



# European Journal of Parental Imprisonment

## Bonding across barriers: Support for the infant-parent relationship within a carceral context





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*Bonding across barriers: Support for the infant-parent relationship within a carceral context*

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### Editors

Brianna Smith  
Noah Boden

### Editorial Consultant

Liz Ayre

Cover image: Vincent, age 8, at La Santé Prison, Paris

Children of Prisoners Europe (COPE) is a pan-European network of non-profit organisations working on behalf of children separated from an imprisoned parent. The network encourages innovative perspectives and practices to ensure that children with an imprisoned parent fully enjoy their rights under the UN Convention on the Rights of the Child and the EU Charter of Fundamental Rights, and that action is taken to enable their well-being and development.

The European Journal of Parental Imprisonment is a publication that seeks to broaden the study of issues relevant to children affected by parental incarceration and meet a burgeoning interest in the development, implementation and evolution of entitlements, policies and practices that promote their well-being. With a view to fostering new perspectives for children with imprisoned parents, the journal features contributions by eminent scholars and experts in the fields of child rights, child welfare, criminal and social justice, psychology, penal affairs and other disciplines; published articles do not necessarily represent COPE's opinions. Selected articles are editorial screened but not peer-reviewed. The editors are committed to reasoned ideological diversity and welcomes suggestions for special issues and contributions.

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*The views expressed in these articles do not necessarily reflect those of Children of Prisoners Europe, except where indicated.*





## Introduction

### Bonding across barriers: New standards, new approaches, new perspectives

**Brianna Smith**

Project Coordinator

Children of Prisoners Europe

Children with parents in prison have the same rights as all children, though they have a specific set of needs and require additional, multi-sectorial support in order to cope with the challenges they may face. This edition of the *European Journal of Parental Imprisonment* uses 'Bonding across barriers' as a common thread that helps us to think of supporting the infant-parent relationship at many levels: not only at the penitentiary level for infants residing in prison with their mother, but also encompassing developments in rights-based legislative support and considering alternative sentencing for primary caregivers.

From a fundamental human rights perspective, no child should be living in detention. Yet there are particular cases when sentencers may decide that living with a parent in prison is in the best interests of young children (particularly infants), to allow for bonding between child and parent during the crucial early developmental stage, or, for example, when there is the risk of a child living in foster care or in institutions. This is not a decision taken lightly, as it brings into question the deprivation of liberty of these children.

This issue is a key element of the UN Global Study on Children Deprived of Liberty, due to be published in Autumn 2019. As Rachel Brett discusses in this publication, the Global Study developed out of an initial NGO appeal to consider children living in prison with a parent throughout the justice system, which doubled as a call for more information about this particular population of children. The scope of the study grew to include a range of children, all faced with deprivation of liberty. The UN General Assembly endorsed this study in 2014. The Global Study covers children deprived of liberty

- in the administration of justice;
- for migration-related reasons;
- in institutions;
- related to armed conflict and national security;
- living with their parents in prison.

The study is making significant advances for the collection of information/data on children affected by parental incarceration, an issue addressed in Volume 5 of this publication, *Making children count: Improving data collection for children with imprisoned parents*. It remains a challenge to gain

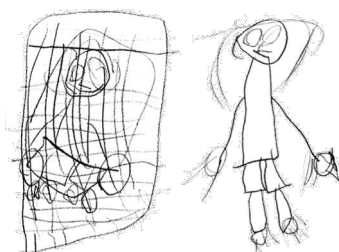
accurate information about children with imprisoned parents. To draft and put into practice the necessary policies to address the situations that these children are faced with, it is crucial to understand the scope of the issue and just how many children can be considered as being 'deprived of liberty'. The UN Global Study provides an opportunity for progress in understanding the realities of children deprived of liberty and working to ensure that the rights of all children are protected and defended.

The Council of Europe Recommendation CM/Rec(2018)5 of the Committee of Ministers to Member States concerning children with imprisoned parents contains a subsection of articles focused on ensuring that the rights of infants living with their parents in prison are respected. Of the 56-article Recommendation, Articles 34 through 40 concern infants in prison, with Article 37 stating that prisons must provide care and child-friendly activities and facilities for infants in prison with a parent, stipulating the following measures: ensure that the best interests and safety of infants are a primary consideration, as are their rights, particularly the right to play, the right to non-discrimination and the right to be heard; protect the welfare of the child and promote their healthy development; promote child-parent attachment; ensure that children have the same access to services and support available to the larger community; and enhance contact with family outside of the prison. Kate Philbrick details the importance of these articles concerning infants living in prison with their parent in her piece further on in this publication.

Deciding when a child is to leave prison hinges on flexible, case-by-case consideration, the assumption being that preventing separation is usually in the best interests of the child. Consideration should be given to the age at which the child will 'age out' of the system. As it stands, there is a discrepancy in standards between the Council of Europe Prison Rules, which suggest 'infants (meaning children up to 3 years) should be allowed to stay in prison with a parent only when this is in their best interests', and the protocols and practices of EU Member States. Many EU members have different national legislation in this regard, with upper age limits ranging from 9 months to 6 years; some countries allow older children to

remain in prison with a parent in exceptional cases<sup>1</sup>.

There are a variety of reasons for why children may stay with their parents in prison up until a certain age, often based on the consideration that developing an emotional relationship with the mother and/or father is essential for development and, therefore, in the child's best interests. Developing an emotional relationship with one or both parents is crucial in ensuring a child's well-being and life chances, however the moment of separation from a parent in prison can be difficult to navigate. Liz Ayre looks at some of the ways in which an infant's rights, needs and welfare can be protected and their best interests served when co-residing with an incarcerated primary carer, highlighting the pivotal role of support networks for both infants and their caregivers inside and outside prison. Among other things, her article emphasises the importance of support for the parent to in turn support their child by promoting their healthy development and caring for them.



Rosi Enroos provides a detailed look at the changing situation of children living with parents in prison in Finland, how they are considered and how their rights are respected. A family ward exists in the Vanaja open prison, where children and their families receive support from specialised staff. The number of children living in prison with their parents is not high, allowing for their care and well-being to be monitored closely. The prison has a number of positive initiatives in place for supporting parents and children, though there is a call for more of a child rights perspective in future policy changes that may be made.

Many EU members require national authorities to seek alternatives to detention for parents, especially for mothers. Italian national law provides, for instance, that 'unless condemned for violent crimes, mothers

whose children are aged under 6 years may have their imprisonment suspended and may be held under alternative forms of detention, such as in correctional institutions or home detention'<sup>2</sup>. Following in this vein, Rona Epstein and Claire Powell provide a review of key legislation that impacts on children's rights in the case of maternal imprisonment in the United Kingdom, citing an overuse of short custodial sentences for women. Epstein and Powell provide case studies of situations where the rights of the child have not been taken into account during sentencing procedures and encourage alternatives to imprisonment for mothers as opposed to short-term sentences. A reconsideration of short sentences may well have wide-ranging benefits for children and their family life.

Philipp Müller's piece discusses how children living with one parent (typically the mother) in prison can maintain a healthy, stable relationship with the parent (in the case of this article, the father) living outside the prison. He includes a short review of fundamental theories of psychological attachment, and emphasises the importance of infants developing a significant relationship with their father. As mentioned above, children have the right to family life and to contact with both parents when in their best interests; as outlined in COE Recommendation CM/Rec(2018)5, they should have regular opportunities for contact with family outside the prison. Müller's piece explores different avenues of contact from a theoretical perspective, and calls for future work to be done in considering the rights of children co-residing with a parent in prison.

Part of the challenge of supporting the infant-parent bond is reconceptualising what that support looks like; how can we provide support as practitioners across the board and in myriad contexts? What follows are six innovative examples of the forms that such support can take.

<sup>1</sup> 2017. European legal and policy framework on immigration detention of children. Vienna: European Union Agency of Fundamental Rights, 53. Retrieved from [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-immigration-detention-children\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-immigration-detention-children_en.pdf).

<sup>2</sup> Ibid., 54.



## Enhancing and protecting the mother-child relationship in prison nursery units

**Liz Ayre**

Executive Director  
Children of Prisoners Europe

The first year of an infant's existence is pivotal to mother-child bonding. Building a secure attachment bond benefits a child throughout their entire life, underpinning the child's ability to develop a sense of security, self-confidence and trust and influencing how they interact and form relationships later in life<sup>1</sup>. Likewise, it is generally accepted that early attachment experiences are crucial in promoting the development of maternal skills, providing opportunities for caregivers to learn to read, interpret and respond to their infants' cues and engage in consistent, responsive parenting<sup>2</sup>.

