

# Justice

## for Children of Prisoners

Special Edition Newsletter 3 of 4 - 2013

### Police, Judges & Sentencing Arrests, Trials & Children's Rights

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**Children of Prisoners Europe**  
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*Articles within do not necessarily reflect the opinion of Children of Prisoners Europe.*

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## Foreword

Children of Prisoners Europe (COPE) works to protect the rights of children whose parents are imprisoned. We not only accompany children during the imprisonment of their parent, we consider their needs during the whole process: from the arrest, throughout the pre-trial detention period and the trial, to release. It is crucial that the child of a parent who is arrested be given the right level of support to guide them through the process. Witnessing the arrest of a family member can be a traumatic experience for a child. Children need to be listened to and supported with patience and sensitivity. We aim to give these children a voice where they are often not heard. Children in these situations come into contact with a multitude of decision and policy-makers and practitioners who may not necessarily prioritise the best interests of the child; they may be prison officers, social workers, lawyers, judges or police officers. Their influential roles empower them to make decisions which can directly or indirectly affect children's lives.

In compiling these Special Edition newsletters, we intended to gather responses from various police forces across Europe whom we contacted for information regarding any child-oriented protocols and practices that they had in place. We were particularly interested in finding out about practices that take into consideration the rights of children of prisoners and whether police training includes child-specific training. We asked a series of questions including: whether children witness the arrest of their parents or whether they are taken out of sight and earshot at this time; whether families are informed of where the arrested parent is being taken and subsequently updated on this individual's situation before trial; whether families receive information from the police on whom to contact for support during the arrest and pre-trial period; and what protocols are in place if an arrest occurs where the adult arrested is the sole carer of the children.

Unfortunately the majority of police forces we contacted did not respond, and those which did were not able to supply us with the information we

were looking for. One police force replied: "Sorry, but the police is not responsible for the topic of prisoners' children and there are no special courses, interactions or training." And another: "There is no specific child-related training for our police officers in relation to children of imprisoned parents." Although somewhat disheartening, this was interesting feedback in itself and this is an avenue we as a network intend to pursue in greater detail in the future.

Children whose parents are in pre-trial detention may find themselves in an unfamiliar and uncertain situation. In some jurisdictions they may be prevented from seeing their parent, they may have limited telephone access, if any, and they may have no one to turn to for information about what is likely to occur during the trial. The trial itself, where children are most often not present, is a stressful time and children may become anxious and need special support. At COPE we aim to promote awareness among the key actors who affect the lives of this group of children at this stage, urging them to consider the best interests of the child and take the fact that a defendant is a parent into consideration during sentencing.

This publication, the third newsletter in our series of four, describes the various systems in place that affect the group of children we work with at the different stages leading up to the imprisonment of their parents, from the arrest to the pre-trial detention and the trial itself. Due, quite simply, to the lack of responses we received from certain countries, this newsletter focuses primarily on the UK and on Scandinavian countries Sweden and Denmark. We are very pleased to include a mixture of articles and interviews from judges, lawyers, lecturers and researchers, as well as from two of our network members.

*Hannah Lynn*  
*Editor*  
*Project Coordinator,*  
*Children of Prisoners Europe*

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# 1. Children of prisoners: The arrest procedure

**B**efore a child becomes the child of a prisoner, they are the child of a suspect. And for many children, their first contact with the criminal justice system happens at this early stage, at the point of a parent's arrest.

The way this event happens can have a long-lasting impact on children's future relationship with the police and with authority in general. When an arrest is focused solely on apprehending a suspect without consideration of the consequences, it can have strongly negative impacts.

*“a long-lasting impact on children's future relationship with the police and with authority”*

Children who experience police forcibly entering their home, restraining and handcuffing a parent, and taking them away without telling the children what is happening can be traumatised. Children who return home from school to find no parent and no explanation can be distressed. Children who have to look after themselves (on occasion for days or weeks on end), because no plan for their care has been arranged, can become more and more distraught.

*“to minimise disruption and unnecessary trauma to the children”*

However, there are alternative ways of responding to children. When police consider children before beginning an arrest, this can lead them to plan alternative, child-sensitive procedures. They can check to see if the suspect is known or likely to have children. They can wear civilian clothing when conducting arrests. They can explain to children what is happening.

If a parent needs to be handcuffed, this can take place out of sight of the children. Parents can be given a chance to explain what is happening to the children, to make arrangements for their im-

mediate care and to say goodbye.<sup>1</sup> This can make arrests more bearable for the children, but also for parents (who may be less anxious if they know their children will be looked after during their absence<sup>2</sup>) and for police officers, several of whom have reported being affected by cases involving children, even years later.<sup>3</sup>

*“sensitive arrests can also improve the longer-term relationship between police and the children of suspects”*

Good practice may depend on individual police officers, but it can also be built into training and guidance. Interestingly, several police services in the US have developed arrest protocols, developed in coordination with academics or NGO practitioners. These can include the values and principles that underlie a child-sensitive arrest system (for example, “to minimise disruption and unnecessary trauma to the children by providing the most supportive environment possible after an arrest, and to determine the best alternative care for the child(ren).”<sup>4</sup> They can also give details of the specific steps a police officer should take, tailored to the specific situation of that police service (such as the documents that should be consulted or the child welfare bodies that should be informed). Such protocols may go beyond just arrest to include details of, for example, how children's visits to parents in police custody can be made more positive; they can also alert police to any specialist support services that can help the children and families.

1. Adele D. Jones and Agnieszka E. Wainaina-Wozna (eds) (2013) *Children of Prisoners: Interventions and mitigations to strengthen mental health*, University of Huddersfield, p. 73.

2. Oliver Robertson (2007) *The Impact of Parental Imprisonment on Children*, QUNO, pp. 15-16.

3. Peter Scharff-Smith and Lucy Gampell (eds) (2011) *Children of Imprisoned Parents, The Danish Institute for Human Rights, European Network for Children of Imprisoned Parents*, University of Ulster and Bambinisenzasbarre, pp. 60-78

4. San Francisco Police Department protocol, p. 2

# 1. Children of prisoners: The arrest procedure

To date, arrest protocols have been geographically limited in scope. However, on 12 June 2013, the White House hosted an event recognising the efforts of individuals working with children of imprisoned parents, at which it also announced various policy measures. Among these was the development of a model arrest protocol by the International Association of Chiefs of Police.<sup>5</sup>

It remains to be seen what such a protocol will look like, and how well it will walk the line between being so specific that it will only work in a few jurisdictions, and so broad that it is unfocused and not useful. But the benefits of considering children during arrest can be far-reaching. In Sweden, research has suggested that older children are particularly likely to miss school around the time of a parent's arrest, so efforts to support them may help their education.<sup>6</sup> Sensitive arrests can also improve the longer-term relationship between police and the children of suspects. As US Police Lieutenant Ray Hassett put it: "Encouraging kids to see cops as the enemy ... does not enhance public safety – nor, for that matter, police safety .... Having a rapport with the family helps get the job done in a safe manner."<sup>7</sup>

*Oliver Robertson*  
*Penal Reform International*



*Child's drawing provided by  
Children of Prisoners Europe*

5. [US Department of Justice website](#) (November 2013)

6. Jones A. et al., 2013, *op. cit.* p. 68.

7. Nell Bernstein (2005) *All Alone in the World: Children of the Incarcerated* (The New Press) p. 28

## 2. Arrested development?

If a practice or procedure of a state institution or state actors is found to be harmful to innocent children, should it be modified or altered (as far as is feasibly possible) to reduce the risks to the child? Likely, most people would agree that there is a moral imperative for the state to intervene in such cases to effect changes. One such area of concern is how the police conduct arrests of a child's parent(s), the manner of the arrest, the techniques used at the family home, as well as the resulting child care arrangements (or lack thereof) that can result.

