



MATERNAL IMPRISONMENT IN IRELAND: A SCOPING STUDY

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort. IPRT is committed to reducing imprisonment and the progressive reform of the penal system based on evidence-led policies. IPRT works to achieve its goals through research, raising awareness, and building alliances.

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A note on language

IPRT is cognisant of the language and terminology we use in our publications. IPRT is committed to using 'person first' language as much as possible. However, for purposes of clarity, the term 'prisoner' is used often throughout this report; this is to distinguish between staff and people detained.

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Acronyms

| | |
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| ACERWC | African Committee of Experts on the Rights and Welfare of the Child |
| ACE | Adverse Childhood Experience |
| BRFP | Bedford Row Family Project |
| CoE | Council of Europe |
| COPE | The Children of Prisoners Europe Network |
| CPT | European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment |
| CRC | UN Convention on the Rights of the Child |
| CEDAW | UN Convention on the Elimination of All Forms of Discrimination against Women |
| CSOs | Community Service Orders |
| DCEDIY | Department of Children, Equality, Disability, Integration and Youth (Ireland) |
| ECtHR | European Court of Human Rights |
| ECHR | European Convention on Human Rights and Fundamental Freedoms |
| FIG | Families and Imprisonment Group (Irish Prison Service) |
| FFP | Organisation for Families and Friends of Prisoners (Norway) |
| IPS | Irish Prison Service |
| IPRT | Irish Penal Reform Trust |
| ISIS | Irish Sentencing Information System |
| NGOs | Non-governmental Organisations |
| SGIC | Sentencing Guidelines and Information Committee |
| UN | United Nations |
| UNODC | United Nations Office on Drugs and Crime |



Summary of Recommendations

Key recommendations – Children’s right to express their views

1. The Child and Family Agency (Tusla) and the Department of Children, Equality, Disability, Integration and Youth should work together to develop mechanisms and provide forums to enable children with mothers in prison to express their views on matters directly impacting them in a safe and friendly environment.
2. Relevant agencies such as the Child and Family Agency (Tusla) and others should make efforts to reach out to all children impacted by maternal imprisonment, including those from hard-to-reach groups. This can be done in conjunction with relevant civil society and community groups.
3. If it is not possible for children to express their views directly, these can be collected through child-specialist NGOs, other expert groups or via professionals working with these groups of children. This could include the establishment of multi-agency expert groups.
4. Consideration be given by the Department of Children, Equality, Disability, Integration and Youth or statutory agency such as Ombudsman for Children to adopting – in consultation with children themselves – a Bill of Rights for children with a parent in prison. This should be done with a view to further incorporating such rights into legislation.

Key recommendations – Sentencing

5. Pre-sentence reports and judicial decisions should be monitored and systematically recorded by the Probation Service and Courts Service to establish the extent to which children are considered in probation assessments and whether judges currently consider the best interests of the child when remanding or sentencing a mother.
6. Child impact assessments should be incorporated into the Probation Service’s pre-sanction reports and judges should be required to request and consider these assessments in sentencing any mothers. Where the Child and Family Agency (Tusla) is already involved with the family, they should be involved in the preparation of such reports.
7. If it is not possible to incorporate child impact assessments, the Probation Service should be required to include a mothers’ family situation in the pre-sanction and community service reports, and these should include sufficient detail on the family situation and the potential impact of imprisonment on the child in order for the judge to make an informed decision.
8. The Sentencing Guidelines and Information Committee should include in proposed sentencing guidelines the requirement that the best interests of the child and the impact of imprisonment on the child be considered when a mother is remanded or sentenced to imprisonment. Where imprisonment is deemed unavoidable, consideration of the impact of maternal imprisonment on her children should be considered in relation to sentence length. Consideration should also include any effect of a sentence on the health of pregnant women and their unborn child. Gender specific sentencing guidelines should also be considered.
9. Bodies such as the Judicial Council, Law Society and Bar Council should consider incorporating training on the impact of maternal imprisonment so that judges and other relevant criminal justice officials have sufficient insight into these issues to properly weigh it as a factor in decision making.
10. Bodies such as the Judicial Council, Courts Service and legal representative bodies should ensure lawyers and justice sector officials are well informed of, and confident in, non-custodial measures available for women so that they properly consider these at sentencing. It would be good practice for judges to receive feedback on the implementation of non-custodial sentences, for example, with such feedback coming from the Probation Service.

Key recommendations – Non-custodial measures

11. In light of women's caretaking responsibilities, non-custodial measures should be considered by justice sector officials at every stage of the criminal justice process. Sentencing bodies should impose the least interventionist non-custodial sentence which takes into account a woman's personal circumstances.
12. Alternatives to prosecution and diversionary measures should be considered and strengthened where a woman does not pose a danger or serious threat to safety and society. Alternative measures may include case dismissal or gender-responsive diversion and community-based treatment programmes.
13. Policy officials should review and expand the diversity of sentencing options for women with an emphasis on gender-responsive community-based approaches.
14. Ensure that justice sector officials promote the use of gender responsive Community Service Orders for women offenders, developed to meet their specific needs including caretaking responsibilities.
15. The Probation Service should commission further research into the number, type and uptake of community sanctions to ascertain gaps in service provision and areas for development with respect to gender-sensitive options.
16. Relevant authorities such as the Department of Justice and/or Sentencing Guidelines and Information Commission should undertake research on the current use of suspended sentences and the extent to which child caretaking responsibilities are taken into account to support decisions on suspended sentences in Ireland.
17. The Department of Justice and/or Courts Service should undertake research, data collection and analysis on the use of bail and other pretrial alternatives as options for women with caretaking responsibilities.
18. Any new sentencing guidelines should include the position that pretrial non-custodial alternatives should be the de facto position for pregnant women / women with dependents regardless of the offence in question.
19. Decisions on early release should take into account women offenders' caretaking responsibilities in line with Rule 63 of the Bangkok Rules. Women offenders with caretaking responsibilities should be prioritised for early release programmes.