It follows therefore that in most cases it is in an infant's best interests to reside with the mother<sup>3</sup>, even, as suggested by some studies, if this means co-residing in prison, on condition that the infant is deemed safe<sup>4</sup>. The question of whether an infant should live with a primary caregiver when the parent is in prison remains controversial and is always a concern, with earlier studies pointing to the adverse impact of restricted access to varied stimuli on infant development<sup>5</sup>. More recent studies, however, suggest that infants can be exposed to greater developmental risks when separated from their imprisoned primary carer during their early months, than when living with that parent in prison nursery units, particularly when support for mother and child inside and outside prison is provided<sup>6</sup>. A consensus holds that the decision be made on a case-by-case evaluation of the child's best interests and circumstances for safe, protected co-residence where the child's basic health, nutritional and educational needs are met<sup>7</sup>. Eligibility for co-residence with the incarcerated parent ideally includes infants born during the caregiver's incarceration, those born prior to the incarceration and young children who have been adopted.

Ideally no parent, particularly a primary caregiver, should be incarcerated, with alternative measures always being given priority<sup>8</sup>. But this is not always feasible; the reality is that many primary caregivers are imprisoned. So until greater progress is made on promoting available community-based alternatives to custody for primary caregivers—such as Spain's External Mother Units focusing on the mother-child relationship—and on fostering eligibility for these alternatives, conditions inside prisons and detention centres need to be enhanced and support networks need to be developed. Indeed, research reveals, as Melanie Paurus notes in her survey of prison nurseries worldwide, that when nurseries are carefully laid out to serve children's best interests, they can provide 'a compelling form of alternative sentencing'<sup>9</sup>.

To provide more enriching, supportive prison nursery units that serve children's best interests, all stress on the infant needs to be minimised and measures taken to overcome the often-repetitive sensorial experiences associated with the prison world—keys jangling, doors clanging and industrial smells. Noise reduction acoustics, for example, can buffer the sounds of the carceral world and of other children crying. The mother's space in the cell should be separate from that of the child, with the cell offering access to a communal setting with bright, vivid colours and other sensory-stimulating features to enhance cognitive, psychomotor and

1 Bowlby, J. (1988). *A Secure Base: Parent-Child Attachment and Healthy Human Development*. New York: Basic Books; Bowlby, J. & Ainsworth, M.D.S. (1951). *Maternal care and mental health* (Vol. 2). Geneva: World Health Organisation.

2 See for example Lebovici, S., & Stoléru, S. (1990). *Le nourrisson, la mère et le psychanalyste: les interactions précoces*. Paris: Bayard Editions-Centurion.

3 Bowlby, J. (1988), *op. cit.*; Bowlby, J. & Ainsworth, M.D.S. (1951). *op. cit.*

4 See, for example, Goshin, L.S. Byrne, M.W., Blanchard-Lewis, B. (2014); Byrne, M. W., Goshin, L. S., & Blanchard-Lewis, B. (2012); Byrne, M. W., Goshin, L. S., & Joestl, S. S. (2010); Jimenez, J. M., & Palacios, J. (2003); Bouregba, A. (2003). 'L'enfant de moins de trois ans et son parent incarcéré', in *L'enfant et son parent incarcéré*, Paris: Eres; Dolto, F. (1991). Une journée particulière à Fleury-Mérogis: La visite de Françoise Dolto à la Maison d'Arrêt de Fleury-Mérogis, le 26 mars 1987. *Transitions* 31 (Enfants, Parents, Lieux), 86-110. Biondi, G. (1995). *Infants in Prison*, Rome: Delfi editore.

5 See for example Catan, L. (1988). The Development of Young Children in HMP Mother and Baby Units. *HORPU Research Bulletin*, No.26., 9-12. London.

6 Goshin et al. (2014), *op cit.*; Byrne, M. W., et al. (2012), *op. cit.*; Byrne, M. W. et al. (2010), *op. cit.*; Jimenez, J. M. et al. (2003), *op. cit.*

7 Robertson, O. (2012). *Collateral Convicts: Children of incarcerated parents: Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion 2011*. Quaker United Nations Office, Geneva.

8 See for example, Appendix to Council of Europe Recommendation CM/Rec(2018)5.

9 Paurus, M. (2017). 'International Report on the Conditions of Children of Incarcerated Parents: A Survey of Prison Nurseries'. Children of Incarcerated Caregivers, Minneapolis, MN.

linguistic development. The environment should have basic child protection features, good ventilation and access to natural light and allow children the freedom to move about. Activities should promote bonding with the mother, who also needs support, and incorporate aspects of normalisation—mothers preparing meals for children or getting them ready for day-care centres outside the prison, for example.

Yet even in prison nurseries that appear to be less than a compelling form of alternative sentencing, certain elements like multidisciplinary developmental support networks can serve as protective factors and compensate for some inadequacies. For example, despite having many limitations, Goshin et al. (2014), (comparing long-term outcomes of preschool children who had lived as infants with mothers in a U.S. prison nursery with children from a national dataset who had been separated from incarcerated mothers), found that co-residence in a prison nursery with developmental support conferred some resilience in children affected by maternal imprisonment at an early age<sup>10</sup>. Support networks also afford parents opportunities for personal and professional development (providing care for the child during these activities), enhancing self-esteem and parental competence and enabling them to better meet their infant child's needs.

Incarcerated parents need to be able to engage with others, not only to avoid isolation but also to reduce the risk of a fusional mother-child relationship and to allow children to observe their parents engaging with other adults, which is beneficial to them and their social development. Regular contact with other family members (through both excursions outdoors and prison visits) is also beneficial to maximising the child's attachments. Support networks can help organise these regular outings for children and play a vital role in building bridges between prisons and social and child welfare services, family support agencies and NGOs. Preparation for separation, which should ideally start from the onset of the co-residence, and at minimum six months prior to separation, should include engaging with mothers to learn about the child's specific needs and to plan the child's daily routine, while organising outings for the child with the future caregiver outside prison. Support networks can assist in identifying accommodation options for children and in preparing the child's departure through incremental stays in designated premises. Ideally, mothers would be granted temporary leave to be involved in these outings.

In short, in light of enhanced understanding and research findings, providing protective prison-based spaces appears to be within easier reach, an interim strategy until community-based alternatives to custody grow more widespread and primary caregivers are granted eligibility to access them. It is hoped that the impending UN Global Study on Children Deprived of Liberty will raise further awareness on the importance of promoting these alternatives.

<sup>10</sup> Goshin, L.S., et al. (2014), *op. cit.*

## The UN Global Study on Children Deprived of Liberty

The initial impulse for the UN Global Study on Children Deprived of Liberty came from the non-governmental organisation (NGO) Defence for Children International, specifically to look at children incarcerated through the justice system, and especially given the lack of information about the numbers of such children<sup>1</sup>. However, other NGOs, including members of the NGO Working Group on Children of Incarcerated Parents<sup>2</sup>, quickly joined in the call for a study, and broadened the

<sup>1</sup> See Nowak, M. & Altafin, C. (2017). 'Data collection, children of prisoners and the UN Global Study on Children Deprived of Liberty', *European Journal of Parental Imprisonment* 5. Children of Prisoners Europe, Paris, 8-10.

<sup>2</sup> For more information on the NGO Working Group on Children of Incarcerated Parents, see [https://www.childrightsconnect.org/working\\_groups/children-of-incarcerated-parents](https://www.childrightsconnect.org/working_groups/children-of-incarcerated-parents). There is also a link to the online database of the Committee on the Rights of the Child's Concluding Observations relating to this issue.

**Rachel Brett**  
COPE Board Member

scope to include other forms of deprivation of liberty of children. In response to the NGO call, in 2014 the UN Committee on the Rights of the Child exercised its right under Article 45 of the Convention to call on the UN Secretary General to undertake such a study, and this was endorsed by the UN General Assembly in 2014<sup>3</sup>. This is the third such study, the others being on Children and Armed Conflict and on Violence against Children. In 2016, Manfred Nowak was appointed as the Independent Expert to undertake the Global Study.

In addition to the original focus on children deprived of liberty in the administration of justice, the Global

<sup>3</sup> UN General Assembly resolution 69/157, *Rights of the child*, A/RES/69/484 (18 December 2014), [www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_69\\_157.pdf](http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_69_157.pdf).



Study covers children deprived of liberty

- in the administration of justice;
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- in armed conflict;
- related to national security reasons; and
- children living with their parents in prison<sup>4</sup>.