*“a pressing need for a more child-friendly criminal justice system”*

We say this because there is an emerging pool of evidence which shows that witnessing the arrest of a family member can be predictive of symptoms of significant trauma for the child (Phillips, 1998) or can cause a range of other negative emotions, including anxiety, confusion, sadness and anger in the child.<sup>1</sup> These findings are supported by recently completed research (the COPING project)<sup>2</sup>, a major three-year pan-European project to understand how the loss and imprisonment of a parent affects children's mental health and well-being, which included looking at the arrest stage in the criminal justice system. Overall, we found that in the UK at least 25 per cent of our sample of children (aged 11 years or more) were at a high risk of mental health problems compared to their peers. Whilst this may be attributable to a number of reasons (including forced separation and difficulties in maintaining contact with the imprisoned parent, suffering stigma and secrecy, and financial hardships), the impact of a parent being arrested appeared to act as a contributing factor, at least for some children.

1. [The Osbourne Association](#), 2011

2. Jones, A. et al, 2013. 'The COPING Project: Children of prisoners: Interventions and mitigations to strengthen mental health'. University of Huddersfield.

*“when we asked families about their experience of a partner/spouse/parent being arrested, often children were present during the arrest”*

Police arrests can be dramatic, violent and sudden. They can involve an early morning raid, battering in a door at a family home, with paramilitary-style officers storming into the property, verbally and physically dominating anyone they confront. When we asked families about their experience of a partner/spouse/parent being arrested, often children were present during the arrest (although not always). Families explained how their children were awoken by the police raid and ensuing chaos in their homes, and how confusing and frightening this was for their children. Such tactics were generally viewed as heavy-handed and unnecessary, as was sometimes the level of the police presence. Some children got very distressed at seeing their parent arrested, especially when it was conducted in front of them or they were given no explanation as to why this was occurring, or a parent was prevented from doing so. One carer reported that she thought the attending officers appeared uninterested in the fact that her son was present, and that they were forcibly separated to be interviewed. Children could also be distressed to see their home and property searched, removed or destroyed (including personal possessions such as toys) by officers making investigations. Furthermore, making immediate childcare decisions was nearly always difficult for parents in the process of being arrested and some interviewees explained how the police “threatened” them with having their child/ren (who were present) placed in social care if nobody could be found quickly enough to take care of them.

Whilst these examples of police practice may have caused interviewees to view the police in negative terms, other examples of practice received a more positive response. This included sparing the children from seeing their parent being handcuffed, or

## 2. Arrested development?

calmly asking if the child could go upstairs while they spoke to the child's parents. Another family reported, as the home was being raided by police, that their son who was present at the arrest was allowed to continue with his daily routine and get ready for school. However, these particular examples appeared to be at the discretion of the police officers in attendance, rather than being rooted in clear practice guidelines for making arrests in the home, and when children were present.

***“the attitude, behaviour and language used by the police in searching a home and making an arrest can have a profound impact on a dependent child witnessing such events”***

Our evidence suggests that the psychological and physical well-being of any dependent children – present or returning to the home – is influenced by the attending police officers' practices regarding their care and treatment at the time of arrest. The attitude, behaviour and language used by the police in searching a home and making an arrest can have a profound impact on a dependent child witnessing such events. We found that police too often neglected to fully consider the effects of an arrest on children, whereas it is generally accepted that conducting the arrest in a child-friendly way can lessen any potential distress for children as well as have a positive impact on the child's relationship with the police, courts and other criminal justice agencies. This would be assisted by having clear written guidelines to help police perform impact assessments of the children's needs and use subtler methods of arrest that maintain the

***“police too often neglected to fully consider the effects of an arrest on children”***

parent's dignity in front of children; to ensure that someone appropriate can speak to children at the

time of arrest; and to allow (where at all permissible) the arrested parents time to say goodbye. There is also a need to ensure there is follow-up (by police, social services or others) if children are temporarily placed with neighbours or other alternative carers. Written material should also be available for families on sources of support and their legal rights.

Children of prisoners don't have much lobbying clout with governments, but as the research evidence mounts up, there appears to be a pressing need for a more child-friendly criminal justice system, one that recognises and respects the best interest of the child and makes greater provision for them.

*This is an author-manuscript version of an earlier article for Police Professionals titled “Arresting Development?” by:*

***Kris Christmann  
Research Fellow<sup>3</sup>  
Applied Criminology Centre  
University of Huddersfield***

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3. Kris was involved in the COPING Project research at the University of Huddersfield. Jones, A. et al, 2013. *op.cit.*

### 3. Sentencing: The impact of imprisonment on offenders' children

Generally, when sentencing an offender, a court can take a variety of matters into consideration. These typically include the type of offence committed and aggravating and mitigating factors, the accused's criminal record, the views of the victim, and wider social and policy issues. However, the extent to which incarceration will impact on the defendant's family, and in particular their children, normally receives little attention beyond its possible inclusion as a mitigating factor. Indeed, a sentencing judge may be unaware of the fact that the offender has children, with most systems relying on a discretionary process regarding child/family impact assessments.

*“this sentencing approach needs to be understood against a background of child rights”*

For example, in Ireland, where sentencing has historically been regarded as being within the sole discretion of the court, the family background of an offender will, at most, be included in a pre-sentence report. However, the focus of the court is predominantly on the punishment of the offender.

*“examples can be found of courts using existing legal frameworks in order to introduce children's rights”*



This traditional sentencing approach needs to be understood against a background of child rights. [The UN Convention on the Rights of the Child](#) (CRC) contains four core guiding principles which must be read in tandem:

**Principle of non-discrimination (Article 2)**

**Best interests principle (Article 3)**

**Right of the child to life, survival and development (Article 6)**

**Right of the child to express views (Article 12)**

Articles 3 and 12 are of particular importance in the context of sentencing. However, in practice the extent to which children's views should be represented at the sentencing of a parent is highly contested, as is how those views should actually be represented in court.

Examples can be found of courts using existing legal frameworks in order to introduce children's rights into the sentencing decisions made in relation to their parents. Most significantly, the South African Constitutional Court in [S v M](#) [2007] held that the best interests of children *should* be considered alongside other elements in the sentencing process. In particular, Albie Sachs J. noted the need for a “change in mindset” when dealing with cases where children are affected by the sentencing of a parent. The sentencing court needs to acknowledge that while a prison sentence is imposed as punishment for a crime, imprisonment has an impact beyond the offender. This does not mean parents are not sent to prison where such a sentence is appropriate, but rather that the full impact is understood and alternative punishments considered where the rights of children are affected.

Similarly, the Court of Appeal in England and Wales has utilised the right to family life under Article 8 of the [European Convention on Human Rights](#) to adopt a similar approach. In [R \(P and](#)



### 3. Sentencing: The impact of imprisonment on offenders' children

Q) v Secretary of State for the Home Department [2001] and R v Joanne Mills [2002], it was decided that a sentencing court, in considering a mother with dependent children, had to engage in a balancing act weighing the rights of the child against the seriousness of the offence. This involves a two-stage approach: firstly, the court needs access to information regarding the existence and situation of any dependent children; secondly, the court must then balance the needs of those children against the seriousness of the offence.<sup>1</sup>

As with the South African case, this does not prevent the court sentencing a parent to prison, but recognises that imprisonment has serious consequences for those children. However, in practice it appears the lower courts in England and Wales have found it difficult to adopt this more child

*“the reality is that for most children, they remain silent victims of the process”*

rights-oriented approach. Research, carried out by Epstein (Epstein, R. “Mothers in Prison: the rights of the child”, (2011) 86:1 CJM 12) revealed that lower courts continued to either ignore the rights of offenders' children or blame the parents for the hardship they face. Thus, even in a jurisdiction where the higher courts have indicated a willingness to include a child rights perspective when sentencing primary carers, the reality is that for most children, they remain silent victims of the process.