Key recommendations – Mitigating the impact of maternal imprisonment

20. The State should recognise children with imprisoned parents as a specific cohort in need of support and establish and fund a national support service to provide integrated support services to children and families with a family member in prison, including providing financial support to prisoners' families where needed.
21. The Department of Justice should conduct a centralised mapping and review of support services and other initiatives available to children of mothers in prison. This should include services provided by government agencies as well as by voluntary sector organisations and should analyse the services available and the extent that they are used. This will allow authorities to determine gaps in service provision and identify where improvements are needed.
22. All relevant departments, including the Department of Children, Equality, Disability, Integration and Youth and Department of Justice, ensure that the specific support needs of children whose mothers are in prison are identified and included in policy commitments of all relevant agencies and that this forms part of an integrated national response to the needs of this group of children.
23. Agencies such as the Irish Prison Service and Probation Service should ensure that support services available to women in prison, as well as pre-release programmes and post-release services, take into account their needs as mothers and are designed accordingly. This includes tailoring services to meet the needs of particular groups of mothers.
24. Staff who come into contact with women and children in the criminal justice system should be trained on trauma and gender-informed practice to enable them to support women, mothers and children in a meaningful way.

Key recommendations – Research, data collection and awareness raising

25. The Irish Prison Service should ensure that all prisons confidentially record the names, ages, location and custody status of children of women admitted to prison, and that the reasons for collecting this information are clearly explained and the questions are framed in a way that will establish trust.
26. The Irish Prison Service should ensure that data on children of prisoners collected by each prison is made available in a format that can be used to estimate national statistics of children impacted by imprisonment, disaggregated by the gender of parent and child. These statistics should be publicly available.
27. The Department of Justice and/or Department of Children, Equality, Disability, Integration and Youth should provide relevant agencies with the resources needed to conduct research and data collection related to women and the children of women in the Irish criminal justice system, including the impact of imprisonment and their support needs and research on the impacts on specific groups of women and children.
28. The Department of Justice and Department of Children, Equality, Disability, Integration and Youth should lead in developing a centralised knowledge base to collect and analyse all relevant findings and share findings between different sectors involved with prisoners and the children of prisoners.
29. The Department of Justice and Department of Children, Equality, Disability, Integration and Youth should ensure that the findings and recommendations of research are used to adjust and improve policies to reduce or mitigate against any negative impacts and to meet the needs of this group of children through targeted services. Judicial decision makers should also be sensitised to the impacts of maternal imprisonment.

Introduction

In recent years there has been increasing recognition of children of imprisoned parents as a specific group of vulnerable and marginalised children with particular needs, and of the detrimental impact of parental imprisonment on them.¹ While there has been less focus on the specific impact on children when their mother is sent to prison, several studies have found that, while less common, maternal imprisonment can be significantly more disruptive than paternal imprisonment.²

This is largely due to the fact that women are more often the primary caregivers for their dependent children. When fathers are imprisoned, the mother usually continues to care for any children. However, studies have shown that when mothers are sent to prison, the family is more likely to be broken up, with children being placed with other family members or into State care.³ The impact of maternal imprisonment has wider implications as a result, including on the women themselves, their family and the broader community.

Despite the well-documented impacts of parental, and specifically maternal, imprisonment on children and the clear obligations within the international human rights framework to consider children when their parents or primary caregivers come into conflict with the law, there are very few court systems which actively require courts to take children into consideration at sentencing or when determining pre-trial measures.

Additionally, when mothers are sent to prison, there are significant data gaps globally in understanding the numbers of children impacted, and a corresponding lack of effort made to mitigate against the potential negative impacts on them. Where data is collected, it is usually facility specific with no efforts to collate data nationally or coordinate responses across different agencies.

The Irish Prison Service (IPS) and the Probation Service have identified the risks associated with maternal imprisonment, noting that, '[t]he outcomes for children whose mothers have experienced prison are of major concern. Children of women prisoners frequently exhibit a number of behavioural and psychological problems and there is an increased likelihood of them becoming offenders themselves.'⁴ Despite this, there has been very limited examination of the numbers and experiences of mothers imprisoned in Ireland and their children.

While the IPS, the Probation Service and other associated agencies appear to recognise the need to support children of mothers in prison – indeed these agencies have made efforts in developing support programmes – concern remains at the lack of attention given, at the point of sentencing, to the caregiving responsibilities of women and the best interests of their children. The findings of this research also point to a lack of national efforts to coordinate amongst different stakeholder agencies to reduce the negative impacts of maternal imprisonment on children.

1 See, for example UN Human Rights Council. A/HRC/25/L.10, Rights of the Child, Access to Justice, 25 March 2014, para 5(a) and Council of Europe Strategy for the Rights of the Child (2016–2021), 2013, para 13

2 Lucy Baldwin, 'Motherhood disrupted: Reflections of post- prison mothers. Emotion, Space and Society' [2018] 26 Emotion, Space and Society 49.

3 B.J. Myers, T.M. Smars and K Amlund-Hagen, 'Children of Incarcerated Mothers' 8 Journal of Child and Family Studies 11.

4 Joint IPS and Probation Service, *Irish Prison Service Strategy 2014 – 2016: an Effective Response to Women Who Offend* (2014).

Background

This research project has been conducted for IPRT by expert consultants Sharon Critoph and Vicki Prais, with the aim of: better understanding the levels of maternal imprisonment in Ireland; identifying any gaps in the data available, including how court decision-making impacts the rates of maternal imprisonment; and considering possible ways of addressing this in legislation or through other measures.

The research included a literature review of domestic and international research to identify trends in maternal imprisonment internationally and the impact of imprisonment on both women and children. The researchers also identified good practice in reducing rates of maternal imprisonment and mitigating negative impacts when a mother is sent to prison.



Maternal imprisonment – facts and figures

There are more than 714,000 women and girls held in prisons throughout the world, either as pre-trial detainees or sentenced prisoners, with women making up almost 7% of the global prison population. This represents a 53% increase in the number of imprisoned women and girls since 2000.⁵

Globally, there is very little information on the number of children impacted by maternal imprisonment, with statistics usually given as estimates only, if at all. The Children of Prisoners Europe (COPE) network⁶ estimates, based on a parenting rate of 1.3 children per person, that almost 37,000 children in the European Union (EU) are impacted by the imprisonment of a mother at some point in a given year.⁷

It should be noted that the total number of children affected by the imprisonment of their mother is likely to be significantly higher than this, because the number of people committed to prison throughout the course of a year is usually higher than the average daily population. The number could also be much higher because imprisoned parents tend to have a greater number of children than the average population.⁸

In line with global trends, there has been a significant increase in the number of women in prison in Ireland in the last two decades, with the numbers more than doubling from 2000 to 2022.⁹ This points to a corresponding increase in the numbers of children impacted by the imprisonment of their mother. 82% of the women committed during 2021 were under the age of 45,¹⁰ suggesting that many were mothers of children aged under 18.