Some cross-cutting issues, such as health, gender and disability, are also under consideration, as well as child participation. Furthermore, the overall purpose of the Global Study is not only to identify the negative effects of detention on children, and to at least start to address the lack of data, but also to present good practices and alternatives to detention.

The issue of children deprived of liberty living with their parents in prison was a key focus of the Committee on the Rights of the Child Day of General Discussion that took place on 30 September 2011. The primary recommendation for children living with incarcerated parents resulting from the discussions of the day called on State parties to ensure ‘the provision of sufficient social services at an adequate quality, including health and educational facilities’<sup>5</sup>. The Committee also recommended that decisions considering whether a child should live with their imprisoned parent should take into account the best interests of the child, and how to best fulfil these interests. If a child is living with an imprisoned parent, supports should be in place to ensure the child maintains a relationship with the parent/family living outside the detention facility. The 2011 Day of General Discussion concluded that there was a need to increase research on and allocate resources to help surmount the challenges facing children with parents in prison, and the Global Study, with its focus on children living with their parents in prison, contributes to that.

The NGO Working Group on Children of Incarcerated Parents welcomed the inclusion of their issue in the Global Study and is the main interlocutor on this, with its members providing documentation and, by invitation, contributing two major inputs. Some issues

arise, however. The scope is limited since more children of incarcerated parents are living outside prison than in it. At the same time, the Global Study’s value will be enhanced if it helps to identify how some of the different forms of child detention intersect; children detained through the criminal justice system may also be parents, for example, and children in institutions may have a parent in prison, which may or may not be the reason for the child’s institutionalisation. (In the Czech Republic, 6.7 per cent [n=963] of children in institutions were reported to have a parent in prison.) Infants and young children may also age out and have to leave their imprisoned mother/primary carer and enter an institution or other alternative care. Finally, the global nature of the Study and its reliance on obtaining data may limit its ability to identify the over-representation of some groups, such as Roma and indigenous peoples, and the particular impacts of incarceration on them.

The final Global Study is due to be presented to the UN General Assembly in Autumn 2019, but this should also be the start of the next, implementation, phase in relation to the issues covered. For example, specifically in relation to children of incarcerated parents, this could include a joint handbook or guidelines from the UN Office on Drugs and Crime (UNODC), UNICEF and the Office of the UN High Commissioner for Human Rights, all of whom are participating in the Global Study, about the treatment and situation of, and decisions in relation to, children with a parent in prison. The benefits of such a document include the fact that globally government bodies and officials dealing with the administration of justice and prisons look to UNODC for their international standards and guidance. In addition, training of judges and lawyers, so that they understand the issues and how and why the impact on children should be taken into account when deciding on pre-trial measures and/or sentencing a parent, would be a major step forward in both reducing the number of children living in prison with a parent and the number of children separated from a parent by imprisonment, thus reducing the adverse childhood impact of either of these situations. Sensitising judges and lawyers about how and why to take account of the impact of parental incarceration on children is a current priority for the Children of Prisoners Europe network.

<sup>4</sup> COPE and the Quaker UN Office, Geneva, are the NGO focal points for this part of the Global Study.

<sup>5</sup> UN Committee on the Rights of the Child, *Report and Recommendation of the day of general discussion on ‘children of incarcerated parents’*, (30 September 2011), [www2.ohchr.org/english/bodies/crc/docs/discussion/2011CRCDGDRpt.pdf](http://www2.ohchr.org/english/bodies/crc/docs/discussion/2011CRCDGDRpt.pdf).



## The new Council of Europe Recommendation and children living with a parent in prison

**Kate Philbrick, OBE**  
Former COPE President

Council of Europe Recommendation CM/Rec(2018)5 concerning children with imprisoned parents, ratified by the Committee of Ministers in April 2018, seeks to blend children's rights with the needs of children who have parents involved in the criminal justice context. This Recommendation represents a departure from previous international instruments which apply to children living with their parents in prison: the European Prison Rules, the Bangkok Rules, the Nelson Mandela Rules, among others, where provision for children has been subsumed under the arrangements for their parents. The Bangkok Rules, for example, are subtitled 'Pregnant women, breastfeeding mothers and mothers with children in prison', whereas CM/Rec(2018)5 names the provisions concerning children living in prison 'Infants in prison'. This phrasing presents a more child-centred focus on the 'infants', rather than their parents.

Whilst all Council of Europe countries have ratified the UN Convention on the Rights of the Child and all countries worldwide are party to it except for the United States, the relevance of children's rights to guidance on how to provide for and treat prisoners has not previously been explicit. The preamble to the Recommendation and the underlying values and basic principles in Articles 1 through 7 set the scene for the interpretation of the recommendations that follow.

Of particular note is the statement 'Reaffirming that children with imprisoned parents are entitled to the same rights as all children'.

The three statements of intent of CM/Rec(2018)5 enhance the need to protect child development and respect their needs and rights:

'With a view to alleviating the avoidable adverse impact of a parent's imprisonment on children and on parental competency, with a view to protecting child development and fostering family reunification, where appropriate; and recognising that children with imprisoned parents are vulnerable and that consideration of their needs and rights forms part of the Council of Europe Strategy for the Rights of the Child (2016-2021) and should form part of cross-sectorial, multidisciplinary national child protection and welfare strategies'.

These are significant in that they remove the excuse previously used by prisons at times that presented challenges to practitioners: that child-friendly arrangements were not compatible with security. This guidance in CM/Rec(2018)5 makes clear that child-

friendly arrangements for spaces and visits in prisons can in fact be compatible with security. They also set out the multidisciplinary nature of provisions required to ensure that children with imprisoned parents can experience opportunities comparable with those of other children. This is an example of the reframing of how the Children of Prisoners Europe network sees the life chances for children with imprisoned parents; they are not victims to be given meagre provisions at the whim of prison administrations. Holistic approaches to each child's needs are required so they can be equipped with the resilience to cope with the adverse life experience of having a parent in prison and emerge as full of opportunity as other children.

The underlying values spell out the importance of support for parents which is elaborated in the provision for infants living in prison within CM/Rec(2018)5. They are based on the best interests of the child and further specify addressing stigma, which is a primary burden for so many of these children because of our societal approach to prisoners, and by association their families.

For infants living with their parents (not only their mother) the initial articles of the Recommendation encompass the basic principles that apply to their situation: (1) the need to hear and consider children's views, (2) consider alternatives to imprisonment at all stages, particularly when the parent is a primary caregiver, (6) the requirement that sufficient resources are made available both to prisons and to other agencies, and (7) that appropriate training be given for all staff. All of these articles are of particular relevance.

Articles 34 through 40, specifically relating to infants in prison with their parent, embody the principles and rights enshrined above, including the need to find ways respecting the child's right to be heard, and collate provisions from previous guidance. They further elaborate the needs for staff training, for facilities to promote parental attachment and support and specify supporting development of parental competency to ensure they are provided with opportunities to look after their children. This includes cooking meals for them, getting them ready for nursery school and spending time playing with them, both inside and in open-air areas. The services and support, as well as the physical environment, shall be as close as possible as that for a child outside prison. The Explanatory Memorandum accompanying CM/Rec(2018)5 gives further examples of how this can be achieved, and forthcoming implementation guidance will give further ideas and specifics of what infants need in prison,



arising from good practice developed by Children of Prisoners Europe members and experts.

Overall, the child-centred and child-rights approach of CM/Rec(2018)5 prepared by the Council for Penal Cooperation with the Children's Rights division of the Council of Europe and ratified by the Council of Ministers, should, once implemented across the Council's 47 Member States—and strenuous efforts are still required for this to happen—go a significant way in bridging the traditional gap between child and prison services and ensuring even infants with an early life in

prison can emerge as resilient children with the same life chances for healthy development and well-being as other children.



## Imprisoning mothers: Where do children's rights come in?

### Women in prison

Most women are imprisoned for less serious, non-violent offences. In England and Wales, nearly 60 per cent of sentenced women in prison serve sentences of six months or less, some in custody for very short periods. Despite the courts' power to suspend sentences of 24 months or less, there remains an overuse of short custodial sentences for women. One in four women sent to prison in 2016—more than 1,500—were sentenced to 30 days or less; 300 of them were put in prison for under two weeks<sup>1</sup>. Use of pre-trial remand in custody for women is high, with 40 per cent of women entering prison on remand<sup>2</sup>. This overuse of imprisonment for women on remand or convicted of minor offences raises issues of human rights for both women and children.

