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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Cooperation
(PCCP)

**Draft Recommendation CM/Rec(20XX)XX of the Committee of Ministers
to the member States concerning children of imprisoned parents**

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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 in its member States;

Underlying that in all matters concerning children their best interests must be a primary consideration;

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 lack of quality family contact, stigma and financial, practical and psychological consequences;

Acknowledging the impact of imprisonment on children of prisoners and the fact that that prison is not a healthy environment for children;

Desirous of alleviating any possible adverse impact of a parent's incarceration on children and on parental competency, with a view to protecting child development and fostering the parents' social reintegration; and recognising that children of prisoners are considered as vulnerable children and consideration of their needs and rights forms part of the Council of Europe Strategy on the Rights of the Child 2016-2021 and should form part of cross-sectorial, multidisciplinary national child protection strategies;

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);
- Council of Europe Convention on Contact concerning Children (2003).
- 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(97)12 on staff concerned with the implementation of sanctions and measures
- Recommendation Rec(92)17 concerning consistency in sentencing;
- Recommendation Rec(93)6 concerning prison and criminological aspects of the control of transmissible diseases including aids and related health problems in prison;
- Recommendation Rec(2003)22 on conditional release (parole);
- Recommendation Rec(2006)2 on the European Prison Rules;
- Recommendation Rec(2006)13 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 on the European Rules for juvenile offenders subject to sanctions or measures;
- Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules;
- Recommendation CM/Rec(2014)4 on electronic monitoring;
- Recommendation Rec(2017)3 on the European rules on community sanctions and measures;

Bearing in mind:

- 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 (Resolution 2010/16);

- The UN Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules)
- 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 children with imprisoned parents;

Agreeing that additional ethical and professional standards need to be developed in order to guide the national authorities, including judges, prosecutors, prison administrations, probation agencies, 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 its member States;

Recognising that a range of authorities and agencies deal with children who may be affected by parental incarceration 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 accompanying report to its text are translated and disseminated as widely as possible and more specifically to all relevant authorities, agencies, professionals and associations which deal with children of prisoners, as well as to the prisoner-parents themselves.

I. Definitions, underlying values and scope of recommendation

Definitions

For the purpose of this recommendation:

- a. child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.
- b. parent means a person holding parental responsibilities or other persons entitled to exercise some or all parental responsibilities.
- c. **prisoner** means any person who is in custody following conviction for a criminal offence or because of allegations of having committed an offence.
- d. **prison** means an institution reserved primarily for the detention of suspects or sentenced persons;
- e. **judicial authority** means a court, a judge or a prosecutor.

Underlying values

This recommendation is written on the basis that:

- respect for the rights and needs of individual children of prisoners and the quality of contact between them is compatible with ensuring safety, security and good order in prison and has a positive impact on the imprisoned parent, on prison staff, on the reintegration of prisoners and on society in general.
- children can thrive when they have a sense of autonomy and feel they can influence events. If adults listen to and respect children, and model collaboration with them, their sense of themselves as competent members of society grows.
- it is necessary to protect the child's right to an emotional and continuing bond with their imprisoned parent who has a duty and right to play his/her parental role and to promote positive experiences for their children.
- children, family and child-parent relationships need support before, during and after detention.
- all interventions and measures promoted to support children with imprisoned parents and their relationship with them must ensure they create no further stigma and discrimination against these children.
- awareness raising, cultural change and social integration are necessary to overcome the barriers connected with the prejudice and discrimination arising from the imprisonment of a parent.

Scope

This recommendation applies to children with parents in prison, including infant children residing with their parent in prison, and to children whose parents have been deprived of their liberty in the course of criminal proceedings.

II. Basic principles

1. Imprisoned parents and their children shall be treated with respect for their human rights and with due regard for their particular situation and individual needs. Measures that ensure child protection as well as respect for the child's best interests, for family life and for privacy shall be integral to this treatment.

2. Parents shall be remanded in custody or sentenced to custodial sanctions only as a measure of last resort. Imprisoned parents shall be entitled to full consideration for early release and for non-custodial sanctions or measures and when they are primary caregivers the impact on dependent children who risk being affected by imprisonment shall be taken into account in remanding, sentencing and allocation.

3. The prison administration shall endeavour to collect and collate information at entry regarding the children of those detained.

4. The prison administration shall endeavour to accommodate the special welfare needs of imprisoned parents and their children and prepare them for release and social reintegration.

5. Decisions to transfer prisoner-parents to or from a State in which their dependent children reside shall be taken with respect for human rights, in the interests of justice and with regard to the welfare of the children and the need to socially reintegrate such prisoners.

