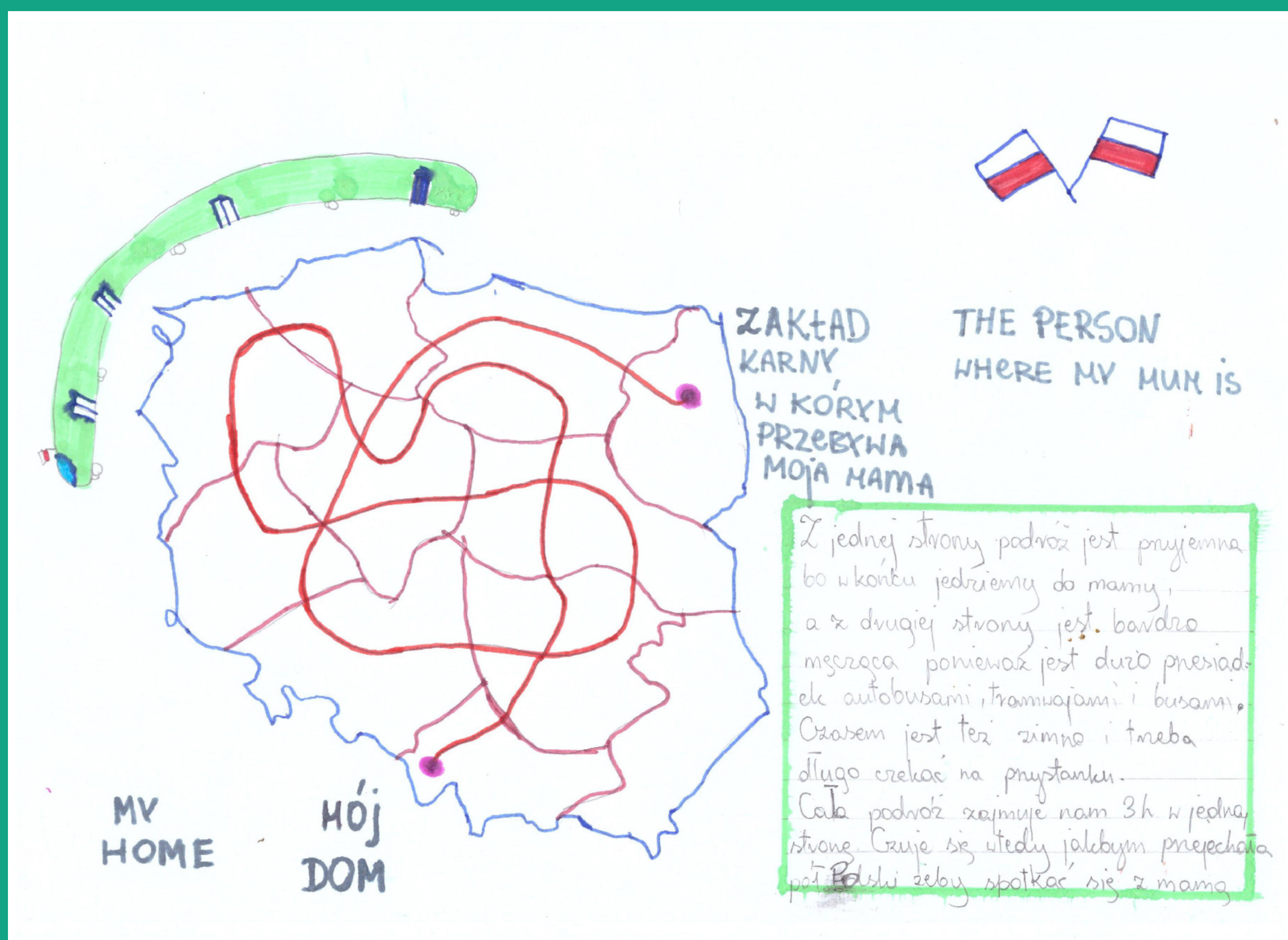


Considerations for the Judiciary

Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents

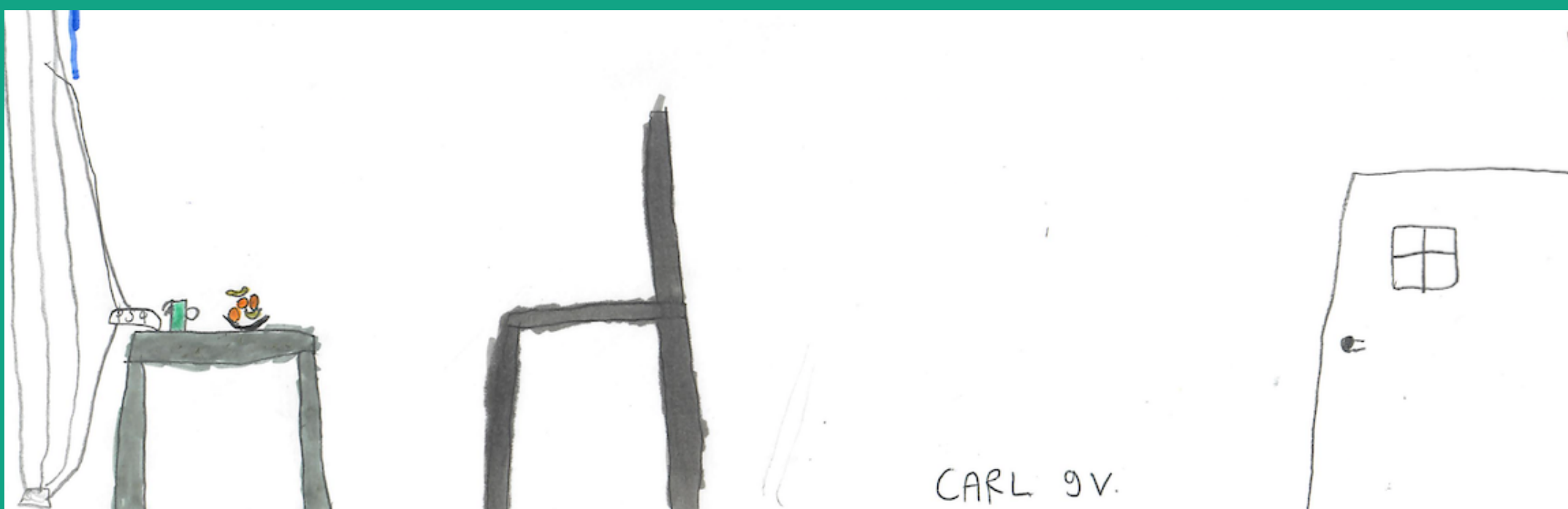


ULA, aged 13, Poland

Introduction

The rights and needs of children are seldom taken into consideration during the sentencing process of a parent. As a result, children may face a unique set of challenges; the separation of a child from their primary caregiver can be damaging to their development and overall well-being, not to mention the stigma, social exclusion, increased poverty and discrimination that they may face. The sentencing of a parent is a singularly key moment in ensuring children's rights and needs are guaranteed.

This document is intended to assist the judiciary in considering *how* to centralise children's rights and needs to mitigate the impact of a parent's sentence. It contains a brief summary of key considerations; salient guidelines outlined in the Council of Europe's landmark Recommendation CM/Rec(2018)5; and links to further tools and materials COPE has created to support the judiciary.



CARL, aged 9, Finland

Examples of good practice

- Consider alternative measures to imprisonment for parents, which will have less of an impact on the child-parent bond. Consider pre-trial detention as a measure of last resort.
- Allow children to visit their parents in pre-trial detention and minimise the time before a child is allowed to visit their parent if the parent is in pre-trial detention.
- When deciding on an early release, the judiciary should consider the importance of strengthening the parental role prior to release.
- Prioritise granting home leave or additional visits to prisoners who are about to be released so that they can begin to build a strong relationship with their children as they reintegrate.
- Work with policymakers, legislators and criminal justice institutions to develop policies and measures to provide financial and logistical support to children with imprisoned parents and their families.

Key Links and Resources



FRIDA, aged 10, Norway

- [Toolkit: Keeping children in mind: Moving from 'child-blind' to child-friendly justice during a parent's criminal sentencing](#)
- [It's Time to Act: CoE Recommendation CM/Rec\(2018\)5](#)
- [Implementation Guidance Document: Council of Europe Recommendation CM/Rec\(2018\)5](#)
