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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Cooperation
(PCCP)

**Draft Recommendation CM/Rec(2018)XX of the Committee of Ministers
to the member States concerning children of imprisoned parents**

By
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The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, in particular through harmonising laws on matters of common interest;

Considering the significant number of children whose parents are detained in the prisons in its member States;

Reaffirming that children with imprisoned parents are entitled to the same rights as all children;

Recognising the obstacles to maintaining ordinary family relationships caused by the imprisonment of a parent and the difficulties which these children and their parents may face on account of such factors as lack of quality family contact, stigma and financial, practical and psychological consequences;

Acknowledging the impact of imprisonment of a parent on children and the fact that prison is not a healthy environment for children;

With a view to alleviating any possible adverse impact of a parent's imprisonment on children and on parental competency, with a view to protecting child development and fostering family reunification; and recognising that such children are considered to be vulnerable and consideration of their needs and rights forms part of the Council of Europe Strategy on the Rights of the Child 2016-2021 and should form part of cross-sectorial, multidisciplinary national child protection and welfare strategies;

Convinced that contact between children and their imprisoned parent can positively impact the child, the imprisoned parent, prison staff and environment, and ultimately society in general and that respect for the rights and needs of individual children and the quality of contact with their imprisoned parents is compatible with ensuring safety, security and good order in prison;

Considering that account should be taken of the special needs of children and their imprisoned parents in order to provide them with opportunities comparable to those of other children and parents;

Taking into account the following Council of Europe legal instruments:

- Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);
- Council of Europe Convention on Contact concerning Children (ETS No 192).
- Convention on the Transfer of Sentenced Persons (ETS No. 112);
- Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167);
- Recommendation Rec(97)12 on staff concerned with the implementation of sanctions and measures
- Recommendation Rec(92)17 concerning consistency in sentencing;
- Recommendation Rec(93)6 concerning prison and criminological aspects of the control of transmissible diseases including aids and related health problems in prison;
- Recommendation Rec(2003)22 on conditional release (parole);
- Recommendation Rec(2006)2 on the European Prison Rules;
- Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;
- Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures;
- Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules;
- Recommendation CM/Rec(2012)12 concerning foreign prisoners
- Recommendation CM/Rec(2014)4 on electronic monitoring;
- Recommendation Rec(2017)3 on the European rules on community sanctions and measures;
- Recommendation PACE Rec(2000)1469 concerning Mothers and babies in prison

Taking also into account the relevant case-law of the European Court of Human Rights:

Bearing in mind:

- The United Nations Convention on the Rights of the Child and the European Convention on Human Rights
- The United Nations Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners (1985);
- The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Resolution 2010/16, Bangkok Rules);
- The UN Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules)
- The UN CRC report and recommendations of the day of general discussion on “children of incarcerated parents” (2011);
- Charter of Fundamental Rights of the European Union;
- The European Union Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;
- The European Union Council Framework Decision 2009/829/JHA on the application, between member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention;

Considering that penal policy, sentencing practice and the overall management of prisons in member States need to be guided by commonly agreed standards and principles related to the support and protection of children with imprisoned parents;

Agreeing that additional ethical and professional standards need to be developed in order to guide the national authorities, including judges, prosecutors, prison administrations, probation agencies, police and child welfare and other support agencies in respecting the rights and needs of children and their imprisoned parents;

Taking into account the constitutional principles, legal traditions and the independence of the judiciary in its member States;

Recognising that a range of authorities and agencies in contact with children who may be affected by parental imprisonment and that such bodies are in need of a coherent set of guiding principles in line with Council of Europe standards,

Recommends that governments of member States:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation;
- ensure that this recommendation and the accompanying report to its text are translated and disseminated as widely as possible and more specifically to all relevant authorities, agencies, professionals and associations which come into contact with children of prisoners, as well as to children and their imprisoned parents.