Observation of sentencing in Irish courts confirms that a children's rights approach has yet to be adopted; children remain, at best, a secondary consideration. In practice it is not enough to trust the discretionary powers of the judges to “do the right thing”; this leads to inconsistent and unpredictable outcomes for children. As a minimum, there needs to be clear sentencing guidance provided to courts to ensure that children of offenders are included in the balancing of competing interests.

1. Epstein, R., 2011. ‘Mothers in Prison: the sentencing of mothers and the rights of the child’ 86:1 CJM 12.

Unfortunately, in Ireland the courts have consistently resisted even the most modest of sentencing guidelines, let alone the inclusion of a CRC-compliant approach. However, it needs to be stressed that even CRC-compliant sentencing is largely meaningless without the development of effective alternatives to custody for offenders. Judges need to be able to choose from a range of sentencing options, the majority of which do not result in the separation of children from their parent(s).

*Dr Fiona Donson & Dr Aisling Parkes<sup>2</sup>*  
*Lecturers in Law*  
*University College Cork<sup>3</sup>*

2. See: Donson, F. & A. Parkes, 2012 ‘Changing mindsets, changing lives: increasing the visibility of children's rights in cases involving parental incarceration’ *International Family Law*, (4):408-413

3. University College Cork is in the process of developing a virtual network on children of incarcerated parents

## 5. Reducing female imprisonment: Respecting children's rights

In 2010, more than 17,000 children were separated from their mothers by imprisonment<sup>1</sup> in England and Wales, and for most of them it's reported to be the first time they had been more than briefly separated.<sup>2</sup> Fewer than one in ten children whose mother is in prison are cared for by their father in her absence.<sup>3</sup> According to a recent report, up to 6,000 children a year are "being forgotten by the state when their mother is sent to prison".<sup>4</sup> An earlier study found that 42 women held in London's HMP Holloway (the largest women's prison in Western Europe) had no idea who was looking after their children, some of whom were looking after themselves.<sup>5</sup>

***"more than 17,000 children were separated from their mothers by imprisonment"***

The Prison Reform Trust (PRT) has a three-year strategy to reduce women's imprisonment in the UK, supported by the Pilgrim Trust, and a key element of this is to reduce the imprisonment of mothers and the associated impact on children.

Like many other organisations, such as the Children's Rights Alliance for England, Women in Prison and PACT (a Prison Advice organisation), PRT is concerned that not enough account is taken of children's rights and needs when a parent is imprisoned, particularly mothers. The UN Con-

1. Wilks-Wiffen, S. (2011) *Voice of a child* London: Howard League for Penal Reform. Fifty-four per cent of all prisoners reported having children under the age of 18. See [Ministry of Justice \(2012\) Prisoners' Childhood and Family Backgrounds](#), London, Ministry of Justice
2. Paul Vallely (2012) *'Mothers and Prison: The Lost Generation'*, The Independent, 20 September
3. Baroness Corston (2007) *A Review of Women with Particular Vulnerabilities in the Criminal Justice System*, London: Home Office
4. [Prison Advice and Care Trust](#) (2011) *Protecting the Welfare of Children When a Parent is Imprisoned: A Report Highlighting Concerns that up to 6,000 Children a Year are Being Forgotten by the System When Their Mother Is Sent to Prison*. London: PACT
5. Research by the Revolving Doors Agency at HMP Holloway reported in Cabinet Office Social Exclusion Taskforce (2009) *Short study on women offenders: Making government work better* London: MoJ

vention on the Rights of the Child (UNCRC) has not been incorporated into UK domestic law so is not directly enforceable. But it can be successfully invoked. For example, in 2012 a judge upheld the appeal of two women in prison against the refusal of childcare resettlement leave, a form of periodic leave available to prisoners who have children under 16. The judge found that a child's right to respect for private and family life under the European Convention on Human Rights, and the UNCRC requirement to consider the best interests of a child in all actions concerning the child, should be central to decisions on when to grant a parent leave from prison (for further details on this case, please see Deborah Russo's article on page 12). The High Court judge said she did "not consider that the absence of primary legislation enshrining Article 3(1) UNCRC in the context of temporary leave from prison means that the Secretary of State intends it to be disregarded when exercising his powers under the Prison Act and Prison Rules."<sup>6</sup>

The UN Rules for the Treatment of Women Prisoners (the Bangkok Rules) state that "*women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties*".<sup>7</sup> As the Court of Appeal, and more recently the sentencing judge in *R v. Petherwick*<sup>8</sup> have ruled, when sentencing a mother with a dependent child, the child's rights are engaged and a balancing exercise should be undertaken to ensure that the sentence is a proportionate one. However, there is evidence to suggest courts do not always undertake this balancing exercise when sentencing a mother with dependent children.<sup>9</sup> The case of *Melanie Beswick* who committed suicide in prison after being sent there for a first offence, despite having

6. *R(on the application of MP) SSJ and R (on the application of P) v The Governor of Downview and the SSJ* [2012] EWHC 214 QB
7. For information about the Bangkok Rules see the new resource "toolkit"
8. *R v Petherwick* – [2012] EWCA Crim 2214; *R (on the application of P and Q) v Secretary of State for the Home Department* [2001] EWCA Civ 1151, at para 79
9. Epstein, R. (2012) *Special Issue – Research Report - Mothers in prison: the sentencing of mothers and the rights of the child*, Coventry Law Journal

## 5. Reducing female imprisonment: Respecting children's rights

two dependent children, is a tragic case in point. PRT has therefore recently recommended that the Sentencing Council provide stronger guidance to the court on its duty to investigate sole or primary care responsibilities, take these into account at sentencing, and monitor the sentencing of offenders with dependent children. We also recommend that the Sentencing Council consider drafting a new overarching step aimed at determining whether the offender has dependent children, whether they have sole or primary care responsibilities and how the child's rights and interests will be taken into consideration, as set out by the European Convention on Human Rights and the UN Convention on the Rights of the Child.

In another move to strengthen the protection of children affected by a parent's imprisonment, PRT has joined the [Families Left Behind](#) campaign to lobby for a statutory duty on courts to identify whether individuals being remanded or sentenced to prison have dependent children, and ensure satisfactory arrangements are in place for them.

***“we recommend that the Sentencing Council consider a new step to determine whether the offender has dependent children”***

But most of the solutions to women's offending lie outside prison walls in treatment for addictions and mental health problems, protection from domestic violence and coercive relationships, secure housing, debt management, education, skills development and employment. That's why PRT is seeking to reduce imprisonment and enable women to take control of their lives and care for their children themselves.

***Jenny Earle  
Programme Director  
Reducing Women's Imprisonment  
Prison Reform Trust***

## 4. Female prisoners & their children finally have rights

On 13 February 2012, the High Court of Justice of England and Wales handed down an important judgment for the rights of prisoners and the rights of prisoners' children. The case concerned two joined judicial review cases brought by women prisoners challenging refusals to grant them Childcare Resettlement Leave (CRL). Mrs Justice Lang found that the decisions to refuse the women CRL were unlawful.