In November 2022, the average number of women in prison in Ireland was 200.¹¹ Using the 1.3 parenting rate this equates to 260 children estimated to be impacted by maternal imprisonment in the country.

5 World Prison Brief, 'World female imprisonment list' (4th edition, 2017) https://www.prisonstudies.org/sites/default/files/resources/downloads/world_female_prison_4th_edn_v4_web.pdf accessed 13 January 2023.

6 Children of Prisoners Europe <https://childrenofprisoners.eu/> accessed 13 January 2023.

7 Children of Prisoners Europe, 'Number of children separated from an imprisoned mother' https://childrenofprisoners.eu/facts_and_figures/children-separated-from-mother/ accessed 13 January 2023.

8 Children of Prisoners Europe, 'Data collection and children with imprisoned parents' (2016) <https://childrenofprisoners.eu/data-collection-and-children-with-imprisoned-parents/> accessed 13 January 2023.

9 World Prison Brief, 'World Prison Brief Data: Republic of Ireland' <https://www.prisonstudies.org/country/ireland-republic> accessed 13 January 2023.

10 Irish Prison Service, 'Persons committed to prison - Year 2007 to 2021' https://www.irishprisons.ie/wp-content/uploads/documents_pdf/01-PERSONS-COMMITTED-by-Age-and-Gender-Year-2007-to-2021.pdf accessed 13 January 2023.

11 Irish Prison Service, 'Monthly Information Note – November 2022' (2022) https://www.irishprisons.ie/wp-content/uploads/documents_pdf/November-2022-Website.pdf accessed 13 January 2023.

Impact of maternal imprisonment

The imprisonment of a household member is often cited as one of ten adverse childhood experiences (ACEs) which have a significant negative impact on children's long term health and wellbeing, school attainment and later life experiences.¹² In fact, recent research shows that parental imprisonment is associated with a fivefold increase in exposure to other ACEs.¹³ Whilst the imprisonment of any family member is extremely challenging, the imprisonment of a mother is particularly acute and can be hugely devastating to children, affecting many aspects of their lives. Despite this, there has been limited research on the specific impact of maternal imprisonment on children.¹⁴

The impact of maternal imprisonment on children is often considered in relation to younger children. However, children and young people of all ages can be affected, and the consequences of maternal imprisonment are likely to carry through into adulthood.

It is important to distinguish between the impacts of maternal imprisonment on children who remain

with their mother in prison and those outside prison. Whilst the negative effects of imprisonment on both mother and child are well documented, it is important to recognise that, in some cases, keeping mother and child together in prison can be beneficial.

Several studies have shown that allowing infants born in prison to remain with their mothers promotes bonding and reduces recidivism.¹⁵ On the other hand, life in prison may impact children's physical and cognitive development¹⁶ and their physical safety may be at risk.¹⁷ Much will depend on the prison environment itself and the facilities and services available.¹⁸

For pregnant women there may be risks to an unborn child if a mother is imprisoned. The European Parliament has noted that *'the repercussions of isolation and distress for the health of pregnant women prisoners could also have, in turn, harmful, or even dangerous, consequences for the child'* and has urged careful consideration of a term of imprisonment.¹⁹

12 Prison Reform Trust, 'What about me? The impact on children when mothers are involved in the criminal justice system' (2018) <https://www.togetherscotland.org.uk/media/1111/what-about-me.pdf> accessed 13 January 2023.

13 Kristin Turney, 'Adverse childhood experiences among children of incarcerated parents' (2018) 89 Children and Youth Services Review 218.

14 Examples of national studies include: (i) Prison Reform Trust, 'What about me?' (n 12); Shona Minson, 'Who cares? Analysing the place of children in maternal sentencing decisions in England and Wales' (2017) <https://rb.gy/m6ctv2> accessed 13 January 2023; Re-Unite/Commonweal Housing, Children on the Edge: Children affected by maternal imprisonment' (2016) <https://rb.gy/k6thwe> accessed 13 January 2023; Pitman and Hull, Crest, 'Counting the Cost of Maternal Imprisonment, (2021) <https://rb.gy/jkjm6qf> accessed 13 January 2023 (ii) Canada Katy Stack, 'Moms in prison: The impact of maternal incarceration on Women and Children' Manitoba Law Journal, (2020) 43 (5) Manitoba Law Journal <https://rb.gy/tcfixe> accessed 13 January 2023 (iii) Australia - Liberty, Victoria 'Inquiry into Children affected by Parental Incarceration, (2022) <https://rb.gy/r4glsI> accessed 13 January 2023 (iv) Scotland - University of Glasgow, School of Education / Scottish Centre for Crime and Justice Research, 'Impact of Punishment: Families of People in Prison', (2019) <https://rb.gy/rdzzy> accessed 13 January 2023 (v) International studies include: Children of Prisoners Europe, 'Short but Not Sweet: A Study Exploring the Impact of Short Custodial Sentences on Mothers and their Children' (2017) <https://rb.gy/87h6bf> accessed 13 January 2023 Quakers, UN Office, 'The impact of parental imprisonment on children', (2007) https://www.quono.org/sites/default/files/resources/ENGLISH_The%20impact%20of%20parental%20imprisonment%20on%20children.pdf accessed 15 January 2023.

15 Gary Hunter, 'Prison Nursery Programs Promote Bonding, Reduce Recidivism' (Prison Legal News, 15 September 2010) <https://www.prisonlegalnews.org/news/2010/sep/15/prison-nursery-programs-promote-bonding-reduce-recidivism/> accessed 13 January 2023.

16 Ross Parke and K. Alison Clarke-Stewart 'Effects of Parental Incarceration on Young Children' (2002): <https://www.urban.org/sites/default/files/publication/60691/410627-Effects-of-Parental-Incarceration-on-Young-Children.PDF> accessed 13 January 2023.