I. Definitions, underlying values and scope

Definitions

For the purpose of this recommendation:

- a. **child** refers to every human being below the age of eighteen years unless under the law applicable to the child, an independent legal status is attained earlier.
- b. **infant** refers to a very young child born and/or living in prison with a caregiving parent.
- c. **imprisoned parent** refers to a parent (as defined by national law) who is detained in custody for being suspected of or for having committed an offence.
- d. **prison** refers to an institution reserved primarily for the detention of suspects or of sentenced persons.
- e. **judicial authority** refers to a court, a judge or a prosecutor.

Underlying values

This recommendation is written on the basis that:

- in all matters concerning children, children's rights and best interests should be of primary consideration bearing also in mind that children of imprisoned parents have committed no crime and should not be treated as being in conflict with the law as result of the actions or alleged actions of their parents.
- all children, without discrimination and regardless of the legal status of their parents, are guaranteed the enjoyment of all UNCRC rights and principles, freedoms and opportunities, including the right to development; the right to have their views respected; the right to maintain personal relations and direct contact with their parents on a regular basis.
- it is necessary to protect the child's right to and need for an emotional and continuing relationship with their imprisoned parent who has a duty and right to play his/her parental role and to promote positive experiences for their children.
- children, family, the child-parent relationship, and the imprisoned parent's role in this, need support before, during and after detention. All interventions and measures promoted to support children with imprisoned parents and their relationship with them must ensure they create no stigma and discrimination against these children.
- awareness raising, cultural change and social integration are necessary to overcome the barriers connected with the prejudice and discrimination arising from the imprisonment of a parent.

Scope

This recommendation applies to children whose parents are in prison, including infants living with their parent in prison.

II. Basic principles

1. Children and their imprisoned parents shall be treated with respect for their human rights and with due regard for their particular situation and individual views and needs. Measures that ensure child protection as well as respect for the child's best interests, family life and privacy shall be integral to this as shall be the measures which support the role of the imprisoned parent from the start of detention and after release.

2. Where a custodial sentence is being considered, the rights and best interests of any affected children should be taken into account and alternatives to custody be used as far as possible and appropriate, especially in the case of a parent who is a primary caregiver.

3. Whenever parents are detained, serious consideration shall be given to allocating them in a facility close to their children.

4. Decisions to transfer imprisoned parents to or from a State in which their dependent children reside shall be taken with respect for human rights, in the interests of justice and with regard to the best interests and welfare of dependent children and their family.

5. The prison administration shall endeavour to collect and collate relevant information at entry regarding the children of those detained.

6. Sufficient resources need to be allocated to the relevant agencies in order to deal effectively with the particular situation and specific needs of children and their imprisoned parents.

7. Appropriate training on child-related policies, practices and procedures shall be provided for staff and professionals with regular contact with children and their imprisoned parent.

III. Police detention, judicial orders and sentences

8. Due consideration should be given by the police to the potential impact that arrest or detention of a parent can have on any children present. In such cases, where possible, arrest should be carried out in the absence of the child or, at a minimum, in a child-sensitive manner.

9. Enforcing restrictions on contact of an arrested or remanded parent should be done in such a way as to respect the children's right to remain in contact with them.

10. Without prejudice to the independence of the judiciary, before a judicial order or a sentence is imposed on a parent, account shall be taken of the rights and needs of their children and the potential impact on them. The judiciary should examine the possibility of a reasonable suspension of pre-trial detention or the execution of a prison sentence and their possible replacement with community sanctions or measures.

11. Significant events in a child's life – such as birthdays, first day of school, hospitalization – should be considered when granting prison leave to imprisoned parents.

IV. Conditions of imprisonment

Admission

12. Prior to or on admission, individuals with caretaking responsibilities for children shall be enabled to make arrangements for those children, taking into account the best interests of the child.

13. At admission, prison administration should record the number of children a prisoner has, their ages and their current primary caregiver, and shall endeavour to keep this information up-to-date.

