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

*(Adopted by the Committee of Ministers on 4 April 2018
at the 1312th meeting of the Ministers' Deputies)*

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

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

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

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

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

Acknowledging the impact of imprisonment of a parent on children and the fact that prison can be a difficult environment for children;

Also taking into account that child-parent relationships are not always positive and healthy;

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;

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

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

Taking into account the following Council of Europe legal instruments:

- Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);
- Convention on Contact concerning Children (ETS No. 192);
- Convention on the Transfer of Sentenced Persons (ETS No. 112);
- Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167);
- Recommendation Rec(92)17 of the Committee of Ministers to member States concerning consistency in sentencing;

- Recommendation Rec(93)6 of the Committee of Ministers to member States concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison;
- Recommendation Rec(97)12 of the Committee of Ministers to member States on staff concerned with the implementation of sanctions and measures;
- Recommendation 1469 (2000) of the Parliamentary Assembly of the Council of Europe "Mothers and babies in prison";
- Recommendation Rec(2003)22 of the Committee of Ministers to member States on conditional release (parole);
- Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules;
- Recommendation Rec(2006)13 of the Committee of Ministers to member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;
- Recommendation CM/Rec(2008)11 of the Committee of Ministers to member States on the European Rules for juvenile offenders subject to sanctions or measures;
- Recommendation CM/Rec(2010)1 of the Committee of Ministers to member States on the Council of Europe Probation Rules;
- Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners;
- Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring;
- Recommendation CM/Rec(2017)3 of the Committee of Ministers to member States on the European Rules on community sanctions and measures;

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

Bearing in mind:

- the United Nations Convention on the Rights of the Child (1989);
- the United Nations Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners (1985);
- the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (Resolution 2010/16 of the Economic and Social Council);
- the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, 2015);
- the United Nations Committee on the Rights of the Child report and recommendations of the day of general discussion on "Children of incarcerated parents" (2011);
- the Charter of Fundamental Rights of the European Union (2009);
- the European Union Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union;
- the European Union Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;
- the European Union Council Framework Decision 2009/829/JHA on the application, between member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention;

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

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

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

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

Recommends that governments of member States:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation;
- ensure that this recommendation and the explanatory report to its text are translated and disseminated as widely as possible and more specifically to all relevant authorities, agencies, professionals and associations, as well as being made accessible to children and their imprisoned parents.

Appendix to Recommendation CM/Rec(2018)5

I. Definitions, underlying values and scope

Definitions

For the purpose of this recommendation:

- a. "child" refers to any human being under the age of 18;
- b. "prison" refers to an institution reserved primarily for the detention of suspects or of sentenced persons;
- c. "imprisoned parent" refers to a parent (as recognised by national law) who is detained in prison;
- d. "infant in prison" refers to a very young child born and/or living with a parent in prison;
- e. "caregiver" refers to a person who looks after and takes responsibility for the child on a daily basis;
- f. "judicial authority" refers to a court, a judge or a prosecutor.

Underlying values

This recommendation is written on the basis that:

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

Scope

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

II. Basic principles

1. Children with imprisoned parents shall be treated with respect for their human rights and with due regard for their particular situation and needs. These children shall be provided with the opportunity for their views to be heard, directly or indirectly, in relation to decisions which may affect them. Measures that ensure child protection, including respect for the child's best interests, family life and privacy shall be integral to this, as shall be the measures which support the role of the imprisoned parent from the start of detention and after release.
2. Where a custodial sentence is being 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.
3. Whenever a parent is detained, particular consideration shall be given to allocating them to a facility close to their children.
4. 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.
5. The prison administration shall endeavour to collect and collate relevant information at entry regarding the children of those detained.
6. National authorities shall endeavour to provide sufficient resources to State agencies and civil society organisations to support children with imprisoned parents and their families to enable them to deal effectively with their particular situation and specific needs, including offering logistic and financial support, where necessary, in order to maintain contact.
7. Appropriate training on child-related policies, practices and procedures, shall be provided for all staff in contact with children and their imprisoned parents.

III. Police detention, judicial orders and sentences

8. 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.
9. Enforcing restrictions on contact of an arrested or a remanded parent shall be done in such a way as to respect the children's right to maintain contact with them.
10. Without prejudice to the independence of the judiciary, before a judicial order or a sentence is imposed on a parent, account shall be taken of the rights and needs of their children and the potential impact on them. The judiciary should examine the possibility of a reasonable suspension of pre-trial detention or the execution of a prison sentence and their possible replacement with community sanctions or measures.
11. Significant events in a child's life – such as birthdays, first day of school or hospitalisation – should be considered when granting prison leave to imprisoned parents.

IV. Conditions of imprisonment

Admission

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.
13. At admission, the prison administration should record the number of children a prisoner has, their ages, and their current primary caregiver, and shall endeavour to keep this information up-to-date.
14. On admission and on a prisoner's transfer, prison authorities shall assist prisoners who wish to do so in informing their children (and their caregivers) of their imprisonment and whereabouts or shall ensure that such information is sent to them.