*“the judgment is an important reminder that a prisoner does not forfeit her human rights in their entirety, including her right to family life, merely due to her status as a prisoner”*

This decision will have a positive impact on the rights of prisoners with sole carer responsibilities and on their children. The judgment is an important reminder that a prisoner does not forfeit her human rights in their entirety, including her right to family life, merely due to her status as a prisoner.

CRL is one form of temporary release on licence that prisoners are entitled to, to assist in their rehabilitation and resettlement, and in the case of CRL, to maintain their family ties. CRL is available to prisoners who can demonstrate that they have sole caring responsibility for children under the age of 16. Applications for CRL require an assessment of suitability, including a comprehensive risk assessment, and consideration of appropriate conditions.

As a result of the judgment, a new Prison Service Instruction (PSI 21/2012) has been issued amending Prison Service Order 6300 on Release on Temporary Licence (ROTL). The amended section relating to CRL includes, among other aspects, the following amendments. Where it is established that prisoners have sole caring responsibility for a child under 16, they are eligible to be considered for temporary release under Childcare Resettle-

ment Licence (CRL). Reflecting the unique position of the children of the sole carer, the purpose of the licence is to encourage the maintenance of the parent/child tie and to help prepare the prisoner for the resumption of their parental duties on release. The prisoner must prove that they were the sole carer of the child immediately prior to their imprisonment and would be so if they were not in prison.

Of particular interest in these amendments is that the safety of the child is the overriding concern in all decisions about granting Childcare Resettlement Licence. Once it is established that the prisoner has lawful access to the child and that the release will not put the child at risk, the best interests of the child more generally are required to be taken into account. It is accepted that the children of sole carers may face particular difficulties with separation from the sole carer, and some CRL may be helpful as a supplement to prison visits and/or family day events at the prison.

*“governors/controllers must balance the interests of the child with the duty to maintain public confidence”*

It is interesting to note, however, that no release may be made where it is considered that the release “would be likely to undermine public confidence in the administration of justice”. In England and Wales, the media and public opinion play a huge part in all political matters. Governors/controllers must balance the interests of the child with the duty to maintain public confidence. Where it has been established that the release is in the child's best interests, that will be a primary consideration but it does not override all other considerations. All cases must be considered on their merits. Cases involving prisoners whose offending has attracted a long sentence and/or who have been convicted of serious violent or sexual offences, or any offence involving the death or serious injury of the victim, must be considered with particular sensitivity to public confidence.

## 4. Female prisoners & their children finally have rights

The new amendment stipulates that Childcare Resettlement Licence may be taken no more than once every two months and the maximum duration of each period of licence must not exceed three nights away from the prison. Governors/controllers should not grant overnight release on the first CRL licence to prisoners who have little or no previous history of successful ROTL releases unless a day release is impractical due to excessive travelling time.

Release is, of course, subject to risk assessment in the normal manner and no release may be authorised where there is an unacceptable risk of harm, reoffending or absconding. In terms of risk of absconding and the harm that would arise as a result, it is accepted that this is greater in principle where there is a significant portion of the sentence still to be served. This may be outweighed by countervailing factors, including the strength of family ties. When commissioning the home circumstances report, governors must ask specifically for advice on any risk of harm posed to the prisoner's children in granting the release.

Both claimants in this case had sole caring responsibility for children under 16. They both applied for CRL due to the serious impact that separation was having on their children. Their applications were refused, predominantly on the basis that they had not served a sufficient proportion of their sentences and that their prison categorisation was "closed" (as opposed to "open" or, prior to 2009, "semi-open").

Mrs Justice Lang found that when considering an application for CRL, the Secretary of State must have regard to Article 8 of the European Convention on Human Rights (the Right to Family Life) and to Article 3(1) of the UN Convention on the Rights of the Child.

Mrs Justice Lang also found that the Secretary of State must consider the individual circumstances of a prisoner and her children when considering an application for CRL. Mrs Justice Lang found that primary consideration must be given to the

rights of the child when deciding whether to grant CRL to prisoners, and that the views of the child must be ascertained.

*“the effects on children are ‘so often nothing short of catastrophic’ ”*

Losing a parent to imprisonment is often an extremely damaging life event for a child. Baroness Corston, in her influential 2007 report, found that the effects on children of having their mother imprisoned were “so often nothing short of catastrophic”. This important decision recognises the impact of imprisonment on the children of prisoners.

*Deborah Russo and Naomi Lumsdaine,  
Prisoners' Advice Service<sup>1</sup>*

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1. The Prisoners' Advice Service (PAS) provides free legal advice and information to all prisoners in England and Wales regarding their rights, particularly the application of the Prison Rules and conditions of imprisonment. PAS publishes a range of Information Sheets about prison law. You can contact PAS to ask for advice, by mail to PO Box 46199 EC1M 4 XA, London, or on their telephone advice line 0845 4308923 which is open 9.30am – 1pm and 2am – 5.30pm Mondays, Wednesdays and Fridays.

## 6. Mothers in prison: Sentencing and the rights of the child

The Human Rights Act 1998 came into force in the United Kingdom in October 2000. Section 6 obliges all public bodies, including the courts, to comply with the European Convention on Human Rights.

### The rights of the child

Article 8 of the European Convention on Human Rights and Fundamental Freedoms (1950) (ECHR) states that everyone has the right to respect for private and family life. As imprisonment of a father or mother entails the forcible separation of a child from their parents and therefore impacts on the child's Article 8 rights, sentencing courts are required to obtain information on dependent children and then conduct a balancing exercise weighing the Article 8 rights of potentially affected children against the seriousness of the parent's offence.

*“the rights of the child have to be weighed against the seriousness of the offence in a ‘balancing exercise’ ”*

### The law

In *R (on the application of P and Q) v Secretary of State for the Home Department*<sup>1</sup> Lord Phillips stated that, in sentencing a mother with dependent children, the rights of the child have to be weighed against the seriousness of the offence in a “balancing exercise”:

“Illumination of the task confronted by a court in a case concerned with a prospective violation of a child's Article 8 rights has recently been provided by Hale L J in the quite different context of interim care orders ... After saying ... that respect for family life was fundamental to the philosophy underpinning the ECHR, and describing the different levels of interference with the right to respect for family life inherent in the different types of order a court might make, she said:

1. [2001] EWCA Civ 1151

‘Such an interference can only be justified under Article 8.2 if three conditions are fulfilled:

- i) It must be “in accordance with the law”...
- ii) It must be in pursuit of one of the legitimate aims provided for in the Article ...
- iii) It must be “necessary in a democratic society”: that is to say, the reasons given for the interference must be “relevant and sufficient”... It must correspond to a “pressing social need” and be “proportionate” to the legitimate aim pursued ... ”<sup>2</sup>

Thus, when considering imposing custody on remand or on sentence, magistrates and judges must:

a. acquire information about dependent children and

b. balance the Article 8 rights of the child against the seriousness of the mother's offence.

These principles were confirmed and re-stated recently in the High Court and in the Court of Appeal.<sup>3</sup>

### In prison on remand

The requirement to obtain information on the children and consider their rights is even stronger in the case of mothers who are in prison on remand.

The latest data show that on 30 June 2013 there were 3,853 women in prison in England and Wales. Of this, 604 women were on remand, accounting for 16 per cent of the female prison population.<sup>4</sup>

2. [2001] EWCA Civ 1151

3. *R (on the application of Amanda Aldous) v Dartford Magistrates' Court* [2011] EWHC 1919 (Admin) in the High Court; *R v Bishop* [2011] WL 844007, Court of Appeal, *R v Petherick* [2012] EWCA Crim 2214. See Epstein, R, Masson, I, and Wise, I. (2011). *Imprisonment For Debt: A Case Study*. *Coventry University Law Journal*, 16(2): 56-63.