6. Sufficient resources shall be allocated in order to deal effectively with the particular situation and specific needs of children of prisoners and prisoners who are parents.

7. Appropriate training in dealing with children, and with their imprisoned parents shall be provided for the staff of the relevant authorities, agencies and associations as well as professionals who have regular contact with such persons.

IV. Sentencing

8. The judicial authorities shall be provided, where possible and appropriate, with pre-sentence reports about the personal circumstances of suspects, their children and their families, and the likely impact of various sanctions on children.

9. To avoid disproportionate hardship and obstacles to social reintegration, account shall be taken when considering sentences of the possible impact that such sentences may have on individual suspects and their children, without prejudice to the independence of the judiciary.

V. Conditions of imprisonment

Admission

10. Prior to or on admission, individuals with caretaking responsibilities for children shall be enabled to make arrangements for those children, including the possibility of a reasonable suspension of pre-trial detention or the execution of the prison sentence, where available, taking into account the best interests of the child.

11. At admission and during detention, prisoners who are parents shall be provided with information about:

a. their rights and duties as prisoners including regarding contact with their children and families;

b. the main features of the prison regime and the internal regulations;

12. Immediately after admission, prison authorities shall assist prisoners who are parents, who wish to do so, to inform of their imprisonment their families or ensure that such information is sent to them with their permission.

13. As soon as possible after admission, prisoners who are parents shall be provided with information which they can send to their children and families to explain entitlements to and procedures for visiting.

14. At admission, prisoners will be asked about the numbers and ages of any children they have. Prisoners will also be asked about who is caring for their children while the parent is detained or imprisoned.

Allocation

15. Subject to the requirements of safety and security, and the individual needs of prisoners who are parents, consideration shall be given to allocating these prisoners in prisons close to their family home that would enable their families to visit them without undue burden either financially or geographically.

Contact with the outside world

16. To alleviate the potential isolation of imprisoned parents, special attention shall be paid to the maintenance and development of their relationships with the outside world, including contacts with their children, family and friends, consular representatives, probation and community agencies and volunteers as appropriate.

17. Special measures shall be taken to encourage and enable imprisoned parents to maintain regular and meaningful contact with their children, to maintain and strengthen the child-parent bond and safeguard children's healthy development, while facilitating their rehabilitation process. Restrictions imposed on contact between prisoners and the outside world shall be implemented in a way that does not violate the child's right to contact with their imprisoned parent.

18. Arrangements shall be made to facilitate visits, correspondence and other forms of communication by children with their imprisoned parent, including when the parent is detained in a prison in a foreign country.

Telephones and other forms of electronically assisted communication

19. Systematic use of telephone technology and IT (e.g., video-conferencing, mobile telephone systems, Internet, including webcam and chat functions) shall be facilitated between scheduled face-to-face meetings. These means of communication should never be seen as a permanent alternative to face-to-face contact between children and their imprisoned parents.

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

21. Imprisoned parents shall be assisted with the costs of communicating with their children if their means do not allow it.

Visits

22. Prison visits shall be arranged so as to allow prisoners to maintain and develop relationships with their children and families in as normal a manner as possible. Children may be granted visits with their parents that offer privacy, when necessary and in specific circumstances, such as bereavement.

23. Children shall be authorised to visit an imprisoned parent within a week following the parent's detention and, on a regular and frequent basis, from then on. Visits shall be authorised at least once a week, with shorter, more frequent visits allowed for very young children. Visits shall be organised so as not to interfere with school attendance.

24. In order to optimise contact, visits to imprisoned parents from family members who live at great

distances from the place of detention shall be arranged in a flexible manner, which may include allowing prisoners to combine their visit entitlements and offering financial support for families and children to help defray travel costs.

25. Security checks shall be carried out in a child-sensitive manner that respects children's dignity and privacy. A designated children's space shall be provided in prison waiting rooms (e.g., bottle warmer, changing table, toys, drawing materials, games).

26. Prisons shall have designated "children's and/or family officers", specifically trained to support children, their imprisoned parents and the child-parent bond during visits.

27. Prison visits facilities shall provide designated child-friendly waiting areas and spaces that allow for physical contact, and an environment conducive to play and interaction with the parent.

28. Prison staff shall respect imprisoned parents and avoid undermining their parental role especially prior to and during visits. As this can have an adverse impact on the child's visit. To the extent possible, children shall be authorised to leave the visits area prior to the imprisoned as this can be traumatic for some children. Clothes provided by prison authorities shall not offend the dignity of prisoners who are parents, particularly during visits with their children.