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

Allocation, communication, contact and visits

16. Apart from considerations regarding requirements of administration of justice, safety and security, the allocation of an imprisoned parent to a particular prison, shall, where appropriate, and in the best interests of their child, be done such as to facilitate maintaining child-parent contact, relations and visits without undue burden either financially or geographically.

17. Children should normally be allowed to visit an imprisoned parent within a week following the parent's detention and, on a regular and frequent basis, from then on. Child-friendly visits should be authorised in principle once a week, with shorter, more frequent visits allowed for very young children, as appropriate.

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

19. In cases where the current caregiver is not available to accompany a child's visit, alternative solutions should be sought, such as accompanying by a qualified professional or representative of an organisation working in this field or another person as appropriate.

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

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

22. When a child's parent is imprisoned far away from home, visits shall be arranged in a flexible manner, which may include allowing prisoners to combine their visit entitlements.

23. Any security checks on children shall be carried out in a child-friendly manner that respects children's dignity and right to privacy, as well as their right to physical and psychological integrity and safety. Any intrusive searches on children, including body cavity searches, shall be prohibited.

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

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

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

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

28. Child-parent activities should include extended prison visits for special occasions (Mother's Day, Father's Day, end of year holidays, etc.) and other visits to further the child-parent relationship, in addition to regular visits. Consideration on such occasions should be given to prison and other staff in visiting areas being dressed less formally, in an effort to normalise the atmosphere.

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

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

31. A child's right to direct contact shall be respected, even in cases where disciplinary sanctions or measures are taken against the imprisoned parent. In cases where security requirements are so extreme as to necessitate non-contact visits, additional measures shall be taken to ensure that the child-parent bond is supported.

Prison leave

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

Good order, safety and security

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

Infants in prison

34. In order to ensure the right of a child to the highest attainable standard of health, appropriate pre-natal and post-natal health care, support and information shall be provided for imprisoned mothers. Pregnant women shall be allowed to give birth in a hospital outside prison. Instruments of restraint shall never be used on women during labour, during birth and immediately after birth. Arrangements and facilities for pre-natal and post-natal care in prison shall respect, as far as practicable, cultural diversity.

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

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

37. Arrangements and facilities for the care of infants who are in prison with a parent, including living and sleeping accommodation, shall be child-friendly and shall:

- ensure that the best interests and safety of infants are a primary consideration, as are their rights, including those regarding development, play, non-discrimination and the right to be heard;
- safeguard the child's welfare and promote their healthy development, including provision of ongoing health-care services, and arranging for appropriate specialists to monitor their development in collaboration with community health services;
- ensure that infants are able to freely access open-air areas in the prison, and can access the outside world with appropriate accompaniment and attend nursery schools;
- promote attachment between a child and their parent, allowing the child-parent relationship to develop as normally as possible, enabling parents to exercise appropriate parental responsibility for their child and providing maximum opportunities for imprisoned parents to spend time with their children;
- support imprisoned parents living with their infants and facilitate the development of their parental competency, ensuring that they are provided with opportunities to look after their children, cook meals for them, get them ready for nursery school and spend time playing with them, both inside the prison and in open-air areas;
- as far as possible, ensure that infants have access to a similar level of services and support to that which is available in the community, and that the environment provided for such children's upbringing shall be as close as possible to that of children outside prison;
- ensure that contact with the parent, siblings and other family members living outside the prison facility is enabled, except if it is not in the infant's best interests.

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

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

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

Sentence planning and preparation for release

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

42. In order to enhance child-parent relationships, prison authorities shall utilise options such as home leave, open prisons, halfway houses, 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.

Through-care

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

Policy development

45. Any new policies or measures designed by or for the prison administration which may impact child-parent contact and relations shall be developed with due regard to children's rights and needs.

V. Staff working with, and for, children and their imprisoned parents

46. Staff who come into contact with children and their imprisoned parents shall respect their rights and dignity. Prison administrations should select, appoint and resource designated "children's and/or family officers" whose role should include support for children and their imprisoned parents, facilitate visits in child-friendly settings, provide guidance and information, in particular to children newly confronted with the prison environment, and liaise with relevant agencies, professionals and associations on matters related to children and their imprisoned parents.

47. Staff who come into contact with children and their imprisoned parents shall receive training in areas including how to respect children's needs and rights, the impact of imprisonment and the prison setting on children and the parental role, how to support imprisoned parents and their children and better understand the specific problems they face, how to make visits child-friendly and to search children in a child-friendly manner.

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

A multidisciplinary and multi-agency approach

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

VI. Monitoring

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

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

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

52. Statistical data from prison and child welfare sources should be systematically collected and published together with information on children with imprisoned parents and inventories of good practice.

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

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

VIII. Work with the media and with public opinion

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

56. The media, professionals and the general public should be provided with reliable and up-to-date data and good practice examples to increase their awareness regarding the numbers of children affected and the impact of parental imprisonment, and to avoid negative stereotyping and stigmatisation of children with imprisoned parents.