

BRIEFING PAPER

Compassionate Sentencing:
Protecting the Rights of Children
with a Parent in Conflict with the Law



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minute
read

Notes on Proposed Document

The aim of this proposed document is to advocate for the integration of compassionate sentencing into judicial practices, emphasising the judiciary's role in balancing justice with the protection of children's rights during a parent or primary caregiver's criminal justice proceedings. It is structured to align with the expectations of a judicial audience by:

1. Providing a Structured and Logical Framework

The document follows a hierarchical numbering system (e.g., 3a.1, 4b.2) consistent with the structured reasoning process familiar to legal professionals. Each section flows logically, beginning with the identification of the problem and its impact, progressing to actionable solutions supported solely by the findings, examples and recommendations outlined in the guidance from Children of Prisoners Europe (COPE).

2. Grounding Arguments in Evidence

The document bases its recommendations entirely on the evidence and examples identified by COPE, including its references to good practices, case examples and multidisciplinary approaches.

3. Highlighting Judicial Responsibilities

The document outlines the judiciary's role in balancing justice and protecting children's rights as described by COPE. It connects compassionate sentencing to core judicial duties, including:

- Fulfilling the responsibilities outlined in COPE's guidance.
- Considering fairness and equity in sentencing decisions that impact children.
- Prioritising children's well-being in judicial decision-making.

4. Offering Practical and Actionable Recommendations

The document presents solutions, such as implementing child impact assessments and promoting alternatives to custodial sentencing, drawn directly from COPE's recommendations and good practice examples.

5. Using a Professional and Evidence-Based Tone

The language aims to be formal, respectful and based entirely on COPE's research and findings, avoiding emotive or persuasive appeal.

6. Call to Action

The document outlines how the practices recommended by COPE can be incorporated into judicial decision-making to strengthen the consideration of children's rights in sentencing.

1. Introduction —

The Case for Compassionate Sentencing

1a. The Problem

1a.1 Children with a parent in conflict with the law are among the most vulnerable groups in society.

1a.2 Despite legal protections like the UN Convention on the Rights of the Child (UNCRC)¹ and Council of Europe Recommendation CM/Rec(2018)5 on children with imprisoned parents, children's rights are frequently overlooked during criminal sentencing.

1b. The Judicial Responsibility

1b.1 Judges have a dual responsibility: to deliver justice and to protect vulnerable individuals affected by judicial decisions.

1b.2 Compassionate sentencing helps ensure children's rights and well-being are prioritised without compromising judicial integrity.

1c. Why This Matters

1c.1 Sentencing decisions impact not only the defendant but also their dependents, creating lifelong consequences for children.

1c.2 A justice system that neglects children perpetuates cycles of harm, undermining societal well-being and trust.

2. How Parental Incarceration Can Impact Children

2a. Adverse Childhood Experiences (ACEs)

2a.1 Parental incarceration is a recognised ACE and can lead to toxic stress, disrupted development and increased risks of poverty and mental health challenges.

2b. Psychological and Emotional Harm

2b.1 Children often experience trauma, instability and stigma, which can disrupt their ability to form secure attachments and affect their long-term emotional health.

2c. Legal Gaps and Omissions

2c.1 UNCRC Articles 3 (best interests of the child), 9 (right to parental contact) and 12 (right to be heard) are often ignored in criminal sentencing.

¹ All European States are parties to the UNCRC and are legally bound to uphold children's rights in all judicial decisions.

2c.2 Judicial systems rarely include formal mechanisms to assess or take into account the impact of sentencing on dependents.

3. Good Practices in Action

3a. South Africa's S v M (2007)

3a.1 Case Overview:

- a.** A mother of three minor children was sentenced to four years in prison.
- b.** The Constitutional Court of South Africa commuted the custodial sentence to correctional supervision, allowing the mother to remain at home and care for her children.

3a.2 Key Legal Principle:

- a.** The judgment emphasised that "the best interests of the child must be a paramount consideration in all proceedings affecting them."
- b.** This case established a precedent for considering the well-being of dependents as integral to sentencing decisions.

3a.3 Relevance for European Jurisdictions:

- a.** The principle can be applied across legal systems, aligning with UNCRC Articles 3, 9 and 12.