17 Billy Gorter, 'Women in Cambodian Prisons: The challenges of caring for their children' (Penal Reform International, 4 November 2019) <https://www.penalreform.org/blog/women-in-cambodian-prisons-the-challenges-of-caring/> accessed 13 January 2023.

18 The Conversation, 'Babies and toddlers are living with their mums in prison. We need to look after them better' (16 May 2019) <https://theconversation.com/babies-and-toddlers-are-living-with-their-mums-in-prison-we-need-to-look-after-them-better-117170> accessed 13 January 2023.

19 European Parliament Resolution, *European Parliament resolution of 13 March 2008 on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life* (2007/2116(INI)) 13 March 2008).

It should, of course, also be noted that in some cases, children may be unaffected or indeed may benefit from the imprisonment of their mother, especially if their family environment is dangerous or negligent. According to one study:

*"Children who have had little contact with the imprisoned parent may find their lives are largely unchanged, while some may benefit from being separated from parents who behave dangerously or disturbingly. Every child is different and will cope differently, but the effects on children, good or bad, are rarely considered in criminal justice processes."*²⁰

In most cases, however, the imprisonment of a mother will create problems for and have negative impacts on both her and her children. Indeed, some studies have suggested that deprivation of parental care due to imprisonment is more detrimental than other forms of parental loss or separation such as divorce.²¹

The United Nations (UN) Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)²² clearly recognise the potential impact of imprisonment on the children of women in conflict with the law. As the commentary to the Rules points out:

*"By keeping women out of prison, where imprisonment is not necessary or justified, their children may be saved from the enduring adverse effects of their mothers' imprisonment, including their possible institutionalization and own future incarceration."*²³

Children will experience the imprisonment of their mother in uniquely different ways depending on several factors including their age, emotional maturity, family situation, child-parent

relationship as well as other social, economic and environmental factors.²⁴ There is no blueprint or 'one size fits all' to describe a child's lived experience when a mother is imprisoned, and any generalisations should be avoided.

That said, in many cases, children will already be facing material hardship and social disadvantage prior to the imprisonment of their mother and imprisonment may only serve to exacerbate their situation. Indeed, children may well already be impacted by the same drivers that led to their mother coming into conflict with the law, including poverty, family breakdown, violence and substance abuse.

The impact of maternal imprisonment on children must also be considered in relation to the consequences on the mothers themselves, as these will have a knock-on effect on their children, including in relation to their mothers' physical and mental health. Additionally, the risks of recidivism have been shown to increase when a mother is separated from a child.²⁵

While there is no evidence in Ireland to link recidivism rates to mother-child separation, data demonstrates that recidivism rates among women in Ireland are particularly high, with almost seven out of ten females (69.7%) having reoffended within three years of release from custody in 2016, higher than the male re-offending rate of 61.7% for the same period.²⁶

Children may suffer deep trauma on being separated from their mother including feelings of stigmatisation, isolation and 'confounding grief',²⁷ and there are many challenges around the care and supervision of children following the imprisonment of a primary caregiver,²⁸ including maintaining the mother-child bond.²⁹

20 Child Rights Connect, 'Children of Incarcerated Parents' https://childrightsconnect.org/working_groups/children-of-incarcerated-parents/ accessed 13 January 2023.

21 Hayli Ann Millar and Yvon Dandurand, Yvon, Springer, 'The Best Interests of the Child and the Sentencing of Offenders with Parental Responsibilities' (2018) 29 Criminal Law Forum 1.

22 The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules') (2010) https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf accessed 24 January 2023.

23 Commentary to the UN Bangkok Rules. https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf accessed 24 January 2023.

24 Commonweal Housing, *Children on the Edge: Children affected by maternal imprisonment* (2016) (n.14).

25 Jennifer G. Clarke and Rachel E. Simon, 'Shackling and Separation: Motherhood in Prison' (2013) AMA Journal of Ethics 779.

26 Central Statistics Office, 'Prison reoffending statistics 2019' <https://www.cso.ie/en/releasesandpublications/ep/p-pros/prisonre-offendingstatistics2019/detailsof3-yearcustodialre-offending/> accessed 13 January 2023.

27 Prison Reform Trust, *What about me? The impact on children when mothers are involved in the criminal justice system?* (IPRT 2018) (n.12); Shona Minson, 'Direct harms and social consequences: An analysis of the impact of maternal imprisonment on dependent children in England and Wales' (2019) 19 Criminology and Criminal Justice 519.

28 Quaker United Nations Office, *The impact of parental imprisonment on children* (2017) https://www.quono.org/sites/default/files/resources/ENGLISH_The%20impact%20of%20parental%20imprisonment%20on%20children.pdf accessed 13 January 2023.

29 Minson (n.27) 519.

Children's physical and mental health

The imprisonment of a mother can have a hugely damaging impact on children's well-being be it physical, psychological, emotional or developmental. It may also affect their education, housing and finances. The experiences of children impacted by maternal imprisonment has been coined by one academic as 'secondary prisonization' and 'secondary stigmatization'.³⁰

There has been limited research looking specifically at the physical health impacts of maternal imprisonment on children outside prison, with much of the health research related to the health consequences for children living inside prison with their mothers.³¹

Some research has found that children with imprisoned mothers have presented with psychosomatic disorders such as eating problems and bedwetting,³² whilst a study in the USA found that children of incarcerated mothers are less likely to access healthcare services.³³ In the UK, children of mothers in prison had difficulties accessing counselling and other services.³⁴

International research has documented the mental health impacts of parental imprisonment on children and found that this group of children are at greater risk of suffering mental health issues than children who do not have parents in prison.³⁵ In particular, these children may suffer from low self-esteem, depression, disturbed sleep patterns and symptoms of post-traumatic stress disorder.³⁶ Further research has documented poor mental health as a common factor presenting

among children of imprisoned mothers specifically with, in some cases, instances of self-harm and suicide attempts.³⁷

The imprisonment of a parent can leave deep psychological scars on children and the impact is likely to be more acute in cases of maternal imprisonment.³⁸ Children may experience feelings of sadness, anger, guilt, self-blame, shame, grief and loss on the imprisonment of their mother. Such feelings may present in angry or aggressive behaviour. One study found that children who witnessed their mother's arrest often experienced nightmares and flashbacks.³⁹