14. Immediately on admission and on a prisoner's transfer, prison authorities shall assist prisoners, who wish to do so, in informing their children (and their caregivers) of their imprisonment and whereabouts or shall ensure that such information is sent to them.

15. Support and information shall be provided by the prison as far as possible about contact and visiting modalities, procedures and internal rules in a child appropriate manner and in different languages and formats as necessary.

Allocation, communication, contact and visits

16. Apart from considerations regarding requirements of safety and security, the allocation of an imprisoned parent shall facilitate maintaining child-parent contact, relations and visits without undue burden either financially or geographically, including when the parent is detained in a prison in a foreign country.

17. Children are entitled to visit an imprisoned parent within a week following the parent's detention

and, on a regular and frequent basis, from then on. Child-friendly visits shall be authorised in principle once a week, with shorter, more frequent visits allowed for very young children, as appropriate.

18. Visits shall be organised so as not to interfere with other elements of the child's life, such as school attendance. If weekly visits are not feasible, then longer, less frequent visits allowing for greater child-parent interaction should be facilitated.

19. In cases when the current caregiver is not available to support a child's visit, alternative solutions should be sought such as being accompanied by a qualified professional or representative of an organisation working in the field.

20. A designated children's space shall be provided in prison waiting and visiting rooms (e.g., bottle warmer, changing table, toys, drawing materials, games) where children can feel safe, welcome and recognised. Prison visits shall provide an environment conducive to play and interaction with the parent. Consideration should also be made to permitting visits to take place in the vicinity of the detention facility, with a view to promoting, maintaining and developing child-parent relationships in as normal a manner as possible.

21. Measures should be taken to ensure that the visit context is respectful to the child's dignity and right to privacy, including facilitating access and visits for children with special needs.

22. When a child's parent is imprisoned a long distance from home, visits shall be arranged in a flexible manner, which may include allowing prisoners to combine their visit entitlements and offering logistic and related financial support to families and children.

23. Security checks shall be carried out in a child-sensitive manner that respects children's dignity and privacy as well as their right to physical and psychological integrity and safety.

24. Any searches of prisoners prior to visits shall be conducted in a manner which respects their human dignity in order to enable them to interact positively with their children during visits. To the extent possible, children shall be authorised to leave the visiting area prior to the imprisoned parent as this can be traumatic for some children. Clothes provided by prison authorities shall not offend the dignity of prisoners who are parents, particularly during visits with their children.

25. In accordance with national law and practice, the use of telephone technology and IT (e.g., video-conferencing, mobile telephone systems, Internet, including webcam and chat functions) shall be facilitated between face-to-face visits and should not involve excessive costs. Imprisoned parents shall be assisted with the costs of communicating with their children if their means do not allow it. These means of communication should never be seen as an alternative replacing face-to-face contact between children and their imprisoned parents.

26. Rules for making and receiving telephone calls and other forms of communication with children shall be applied flexibly to maximise communication between imprisoned parents and their children. When feasible and in accordance with national law, children should be authorised to initiate telephone communications with their imprisoned parents.

27. Arrangements should be made to facilitate an imprisoned parent, who wishes to do so, to participate effectively in parenting of their children, including school, health and welfare decisions, except in cases where it is not in the child's best interests.

28. Child-parent activities should include extended prison visits for special occasions (Mother's Day, Father's Day, end of year holidays, etc.) and other visits to further the child-parent relationship, which should not replace standard authorised visits. As far as practicable, prison staff shall be dressed in a child-friendly manner during these special visits, in an effort to normalise the atmosphere for children.

29. Children shall be offered the opportunity, when feasible and in the child's best interest, and with the support of an adult, to visit or receive information (including images) about areas in which their imprisoned parent spends time, including the parent's sleeping accommodation.

