fostering the relationship between the child and an imprisoned parent by ensuring appropriate visits facilities, as well as visiting hours that do not interfere with school attendance.²
3. Authorising visits between a child and their imprisoned parent in appropriate conditions during the first week following incarceration, and on a regular basis from then on.
4. Systematising support for prisoner-parents to enable them to be responsible parents and effective non-violent role models and thus contribute to their child's healthy development.
5. Implementing mandatory training for all prison personnel, particularly those who have front-line contact with children.

¹ Jones, A. D., (ed.). (2013). *Children of Prisoners: Interventions and mitigations to strengthen mental health*. Huddersfield: University of Huddersfield.

² Memorandum of Understanding signed between the Italian Minister for Justice, the Italian Ombudsman for Childhood and Adolescence and Bambinisenzasbarre ONLUS (2014), article 2.6: Visits are organised over six days a week, allowing at least two afternoons so as not to prevent children from attending school. Visits are also to be scheduled on Sundays and public holidays.

I. Draft recommendation

1. The Council of Europe Convention on Contact concerning Children (2003) specifies and reinforces the basic right of children and their parents to maintain contact, taking into account Article 9 of the United Nations Convention on the Rights of the Child (1989) which provides for the right of a child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except when this is contrary to the child's best interests. States have a positive obligation to facilitate these contacts.³

2. Despite this, appropriate prison-based facilities and policies are lacking in any systematised way for the estimated 2.1 million children separated from a parent in prison on a given day each year in Council of Europe member states.⁴

3. Experts agree that separation due to parental incarceration can have a long-term adverse impact on children, including feelings of abandonment, impairment of attachments to others, emotional maladjustment and personality disorders, and that quality contact with the parent can help mitigate these difficulties. It is also recognised that most prison environments are lacking appropriate facilities and policies to allow contact and can be a deterrent to children visiting an imprisoned parent.⁵

4. In view of the adverse effects of imprisonment of parents on dependent children, the Assembly recommends that the Committee of Ministers invite member states:

i. when possible, to use community-based penalties for parents of dependent children and to avoid the use of prison custody⁶;

ii. to offer the possibility of home leave to allow the imprisoned parent to be present during significant moments in children's lives, especially if children are minors; these include, *inter alia*, birthdays, first day of school, recitals, graduation;

iii. to ensure that all prison waiting areas and prison visit rooms are equipped with age-appropriate play facilities and resources such as bottle warmers and changing tables for toddlers;

iv. to organise regular prison visits in settings that foster quality contact, including physical contact; help strengthen the relationship between parents and their offspring; and offer opportunities for children and imprisoned parents to experience ordinary family life, such as having meals or doing homework together with children; to also

³ *Hokkanen v Finland*, 23 September 1994.

⁴ COPE network extrapolation using World Prison Brief figures and based on a 1999 study undertaken by the French institute for statistics, INSEE, which determined a parenting rate of 1.3 children per male prisoner.

⁵ *Horych v Poland*, 17 April 2012.

⁶ Community sentences can include probation, community service, restorative measures like mediation and compensation to victims, or suspended prison sentences which only come into force if further offences are committed. In reference to avoiding the use of prison custody when dependent children are involved, see: South African case *S v M* (CCT 53/06) [2007] ZACC 18.

organise open days in prisons and extended prison visits for children and parents, without considering these additional contacts with children as “rewards” granted on the basis of the prisoner’s good behaviour;

v. to facilitate all communication between children and their imprisoned parents, including the opportunity for children to contact imprisoned parents, via telephone, video conferencing and Skype;

vi. to recognise that security measures should never prevail over children’s best interests to quality contact with their parent, the primary concern being the welfare of the child while ensuring that security can be offered to the public;

vii. to implement mandatory training modules for prison personnel who have frontline contact with children visiting prisons to gain better understanding of the impact of parental incarceration on children and how they can support child visits; and for all prison personnel on the ways in which they can support imprisoned parents to enable them to be responsible, effective caregivers;

viii. to recognise that fostering prison policies that help preserve the child-parent bond promotes the social reintegration of prisoners, which Assembly Recommendation 1741 (2006) highlights as an important factor when assessing the functioning of democracy in Council of Europe member states;

ix. to develop appropriate guidelines so that courts recognise the need for special consideration when dealing with cases where dependent children are affected by the sentencing of a parent, consider alternatives to custodial sentences for parents of dependent children when possible and when custody is required, consider the potential impact of parental incarceration on dependent children when sentencing;

x. to ensure that the choice of establishment for the detention of a parent with dependent children takes into account the need to guarantee the possibility of direct contact between child and parent during his/her stay in prison; and to recognise that the financial burden of traveling great distances to visit imprisoned relatives can be a hardship for families;

xi. to report back on the progress made with respect to these recommendations by the year 2020.