29. Arrangements for child-parent activities shall be made on a regular basis as a child's right rather than a tool for prisoner's discipline and control. These activities 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, and do not replace standard authorised visits. To the extent possible, prison staff shall be dressed in a child-friendly manner during these special visits, in an effort to normalise the atmosphere for children.

30. In cases where security requirements are so extreme as to necessitate closed visits, additional measures shall be taken to ensure that the child-parent bond is supported and child-friendly environment is made available, even within these circumstances.

Support and information

31. Support and information shall be provided by the prison to the extent possible to enable family members, particularly children, to visit prisoner-parents. Age-appropriate information about visiting procedures and rules (e.g., what can be taken to visits, security procedures) shall be made available to families. Authorities shall endeavour to inform family members about the prison or other facility in which the prisoner-parent is held or to which they have been transferred. Authorities shall endeavour to keep up-to-date contact details of family members of prisoner-parents.

32. To dispel potentially damaging preconceptions the child may have about the prison environment, children shall be authorised, when feasible and in the child's best interest, to visit or see photographs of areas in which their imprisoned parent spends time, including the parent's sleeping accommodation.

Prison leaves

33. The prison administration should consider, when possible allowing visits of prisoners to their families, or with their families in the community; especially during the period leading up to their release. In addition visits at home provide a more realistic opportunity to exercise the parental role in preparation for resuming it fully on release and protect children from the frequently harsh prison environment.

34. Subject to safety, security and good order, in order to enable prisoner-parents to relate effectively to their children and to exercise their parental role, they should be offered the possibility of home leave to allow their presence during significant moments in children's lives.

Sentence planning, education, training

35 Following the collection of information about whether prisoners are parents prior to admission or at entry, consideration shall be given in sentence planning as to which programmes, courses and other

interventions will enable prisoner-parents to act as positive, non-violent role models for their children.

36. Positive staff/prisoner engagement and positive role models for imprisoned parents and their children should be promoted.

37. Prisoners who are parents shall be given opportunities to exercise their role as parents, and to receive support and learning to sustain this. Specific support and learning objectives include: retaining maximum parental responsibility during imprisonment; minimising the impact of imprisonment on their children; developing and strengthening constructive child-parent relationships; and preparing for integration into family life on their release.

38. To ensure that educational and vocational training is as effective as possible for prisoner-parents, prison authorities shall take account of their individual needs and aspirations, which may include working towards qualifications that are recognised and that facilitate re-entry into family life. Where possible, support and learning opportunities should also be available following the prisoner's release.

39. The prison library shall be stocked as far as possible with reading materials and other resources that reflect the needs of prisoners who are parents and support joint activities with their children.

Good order, safety and security

40. Prison staff shall ensure that good order, safety and security are maintained through a process of dynamic security with prisoners and interaction with their children and families.

41. To ensure child protection, 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.

Women

42. Attention shall be paid to meeting the psychological and healthcare needs of women prisoners, who are expecting or who have children.

43. Arrangements and facilities for pre-natal and post-natal care shall respect individuals and be non-judgmental, comprehensive and coordinated.

Infants

44. Decisions to allow infants to stay with a parent in prison shall be based on the best interests of the child. Such decisions are based on the presumption that, unless the contrary is shown, that involvement of the parent in the life of the child will further the child's welfare. Infants in prison with a parent shall not be treated as prisoners.

45. The legal status of any infants in prison with a parent shall be determined as early as possible during the sentence of that parent.

46. Arrangements and facilities for the care of infants who are in prison with a parent shall:

- ensure the best interests and safety of infants living in the prison are a primary consideration;
- safeguard the child's welfare and promote healthy child development, including provision of on-going health-care services, and arranging for specialists to monitor their development in collaboration with community health services;
- ensure that all infants living in prison shall be able to freely access open-air areas in the prison, and can access the external world with the appropriate accompaniment; shall attend nursery schools and, where relevant, schools outside the prison;
- promote attachment between a parent and their child, allowing the child-parent relationship to develop as normally as possible, enabling parents to exercise appropriate parental

responsibility for their child and providing maximum possible opportunities for prisoner-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 school, and spend quality time playing with them, both inside the prison and in the open air areas;
- as far as possible ensure 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 a child outside prison.

47. Decisions as to when an infant is to be separated from their imprisoned parent shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.

48. The transition of the infant from 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.

49. After infants are separated from their parents in prison and placed with family or relatives or in other alternative care, prisoners shall be given the maximum possible opportunity and facilities to meet with imprisoned parent, when it is in the best interests of the children and when public safety is not compromised.