30. Restrictions imposed on contact between prisoners and their children shall be implemented only exceptionally, for the shortest period possible in order to alleviate the negative impact they might have on children and to protect their right to an emotional and continuing bond with their imprisoned parent. In addition, special measures shall be taken to encourage and enable imprisoned parents to maintain regular and meaningful contact and relations with their children and thus safeguard their healthy development.

31. A child's right to direct contact should be respected even in cases where disciplinary sanctions or measures are taken against the imprisoned parent. In cases where security requirements are so extreme as to necessitate closed visits, additional measures shall be taken to ensure that the child-parent bond is supported (more examples in the report, Internet, letters, etc.).

Prison leave

32. With a view to: protecting children from the frequently harsh prison environment; preparing them for their parent's return; and having their parents present at significant events in their lives, the prison administration should grant and facilitate, where possible, home leave for prisoners. This is especially important during the period before their release, providing more opportunities to prepare for resuming fully their parental role and its responsibilities on release.

Good order, safety and security

33. To ensure child protection, every effort shall be made to enhance mutual respect and tolerance and prevent potentially harmful behaviour between prisoners, their children and families, prison staff or other persons working in or visiting the prison. Good order, safety and security, in particular dynamic security underpin all efforts to maintain a friendly and positive atmosphere in prison.

Infants in prison

34. In order to ensure the right of a child to the highest attainable standard of health, appropriate pre-natal and post-natal healthcare, support and information shall be provided for mothers in prison. Pregnant women should be allowed to give birth in a hospital outside prison. Arrangements and facilities for pre-natal and post-natal care in prison shall respect, as far as practicable, cultural diversity.

35. A child born to an imprisoned mother shall be registered and issued with a birth certificate without delay, free of charge and in line with applicable national and international standards. The birth certificate shall not mention that the child was born in prison.

36. Infants may stay in prison with a parent only when it is in the best interest of the infant concerned and in accordance with national law. Relevant decisions to allow infants to stay with their parent in prison shall be made on a case-by-case basis. Infants in prison with a parent shall not be treated as prisoners and shall enjoy the same rights, freedoms and opportunities as all children.

37. Arrangements and facilities for the care of infants who are in prison with a parent shall:

- ensure the best interests and safety of infants are a primary consideration as are the infants' rights, including those regarding development, play, non-discrimination, and to be heard;
- safeguard the child's welfare and promote healthy child development, including provision of on-going health-care services, and arranging for specialists to monitor their development in collaboration with community health services;
- ensure that infants shall be able to freely access open-air areas in the prison, and can access the external world with the appropriate accompaniment; shall attend nursery schools and, where relevant, schools outside the prison;
- promote attachment between a child and their parent, allowing the child-parent relationship to develop as normally as possible, enabling parents to exercise appropriate parental responsibility for their child and providing maximum possible opportunities for imprisoned

parents to spend time with their children;

- support imprisoned parents living with their infants and facilitate the development of their parental competency, ensuring that they are provided with opportunities to look after their children, cook meals for them, get them ready for school, and spend quality time playing with them, both inside the prison and in the open air areas;
- as far as possible ensure infants have access to a similar level of services and support to that which is available in the community and that the environment provided for such children's upbringing shall be as close as possible to that of a child outside prison;
- ensure that contact with the parent, siblings and other family members living outside the detention facility is facilitated, except if it is not in the infant's best interests.

38. Decisions as to when an infant is to be separated from their imprisoned parent shall be based on individual assessments and the best interests of the child within the scope of the applicable national law.

39. The transition of the infant to life outside prison shall be undertaken with sensitivity, only when suitable alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials, where appropriate.

40. After infants are separated from their parent in prison and placed with family or relatives or in other alternative care, children shall be given the maximum possible opportunity and facilities to meet with their imprisoned parent, except when it is not in their best interests.

Sentence planning and preparation for release

41. In order to promote positive parenting, consideration shall be given in sentence planning to include programmes and other interventions that support and develop a positive child-parent relationship. Specific support and learning objectives include: preserving, and exercising as far as possible, their parental role during imprisonment; minimising the impact of imprisonment on their children; developing and strengthening constructive child-parent relationships; and preparing them and their children for family life after release.