II. Explanatory memorandum

1. This report examines how parental incarceration can have adverse effects on children and the relationship with their imprisoned parent, particularly young children, and proposes a holistic approach to supporting the child-parent bond.

2. The main conclusion of this report is that prison has adverse effects on the relationship between children and their imprisoned parent, particularly when policies and support systems are inadequate. Opportunities for quality contact and the availability of support interventions help mitigate the adverse effects of parental incarceration on children. The suggestion is to systematise a holistic approach to

working with children with imprisoned parents—implementing policies and support systems for children and prisoner-parents that safeguard a child’s healthy development.

International law

1. Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Optional Protocol to that Convention on the establishment of a system of regular visits by international and national bodies to places of detention state:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

2. The four General Principles of the UN Convention on the Rights of the Child (UNCRC) are central to ensuring the implementation of children’s rights, including the rights of children separated from an imprisoned parent.

Article 2 states:

Ensuring all children’s rights without discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child’s parents

Article 3 states:

Ensuring that the best interests of children be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.

Article 6 states:

Ensuring the survival and development of the child.

Article 12 states:

Ensuring that children (as individuals and as a group) have the right to express their views on matters of concern to them.

3. Beyond the General Principles,

Article 9(1) states:

Children shall not be separated from their parents except where it is necessary to ensure their best interests are protected

Article 9(3) states:

Where children are separated from their parents, it is crucial that they maintain personal and direct contact with both parents on a regular basis.

Article 31 states:

Every child has the right to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

In signing the UN Convention on the Rights of the Child, States Parties committed themselves to guaranteeing all children, regardless of the legal status of their parents, all rights enshrined in the Convention, including the right to contact with a parent. This commitment should also apply to children who are separated from an imprisoned parent.

4. The European Convention on Human Rights, Article 8 states:

Everyone has the right to respect for his private and family life, his home and his correspondence.

5. UN Member States have committed to basic minimum standards under the UN Standard Minimum Rules for the Treatment of Prisoners (revised in 2015). This includes specific reference to children as follows:

Rule 7(f) states:

collection and recording data of family members including names, ages, location, and custody or guardianship status of children;

Rule 43.3 states:

disciplinary or administrative sanctions shall not include prohibition of family contact;

Rule 58 states:

regular communication with family shall include telecommunications, electronic, digital, and other means where available, and by receiving visits;

Rule 59 states:

Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation;

Rule 75 states:

standard of education and training for prison staff shall be tailored to their general and specific duties;

Rule 88.2 states:

There should be in connection with every prison social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his or her family and with valuable social agencies;

Rule 106 states:

special attention shall be paid to the maintenance and improvement of relationships between a prisoner and his/her family where this is in the best interests of both;

Rule 107 states:

from the beginning of sentence, encouragement and provision of assistance to maintain or establish relations with persons or agencies outside as may promote rehabilitation and the best interests of the family.

6. The European Prison Rules as amended by the Council of Europe in 2006:

Part I

8 states:

Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.

Part II

24.1 states:

Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons

24.4 states:

The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

24.7 states:

Whenever circumstances allow, the prisoner should be authorised to leave prison either under escort or alone in order to visit a sick relative, attend a funeral or for other humanitarian reasons.

Part IV

60.4 states:

Punishment shall not include a total prohibition on family contact.

Part VIII

107.4 states:

Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.

7. The Council of Europe's 1973 Resolution (73)5 on Standard Minimum Rules for the Treatment of Prisoners:

Article 37 states:

Prisoners shall be allowed to communicate with their family and all persons or representatives of organisations and to receive visits from these persons at regular intervals subject only to such restrictions and supervision as are necessary in the interests of their treatment, and the security and good order of the institution.

8. It seems clear that a child's inability to maintain quality and regular contact with their parent as a result of separation due to incarceration of the parent is contrary to international law.