4. Table 1.1c, Ministry of Justice (2013) *Offender Management Statistics (quarterly) January to March 2013*, London: Ministry of Justice

## 6. Mothers in prison: Sentencing and the rights of the child

Mothers imprisoned on remand are a considerable group, as 16 per cent of imprisoned women are on remand, not yet convicted of any crime: when it comes to a trial many of them will be found not guilty, or given a non-custodial sentence or cautioned. Their children's rights, I argue, have not been considered in the decision to remand in custody and this is wrong — legally, morally, socially.

### The research

My research aimed to explore to what extent, if at all, the required balancing exercise is being carried out. The research covered 75 cases of the imposition of custody (suspended or immediate) on mothers who care for a dependent child. I analysed the sentencing remarks of Crown Court judges, the reports of the Court of Appeal and the files of magistrates.

*“one can expect a large degree of inconsistency in judicial attitudes and practice”*

This study has found that the courts did not appear to have considered the Article 8 rights of children potentially affected by their mother's imprisonment. The Article 8 rights of the child were not referred to in any of the 75 cases. In seven cases no mention was made at all of the dependent children concerned. In some cases imprisonment was suspended: this may perhaps be construed as indicating that the children's rights were taken into consideration, although this was not made explicit.

Practice regarding the required balancing exercise appeared to be inconsistent. “A balancing exercise” is a vague phrase with no clearly defined set of procedures. Given the vagueness of the concept, the fact that sentencers have considerable discretion in terms of sentencing generally, and the absence of any guidelines, one can expect a large degree of inconsistency in judicial attitudes and practice in this area.

In a few rare cases where the imprisonment of a mother had caused great suffering to young children, a sentence of imprisonment was appealed, and reduced in length or suspended by the Court of Appeal. For the vast majority of mothers in prison there will be no sentencing appeal. Those on short sentences will have no opportunity to appeal.

No legal authorities have set out exactly what this balancing exercise should consist of. Lord Justice Phillips in P and Q stated that the court considering imprisonment of a mother must have “sufficient information” on the children likely to be affected by a parent's imprisonment. Procedures must be developed as to how the required information is to be obtained and how the balancing exercise should be carried out. Should it be a requirement that the balancing exercise be articulated in the sentencing remarks made by judges and magistrates when they pronounce sentence? If there is no clear reference to the balancing exercise how can we be confident that it has taken place?

It is a legal requirement that where a mother with a dependent child is at risk of a custodial sentence, the sentencer must acquire information about the dependent children, and must then weigh the Article 8 rights of the children against the seriousness of the offence. In the most serious cases the balance will come down on the side of custody. But in some instances the court will suspend imprisonment or impose a community order rather than a custodial punishment. The vast majority of women are imprisoned for less serious offences and receive short sentences: the balancing exercise should now take centre stage.

**Rona Epstein<sup>5</sup>**  
*Honorary Research Fellow*  
*Coventry Law School*  
*Coventry University*

5. This research was funded partly by Coventry University and partly by The Oakdale Trust. I am grateful for this support which provided payment for the transcripts of sentencing remarks. I would also like to thank Women in Prison for their help in making this research possible.

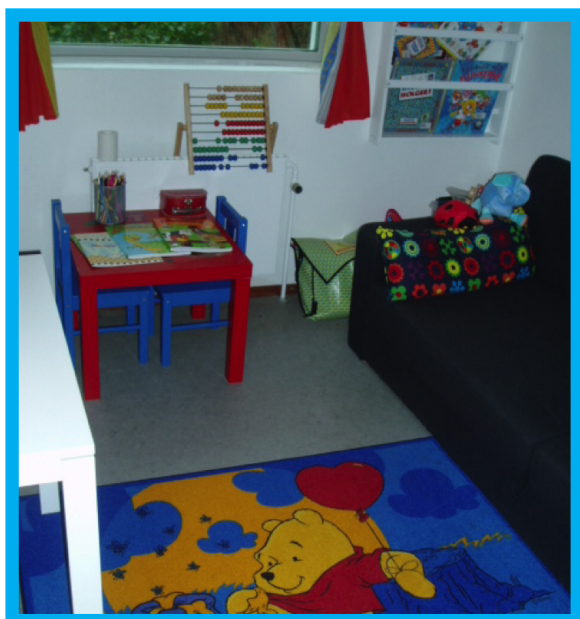
## 7. The Danish Prison & Probation Service

**T**he following is a question and answer session with **Hannah Hagerup of the Danish Prison and Probation Service<sup>1</sup>**, Ministry of Justice.

**Please begin by describing the prison situation in general in your country and the work you and your organisation carry out within the penal system.**

*The penal system in Denmark is quite progressive: we have been aware of the unique problem of children with imprisoned parents for some years now. We take the UN Convention on the Rights of the Child very seriously. Ensuring that children of prisoners can contact and visit their parents is one of our agendas at the Danish Prison and Probation Service.*

***“we take into consideration that children must not miss school and so visiting hours are also in the evening or at the weekend”***



*Visiting room, Vejle remand prison*

1. The Danish Prison and Probation Service provides online videos for children visiting their parents in prison with English subtitles.

*As a general rule, prisoners can receive visits from their families. In remand prisons there are certain restrictions, if the inmate is in isolation or if the police wish to be present during visits, for example. In general, inmates are entitled to one 60-minute visit a week. This is the minimum granted; it is usually possible to request longer visits. As a Prison and Probation Service, we have rules in place which pay special attention to children and ensure that they can visit their parents. For example, we take into consideration that children must not miss school and so visiting hours are also in the evening or at the weekend. It can, however, vary slightly from establishment to establishment.*

*In Denmark, prisoners can apply for leave every third weekend during their imprisonment. If there is a serious problem with their child, the prisoner may apply for leave every fortnight. This requires certification from the child support worker or psychologist working with the child (if the child has psychological problems or problems at school, for example). Of course, these regulations are put in place from the perspective of the prisoner, rather than the child. We are, however, very much aware of the best interests of the child. A visit is never enforced. It is not the Prison and Probation Service who has the information on the child: it is the social authorities. It is our job to make sure the prisoner can receive visits and that suitable visiting facilities are available.*

**Do prisons in Denmark keep records on which prisoners have children? Are prisoners obliged to disclose whether or not they have children when they enter the prison?**

***“it can be a very delicate issue for an inmate: we respect that”***

*Prisoners are not obliged to disclose whether or not they have children. We usually do ask them and if they tell us we note this in their “journal” upon arrival at the prison, but they are not obliged. These journals are kept and we can draw relevant statistics from them when necessary. We at the Service*



## 7. The Danish Prison & Probation Service

*make special plans for their imprisonment and the time after imprisonment, and in the construction of these plans we ask them about their family situation. It does happen that some prisoners do not want to disclose this information, for example if they are afraid of their children being put in state care. We do our best to reassure them: it can be a very delicate issue for an inmate and not something they want to talk about straight away. We have to respect that. Often we find that a prisoner wants to get to know and trust a prison guard before he or she is willing to share this information. When it comes to not wanting their children to visit the prison, we try to convince them that, for the child, it is even worse not to visit and not to know how their mother or father is being treated or where, indeed, he or she is.*

**What can you tell us about the prison conditions in your country?**

*Improving prison visiting conditions is something we have been working on for many years. Some remand prisons are very old and not very up-to-date. Most prisons have toys and games for visiting children, however. There is also usually a television with DVDs.*