Behaviour, emotional and educational development

Several studies have documented behavioural difficulties in children following the imprisonment of a mother.⁴⁰ More widely on the imprisonment of a parent, children start to 'act out' and may become angry, physically abusive towards new caregivers, agitated, violent and start to show regressive behaviour such as difficulty sleeping. Changes in behaviour may also include children becoming quiet, withdrawn, depressed and hyperactive; research suggests that changes may be due to the fact that the prison sentence has not been discussed with children, so they cannot discuss it with their parents or with others.⁴¹

The imprisonment of a mother also presents challenges for children's everyday lives and relationships. They may be viewed as 'other', being subject to differential treatment by the wider community.⁴² They may start to fail at school, achieve poor grades and are at greater risk of

antisocial or delinquent behaviour.⁴³ Some children choose to lead a 'double life' and pretend their mother is elsewhere.⁴⁴

Socio-economic impacts

Maternal imprisonment can have equally serious impacts upon the wider family, and it is not uncommon for family units to break down on the imprisonment of a mother. When mothers are imprisoned, children may be taken into care, sometimes leading to the separation of siblings. In other cases, grandparents or other relatives become responsible for caring for the children.⁴⁵ Whilst such measures keep a semblance of family life, it can also place undue burden on other family members.

It is well documented that many people in prison come from poor socio-economic backgrounds and the incarceration of a mother will only serve to push families further into poverty and place huge financial strains upon the family.⁴⁶ These financial pressures will inevitably impact children including in relation to nutrition, education, clothing and access to social activities.

As children become older, any separation from their primary carer may impact upon their ability to secure stable employment and lead them to criminal behaviour. There has been much focus on the cycle of intergenerational criminal behaviour⁴⁷ and research has found that children of imprisoned mothers had much higher rates of imprisonment than children of imprisoned fathers.⁴⁸

When mothers are imprisoned, their children may face housing instability or even homelessness. Alternatively, children may be compelled to 'be on the move' and lodge with friends, neighbours or even live on their own. In all cases, these new living arrangements can cause deep distress and disruption to children.

Imprisoned mothers have often led complex lives and experienced extensive trauma and substance dependency, and such experiences will have impacted their experiences of motherhood prior to imprisonment. It is noted that in some circumstances maternal imprisonment can help mothers rebuild their relationships with their children.⁴⁹

Research in Ireland

To date, the impact of maternal imprisonment has been the subject of limited research in Ireland.⁵⁰ In one study, '...the collateral damage of incarceration regarding the loss of secure housing, disrupted mother-child attachments and persistent reoffending' was noted and mothers identified the loss they feel in terms of their primary caring role, with 'complex emotions of remorse, pain and sadness for not knowing when they would next see, hold or properly mother their children again'.⁵¹ The Bedford Row Family Project (BRFP) has also identified impacts on the imprisonment of mothers in prison noting that mothers who are prisoners will experience prison in a 'qualitatively different' way to fathers in prison.⁵²

30 Ibid.

31 WEPHREN, the Global Health Network, *Addressing the health and social needs of children whose parents are incarcerated* <https://wephren.tghn.org/community/blogs/post/49326/2019/11/addressing-health-and-social-needs-children-whose-/> accessed 13 January 2023.

32 Commonweal housing (n.24) 28.

33 Holly Foster and John Hagan, 'Maternal imprisonment, economic marginality, and unmet health needs in early adulthood' (2017) 99 *Preventive Medicine* 43.

34 Sarah Beresford, Nancy Loucks and Ben Raikes, 'The health impact on children affected by parental imprisonment' (2018) 4 *BMJ Journals*.

35 Ibid.

36 Commonweal housing (n.14) 28; Crest, *Counting the cost of maternal imprisonment* (2021) <https://www.crestadvisory.com/post/report-counting-the-cost-of-maternal-imprisonment> accessed 13 January 2023.

37 Crest (n.14) 50.

38 Ibid.

39 Prison Reform Trust, *What about me? The impact on children when mothers are involved in the criminal justice system* (n12); Action for Prisoners' and Offenders' Families, *The impact of parental imprisonment on the mental health of children and young people* (2017) https://app.pelorous.com/media_manager/public/209/Documents/APOF/APOF%20Parental%20imprisonment%20and%20CYP%20mental%20health%20Jan%202017.pdf accessed 13 January 2023.

40 Minson (n.27) 519.

41 Action for Prisoners' and Offenders' Families (n.29) 2.

42 Nicola Lacey and Hanna Pickard, 'To blame or forgive? Reconciling punishment and forgiveness in criminal justice' (2015) 35 *Oxford Journal of Legal Studies* 665.

43 Prison Reform Trust (n.14); Commonweal (n.14).

44 Commonweal (n.14).

45 Centre for Social and Educational Research, Dublin Institute of Technology, *Parents, Children and Prison: Effect of Parental Imprisonment on Children* (2002) <https://www.drugsandalcohol.ie/15061/1/Parents-Children-Prison%5B1%5D.pdf> accessed 16 January 2023.

46 Jesuit Centre for Peace and Justice, *The Ripple Effects of Imprisonment on Prisoners' Families*, (28 March 2008) <https://www.jcfj.ie/article/the-ripple-effects-of-imprisonment-on-prisoners-families/> accessed 16 January 2023.

47 Eric Martin, 'Hidden consequences: The impact of incarceration on dependent children' (2017) 278 *National Institute of Justice Journal*.

48 Ibid 2.

49 Ibid 336.

50 IPRT, *Picking up the Pieces: the Rights and Needs of Children and Families Affected by Imprisonment* (IPRT 2012) https://www.iprt.ie/site/assets/files/6320/iprt_children_of_imprisoned_parents2.pdf accessed 13 January 2023; Centre for Social and Educational Research, Dublin Institute of Technology, *Parents, Children and Prison: Effects of Parental Imprisonment on Children* (2002) (n.45); Sinead Mary O'Malley, 'Motherhood, mothering and the Irish prison system' (2018) <https://aran.library.nuigalway.ie/bitstream/handle/10379/14612/Sinead%20O%27Malley%20-%20PhD%20-%20Motherhood%2c%20Mothering%20and%20the%20Irish%20Prison%20System.pdf?sequence=1&isAllowed=y> accessed 13 January 2023; St Nicholas Trust, *Doing Time - Conference Report* (2011) <https://www.stnicholastrust.ie/support-for-prisoners-families-conference-report/doing-time-2> accessed 13 January 2023; Jesuit Centre for Faith and Justice, *The Ripple Effects of Imprisonment on Prisoners' Families* (28 March 2008) <https://www.jcfj.ie/article/the-ripple-effects-of-imprisonment-on-prisoners-families/> accessed 13 January 2023.