The welfare of the child

9. The primary consideration must be the welfare of the child.

10. Prison is not a healthy environment for children. Imprisoned mothers and fathers are inevitably under stress, prisons tend to be noisy and privacy is difficult. Many prisons receiving children on prison visits have few specially trained staff, inadequate visits facilities and poor play facilities. In some prisons, physical contact between children and their imprisoned parent is restricted. There are few opportunities for children and parents to experience ordinary family life. The children have little opportunity to strengthen their bond or form relationships with their fathers or mothers. These negative conditions can dissuade children from visiting a parent in prison and jeopardise a child's healthy development.

11. A psychological study of children separated from a parent in prison in four European countries found that 25% of prisoners' children are at greater risk of mental health difficulties, if adequate support is unavailable.

12. Studies show that regular, direct contact with an imprisoned parent helps promote resilience in children.⁷

13. Societal attitudes are important. The Project Metropolitan study in Sweden and the UK (2007) found that more family friendly prison policies and more sympathetic public attitudes toward crime and punishment acted as protective factors for children with imprisoned parents. This is why advocacy efforts such as those carried out by Children of Prisoners Europe must accompany efforts to implement policies that support children; changing attitudes in the long-term.

Practice across Europe

A look at some European-level developments

14. In 1989, the European Parliament passed a resolution (document A-2-51/89) on women and children in prison. This recognised that women in prison form a special category who need specific legal protection and urged member states as a matter of urgency to investigate and implement a policy of alternatives to custodial sentencing.

15. In 2008, the European Parliament adopted a resolution on the situation of women in prison and the impact of the imprisonment of parents on social and family life (2007/2116(INI)), as put forward by the Committee on Women's Rights and Gender Equality.

16. In 2010, the EU-funded transnational study "Children of prisoners: Interventions and mitigations to strengthen mental health" examined the needs of children affected by parental incarceration in Sweden, Germany, Romania and the UK; children in the four countries participated in the study (n=984).

17. The Council of Europe Strategy on the Rights of the Child (2016-2021) recognises children with imprisoned parents as one of society's most vulnerable and marginalised groups of children, requiring protection against exclusion and discrimination.

18. In 2016, ten Members of the European Parliament sponsored a Written Declaration ([P8_DCL(2016)0084]) on the protection of children with imprisoned parents before the parliament under Rule 136 of the body's Rules of Procedure.

A look at some national-level practice and policy developments (non-exhaustive)

19. In Italy, since the adoption of a Memorandum of Understanding for children affected by parental incarceration in 2014 (renewed in 2016), signed between the Italian Justice Ministry, the Children's Ombudsman's Office and NGO Bambinisenzasbarre, 95% of Italian prisons now have child-friendly visiting rooms.

⁷ Poehlmann, J., Dallaire, D., Loper, A. B., Shear, L. D. (2010). Children's contact with their incarcerated parents: Research findings and recommendations. *American Psychologist*, 65(6), 575.

20. In Sweden, prisoners participate in group parenting courses, known as “study circles”, which are led by prison officers with special training. Furthermore, mandatory “Child Talk” programmes are implemented in all Swedish prisons: NGO Buff meets with all imprisoned parents at the onset of their sentence to discuss their children and how to maintain contact.

21. In France, imprisoned parents are authorised to follow their children’s school progress as per *Circulaire n° 94 -149 du 13 avril 1994 relative au contrôle de la scolarité des enfants naturels ou légitimes par leurs parents*. In addition, prisoners can spend from six to seventy-two hours with their dependent children and another family member or relative, without supervision, in a Unité de Vie Familiale.

22. In the Netherlands, exceptional visits for children and imprisoned parents are mandated by the Justice Ministry so as not to interfere with school hours.

23. In Ireland, the government has explicitly committed to ensuring adequate access by children to an imprisoned parent in its National Policy Framework for Children 2014-2020: Better Outcomes, Brighter Futures, which provides for the development and implementation of policy and services for children and young people. The government recognises the stigma and life disruption experienced by many children and young people on the imprisonment of a parent, and commits to:

3.22 Ensure adequate access by children to an imprisoned parent, in a child-friendly setting. (Department of Justice and Equality, DJE)

24. In England and Wales - Guidance for sentencers to encourage them to check the immediate care arrangements for dependent children at the point of placing a parent/carer in custody has been re-issued to all courts in England and Wales. In addition, certain prisons in England and Wales have designated Family Engagement Workers. Recent results of the Cambridge University’s Institute of Criminology’s evaluation of charity Pact’s Family Engagement Service (2016), found evidence that the service, which involves specialist family workers operating inside prisons, improves the emotional well-being of prisoners, motivates improved compliance with the prison regime. The study, “Bridging the Gap”, revealed an important link with reducing emotional distress, self-harm, violence and disruptive behaviour, as well as a link between improved family relationships and an increase in hope for the future.