*Family visiting room, Horserød state prison*

***“in these apartments the family can cook together, watch TV: lead a somewhat ‘normal’ life for the weekend”***

*In general, we have been renovating the facilities. Three Danish prisons have visiting apartments where a family can visit for a whole weekend (with the permission of the social authorities). The prisoners who are entitled to these visits usually are those who have longer sentences and who are not granted leave. A new prison is being built with such an apartment facility. In these apartments the family can cook together, watch TV: lead a somewhat “normal” life for the weekend. The atmosphere is more relaxed: there are no cameras. Prison officers of course visit the apartment every so often to make sure everything is under control and the family can call prison officers from the apartment.*

**Do you have “closed” visits in Denmark, with no physical contact between the prisoner and child?**

*What we call “glass visits”, visits across a glass screen, sometimes take place, but the prisoner and their child can almost always have physical contact. “Glass visits” are usually imposed if there has been a problem; for example, if the visitor has attempted to smuggle in contraband items. Children under the age of 15 are not permitted to visit alone; they must always be accompanied by an adult.*

**If both parents are present, how do you try to avoid the child being “left out”?**

*In some cases we place a lot of importance on discussion with the parent before they visit with their child. We encourage two separate visits: that they visit once alone and then a second time with the child. It is natural that parents have adult things to talk about; financial issues, practical issues, etc. So we encourage two separate visits.*

**The Danish Prison and Probation Ser-**

## 7. The Danish Prison & Probation Service

**vice trains prison officers. Do they receive child-specific training? During searches is there a special protocol for children?**

*The process of visiting children comes into the training which prison officers receive. It is an obligatory part of their education. They are taught how to greet the child and how to talk to the child. We have also recently piloted a project from 2010 to 2012 whereby four of our institutions have specially appointed “child officers”. These “child officers” are trained to be specially aware of the importance of contact between the prisoner and his or her children; on the importance of having appropriate visiting facilities; and also on providing information to the children and family outside (for example, information on visiting hours, pictures showing what the prison looks like, information for the child on how their mother or father is being treated in prison). These “child officers” will also consider whether it is pos-*

***“these ‘child officers’ can also talk to the imprisoned parent prior to visits, to discuss how a successful visit should be”***

*sible to make special arrangements for the children, such as parties at Christmas and Easter or presents for the children when they visit. They also deal with the decor of the visiting areas, such as putting pictures and paintings on the walls and providing toys from smaller children. They will have the freedom to implement whatever projects they see fit at their institution and the Prison and Probation Service will simply provide support and advice.*

*These “child officers” can also talk to the imprisoned parent prior to visits, to discuss how a successful visit should be and to suggest what they could talk about with their child during the visit and what games they might play. This is to prepare the prisoner for the visit. They also do a follow-up after the visit to discuss how it went. The child officer also provides his or her colleagues with specialist knowledge on the area.*

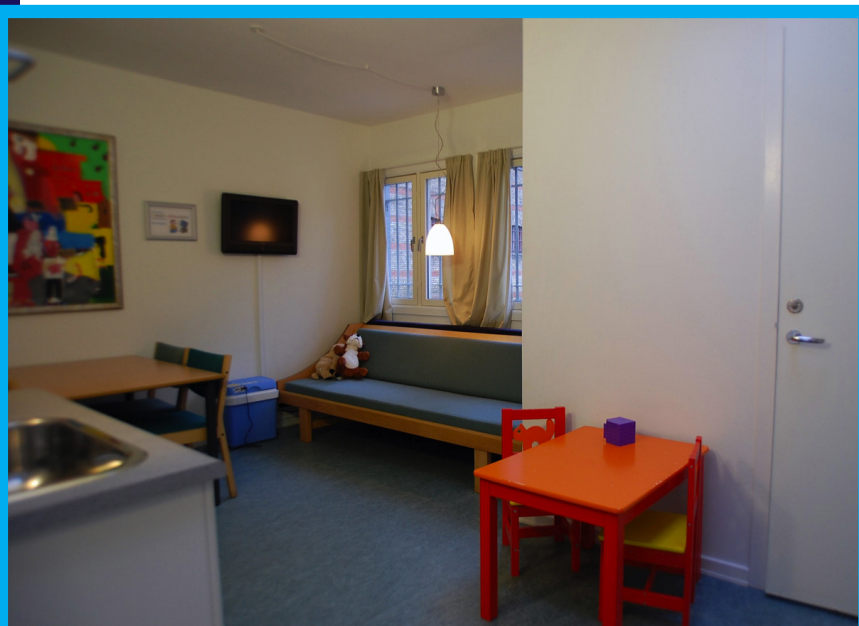
**Does the child-specific training cover the staff carrying out searches of visitors?**

*Yes. We are very aware of child-friendly policies, and special consideration is given to children during searches. We do use dogs, but we are working on ways to make sure that the children are not scared by them.*

**In your opinion, is the prisoner-child relationship important for the welfare of the child and is it always in the best interest of the child to see his/her imprisoned parent?**

*In my opinion, it is usually good for the child to visit, as a child’s fantasies can often be worse than the reality.*

**Denmark places a relatively large importance on alternative sentencing. What are the requirements for this? Are alternative sentences considered in particular if a prisoner is a parent? Are dependent children**



*Family visiting room, Copenhagen prison*

## 7. The Danish Prison & Probation Service

### taken into account at the time of sentencing?

*A convicted person's role as a parent is not something that affects alternatives to sentencing in particular, but it is of course included in the considerations. In special cases, such as when a dependent child is under three years old, the child may live in prison with his or her mother. In this case, the social authorities must agree to this.*

***“a child's fantasies can often be worse than the reality”***

*For sentences under six months, we often use electronic tagging. Special attention is not paid to whether or not the convicted person has children, but is included in the complete consideration.*

*Another alternative to prison is to serve one's sentence in an institution or our “Family House”. This “Family House”, which is in Engelsborg, is a half-way house and there is room for five families there. It is very popular. There are special staff (pedagogues, therapists, etc.) there who help the families. This is one alternative to sentencing if the prisoner has children.*

*Otherwise, if a prisoner contacts us and applies to serve their sentence near their family, we usually take this into consideration.*

### Have there been any innovative or original initiatives in your country to improve the situation of children of prisoners?

*In Denmark, we have a group called the Forum of Experts, which meets a couple of times a year with NGOs outside the prison service to get inspiration and support on the issues surrounding children of prisoners. We have an NGO for parents outside prison – SAVN (which means ‘loss’ in Danish). SAVN is a member of the Children of Prisoners Europe Network.*

*We are also in close contact with the Red Cross, which provides special groups for children of inmates where they can meet each other, giving them the opportunity to talk to someone who knows what it is like to have an incarcerated parent. There have been others who are interested in the subject, such as the Danish Institute of Human Rights.*

***Interview conducted by  
Hannah Lynn  
Project Coordinator  
Children of Prisoners Europe***



*Visiting apartment, Herstedvester prison*

## 8. The Swedish judicial process: Q&A

**T**he following is a question and answer session with Martin Weyler, Solna District Court Judge.

**Is there existing legislation encouraging the acknowledgement of prisoners' children during sentencing in Sweden? Is a convicted person's status as a parent taken into consideration during sentencing?**

*“a judge asks personal questions to do with the person's family and whether or not this person has children”*

A convicted person's status as a parent is taken into consideration during sentencing in Sweden. At the end of a trial, before ruling what sentence will be given, a judge asks personal questions to do with the person's family and whether or not this person has children. These questions, along with statements from the defence lawyers, may affect whether or not the judge decides to send the person to prison. Alternative sentences are often considered, especially for those who have dependent children at home. If the sentence to be given is lower than a year, the majority of people are not sent to prison. For example, for crimes such as theft, a suspended sentence with fines may be given or a suspended sentence with social or unpaid work. Similarly, a suspended sentence with parole officers is a common choice by the judges. The Swedish prison system also has several open prisons in place. The role of a convicted person as a parent may cause the presiding judge to consider other alternatives to prison.