51 Sinead Mary O'Malley (n.50) 308.

52 Bedford Row Family Project, *Holding the Suffering* (2017) <https://www.bedfordrow.ie/wp-content/uploads/2013/08/BEDFORD-ROW-RESEARCH-REPORT-2017-FULL.pdf> accessed 13 January 2023.



Particular groups of women and children

The impact of maternal imprisonment on specific groups of women and their children is an issue which should also be given attention and due consideration during pre-trial decision making, sentencing or sentence planning.

Minority groups

The impact of maternal imprisonment on minority groups has been studied to a limited extent in countries with disproportionate rates of imprisonment among certain population groups.

Studies of Aboriginal women in prison in Australia found that more than 80% of them were mothers and that Aboriginal women also often have primary care responsibilities for other children.⁵³ Naturally, where certain groups of women are disproportionately represented within criminal justice systems, it follows that their children will be disproportionately affected. These groups are also often already marginalised in society and are less likely to be given non-custodial measures or have their specific needs adequately met in prison.

According to a report published in 2022, Travellers are disproportionately represented in the Irish prison system, accounting for 7.3% of the prison population, whilst they make up only 0.7% of the general population. Significantly, Traveller women accounted for 14.4% of the female prison population.⁵⁴ Another report noted that up to 25% of women in Mountjoy Female Prison (Dóchas Centre) were Traveller women with many having been imprisoned for minor first-time offences such as driving without tax, shoplifting and crimes linked to addiction.⁵⁵

It is not known how many Traveller children are impacted by maternal imprisonment, but the figure is likely to be much higher than the 1:3 ratio used in general estimates as Traveller women are more likely than the general female population to be mothers, to have a greater number of children, and to have children at a younger age.⁵⁶ It has been noted that many children of imprisoned Traveller women are teenagers who face very specific challenges when their mother is imprisoned.⁵⁷ As with Aboriginal women in Australia, Traveller families tend to operate in extended family structures⁵⁸ and children may therefore be impacted by the imprisonment of female family members other than their birth mother.

While the impact of maternal imprisonment on Traveller children in Ireland has not been well documented, concerns have been raised about the problems Traveller women face on release from prison when attempting to reconnect with children who are in care.⁵⁹ The trauma of separation can also be compounded for Travellers whose children are cared for by someone outside the Traveller community⁶⁰ and mothers in the Traveller community have described the major, harmful consequences of their imprisonment regarding children's wellbeing.⁶¹

53 Elizabeth A Sullivan et. al., 'Aboriginal mothers in prison in Australia: a study of social, emotional and physical wellbeing' (2019) 43 Australian and New Zealand Journal of Public Health 241.

54 Sindy Joyce et al, *Irish Travellers' Access to Justice* (2022) https://www.drugsandalcohol.ie/36509/1/ITAJ_Final.pdf accessed 14 January 2023.

55 Journal.ie, 'Revolving door': Traveller women imprisoned for minor offences such as driving without tax, (October 2021). <https://www.thejournal.ie/tough-start-pt-4-traveller-children-justice-5577440-Oct2021/> accessed 16 January 2023.

56 Irish Penal Reform Trust, *Travellers in the Irish Prison System, A Qualitative Study*, (2014) https://www.iprt.ie/site/assets/files/6339/iprt_travellers_report_web.pdf accessed 16 January 2023.

57 Ibid.

58 Friends, families and Travellers, *A guide for professionals working with Gypsies, Roma and Travellers in Children's Services* (2017) <https://www.gypsy-traveller.org/wp-content/uploads/2017/03/A-guide-for-professionals-working-with-Gypsies-and-Travellers-in-the-public-care-system.pdf> accessed 16 January 2023.

59 Houses of the Oireachtas, Joint committee on key issues affecting the Traveller Community debate (2021) https://www.oireachtas.ie/en/debates/debate/joint_committee_on_key_issues_affecting_the_traveller_community/2021-10-21/2/ accessed 24 January 2023.

60 Cemlyn, S, Greenfields, M, Burnett, S, Matthews, Z and Whitwell, C (2009) *Inequalities experienced by Gypsy and Traveller Communities: A Review*. Research Report 12, Equality and Human Rights Commission, Manchester.

61 IPRT, *Travellers in the Irish Prison System, A Qualitative Study*, (2014) (n. 56).

Foreign nationals

As of December 2022, there were 24 non-Irish female prisoners in Irish prisons,⁶² with many foreign nationals reported to be detained on immigration related charges.⁶³ While there is no specific research on the impact of imprisonment on children of foreign prisoners in Ireland, it is clear that these families face unique challenges in relation to maintaining family contact, alternative care measures and post-release reunification.

Sole caregivers

While it is not known how many mothers in prison in Ireland were the sole caregivers for their children before their imprisonment, studies from other countries show that many imprisoned mothers are sole caregivers.⁶⁴ In these cases, the impact of imprisonment is likely to be much greater, primarily because the child is more likely to be placed into care outside their family. The European Parliament has noted *'with regret that many women in prison are single mothers who lost contact with their children, sometimes forever.'*⁶⁵

Women with mental health conditions

Prisons around the world have an overrepresentation of people with mental health conditions, with imprisonment exacerbating existing problems or leading to the development of mental health conditions. In Ireland, one study found that the rate of mental illness among all women in prison was 41%, rising to 60% amongst sentenced women.⁶⁶ Incidents of self-harm amongst women in prison in Ireland is also high, with the recorded self-harm incidence among women eight times higher than it was among male prisoners in 2019.⁶⁷

Pre-trial detainees

While much of the research on the impact of parental imprisonment on children focuses on sentenced prisoners, it is well established that the impact of pre-trial detention can be equally damaging, including in relation to health, socio-economic and criminogenic factors.⁶⁸ It is worth noting that some of those held in pre-trial detention will not be convicted at trial, or will not be given a custodial sentence but, by this stage, the harm may already be done, and may in some cases be irreversible. With approximately 22.6% of the female prisoner population in Ireland in pre-trial detention as of December 2022,⁶⁹ it is crucial that the impact of pre-trial detention on mothers and children be given due consideration.