### The effects of parental imprisonment

National and international studies have demonstrated the negative effects on children of having a parent in prison<sup>3</sup>. The multinational EU-funded study 'Children of prisoners: Interventions and mitigations to strengthen mental health' on the mental health of children of prisoners across four European countries found that a majority of children reported adverse effects<sup>4</sup>.

1 Merrick, R. (2017, 27 December). 'Women hit hardest by "shameful" short prison sentences, new figures reveal'. *The Independent*. Retrieved from <https://www.independent.co.uk/news/uk/politics/women-prison-sentences-short-jailed-periods-less-month-inmates-minor-offences-children-labour-a8124896.html>.

2 All Party Parliamentary Group on Women in the Penal System (2015). *Report on the Inquiry into Preventing Unnecessary Criminalisation of Women*. London: The Howard League for Penal Reform.

3 Murray, J. Farrington, D.P., Sekol, I. (2012). 'Children's antisocial behavior, mental health, drug use and educational performance After Parental Incarceration'. *Psychological Bulletin* 138(2), 175-210.

4 Robertson, O. (2015). 'Child rights: Some long-term perspectives'. *European Journal of Parental Imprisonment* 1. Children of Prisoners Europe, Paris, 22-23.

### Rona Epstein & Claire Powell

Coventry University Law School

King's College London

A recent study from L. Baldwin and R. Epstein (2017), 'Short but not sweet: A study of the impact of short custodial sentences on mothers and their children', highlighted the significant negative impact on children whose mothers served short periods in prison<sup>5</sup>. Shona Minson's study 'Direct harms and social consequences: An analysis of the impact of maternal imprisonment on dependent children' revealed the far-reaching consequences of maternal imprisonment for dependent children<sup>6</sup>.

### The United Nations Convention on the Rights of the Child (UNCRC)

The UNCRC is the specific international instrument intended to secure children's rights. It was adopted in 1989 and entered into force in 1990. Article 3 (1) of the UNCRC reads as follows:

*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 principle of the best interests of the child must be applied if a parent is incarcerated, as parental incarceration infringes upon the right of the child to parental care<sup>7</sup>. The UN Committee on the Rights of the Child has indicated that the best interests of the child of a defendant or an imprisoned parent must be considered carefully and independently by 'competent professionals and taken into account in all decisions related to detention, including pre-trial

5 Retrieved from <https://www.dora.dmu.ac.uk/xmlui/handle/2086/14301>.

6 Retrieved from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3067687](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3067687).

7 Liefwaard, T. (2015). 'Rights of incarcerated parents: Towards more procedural safeguards'. *European Journal of Parental Imprisonment* 1. Children of Prisoners Europe, Paris, 13-15.

detention and sentencing, and decisions concerning the placement of the child’.

### The UK Supreme Court

Lady Justice Hale cited the need to consider the best interests of the child in a Supreme Court case in 2011 concerning deportation of a mother of young children<sup>8</sup>. She stated: ‘For our purposes the most relevant national and international obligation of the United Kingdom is contained in article 3(1) of the UNCRC’:

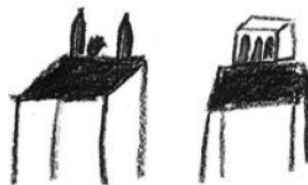
*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

The UNCRC neither offers a precise definition, nor explicitly outlines common factors of the best interests of the child, but stipulates that:

- a. the best interests must be the determining factor for specific actions, notably adoption (Article 21) and separation of a child from parents against their will (Article 9);
- b. the best interests must be a primary (but not the sole) consideration for all other actions affecting children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (Article 3).

### The European Convention on Human Rights and Fundamental Freedoms (ECHR) 1950

The crux of the UNCRC is the principle of the best interests of the child. The ECHR, however, protects the child’s interests through the right to respect for private and family life. Article 8 of the ECHR states that everyone has the right to respect for private and family life. Under Article 8 (2), any interference with this right must be in accordance with the law, in pursuit of one of the legitimate aims provided for in Article 8 (2), and must be ‘necessary in a democratic society’. 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 Human Rights Act 1998 (HRA)

In the UK, the HRA obliges all public bodies, including courts, to comply with the rights contained in the European Convention on Human Rights. When courts sentence a mother with care of a dependent child, the Article 8 rights of the child are engaged. It is clear from both the UN Convention on the Rights of the Child and the European Convention on Human Rights that the rights and best interests of the child must be a primary consideration when a court of law is considering a decision which may cause separation from a parent due to incarceration.

### A leading case in the Court of Appeal

*R (on the application of P and Q) v Secretary of State for the Home Department* ([2001] EWCA Civ 1151) was a Court of Appeal case concerning the prison rule providing that babies in a Mother and Baby Unit had to leave the unit at the age of 18 months. Two mothers, P and Q, challenged the inflexible application of that rule. Giving the judgment of the Court, Lord Justice Phillips stated that, in sentencing a mother with dependent children, the child’s rights have to be weighed against the seriousness of the offence in a ‘balancing exercise’. Thus magistrates and judges must:

- a. acquire information about dependent children;
- b. balance the Article 8 rights of the child against the seriousness of the mother’s offence.

These principles were confirmed in *R v Petherick* [2012] EWCA Crim 2214, where Lord Justice Hughes stated: ‘First, the sentencing of a defendant inevitably engages not only her own Article 8 family life but also that of her family and that includes (but is not limited to) any dependent child or children’.

### Research on sentencing

Recent research explored to what extent, if at all, the required balancing exercise, as set out by Lord Justice Phillips in the case of *P and Q*, is performed in the

English sentencing courts and whether the courts are complying with the Human Rights Act in this respect. Seventy-five cases of the imposition of custody (suspended and immediate) on mothers who care for a dependent child were studied<sup>9</sup>.

In the sentencing remarks, there was no evidence of any specific consideration of the Article 8 rights of the child. There was wide variation in how dependent children appeared to be considered in sentencing, with the stress on the welfare of children rather than

<sup>8</sup> *ZH (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department (Respondent)* [2011] UKSC 4.

<sup>9</sup> Epstein, R. (2012). ‘Mothers in Prison: The Sentencing of Mothers and the Rights of the Child’. *Coventry Law Journal*, Special Issue: Research Report. Retrieved from <http://www.makejusticework.org.uk/wp-content/uploads/Mothers-in-Prison-by-Rona-Epstein.pdf>.

on the child's rights. In some cases, the court made no mention at all of the accused's children. In others, the courts alluded to the trauma and misery caused to the children, but blamed the defendant, did not consider the rights of the children and did not appear to impose an alternative or reduced sentence<sup>10</sup>.

## Training the judges

Shona Minson of University of Oxford<sup>11</sup> produced training materials, launched in February 2018, which 'highlight the need for all criminal justice professionals involved in sentencing to ensure that children's welfare is safeguarded and their rights observed when their primary carer is sentenced'<sup>12</sup>. There are four training films: for the judiciary, legal professionals, probation staff and defendants.

## Separation of mother and child due to maternal imprisonment

For mothers with children aged under 18 months, there is the possibility of a joint stay in a prison Mother and Baby Unit (MBU)<sup>13</sup>. However, unless a woman gives birth during her prison sentence and moves straight to an MBU, she will be separated from her young child for a period of time whilst she is on remand and/or when first sentenced because she cannot apply for an MBU place until she is imprisoned. Decisions for MBU placement are made by social services, with prisons only occasionally overriding decisions<sup>14</sup>. Mothers with previous social services involvement, drug and alcohol addictions and mental health difficulties are generally excluded from MBUs in England and Wales; thus most mothers in prison are not eligible for MBUs. Indeed, research shows that mothers on MBUs are not, in fact, representative of women in the wider prison population<sup>15</sup>.

## *The overuse of imprisonment for women on remand or convicted of minor offences raises issues of human rights for both women and children.*

Whilst all separations from children are acknowledged as 'traumatic' for mothers in relevant prison policy, there are few details as to how mothers and children should be supported in England and Wales<sup>16</sup>. Interviews with prison staff in England revealed that MBUs had detailed procedures to support mothers following a joint stay in an MBU<sup>17</sup>. However, staff were concerned that once women returned to the main prison, the impact of separation was no longer acknowledged. In addition, they pointed out that women who arrived into prison separated from their children and who did not have the opportunity to access an MBU were even less likely to receive any support.

This lack of support is reflected in findings that separation from children is reported to be the leading cause of self-harm and suicide for women in prison<sup>18</sup>.