42. In order to enhance child-parent relationships, prison authorities shall utilise options such as home leave, open prisons, halfway houses and community-based programmes and services to the maximum possible extent, to ease transition from prison to liberty, to reduce stigma, to re-establish contact with families at the earliest possible stage and minimise the impact of a parent's imprisonment on children.

43. For the same purpose, decisions regarding early release shall take into account prisoners' caregiving responsibilities, as well as their specific family reintegration needs.

Through-care

44. In order to help former prisoners reintegrate with their children and families support and care shall be provided to the child and the released parent by prison, probation or other agencies which specialise in assisting prisoners, as appropriate. Prison authorities, in cooperation with probation and/or social welfare services, local community groups and civil society organisations shall design and implement comprehensive pre- and post-release reintegration programmes which take into account the specific needs of parents resuming their parental role in the community.

V. Persons working with and for children and their imprisoned parents

45. Persons who come into contact with children and their imprisoned parents need to demonstrate sensitivity in order to respect their rights and dignity. Prison administrations should appoint and resource designated "children's and/or family officers" who support children and their imprisoned parents; facilitate visits in child-friendly settings; and liaise with relevant agencies, professionals and associations on matters related to children and their imprisoned parents.

46. All persons who come into contact with children and their imprisoned parents shall receive training in areas including: how to respect children's needs and rights; the impact of imprisonment and the prison setting on children, the parental role; how to support imprisoned parents and better understand the particular problems they face; making visits child-friendly; and how to search children sensitively.

47. In order to ensure efficiency and quality of the support, protection and care provided to children and their imprisoned parent, training programmes shall be evidence-based, reflect current national law and practices and international and regional human rights law and standards relating to children and shall be revised regularly.

A multidisciplinary and multi-agency approach

48. The relevant national authorities should adopt a multi-agency and cross-sectorial approach in order to effectively promote, support and protect the rights of children with imprisoned parents, including their best interests. This involves cooperation with local communities, schools, health and child welfare, police, the children's ombudsperson or other officials with responsibility for protecting children's rights, as well as other relevant statutory and non-statutory bodies, including civil society organisations offering support to children and their families.

49. Sufficient resources should be made available to state agencies and civil society organisations that can offer support to children with imprisoned parents and their families to enable them to provide a satisfactory level of support.

VI. Monitoring

50. The relevant ministries responsible for children as well children's ombudspersons or other national human rights bodies with responsibility for protecting children's rights shall monitor and report regularly regarding the recognition and implementation of the rights and interests of children with imprisoned parents, including infant children living in prison with their parent.

VII. Research and evaluation of child-friendly practices and policies

51. Multi-disciplinary and multi-agency expert groups, involving children with imprisoned parents, should be established in order to assess how children experience parental imprisonment, contact and relations with their imprisoned parent and to suggest improvements to current policies and practices.

52. Funding shall be made available to support research on children with imprisoned parents in order to contribute to policy development and to promote best practice in this area.

53. The implementation of child-friendly practices and policies, including international standards relating to children of imprisoned parents shall be regularly reviewed and evaluated. This review may involve the relevant ministries, the prison administration, social services, children's ombudspersons and other human rights bodies with responsibility for protecting children's rights, as well as other relevant statutory and non-statutory bodies, including civil society organisations.

VIII. Work with the media and with public opinion

54. Information provided to and by the media should not violate the right to privacy of children and their families, including data protection rules, and any media reporting should be carried out in a child sensitive manner.

55. Negative stereotyping and stigmatisation of children with imprisoned parents, including in the media and in political discourse, should be avoided. The media, professionals and the general public should be provided with reliable and up-to-date data and good practice examples in order to increase their awareness regarding the numbers of children and the impact of parental imprisonment.