*“alternative sentences are often considered, especially for those who have dependent children at home”*

For crimes related to drugs or alcohol abuse, sentences might be given which are called “contracts”. The convicted sign a contract of treatment, such

as six months rehabilitation in a closed setting followed by 6 to 18 months in an open setting, with continued treatment.

**Have there been any cases in the past in which the presence of children has impacted sentencing?**

It is interesting to note that if a judge decides to send a convict out of the country, in other words to deport them, the judge must ask if the convict has children residing in Sweden. If this is the case, the convicted person will usually then remain in Sweden, even if they don't have permanent residence. This is solely because of the children. The children are never deported with the parents. Each case is considered separately.

In the past, however, this was not the case. In the 1990s, there was a case of a South American mother living in Sweden who did not have custody of her children. However, when the father of the children was arrested and sentenced to life imprisonment, the mother was given sole carer responsibility and therefore sole custody of the children, which subsequently meant that the Swedish courts were authorised to deport her with her children.

*“if a judge decides to send a convict out of the country, in other words to deport them, the judge must ask if the convict has children residing in Sweden”*

Since this case, and, indeed, to a certain extent because of this case, there have been many changes in the Swedish prosecution system and these deportation cases are no longer authorised. The rules have been improved upon and it is now generally considered that even someone convicted to life imprisonment still holds the right to be a parent and therefore the right to have contact with his or her children.

## 8. The Swedish judicial process: Q&A

**Are children frequently present during the trial of their parents? Are they allowed at the trial? Are there any moves to allow children to voice their opinion during trial?**

There are no rules against allowing children to be present at trial. It is generally held that a courtroom is not a suitable environment for a child, however. The court process is a reality that children are usually not used to or familiar with. As a District Judge, I once brought an audience of 13- and 14-year-old school children into the courtroom during a trial, to open their eyes to a reality they are not used to. In my opinion, for the children of those convicted, the worst part of the pre-trial and trial process is the not knowing. I regularly find that their imagination is worse than the reality. For this reason, I would never send a child of someone convicted out of court. However, in my experience, these children do not come to court very often.

One of the reasons for this might be that those who commit crimes rarely tend to talk about it with their families or children. They are often alone in the courtroom, which is a problem. It shows that they do not want to talk about the crime committed or seek help. I believe that the family being present in the courtroom is a symbol of hope: if the family is there, the person can be saved.

**On average, how long is the pre-trial detention period? Can children contact and/or visit their parents during this period? What restrictions are in place at this point?**

During the pre-trial detention period, which consists of 23 hours of solitary confinement per day, prisoners are encouraged to speak to and consult a doctor. Many find this period the most difficult and it is often the most difficult period for the affected families as well. The families have a right to visit their imprisoned relative during this period prior to the trial. The prisoner must obtain permission from the prison and usually there is no problem if it is to speak to his or her children but obtaining permission takes time. One of the

difficulties prisoners come up against at this point is that prisoners are often moved from prison to prison during the pre-trial detention period. I constantly feel that things move far too slowly at this point. Sometimes prisoners will be left to wait for weeks before receiving their first visit.

The courts do not have a say in this: the judge simply rules whether there is to be a detention or not and if the prosecutor can put rules in place for who the prisoner may contact. It is then left to the prosecutor to decide any further restrictions. In general, this takes far too much time. After the trial and when the prisoner is in prison, the visiting process is much easier as the prisoner's situation in general is more concrete.

When pre-trial hearings are held at Sollentuna detention centre at the weekend, books, toys and pamphlets are provided for children. The pamphlets describe in simplified Swedish what is happening to the children's parents and why their parent is in custody.

**Are the Swedish police who deal with arrests specially trained to deal with children?**

*“police officers often find the arrest of a parent particularly difficult as they are always seen as the ‘bad guy’ ”*

This is an issue that is being regularly discussed within the police system at the moment. Police officers often find the arrest of a parent particularly difficult as they are always seen as the “bad guy”. Such officers wish to change the image of the police force and to demonstrate that they're not here to arrest the child's parent: they are here to help the child's parent. I have even met police officers who wish they had a teddy bear with them in the car with which to distract any children! I believe that social workers should work with the police force when they carry out an arrest. Indeed, this situation is improving and social workers do work more closely with the police.

## 8. The Swedish judicial process: Q&A

As to whether or not police officers receive specific training: there has been a discussion on how they're supposed to do it and there is a protocol in place. Within the police system there are certain units which work solely with children – questioning of children, etc. There are social workers that work in the police station.

*“children suffer from separation from their father as well as their mother”*

If you look at sentencing in Sweden, women are often not as harshly convicted as men. I have had colleagues who would avoid sending a woman to prison at all costs. We often naturally look for other options for women: we should bring it to people's attention that there are two parents, that children suffer from separation from their father as well as their mother. I think this is a prejudice in Sweden: we talk about “mothers” and we then talk about “men”. We need to come away from this. If not, we would lose the whole objective.

*Interview conducted by Hannah Lynn  
Project Coordinator  
Children of Prisoners Europe*

It is interesting to note that under “[Client Information](#)” on the Swedish Prison and Probation Service website there is concrete information concerning children. The site (aimed at prisoners who have just been convicted) informs prisoners that they will be asked if they have any children, upon arrival at the institution and whether or not they have custody of one or more children. It is also stated that the prisoner's children may visit the prison and that if the prisoner is female, her child may live with her up to the age of 12 months. Interestingly, the final sentence reads: “Things will be arranged in a way that provides the best possible situation for the child.” Under the section “Visits” it reads: “It is stipulated in law that you may receive as many visits as it is possible to arrange.” Children under 18 are welcome, provided they have written permission from their parent or guardian. Children under 15 must be accompanied by an adult. Visiting time generally lasts for one to two hours but visitors who come from farther afield may visit for half or a whole day. At open institutions, prisoners may receive visits in their cells. At some larger institutions there are special visiting apartments where prisoners can be with their families for longer periods and, “most closed institutions have child-friendly visiting rooms”. It is also stipulated that staff may be required to be present if they feel there is a security risk. In these cases, physical contact is not permitted between prisoner and visitor.

## 9. The Danish court system: Q&A

**T**he following is a question and answer session with Henrik Engell Rhod<sup>1</sup>, Chief Justice of the Court in Bornholm, Denmark.

**Is there existing legislation encouraging the acknowledgement of prisoners' children during sentencing? What mentions of children are there in the Danish Penal Code?**

*“if lawyers or prosecutors mention children and the fact that the person is a parent, this information will all enter the ‘melting pot’ of information that the judge will take into consideration”*

*The Danish Penal Code does not directly state that we should take children into consideration. However, the Penal Code does give general advice by law that we should take relevant information regarding the convicted person into consideration, regarding the type of crime committed and the circumstances. If lawyers or prosecutors mention children and the fact that the person is a parent, this information will all enter the “melting pot” of information that the judge will take into consideration.*

**Do lawyers and judges consider the impact on a convicted person's children during the trial and sentencing period?**

*Unfortunately, we do not keep statistics on whether the people we sentence have children or not. When we register a file regarding a charged person, we do not register (or receive, for that matter) information on whether the person has children. It may be stated in reports by the police but it is not officially registered in court.*

**Do you think there is a case for this provision of information to be made obligatory?**

*No, I feel it is up to the parties involved. If the lawyer and the party think it should be taken into consideration they will make it known. I suppose the argument here is, if we make this type of information known, where do we draw the line? It is not the job of judges to look into statistics: that is a job for researchers. I can see it might be useful for them.*