The severe impact of separation on mothers' mental health is clear throughout the literature<sup>19</sup>. This has serious implications for a mother's ability to parent her child on release from prison or to regain custody of her children. Previously imprisoned mothers reported that the lack of housing and rehabilitative support on release from prison made it more difficult for them to recover their children<sup>20</sup>. Prison staff expressed frustration that mothers' prison sentences were sometimes used by violent partners as an opportunity to gain custody of the children and prevent further contact with their mothers. Furthermore, staff felt that social services did not provide adequate support and, in some cases, prevented children from visiting their mothers in prison. Any period of time without visits might be used to support placing children in local authority care, resulting in permanent separations of children from mothers, even if prison sentences are short.

## Short prison sentences to end?

The Ministry of Justice is considering banning prison sentences of less than six months, following Scotland's example. This would require legislation, and we cannot be confident that such a reform will in

10 Epstein, R. (2018). 'The imprisonment of mothers harms the interests of their children'. *Transform Justice*. Retrieved from <http://www.transformjustice.org.uk/the-imprisonment-of-mothers-harms-the-interests-of-their-children>.

11 See Minson, S., Nadin, R., Earle, J. (2015). 'Sentencing of mothers: Improving the sentencing process and outcomes for women with dependent children'. Prison Reform Trust, London; Minson, S. (2017). *Who cares? Analysing the place of children in maternal sentencing decisions in England and Wales* (Doctoral dissertation). University of Oxford.

12 Minson, S. (2018). 'Safeguarding Children when Sentencing Primary Carers'. Retrieved from <https://shonaminson.com/information-for-primary-carers-facing-sentencing-in-the-criminal-courts/>.

13 'Prison life: Prison pregnancy and childbirth in prison'. Retrieved from <https://www.gov.uk/life-in-prison/pregnancy-and-childcare-in-prison>.

14 Powell, C. (2018). *Mother-infant separations in prison: Problematising attachment theory in policy and practice* (Unpublished doctoral dissertation). Middlesex University, London.

15 Birmingham, L., Coulson, C., Mullee, M., Kamal, M., & Gregoire, A., (2006). The mental health of women in prison mother and baby

units. *Journal of Forensic Psychiatry and Psychology* 17, 393-404.

16 Powell, Marzano, L., & Ciclitira, K. (2017). Mother-infant separations in prison: a systematic attachment-focused policy review. *Journal of Forensic Psychiatry & Psychology*, 28(2), 274-289.

17 Powell, C. (2018).

18 Department of Health & Home Office & Ministry of Justice (2017). 'Preventing the deaths of women in prison: Initial results of a rapid information gathering exercise by the Independent Advisory Panel on Deaths in Custody'.

19 Gregoire, A., Dolan, R., Birmingham, L., Mullee, M., & Coulson, D. (2010). The mental health and treatment needs of imprisoned mothers of young children. *Journal of Forensic Psychiatry & Psychology*, 21(3), 278-392.

20 Powell, C. (2018).



fact take place. Nevertheless, it is a hopeful sign that this discussion has been opened.

## Conclusion

Ultimately, the impact of imprisoning women on remand or on short sentences for minor convictions has far-reaching implications for children. Only 5 per cent of children with a mother in prison stay in the family home and they face a range of negative outcomes<sup>21</sup>. The best interests of both mothers and children would be met if Corston's

(2007) recommendations were implemented<sup>22</sup>. In particular, her call for custodial sentences only for serious and violent offences would immediately reduce the number of mother-child separations, avoiding any infringements of children's rights and unnecessary suffering of both women and children. Whilst the possible ban of short sentences is a hopeful sign, in the meantime sentencers have a responsibility to safeguard children and uphold their rights through the required balancing exercise to ensure fewer children's lives are disrupted by maternal imprisonment.

21 Dallaire, D.H., Zeman, J.L., & Thrash, T.M. (2015). 'Children's Experiences of Maternal Incarceration, Specific Risks: Predictions to Psychological Maladaptation'. *Journal of Clinical Child & Adolescent Psychology*, 44(1), 109-122.

22 Corston, B.J. (2007). *The Corston report: The need for a distinct, radically different, visibly-led, strategic, proportionate, holistic, woman-centred, integrated approach*. London: Home Office.

## Infants living with mothers in prison: A father's perspective

Throughout the world, many children live separated from their mother or father as a result of parental imprisonment. Service Treff-Punkt is an organisation in Luxembourg offering a neutral space for visits between children and parents, who are entitled to visiting rights in the case of a separation. In situations where a conflict between parents hinders the child's right to have contact with one of their parents, Service Treff-Punkt organises meetings to allow children to re-establish a connection with their parent. During these visits, a multidisciplinary team of social workers, psychologists and education professionals is present.

We encounter very complex family situations, notably those where one of the parents is imprisoned. In these cases, we also accompany children to prisons to meet with their imprisoned parent. In most cases these are the children who suffer the most. Some categorically refuse to see their parent; others are caught in loyalty conflicts, not daring to admit a real desire to see their parent. Statistics from Service Treff-Punkt that incorporate prison service data show a large number of families where the mother has primary custody of the child. Unfortunately, the father's right to visit is very often undermined by the mother.

Service Treff-Punkt is currently carrying out a project in collaboration with the Penitentiary Centre of Luxembourg concerning visits when infants are in prison. We are studying various possibilities in order to offer support and supervision best adapted to the needs of young children. But in this article, we will be developing our reflections on the father-child relationship, without the family necessarily being in a situation of separation.

Every child has the right and the need to maintain a relationship with their mother but also with their

## Philipp Müller & Patricia Rodrigues Service Treff-Punkt

father. This allows the child to develop through these relationships with each parent and to grow up in conditions favorable to their psychological development. As such, our central question here revolves around how an infant child can maintain a connection with his or her father, when the infant is living with their mother in prison. In order to address this question, we build on several important elements of the period of early childhood. Next, we will briefly examine the role of the father. And finally, we will describe the possibilities that are at the father's disposal to exercise his parental role when the baby is living with his or her mother in prison.

### Some important ideas about infants

A child is a small person in the making, who exists essentially through an attachment figure. John Bowlby (1958) developed attachment theory, and René Spitz (1945) and Harlow (1958) also made observations and explored the subject. We have learned from attachment theory that every child needs the protection of an adult, of an attachment figure, who accompanies him or her in the discovery of the world. In the absence of an attachment figure, the child is distraught and unable to learn<sup>1</sup>.

During early childhood, the child is constantly in the process of discovering the world around them. The child can understand a new situation by searching for commonalities with what they already know, allowing them to develop secure attachments. Mary Ainsworth (1963) developed the idea of what we call the child's 'secure base'<sup>2</sup>.

1 Bowlby, J. (1980). *Attachment and Loss, Vol. 3: Loss, sadness and depression*. New York: Basic Books.

2 Ainsworth, M. (1963). The development of infant-mother

Boris Cyrulnik (2004) describes a sensory niche that exists around the child that protects them as they grow up. This includes the way in which the child is fed, washed or scolded, and the ways in which people play, speak and engage with them. This interactive and relational dimension is essential for an infant<sup>3</sup>.

The transitional object, a concept introduced by Donald Winnicott (1953), is an equally important point. This object contributes to feelings of security and teaches children to regulate their emotions when they are separated from the parent. This object could be a teddy bear, bits of cloth or a blanket—something recognisable by its odour, taste or colour<sup>4</sup>.

### The father's role in a child's life

During the nine months of pregnancy, there is a different level of engagement for men and women. Effectively, both are to become parents, but it is the father who experiences the pregnancy from the outside. There is a significant difference between the role of fatherhood historically and that of the present. The change in the role of the father in Western society is due to concomitant changes in the family model, which have shifted equally. After waiting nine months, the majority of fathers find themselves in a maternity ward for the birth of their child. Thus follows the interaction of father and child. According to Blaise Pierrehumbert (2017), we currently observe an interchangeability between the roles of mother and father, which was previously inconceivable. Fathers readily hold and cradle the child, engage with and comfort them when they are crying, help them get to sleep, care for them, bathe them and change their nappies. Previously, this activity was reserved exclusively for mothers. These interactions between father and child promote and strengthen the relationship<sup>5</sup>.

In effect, a father plays a key role in the triangular father-child-mother relationship because he can allow the mother and the child to detach from a potentially fusional maternal relationship. The father not only introduces a personal space or 'breathing room' for his child, but also initiates the child to the creation of other attachment figures than that of the mother. Indeed, the presence of a father is just as important as the presence of a mother in the construction of a child's identity. It has been demonstrated that the

*The father not only introduces a personal space or 'breathing room' for his child, but also initiates the child to the creation of other attachment figures than that of the mother.*

presence of two parents is essential for the child; what follows are several factors influential to the relationship between a child and their parent.