3b. Barnahus Model (Nordic Countries)

3b.1 Description:

- a.** Barnahus ("Children's House") is a multidisciplinary, child-centred approach to justice.
- b.** It integrates legal, psychological, medical and social services under one roof to minimize trauma and ensure children's rights are prioritised.

3b.2 Strengths:

- a.** Child-friendly environments reduce the stress of legal proceedings.
- b.** Collaboration between professionals ensures that the child's best interests are comprehensively assessed.
- c.** The model encourages the systematic inclusion of children's voices in judicial processes.

3b.3 Application to Parental Sentencing:

- a.** Though focused on child victims, the model demonstrates how multidisciplinary collaboration can inform child impact assessments and sentencing decisions.

3c. Council of Europe Recommendation CM/Rec(2018)5

3c.1 As Guidance for Member States:

- a.** Encourages judicial systems to explore alternatives to custodial sentences for primary caregivers.
- b.** Stresses the importance of maintaining child-parent relationships during incarceration.

3c.2 Examples of Implementation:

- a.** Some jurisdictions have begun incorporating non-custodial measures, such as home detention or community service, to help address the impact on children.

3d. Scottish Children's Hearings

3d.1 Overview:

- a.** A tribunal system focused on the welfare of children integrates child-friendly procedures.
- b.** The hearing involves the child, professionals and decision-makers in a non-adversarial setting.

3d.2 Key Features:

- a.** Children are informed about the proceedings in accessible language.
- b.** The child's views are sought and incorporated into decisions.
- c.** Emotional and psychological support is provided throughout the process.

3d.3 Adaptability to Parental Sentencing:

- a.** The Scottish model offers a blueprint for helping to ensure that children's voices are central in sentencing decisions affecting their parents.

3e. Dynamic Security and Child-Centric Visits

3e.1 Concept:

- a.** Studies show that maintaining regular contact between children and incarcerated parents reduces trauma and fosters family bonds.²
- b.** Quality child-parent visits also improve the incarcerated parent's well-being, contributing to stability of the prison environment (dynamic security).

3e.2 Examples from Research:

- a.** Nordic prison systems prioritise child-friendly visiting areas, reducing stress for children and promoting positive interactions.
- b.** Visits conducted in supportive environments correlate with improved mental health for children, healthier child-parent relationships and better reintegration outcomes for parents.

3e.3 Implications for Sentencing:

- a.** Sentencing decisions should consider how child-parent contact can be preserved through proximity principles (placing parents in facilities close to children) and structured policies with respect to visits.

3f. Best Interest of the Child Assessments

3f.1 United Nations Commentary:

- a.** UNCRC General Comment No. 14 on the UNCRC highlights the need to evaluate children's

² Jones, A. D., & Wainaina-Woźna, A. E. (Eds.) (2013), *Children of Prisoners: Interventions and mitigations to strengthen mental health* [COPING Project], University of Huddersfield, UK; Murray, J. & Farrington, D. (2008), 'The Effects of Parental Imprisonment on Children,' *Crime & Justice* 37(1), 133-206.

best interests at every stage of legal proceedings.

3f.2 Examples of Application in Sentencing:

- a.** In Portugal, reports on the personal circumstances of individuals being sentenced include family considerations, though these are not explicitly focused on children.
- b.** Expanding such assessments to prioritise child-specific impacts would align with international obligations.

3f.3 Call for Integration:

- a.** Best interest assessments must be incorporated as a standard judicial tool, modeled after frameworks like Barnahus and the Scottish Children's Hearings.

4. Judicial Actions to Protect Children's Rights

4a. Incorporating Child Impact Assessments

4a.1 Inspired by *S v M* and supported by CM/Rec(2018)5, child impact assessments evaluate how sentencing affects children at pre-trial, trial, sentencing and post-sentencing stages.

4a.2 Models for Incorporating Child Impact Assessments:

a. Courts in *S v M*

a(1): Demonstrated how detailed evaluations of children's circumstances can be used to balance sentencing with the well-being of dependents.

a(2): Provides a model for aligning judicial decisions with the best interests of the child, as outlined in international obligations like the UNCRC.

b. The Barnahus Model

b(1): Highlights the importance of integrating multidisciplinary input from professionals such as psychologists, social workers and legal experts.

b(2): Serves as a framework for ensuring that child impact assessments are comprehensive, collaborative and focused on the specific needs of each child.