62 Irish Prison Service, monthly information note, December 2022 https://www.irishprisons.ie/wp-content/uploads/documents_pdf/December-2022-Website.pdf accessed 1 February 2023.

63 Sorcha Pollak, 'Over 80 foreign nationals detained in Irish prisons for immigration offences last year' *The Irish Times* (Dublin, 21 March 2022) <https://www.irishtimes.com/news/crime-and-law/over-80-foreign-nationals-detained-in-irish-prisons-for-immigration-offences-last-year-1.4831725> accessed 16 January 2023.

64 Equal Justice Initiative, *Over-incarceration of mothers takes serious toll on children* (2020) <https://eji.org/news/over-incarceration-of-mothers-takes-serious-toll-on-children/> accessed 16 January 2023.

65 European Parliament resolution of 13 March 2008 on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life (2007/2116(INI)). https://www.europarl.europa.eu/doceo/document/TA-6-2008-0102_EN.html accessed 24 January 2023.

66 IPRT, *Presentation of Irish Penal Reform Trust to Women's Health Task Force* (9th Oct 2020). <https://assets.gov.ie/215499/304e42b0-b086-4e22-a6ce-40ac19f22ff3.pdf> accessed 16 January 2023.

67 Irish Prison Service. *Self-harm in Irish prisons* (2019) <https://www.nsrif.ie/wp-content/uploads/2021/04/Self-harm-in-Irish-Prisons-2019-Third-report-from-the-SADA-Project-Final-for-Publication.pdf> accessed 16 January 2023.

68 Open Society Initiative, *'Presumption of guilt: The global overuse of pre-trial detention.'* (September 2014) <https://www.justiceinitiative.org/publications/presumption-guilt-global-overuse-pretrial-detention> accessed 16 January 2023.

69 Irish Prison Service, *Monthly Information Note – December 2022*, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/December-2022-Website.pdf accessed 1 February 2023.

Short sentence prisoners

Of all women under sentence in prison in Ireland on a given day in December 2022, 54.6% were serving sentences of two years or less,⁷⁰ with many serving sentences of just a few months.

Short sentences can have profound impacts on women and their families and may be just as damaging as longer sentences. This has been recognised by the Irish Department of Justice which has stated *'[T]he imposition of short custodial sentences is not conducive to rehabilitation of people and can have far-reaching consequences for parenting, accommodation needs and employment.'*⁷¹

One study of mothers in prison in England and Wales found that short custodial sentences had significant impacts on mothers and their children, *'arguably in most circumstances, no less, and sometimes more, than those who are sentenced to 12 months or more.'* Mothers and children faced the same challenges in terms of lack of support, complex needs, difficulties regarding visits and contact, loss of housing and impact on physical and mental health. Children were traumatised by the separation, regardless of the length of their mother's imprisonment. Notably, the study also found the problems facing women and their families did not end once the period of imprisonment was over.⁷²

70 Irish Prison Service, *Monthly Information Note – December 2022*, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/December-2022-Website.pdf accessed 1 February 2023.

71 Irish Department of Justice, *Review of Policy Options for Prison and Penal Reform 2022-2024* <https://www.gov.ie/en/collection/00924-review-of-policy-options-for-prison-and-penal-reform-2022-2024/> accessed 17 January 2023.

72 Lucy Baldwin and Rona Epstein, *'Short but Not Sweet: A study of the impact of short custodial sentences on mothers and their children'* (2017) <https://www.nicco.org.uk/userfiles/downloads/5bc45012612b4-short-but-not-sweet.pdf> accessed 17 January 2023.



Women in prison in Ireland

There are two women's prisons in Ireland. The Dóchas Centre in Mountjoy Prison which has a bed capacity for 146 women and a female wing in Limerick Prison which has a bed capacity for 28 women. There continue to be concerns about overcrowding in the female estate with both facilities currently operating above capacity. As of 31 January 2023, the Dóchas Centre was operating at 112% capacity and the Limerick facility was operating at 164% capacity⁷³. A new 50-bed women's prison at Limerick is currently being finalised and is due to open in early 2023.

The new facility at Limerick is reported to be based on rehabilitation facilities in Scandinavia, and to have been designed in a trauma-informed and therapeutic way. The visiting area will include improved visiting facilities with an outdoor space and a play area for children.⁷⁴ The accommodation will further comprise bedroom units, some apartment style units and a mother and baby unit.⁷⁵ Despite these positive developments, concerns remain that the expansion of the bed capacity may result in more women being sent to prison.

In 2021 women made up about 3.8% of the daily average prison population in Ireland and accounted for approximately 9.4% of persons committed to prison.⁷⁶ IPRT has further noted that the rate of female prison committals has risen more rapidly than for males since 2011.⁷⁷

As elsewhere in the world, women in Ireland are generally imprisoned for less serious, non-violent offences, with statistics from 2021 showing that 45% of those in prison at the time had been sentenced for theft and related offences.⁷⁸ During 2021, 8% of female committals to prison were for non-payment of court-ordered fines, double the comparable figure for men.⁷⁹ Of the women committed to prison under sentence in 2021, 91.8% were serving prison terms of less than two years with 85.2% committed under a sentence of less than one year.⁸⁰

73 Irish Prison Service, Daily Prisoner Population on Tuesday 31 January 2023, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/31-January-2023.pdf accessed 1 February 2023.

74 Yvonne Jewkes, 'Limerick women's prison: an architecture of hope' (17 July 2022), *Architect's Journal*, <https://www.architectsjournal.co.uk/news/limerick-womens-prison-an-architecture-of-hope> accessed 17 January 2023; Irish Prison Service, 'Minister for Justice Helen McEntee visits new Limerick Prison expansion and announces publication of the Irish Prison Service Annual Report 2021' (8 September 2022) <https://www.irishprisons.ie/minister-justice-helen-mcentee-visits-new-limerick-prison-expansion-announces-publication-irish-prison-service-annu/> accessed 17 January 2023.

75 Houses of the Oireachtas, 'Dáil Éireann Debate, Question on Prison Service' (1 February 2022). <https://www.oireachtas.ie/en/debates/question/2022-02-01/609/> accessed 17 January 2023.