### Influential factors in the relationship

Two factors, among others, influence the relationship between a parent and their infant: the former's parenting skills, and the relationship between the mother and the father.

To have a child and to become a parent are two different things. Becoming a parent involves parenting skills, whereas having a child does not inherently mean a person knows how to provide care. Whether mother or father, a parent must know how to respond to the infant's primary needs, and also how to care for a young child. Every parent has his or her own way of preparing for parenthood and there

are innumerable ways of doing so. Among other things, parenting books are important resources in guiding parents to become parents, in addition to parenting courses and meetings with other future parents. This form of preparation and prior knowledge will ultimately influence the relationship a young child will have with his father.

The relationship between two parents is another primary factor for young children. When parents have a good relationship, they create a positive environment that influences the child and makes visits with a separated parent easier, allowing parent and child to maintain contact and to further develop the relationship.

When an infant child lives with their mother in a prison setting, a third factor is added: the options proposed by the prison administration in order to allow a father to exercise his role as father. Visiting hours and telephone calls are time-limited and often depend on whether the parent is on remand or has been sentenced. Under these conditions, prisons mediate the child-parent relationship; parents are forced to adapt to rigid prison administration protocols, which do not always allow them to exercise their parental roles. These conditions often depend on prison staff<sup>6</sup>.

### Fatherhood in the prison setting

At present, we are going to take a closer look at some of the feasible options that allow fathers to exercise their parental role when their child co-resides with their mother in prison.

The most cost-effective means of exchanging information is via surface mail, which obviously

interaction among the Ganda. In B.M. Foss, *Determinants of infant behaviour (Vol 2)* New York: Wiley, 67-112.

3 Cyrulnik, B. (2016). *Boris Cyrulnik et la petite enfance*. Paris: P. Duval.

4 Winnicott, D.W. (1953). Transitional Objects and Transitional Phenomena—A Study of the First Not-Me Possession *Int. J. Psycho-Anal.*, 34, 89-97.

5 Pierrehumbert, B. (2017). 'L'attachement'. Institut Petite Enfance, Boris Cyrulnik, Programme.

6 Ott, M. (2011). Klein(st)kinder mit ihren Müttern in Haft: Eine ethnographische Studie zu Entwicklungsbedingungen im (offenen und geschlossenen) Strafvollzug. Frankfurt/Main, 13.

does not allow direct communication and takes time. Surface mail is a particularly good way of sending drawings created by children. These drawings have great value, as they allow children to express themselves to their father.

Despite the distance that separates fathers and children, telephone communication allows them to speak together; hearing each other's voices regularly strengthens the relationship and lets the child feel closer to the father. The telephone is also a useful mode of communication for the two parents to discuss issues concerning their child and enables fathers to obtain information about their child's daily life, notably with respect to how the child is experiencing the prison environment. Important parenting decisions can be discussed over the phone—the child's education, for instance. The mother can also find it reassuring to be able to speak to the father, and feel supported in her concerns<sup>7</sup>.

Online tools can be useful as well, notably Skype. Many prisons already authorise the use of these tools to facilitate prisoners' contact with family and friends. These tools have a number of advantages; regular online contact can take place alongside face-to-face visits, for example, and online visits provide a more affordable way of keeping in contact without the father having to travel frequently to prison. This option is especially helpful for parents who are having financial difficulties. Many online tools are free, as long as there is Wifi. The parent can send messages or video call no matter where he is, as long as he respects the schedule set by the prison administration. These tools allow the father the possibility to have a contact in addition to visits.

Visits to prison are of course the most important means of contact, given that they allow for physical contact between children and their fathers. They can spend time as a family, eat and play together. These visits are particularly important for children, because they grant direct contact with the father, strengthening the relationship. Physical contact is especially important for infants and very young children, because the

senses of touch and smell play a role in the primordial development of the child. Being able to touch and smell their father is uniquely possible during physical visits. In terms of supporting parents, there are resources available to facilitate the performance of their parental roles. Parental preparation courses give the possibility to both mother and father to learn more about the parental role and, as mentioned above, to gain the skills involved in parenthood (feeding the infant, changing nappies, etc.) in order to care for their child. These courses can also help to deal with communication between two parents when one of the two is incarcerated. Even though the father may not live with his child, he has the right to information about his child.

In circumstances where the father lives far from his child, professional counseling can be a big help for both parents. A professional can guide parents while keeping in mind the child's perspective, and can become the person who serves as a link between the prison and the outside world. In some countries, the justice system or child welfare services delegate an expert to provide a comprehensive view of the child's situation. This expert can respond to a mother's questions about early childhood development and childcare, and can eventually assist in the mother's rehabilitation<sup>8</sup>.

## Conclusion

This article takes a more or less theoretical approach, and the themes presented can trigger a great number of reflections and questions from multiple perspectives. These perspectives can take into account the child's point of view, as well as that of the father, the mother, professionals and society. In our opinion, among these reflections, the most important are those that concern children and their rights, welfare and best interests.

It is essential that this theme be developed further, particularly with the support of social, psychological and educational professionals, as well as scientific input. Themes such as 'parenting in prison', 'visiting prisons with infant children' and 'infants and children living in prison' are all worthy of further investigation.

<sup>7</sup> Philbrick, K., Ayre, L., Lynn, H. (2014). *Children of Imprisoned Parents: European Perspectives on Good Practice*. 2nd edition. Children of Prisoners Europe, Paris, 75.

<sup>8</sup> Ibid.





## Changing policies and practices for children living with a parent in Finland's prisons

**Rosi Enroos**  
University of Tampere

Finland is one of the countries that allow children to stay with their parent in prison during the parent's sentence. According to Finnish legislation, both mothers and fathers may bring their child with them into prison, but only if it is seen to be in the best interests of the child<sup>1</sup>. Although mother and baby units have existed in different forms since 1881 in Finland, it was only at the beginning of the 2000s that the practice was first reviewed from a child rights perspective. It was debated both within the prison service and in society at large as to whether a childhood in prison could be in the child's best interests<sup>2</sup>. At the time of the debate, the mother and baby units in Finnish prisons gave the mothers a lot of responsibility for bringing up and caring for their children. The mothers took care of their children on a full-time basis. Consequently, they could not participate in education, work or rehabilitation within the prison<sup>3</sup>. In the debate it was claimed that if the system allows children to stay in prison, the responsibility of these children's well-being should be guaranteed by the state, for example, by enabling their mothers' rehabilitation in prison. In addition, it was stated that a child's stay in prison should be assessed carefully from the perspective of the child's best interests. However, there was uncertainty as to how to assess the best interests of a child in practice, and who was responsible for the assessment: was it up to the parents of the child, prison officials, the Criminal Sanctions Agency or someone else<sup>4</sup>?

There was a growing perception that the position of children in Finnish prisons should be considered in light of child rights. Similar discussions and claims concerning children in prison were presented in an international context: the relevant literature reporting conditions and policies from different countries highlighted that children's rights were not widely considered. It was claimed that children in prison were too often ignored by prison systems and officials, with their needs

*If the system allows children to stay in prison, the responsibility of these children's well-being should be guaranteed by the state by enabling their mothers' rehabilitation in prison.*

and best interests unmet<sup>5</sup>. These reports underlined that the practices for children in prison should be implemented with respect to the UN Convention on the Rights of the Child.

In 2010, as a result of the Finnish discussion, legislative changes were introduced implicating a new kind of family ward for children with an imprisoned parent<sup>6</sup>. The ward is a child welfare institution located within the prison organisation, with services in the family ward provided by a regional association under the Federation of Mother and Child Homes and Shelters. Administratively, the National Institute for Health and Welfare has the responsibility to guide and monitor the ward. An incarcerated parent can serve the sentence in the family ward together with her/his child under the age of three if this is considered to be in the child's best interests<sup>7</sup>. The assessment of a child's placement is made and followed up on by the municipal child welfare authority—as in the case of any other type of out-of-home placement in child welfare.

Accordingly, as a response to the uncertainty of who should assess the placement of the child in the prison context, current Finnish policy appoints the duty of assessing whether or not it is in the best interests of the child to stay in prison with his or her parent to the municipal child protection system—in practice, to a child welfare social worker<sup>8</sup>. This policy solution means that convicted mothers or fathers with children in prison have become clients of the child welfare system.