4b. Listening to Children

4b.1 Drawing from the Scottish Children's Hearings and the Barnahus Model, establish mechanisms to ensure that children's voices are meaningfully included in sentencing decisions.

4b.2 Judges should:

- a.** Hear from children directly or through representatives.
- b.** Consider children's views alongside formal assessments of their best interests.
- c.** Balance children's views with other legal considerations. Children's opinions are not determinative of the outcome.
- d.** Inform children that their opinions were considered, even if the final decision differs from their wishes.

e. Assess each case individually. A custodial sentence may be in the child's best interests, while in some cases separation may be necessary to protect the child from harm.

4b.3 Listening to Children — Practical Examples:

a. Scottish hearings prioritise listening to children in a non-adversarial, supportive environment.

b. S v M emphasised that children's perspectives must inform judicial outcomes.

4c. Promote Alternatives to Custodial Sentencing

4c.1 Prioritise non-custodial measures such as community service, house arrest or correctional supervision, particularly for primary caregivers.

4c.2 When imprisonment is necessary, conditions should minimise harm to the child. This includes allowing contact where appropriate and placing parents in facilities close to their children.

4c.3 Successful Models for Non-Custodial Sentencing:

a. Precedent from S v M

a(1): Highlighted the need for judicial flexibility when the well-being of dependents is at stake, influencing the shift toward non-custodial sentences for primary caregivers.

a(2): This approach encourages sentencing practices that prioritize children's best interests without compromising accountability.

b. Child-Centred Approaches in Barnahus

b(1): Established the value of holistic, multidisciplinary assessments in ensuring that children's needs are prioritised.

b(2): Encourages adapting similar frameworks to judicial sentencing decisions, ensuring comprehensive evaluations of a child's circumstances.

4d. Enhance Judicial Training

4d.1 Develop training programmes for judges on compassionate sentencing, drawing from CM/Rec(2018)5 and the UNCRC.

4d.2 Training should:

a. Address practical methods for conducting child impact assessments.

b. Equip judges with the tools to incorporate children's rights into criminal proceedings effectively.

4d.3 Enhancing Judicial Training Through Proven Frameworks:

a. Training in the Barnahus Model equips professionals with the tools to centre children's rights.

b. Scottish tribunals emphasise continuous professional development to enhance child-focused decision-making.

4e. Ensure Consistency in Practice

4e.1 Establish standardised protocols to apply compassionate sentencing across jurisdictions.

4e.2 Protocols should:

- a.** Formalise the use of child impact assessments.
- b.** Mandate consideration of alternatives to custody.
- c.** Provide clear guidance on hearing children in court.

4e.3 Ensuring Consistency Through Child-Centred Practices:

- a.** The consistency of Barnahus procedures offers a model for ensuring systematic application of child-friendly practices.

5. Key Considerations for Implementation

5a. Challenges

5a.1 Resistance to adopting new procedures in overburdened judicial systems.

5a.2 Limited awareness of the rights of children affected by parental incarceration.

5b. Opportunities

5b.1 Frameworks like the UNCRC and CM/Rec(2018)5 provide a solid foundation for reform.

5b.2 Successful examples such as S v M, Barnahus and Scottish Children's Hearings demonstrate feasibility.

5c. Next Steps

5c.1 Pilot programmes to implement child impact assessments and compassionate sentencing training.

5c.2 Develop cross-jurisdictional guidelines to standardise practices.

5c.3 Advocate for legislative changes to ensure the inclusion of children's rights in all sentencing decisions.

6. Call to Action

6a. The Role of Judges

6a.1 Judges are uniquely positioned to integrate compassionate sentencing into judicial systems, bridging the gap between criminal and family law.

6b. Why Compassionate Sentencing Matters

6b.1 Compassionate sentencing is not leniency—it is a commitment to fairness and justice for all affected parties, especially vulnerable children.

6c. Final Appeal

6c.1 By adopting compassionate practices, judges uphold their legal and ethical obligations while strengthening public trust in the judiciary.

6c.2 Ensuring that children’s voices are heard and their rights respected protects families and strengthens the fabric of society.



Children of Prisoners Europe (COPE) is a pan-European network of non-profit organisations working with and on behalf of children affected by the imprisonment of a 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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