25. In Norway, every prison establishment has a designated Children’s Ambassador monitoring the provisions for the needs of children visiting their relatives in prison.

26. In Northern Ireland, prisoners at H.M.P. Magilligan are given access to Skype for personal video calls to family in a move to foster rehabilitation and reintegration back into their family and community.

27. In Schleswig-Holstein (Germany), the Enforcement of Prison Sentences in Schleswig-Holstein and the Establishment of Legal Enforcement Data Protection bill (*Gesetz über*

den Vollzug der Freiheitsstrafe in Schleswig-Holstein und zur Schaffung eines Justizvollzugsdatenschutzgesetzes 1691/2016, 1 September 2016⁸), states:

(1) Family support programmes shall provide assistance to prisoners in coping with their family situation, in maintaining family relations and in exercising their parental responsibilities, including through counselling and parenting support. Children and partners of prisoners may be involved in planning this support.

(2) In agreement with the local Youth Office or relevant public authority, the prison shall support the relationship between prisoners and their dependent children, in particular where the children are in state or foster care.

(3) Suitable premises shall be made available for visits.

The way forward

To be developed.

⁸ Gesetz über den Vollzug der Freiheitsstrafe in Schleswig-Holstein und zur Schaffung eines Justizvollzugsdatenschutzgesetzes 1691/2016, 1 September 2016, paragraph 24

APPENDIX

Country	Prison population	Prison population rate per 100,000	Number of children separated from an imprisoned father (extrapolation)	Number of children separated from an imprisoned mother (extrapolation)
Belgium	12,126	108	15,763	545
Croatia	4,741	108	6,163	307
Czech Republic	16,257	154	21,134	1,999
Denmark	4,091	73	5,318	232
Finland	3,134	58	4,074	296
France	62,443	98	81,175	3,134
Germany	64,379	79	83,692	5,029
Greece	12,479	111	16,222	720
Ireland	4,068	88	5,288	204
Italy	64,835	106	84,285	3,650
Luxembourg	656	122	787	46
Netherlands	13,749	82	17,873	950
Norway	3,649	72	4,743	271
Romania	33,015	155	42,920	1,656
Slovenia	1,357	66	1,764	65
Spain	68,220	147	88,686	6,988
Sweden	6,364	67	8,273	507
Switzerland	6,599	82	8,578	421
United Kingdom				
England/Wales	84,430	148	109,759	5,278
Northern Ireland	1,851	101	2,406	57
Scotland	7,855	147	10,211	583
Russian Federation	681,600	475	886,080	76,960

Source: Children of Prisoners Europe, based on International Centre for Prison Studies data: World prison population list (10th edition 2013).

Note: This extrapolation uses a demographic “parenting rate” of 1.3 offspring per offender, based on the results of a 1999 study conducted by France’s national statistics institute INSEE as part of a national census, which included seventeen hundred male offenders. The figures for the prison populations vary with the rate of imprisonment in each nation, and do not therefore correlate with the size of the population at large. Based on figures for the countries in the table representing data for 2013.

<http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/world-prison-population-list-2005.pdf>

Additional bibliography

Ayre, L., Philbrick, K. & Lynn, H. (2014). *Children of Imprisoned Parents: European Perspectives on Good Practice*. Montrouge: Children of Prisoners Europe

Jones, A.D. (ed.). (2013). *Children of Prisoners: Interventions and mitigations to strengthen mental health*. Huddersfield: University of Huddersfield.

Murray, J. (2005). The effects of imprisonment on families and children of prisoners. In A. Liebling. & S. Maruna (Eds.), *The effects of imprisonment* (pp. 442-492). Cullompton, Devon: Willan.

Murray, J., Janson, C.-G., & Farrington, D.P. (2007). Crime in adult offspring of prisoners: A cross-national comparison of two longitudinal samples. *Criminal Justice and Behavior*, 34(1), pp. 133-149.

Poehlmann, J., Dallaire, D., Loper, A. B., & Shear, L. D. (2010). Children's Contact With Their Incarcerated Parents: Research Findings and Recommendations. *The American Psychologist*, 65(6), 575-598.

Shaw, R., (1992), *Prisoners' children: what are the issues?*. Routledge