The child rights perspective was an important justification for policy change for children in prison in Finland<sup>9</sup>. However, even though the discourse of children's rights has brought up awareness about children in prisons, certain elements of this perspective can be considered as ambiguous or are contested. Morgan Freeman has pointed out that declaring rights for children does not help children until the rights are implemented<sup>10</sup>. By paying attention to the Finnish

1 Prison Act 767/2005; Act amending the Child Welfare Act 88/2010.

2 Pösö, T. & Enroos, R. & Vierula, T. (2010). Children residing in prison with their parents: An example of institutional invisibility. *Prison Journal* 90(4), 516–533.

3 Enroos R. (2008). Vankila lapsuudessa, lapset vankilassa: Tutkimus lapsista joiden elämää vankeus värittää. [Prison in childhood, children in prison: A study on children affected by imprisonment]. Criminal Sanctions Agency, Helsinki; and Enroos, R. (2011). Mothers in prison: between the public institution and private family relations. *Child and Family Social Work* 16(1), 12–21.

4 Enroos, R. (2015). From invisibility to protection: Children in prison with their parent in Finland. *Journal of Children & Society* 29(5), 399–409.

5 See, for example, Alejos, M. (2005). *Babies and Small Children Residing in Prisons*. Quaker United Nations Office, Geneva; Robertson O. (2008). *Children Imprisoned by Circumstance*, Human Rights & Refugees Publications. Quaker United Nations Office, Geneva.

6 Enroos, R. (2015).

7 Act Amending the Child Welfare Act 88/2010; Act on the Units governed by the National Institute for Health and Welfare 1379/2010.

8 Act Amending the Child Welfare Act 88/2010.

9 Enroos, R. (2015).

10 Freeman M. (1983). *The Rights and Wrongs of Children*. London & Dover, NH: Frances Pinter.

policies concerning children in prison, the pros and cons for children can be considered. Have the new practices and policies improved children's position in prison and what kind of lessons can be learnt, by focusing on the Finnish case?

### The changing position of children in prison in Finland: From invisibility to the target of protection

The changing position of children living in prison with their imprisoned parent in Finland can be illustrated by three consecutive periods<sup>11</sup>. The period until the end of the year 2005 could be described as an *invisible era of children in prison*. Children entering prison was a self-evident practice, which was not seen as problematic in any way. While the legislation included a phrase on the child's best interests, it was for the parent to decide whether it was good for a child to stay in prison. The arguments for the practices concentrated on prisoners' rights; whether children should enter prison was seen as a private matter of the family<sup>12</sup>. At the time, no professional assessment was required for the child's placement. Despite the statutory obligation to look after the child's best interests in the legislation, there were no guidelines, systematic monitoring or support of children's entry, residence or the planning of their life after prison. The principles and practices of admitting or keeping a child in prison were largely undocumented. Children had been excluded from institutional record-keeping: children were not entered in the prisoner database, as they were not prisoners. Children in prison were invisible at the institutional and policy level. Consequently, the identity of these children for follow-up and research purposes was impossible to track<sup>13</sup>.

The phase during the years 2005 to 2009 was characterised by *intense public debate and developing practices*. Public discussion was animated and practices around the issue were negotiated and developed. As described in the introduction, claims that children's position in prisons should be viewed in light of child rights were increasing. A need for knowledge production about children in prison emerged, and consequently, the first academic study of children in Finnish prisons was conducted from 2006 to 2008. It was discovered that approximately 100 children resided in Finnish prisons with their parent during the years 2000 to 2006. The number of children in prison

varied annually from nine to 20. Children accompanied their mothers—with the exception of one father. Some mothers with children stayed in the unit for more than a year, although most of the mothers with children stayed just a few months<sup>14</sup>.

The results of the study<sup>15</sup> highlighted the lack of information on children residing in prisons, as well as the lack of guidelines for practice. The position of children was illustrated by the term *institutional invisibility*<sup>16</sup>. This institutional invisibility explained the impossibility of evaluating the children's position or their best interests, and it was stated that making children institutionally visible would help in considering their needs and rights and in examining the impact that the time spent in prison had on them. Accordingly, the new policy solutions for children in prison were charted. It was noted that children could be officially recognised if they were

clients of child welfare services. Consequently, when preparing changes to the child welfare legislation, it was highlighted that: 'regulation should be created so that the decisions to place a child in prison would be made on the basis of the same principles as with other child protection clients'<sup>17</sup>. This statement was widely agreed upon in the Finnish debate.

The period after March 2010 could be described as an era of *public institutionalised practice when new policies concerning children in prison were established and the new family ward in the Finnish prison organisation started to operate*<sup>18</sup>. The position of children in prison was recognised officially, as the children and their parents in prison became clients of the municipal child welfare services. The prison family ward now has duties and responsibilities to protect the rights and interests of children. Appealing to children's rights changed the practices to the extent that being in prison with a child is currently a public concern in Finland<sup>19</sup>.



11 Enroos, R. (2015).

12 Ibid.

13 See Enroos R. & Pösö, T. & Vierula T. (2006). *Lapset vankilassa [Children in prison]*. Childhood and Family Research Series 3. Tampere: Tampere University Press; Enroos R. (2008); Pösö, T. & Enroos, R. & Vierula, T. (2010) Children residing in prison with their parents: An example of institutional invisibility. *Prison Journal* 90(4), 516–533.

14 Enroos, R. (2015); Enroos R. & Pösö, T. & Vierula T. (2006); Enroos R. (2008); Pösö, T. & Enroos, R. & Vierula, T. (2010).

15 Enroos R. & Pösö, T. & Vierula T. (2006); Enroos R. (2008).

16 Pösö, T. & Enroos, R. & Vierula, T. (2010).

17 Government proposal for changing part of the Child Welfare Act, Prison Act and Detention Act, HE225/2009.

18 Enroos, R. (2015).

19 See also: Enroos, R. (2015) Vankila, vanhemmuus ja lapsi: Näkökulmia perhekäytäntöihin [Prison, parenthood and children: Different perspectives on family practices]. *Acta Poenologica* 2. Rikosseuraamusalan koulutuskeskus.

## The new prison family ward: Safeguarding the child's best interests

### *The prison family ward practices*

The prison family ward is located in the Vanaja open prison, southern Finland. The ward consists of places for ten incarcerated parents and their children. In addition, the ward has a department in the Hämeenlinna closed prison nearby, where prisoners who have a child living with them in detention are placed. The ward provides services nationwide, ensuring that inmates and their children across Finland receive equal and fair treatment from specialised and educated staff<sup>20</sup>. The ward is operated by child welfare workers who have the expertise needed to work with families, children and parental issues. Furthermore, child-friendly changes, such as colourful walls and rooms suitable for children, have been made and new activities specifically designed for children have been introduced.

The family ward staff cooperates with the municipal child welfare social workers who make the decision to place a child with his or her convicted parent in the ward<sup>21</sup>. Assessing the child's best interests means that the child's other parent and their close relatives, such as grandparents, are included in the evaluation process. Even though social workers are trained to evaluate children's family relations and placements and have 'tools' to assess the best interests of the child, they need information about the family ward and its function in order to be able to assess the entirety of the situation when considering a child's stay in prison. Child welfare social workers also have a duty to follow the child's stay in prison, which can be interrupted if it is found that the placement no longer serves the best interests of the child.

Knowledge production about children living in prison with their parent has been established in recent years. A report on the activities and the statistics of the family ward is published annually. Consequently, it is possible to review the ages of the children in the ward and the lengths of their stay, for example. Between 2012 and 2017, there were 15 to 22 mothers annually in the family ward. Furthermore, during these years, there were also three fathers in the ward. Some parents have more than one child with them, so consequently there were 16 to 26 children in the family ward during the same time period. Between 2012 and 2017, the majority of

children were under three months old when entering the family ward (six to 12 babies annually). On the other hand, there were four to six children annually who were 1 to 2 years old when entering prison<sup>22</sup>. In light of this information, we can observe that prison stays for infants is a very marginal practice in Finland.

### *Prison family ward policy: Highlighting parental responsibilities*

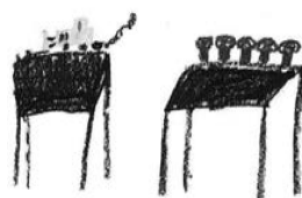
As the Finnish prison family ward is a rather new child welfare unit, there is only limited documentation describing the assignment and the function of the ward. Previously, there were no absolute age limits for children in prison in Finland, but when establishing the new child welfare unit, exact age limits were set:

*A child under 3 years may be placed [...] with his or her parent serving a prison sentence or in detention imprisonment in the prison's family ward. The placement of a child under 3 years may continue in the family ward if it is absolutely in the child's best interests to do so. (Act amending the Child Welfare Act 88/2010.)*

Even though there were some doubts about setting the limits, it was stated in the government proposal that the age limit was set 'on the basis of a general understanding of child development, as a child's linguistic development and understanding are already highly advanced at the age of 3–4 years'<sup>23</sup>. However, the strict limits can create situations where it is not legally possible to place the child in the family ward, for example if the child has passed the age limit. This may be the case despite a decision that found that staying in prison would be in the best interests of the child.