- [Police, Judges & Sentencing, Arrests, Trials & Children's Rights](#)
- [European Journal of Parental Imprisonment: Child impact assessments and sentencing](#)
- [European Journal of Parental Imprisonment: Community sanctions and restorative justice](#)
- [European Journal of Parental Imprisonment: The child's best interests - From theory to practice when a parent is in conflict with the law](#)



Relevant Articles from Recommendation CM/Rec(2018)5

The Council of Europe's Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents is landmark legislation which both recognises parental imprisonment as having long-lasting effects on the well-being of millions of children, and addresses the needs of those children with a parent in prison through 56 guidelines for good practice.

Below you will find a selection of these guidelines geared to judiciary.

02.

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

03.

Whenever a parent is detained, particular consideration shall be given to allocating them to a facility close to their children.

04.

When deciding to transfer sentenced persons to or from a State in which their children reside due regard shall be given to the best interests of the child when considering the rehabilitation purpose of the transfer.

Relevant Articles, cont.

07.

Appropriate training on child-related policies, practices and procedures shall be provided for all staff in contact with children and their imprisoned parents.

08.

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

10.

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

12.

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

Relevant Articles, cont.

39.

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

42.

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

43.

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

Find the complete recommendation at

[HTTPS://CHILDRENOFPRISONERS.EU/COUNCIL-OF-EUROPE-RECOMMENDATION-CM-REC20185/](https://childrenofprisoners.eu/council-of-europe-recommendation-cm-rec20185/)





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 United Nations Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union, and that action is taken to enable their well-being and development.

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