**Does the convicted person's status as a parent affect the location of the prison where the sentence is to be served?**

*We, as judges, do not deal with this. The location of the prison is up to the Danish Prison and Probation Service. It is our job to state if he or she should be imprisoned and for how long.*

*“in general, children under the age of 15 can be excluded from attending a court trial, due to the opinion that a child should not see his parent being sentenced”*

*Regarding the trial, the child is not a party in the trial and therefore the child's views are not heard just because he or she is the child of the convicted person. The child would only be heard at trial if the child had the status of victim or witness. In general, children under the age of 15 can be excluded from attending a court trial, due to the opinion that a child should not see his parent being sentenced.*

**Are Danish police officers trained to deal with children of those who are arrested?**

*When a parent is taken into custody or pre-trial detention, and the police are aware there are children involved, the police will always contact the social authority. If parents are not together and the parent who has sole responsibility is taken into prison, the social authorities will take action before handing the child over to the other parent.*

1. Contact information: her@domstol.dk

## 9. The Danish court system: Q&A

**Do they have social workers during the pre-trial detention period who advise them and perhaps encourage them to talk to their families?**

*In my experience they do. They are organised within counties. In my experience the county is fully aware of those situations.*

**On average, how long is the pre-trial detention period? Can children contact and visit their parents during this period? What restrictions are in place at this point?**

*In Denmark the pre-trial detention period could be from one day up to several months long: it depends on the case and the trial. Children are permitted to contact their parents, as long as it is not considered conflicting with the investigation. If police consider it would conflict with the investigation they can prevent the children's visit or can have a police officer attend the visit.*

**Are there existing NGOs working towards raising awareness on the topic of prisoners' children during the trial and sentencing period? How would you feel about putting flyers on judges panels which highlight the impact of a parent's prison sentence on a child?**

*I don't think a flyer would make any difference because the judge would always consider children to the extent they could be taken into consideration at all. Personally, if I think of cases afterwards, it would usually be those involving children – I don't think that a flyer would make much difference or impact on that.*

*Furthermore, if you were to put up a flyer on this matter, other NGOs would want to put up flyers on other issues. The lawyers in each case have a duty to disclose any information that a judge should take into consideration. A judge is trained that, regardless of the case, you should always keep a professional distance.*

**How often are alternative sentences considered due to the convicted person's status as a parent?**

*While we do not keep statistics on the frequency of alternative sentences, when it comes to pre-trial detention, it is possible to change it into something else, such as the confiscation of one's passport, for example. So whenever there is a possibility to carry out pre-trial detention under different circumstances than in a prison, the judge and lawyers will consider that. Whether or not an alternative sentence is given, this is considered when the judge decides the conditions of the sentence at trial. For example, whether or not a prison sentence should be given or a probation period or if the prisoner should carry out some community service instead of prison: all these things are considered in the "melting pot" to which I referred earlier.*

*Interview conducted by Hannah Lynn  
Project Coordinator  
Children of Prisoners Europe*



## 10. The arrest and sentencing process: The impact on the child

***“There can be no keener revelation of a society’s soul than the way in which it treats its children”***

– Nelson Mandela

The arrest of a parent, the pre-trial remand period and the court process leading to their imprisonment is inevitably an extremely traumatic time for the child involved. This is rendered even more so by the fear of the unknown and the child’s own fantasies and imagination about what is happening and what might happen to their parent.

***“a violent and abrupt separation process renders this stress all the more difficult to cope with”***

As the first two articles in this issue illustrate, the arrest process can be violent and those carrying it out often do not consider the age and sensitivities of any children present. The attitude, behaviour and language used by police officers during an arrest can have a profound effect on the psychological wellbeing of a child. To a young child, a parent is a figure of security and stability: someone they can depend upon and someone they look up to. If this symbol of safety is suddenly and brusquely removed from a child’s life, at the hands of the state authorities, this may very well have a negative effect on the child.

Children may lose faith both in their parent and, depending on the way in which the arrest is carried out, in the police force and state authorities. The separation of a child from their parent is stressful enough for both parties, but a violent and abrupt separation process renders this stress all the more difficult to cope with. To COPE, it is clear that a sensitive police approach and sensitive police practices can reduce the levels of distress experienced by children who witness their parent’s arrest.

Improvements to the arrest process should include: child-specific training for police officers; verification prior to the arrest if the person being arrested has children; having police officers wear civilian clothing and not use handcuffs or violence when children are present; ensuring they do not witness the arrest or search and granting arrested parents sufficient time both to explain what is happening and to say goodbye. Clear written guidelines could help police perform impact assessments of the children’s needs, use subtler methods of arrest that maintain the parent’s dignity in front of children and ensure that someone appropriate can speak to children at the time of arrest.

***“not only is the future completely unknown, but also any requests to contact or visit their parent during this period often take weeks to be processed”***

Following the arrest, the child of a prisoner on remand may experience further anxiety and trauma during the pre-trial detention of their parent. Depending on the country, the pre-trial detention period may differ markedly in length and conditions. Some remand periods may last up to three years. In Sweden, for example, prisoners may be held in solitary confinement 23 hours a day. Due to the uncertainty surrounding the length, location and conditions of the remand period, this can be one of the most distressing times of the imprisonment process for the child. Not only is the future completely unknown, but also any requests to contact or visit their parent during this period often take weeks to be processed. Once the parent has been convicted and placed in a prison and has a relatively more stable lifestyle, the child has the chance to adapt to the situation; only then can he or she start developing (consciously or subconsciously) strategies for coping with the situation.

A further issue related to the pre-imprisonment period is the trial itself. As a network we work

## The arrest and sentencing process: The impact on the child

to promote child participation and the consideration of the best interests of the child. According to the UN Convention on the Rights of the Child,<sup>1</sup> a child has a right to both parents and has a right to contact with both parents. Article 3 of the Convention states that, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” The trial of a parent undeniably concerns their children. Article 9 of the Convention states that, “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except if it is determined that such separation is in the best interests of the child.” In any such proceedings, “all interested parties shall be given an opportunity to participate in the proceedings and make their views known”. Finally, States Parties shall respect the right of the child to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.

***“we cannot rely on the discretion or ‘good intentions’ of police officers to deal with children appropriately and sensitively at the time of arrest”***

If the UN Convention on the Rights of the Child is to be respected it is important that judges and lawyers take the fact that a person on trial is a parent and has dependent children into consideration. In this case, the presiding judge would consider all possible alternative penalties before delivering a prison sentence. Should prison be deemed unavoidable, the judge would recommend that the Prison Service place the prisoner in a detention centre close to his or her family to allow ease of access. Courts decide measures of protection for children who have been harmed or abused but they also affect the lives of these children when sentencing their parents. As the COPING Project

report states, “any potential sentences should take into account the impact on any children; sentences that minimise the negative effects on family life should be preferred.”<sup>2</sup>

We cannot rely on the discretion or “good intentions” of police officers to deal with children appropriately and sensitively at the time of arrest. Nor can we rely on judges and lawyers to use their own intuition to take children into consideration during the sentencing process. Tangible policy recommendations and guidelines built into the fabric of the police and court systems and regulations would mean that outcomes for children were not reliant on police officers and judges failing to consider them or making uninformed decisions affecting their best interests. In line with the Convention on the Rights of the Child and the children’s needs, the welfare of children is and must be made a priority within police and criminal justice agencies.

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1. UN Convention on the Rights of the Child

2. Jones, A. et al, 2013. ‘The COPING Project: Children of prisoners: Interventions and mitigations to strengthen mental health’. University of Huddersfield, p.73