In addition, the tasks and aims of the ward are regulated in the Act on the Units governed by the National Institute for Health and Welfare (1379/2010), and described also in the Handbook of Child Welfare<sup>24</sup> managed by the National Institute for Health and Welfare.

In the Act on the Units governed by the National Institute for Health and Welfare<sup>25</sup>, it is regulated that the task of the family ward is to support parents in parenthood and their life skills management. The policy focuses on ensuring good childcare, coping in everyday life and supporting parental development. At the same time, it is



20 At the same time, the distance might prevent the clients in the family ward to see their relatives who live far from the ward due to economic reasons, or trouble with transportation and time.

21 Act Amending the Child Welfare Act 88/2010; Handbook of Child Welfare: <https://thl.fi/fi/web/lastensuojelun-kasikirja/tyoprosessi/erityiskysymykset/vanhemman-vankeusrangaistus/lapsi-vanhemman-mukana-vankilassa>

22 Kanta-Hämeen perhetyö ry. (2018) Toimintakertomus 2017. [The Report of the Activities and the Statistics of the Family Ward in 2017].

23 Government proposal for changing part of the Child Welfare Act, Prison Act and Detention Act, HE225/2009, 29.

24 Retrieved from <https://thl.fi/fi/web/lastensuojelun-kasikirja/tyoprosessi/erityiskysymykset/vanhemman-vankeusrangaistus/lapsi-vanhemman-mukana-vankilassa>.

25 Act on the Units governed by the National Institute for Health and Welfare 1379/2010, 1§.



highlighted that the family ward has its restrictions when taking into account the child's point of view:

*Even though the activities in the family ward are considered especially from the perspective of the child's best interests, the prison rules and regulations have to be followed. In addition to taking care of the child, the parent has to follow these rules and keep in mind the objectives documented in her or his plan for the time of imprisonment. (The Handbook of Child Welfare.)*

The definition of policy highlights the restrictions and obligations of the imprisoned parent, specifically their role in ensuring the best interests of the child:

*Staying in the family ward with a child requires a parent's specific focus on the child's matters and to the child's perspective. Ensuring the child's wellbeing is primarily the duty of the parent. (The Handbook of Child Welfare.)*

Making future plans for the parents and for the children concerning housing, economy, education and employment are mentioned in the guidelines, as is supporting the healthy interaction of the child and the parent. In addition, according to the guidelines, the aim of the family ward is to create a physically and emotionally safe environment for children.

As illustrated above, new policies underline parents' duties to take care of the child's best interests in the family ward<sup>26</sup>. Arguments based on children's rights are missing from the definition of policy—despite the fact that establishing the new family ward was justified by the child rights perspective<sup>27</sup>.

Highlighting the parents' responsibility in the ward might reflect the current cultural thinking of what is considered to be best for children. Helping and supporting parents can indirectly have a positive impact on the best interests of the child. However, given that parents' abilities to parent are limited in the prison context, it might be easier to justify and connect with the children's rights perspective and increase the direct focus on the child—also at the policy level<sup>28</sup>. The guidelines could highlight the children's rights explicitly in order to demonstrate how each article could be taken into account in the prison family ward. This approach would not exclude work with the parents either.

*Arguments based on children's rights are missing from the definition of policy—despite the fact that establishing the new family ward was justified by the child rights perspective.*

### *'Children's best interests' contains controversies*

According to one study<sup>29</sup>, in the first year, the new practices of the family ward were negotiated in everyday interaction between the prisoners, family workers and prison officials. The negotiations included interpretations and views of the roles of clients and professionals, as well as perceptions of what it means to be a good mother, for example. The negotiations included moral discussions about what is essential and significant in the child-parent relationship when safeguarding the child's best interests. Different views demonstrated the controversies related to a child's best interests and the differences among the prison officials, family workers and women inmates as to how to approach this issue<sup>30</sup>.

The combination of the imprisonment and child protection in the prison family ward implies significant control and/or support, which the parent entering the ward has to accept. Parenting skills are assessed: the surveillance of parenthood is justified by the parent's incarceration and the presence of the child. Therefore, there is a risk that parents in the family ward experience 'a double punishment', which means the control and surveillance of both institutions: the prison service and child protection services<sup>31</sup>. At best, both parties—the child and the parent—receive support customised especially for their needs.

Even though time in the family ward means interventions and strict obligations for the incarcerated parents, it has to be remembered that often these obligations are only for a relatively short period of time—surprisingly short, when the aims of the ward are compared with the length of the stay. According to the family ward statistics, there has been a total of 135 parents with their child or children in the ward during the years 2012 to 2017. Twenty-one parents with children stayed less than a month (16 per cent), and the most common timeframe to stay in the ward is from one month to six months (68 families, 50 per cent). Twenty-nine families (21 per cent) stayed over six months to a year and only 17 parents with children (13 per cent) stayed for more than a year.

### **Discussion based on the Finnish experience**

Internationally, Finland can be seen as shaping the matter of children in prison as a child welfare issue on the front line. At the policy level, the statutory child welfare can be a solution when considering or monitoring a child's stay in prison with a parent. Giving authority to child welfare services can also resolve some issues for safeguarding the best interests of the child,

26 Enroos, R. (2014). Lastensuojelua vankilassa: Instituutioiden tilat ja rajat vankilan perheosastolla. [Child protection in prison: Institutional spaces and boundaries in the prison family ward]. *Yhteiskuntapolitiikka* 79(2), 140–151.

27 Enroos, R. (2015).

28 Enroos, R. (2014); Enroos, R. (2015).

29 Enroos, R. (2014).

30 See also: Pösö, T. & Enroos, R. & Vierula, T. (2010).

31 Enroos, R. (2014); Enroos, R. (2015).

such as resources, expertise and knowledge production. When looking at the new policies and practices for children in prison in Finland from the perspective of the children's rights, it can be noted that the matter is complex in practice, as it contrasts children's rights with parents' rights as well as parents' duties with the prisoners' duties<sup>32</sup>. In addition, international reports on children residing in prisons with their parents show that definitive solutions are not easy to achieve in this matter<sup>33</sup>. It should also be remembered that systems and practices in one country are not directly transferable to different cultures, environments or prisons. The practices concerning children in prison are intertwined with cultural understandings of motherhood, parenthood and what is seen as being good for a child, for example.

Current Finnish practices and policies enable an analysis of the position of children in prison. It has to be the task of public authorities and should be completed systematically. As previously mentioned, the institutional invisibility of children in prison prevents an accurate evaluation of the realisation of the children's rights. Today however, the best interests of the child can be monitored carefully and on a case-by-case basis, as well as for a collectivity of children.

32 Pösö, T. & Enroos, R. & Vierula, T. (2010); Enroos, R. (2015).

33 Scharff-Smith P., Gampell L. (eds.) (2011). 'Children of Imprisoned Parents'. The Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre; Alejos M. (2005) *Babies and Small Children Residing in Prisons*. Quaker United Nations Office, Geneva; Robertson O. (2008). *Children Imprisoned by Circumstance*.

James and James (2004) have reminded us that well-meaning social policy can have negative consequences<sup>34</sup>. We need to remember that there is no evidence-based information that the new policy is better for the children and their parents than the previous arrangements. Therefore, it is essential from the perspective of children's rights to assess the consequences of the created policy. The prison family ward has functioned in Finland for nearly ten years and it is now a good time to evaluate the established practices. It is the state's duty to secure the evaluation by providing resources to do it. In order to guarantee the rights-based practice for children in prison, the evaluations should not be sporadic, but conducted regularly. One could study, for example, the situation of the children after their time in prison: are they still living with their mothers or have they been taken into care? Importantly, in line with the children's rights, we should pay particular attention to the children's own experiences and opinions, which so far have not been studied at all: how the children themselves see and feel about the time in prison afterwards.

Finland has invested in finding the best possible solutions for children in prison in light of the rights of the child. At the same time, research considering the situation of children with imprisoned parents outside prison is lacking. This group of prisoners' children is still invisible. Gaining a better understanding of these children and considering their rights is a challenge for Finland in the future.

34 James A. & James A. (2004). *Constructing Childhood*. in *Theory, Policy and Practice*. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 202.



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