VI. Release/Through-care

Preparation for release

50. Preparation for release of imprisoned parents shall start from the beginning of their sentence and in a manner that facilitates their reunification with their children and reintegration into society.

51. In order to facilitate the reintegration of prisoners into their family and society:

- a. their situation after release shall be determined as early as possible during their sentence;
- b. where appropriate, prison leave and other forms of temporary release shall be granted;
- c. they shall be assisted in making or re-establishing contact with family, friends and relevant support agencies as appropriate.

Consideration for early release

52. Imprisoned parents shall be considered for early release as soon as they are eligible and shall not be discriminated against in this respect. Prison authorities shall utilise options such as home leave, open prisons, halfway houses and community-based programmes and services to the maximum possible extent for prisoners who are parents, to ease their transition from prison to liberty, to reduce stigma, to re-establish their contact with their families at the earliest possible stage and minimise the impact of their imprisonment on their children.

53. Decisions regarding all such early conditional release shall take into account prisoners' caretaking responsibilities, as well as their specific social reintegration needs.

54. When considering for pardon or other such schemes, where available, the parental responsibilities of prisoners shall be taken into account, where appropriate.

Through-care

55. When prisoners are released they shall be provided with support and care by prison, probation or other agencies which specialise in assisting prisoners, as appropriate, in reintegrating with their children and families. Prison authorities, in cooperation with probation and/or social welfare services, local community groups and civil society organisations shall design and implement comprehensive

pre- and post-release reintegration programmes which take into account the specific needs of parents resuming their parental role in the community.

56. Children shall also receive support and care following the release of their parents from prison.

VII. Persons who work with imprisoned parents and with their children

Selection

57. Persons who work with prisoners who are parents shall be selected on criteria that include child-aware sensitivity, interaction skills and abilities to support the child–parent relationship.

Training

58. Staff involved in the admission of prisoners who are parents shall be appropriately trained to interact with them in a sensitive manner.

59. Training shall be provided to all persons who work with children of prisoners and with imprisoned parents on the following: how to respect children’s needs and rights; the impact of imprisonment and the prison setting on children, the parental role; how to support prisoner-parents and better understand the particular problems faced by such prisoners.

60. Such training should include making visits child-friendly and how to search children appropriately.

61. Training programmes shall be evaluated and revised regularly to ensure they reflect changing populations and social circumstances and up-to-date practice.

62. Persons who deal with children of prisoners shall be kept informed of current national law and practices and international and regional human rights law and standards relating to children, including this recommendation.

Specialisation

63. Appropriately trained specialists shall be designated to support imprisoned parents and facilitate visits with children of prisoners and imprisoned parents in child-friendly settings. They will also liaise with relevant agencies, professionals and associations on matters related to children and their imprisoned parents.

VIII. Supervision, independent monitoring, work with the media and with public opinion

64. The relevant ministries responsible for child protection as well children’s ombudsperson or other bodies with responsibility for protecting children’s rights shall supervise the respect of the rights and interests of infant children staying in prison with their parent and of children of imprisoned parents.

65. Civil society organisations offering support to children and families of suspects and prisoners shall monitor the respect of their rights and needs.

66. The media and those with a professional responsibility regarding children of imprisoned parents should be provided with reliable and up-to-date data and good practice examples in order to increase their awareness regarding the numbers and the impact of parental imprisonment. The negative stereotyping and stigmatisation of such children, including in the media and in political discourse need to be combatted accordingly.

A multidisciplinary approach

67. The relevant national authorities should adopt a multi-agency and cross-sectorial approach in order to implement the guiding principles considering the best interests of the children. This involves cooperation with local communities, the children’s ombudsperson or other official with responsibility for protecting children’s rights, as well as other relevant statutory and non-statutory bodies, including civil society organisations offering support to children and families of suspects and prisoners.

67. Sufficient resources need to be made available to such civil society organisations offering support to children and families of suspects and prisoners to enable them to provide a satisfactory level of support to children and families of prisoners and suspects, and to enable them to engage effectively with other relevant bodies.

Evaluation of child-friendly practices and policies

68. Authorities should regularly evaluate their implementation of child-friendly practices and policies relating to children of imprisoned parents and revise them where appropriate. This review should involve the children's ombudsperson or other bodies with responsibility for protecting children's rights, as well as other relevant statutory and non-statutory bodies, including civil society organisations offering support to children and families of suspects and prisoners.

Research

32. Efforts shall be made to organise and promote research on children of imprisoned parents in order to contribute to policy development in this area.