76 Irish Prison Service, Annual Report 2021, at pp.37, 67. <https://www.gov.ie/en/publication/8917e-irish-prison-service-annual-report-2021/> accessed 5 January 2023.

77 IPRT, Women in detention. <https://www.iprt.ie/women-offenders/> accessed 17 January 2023.

78 Irish Prison Service, Offence Group of prisoners under sentence classified by gender on comparable date each year from 2007 to 2021, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/SNAPSHOT-Offence-Group-Year-2007-to-2021.pdf accessed 17 January 2023.

79 Irish Prison Service Annual Report, 2021. (2022) https://www.gov.ie/en/publication/8917e-irish-prison-service-annual-report-2021/?referrer=http://www.justice.ie/en/JELR/IPS_Annual_Report_2021.pdf/Files/IPS_Annual_Report_2021.pdf accessed 17 January 2023.

80 Irish Prison Service, Sentenced Committals for Years 2007 to 2021, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/06-SENTENCED-COMMITTALS-by-Sentence-LengthGender-Year-2007-to-Year-2021.pdf accessed 5 January 2023.

The international human rights framework

As well as recognising the right to family life for people in prison, the international human rights framework recognises the rights of children of prisoners. Under international human rights law, children are rights holders and, as such, are beneficiaries of all the human rights afforded to them under international human rights treaties.

The primary international human rights instrument on the rights of children is the 1989 UN Convention on the Rights of the Child (CRC).⁸¹ Whilst the CRC does not specifically address the situation of children with a parent in prison, these children must be able to enjoy the same rights as others and failure to ensure these rights can represent a contravention of the non-discrimination clause of the CRC.⁸² The CRC, which Ireland ratified in 1992, is binding on all State Parties.

The four core principles of the CRC are the best interests of the child, non-discrimination, child participation, and survival and development.

The Bangkok Rules provide guidance specifically around women in criminal justice systems and call for non-custodial sentences for pregnant women and women with dependent children ‘where possible and appropriate’ and after taking into account the best interests of any children affected.

At the regional level, the rights set out in the European Convention on Human Rights (ECHR) apply to everyone in the jurisdiction, including children. Certain rights have particular relevance for children of imprisoned parents including Article 8 which protects the right to respect for private and family life. Under the ECHR, Article 14 guarantees enjoyment of rights in the Convention ‘without discrimination on any ground’. ECHR jurisprudence has examined family life rights in the context of imprisonment.

The rights of the child are also enshrined in the 2000 Charter of Fundamental Rights of the European Union⁸³ which is binding in EU countries when EU law is being implemented.

The 2021 European Child Guarantee includes children with an imprisoned parent under the definition of ‘children in precarious family situations’ meaning those exposed to various risk factors that could lead to poverty or to social exclusion.⁸⁴

Ireland’s National Action Plan on the Child Guarantee⁸⁵ sets out how Ireland will implement the Child Guarantee with implementation plans to be supplemented by a new framework building on the Better Outcomes, Brighter Future strategy. Disappointingly, despite their explicit inclusion in the Child Guarantee, the only mention of children of imprisoned parents in Ireland’s National Action Plan is to note that statistics are not available. Notably, of all the vulnerable cohorts of children included in the plan, children of imprisoned parents and children living in households with mental illness are the only two categories where statistics were not available. Work is currently underway to update the National Action Plan for the period 2023-2028⁸⁶ and IPRT welcomed reference to the needs of children with a family member in prison in the Final Report on the Public Consultation on a New Policy Framework for Children and Young People that was completed as part of this ongoing work.⁸⁷

81 UN Convention on the Rights of the Child, 1989. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> accessed 17 January 2023.

82 Ibid. Article 2 (1).

83 EU Charter of Fundamental Rights of the European Union [2000] 2000/C 364/01.

84 Council Recommendation (EU) 2021/1004 establishing a European Child Guarantee L 223/14.

85 Government of Ireland, EU Child Guarantee. *Ireland’s National Action Plan* <https://ec.europa.eu/social/main.jsp?catId=1428&langId=en> accessed 17 January 2023.

86 Department of Children, Equality, Disability, Integration and Youth, ‘Minister O’Gorman announces consultation on next national policy framework for children & young people’ (2022). <https://www.gov.ie/en/press-release/f9fff-minister-ogorman-announces-consultation-on-next-national-policy-framework-for-children-young-people/> accessed 5 January 2023.

87 Department of Children, Equality, Disability, Integration and Youth, Final Report on the Public Consultation on a New Policy Framework for Children and Young People (2022). <https://www.gov.ie/en/publication/ac2f8-report-on-the-public-consultation-on-a-new-policy-framework-for-children-and-young-people/> accessed 5 January 2023.

The UN Committee on the Rights of the Child which oversees implementation of the CRC has also produced numerous concluding observations addressed to states with specific recommendations related to parental imprisonment and the rights of the child. The Committee also produced more detailed recommendations in the report of its 2011 ‘Day of General Discussion on Children of Incarcerated Parents’.⁸⁸

At the level of the Council of Europe (CoE), Resolution CM/Rec (2018) of the Committee of Ministers to member States concerning children with imprisoned parents⁸⁹ provides guidance on how to address the need to preserve and develop positive child-parent relations when a parent is in detention. The Council of Europe guidelines on child-friendly justice sets out ways to ensure that justice is ‘always friendly towards children no matter who they are or what they have done’ and includes considerations of children of imprisoned parents.⁹⁰

Best interests of the child principle

The best interests of the child principle derives from Article 3(1) of the CRC which states:

‘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.’

This best interests principle is enshrined in the Irish Constitution in respect of certain proceedings (such as adoption or custody of children)⁹¹ as well as Irish legislation under the Guardianship of Infants Act 1964,⁹² the Child Care Act 1991,⁹³ the Adoption Act 2010,⁹⁴ the Child and Family Agency Act⁹⁵ and the Children and Family Relationships Act 2015.⁹⁶

In its General Comment No. 14 on Article 3(1), the Committee on the Rights of the Child has stated clearly that this principle applies not only to children in conflict with the law but also to children ‘affected by the situation of their parents in conflict with the law.’ The Committee has also expressed the opinion that the child’s best interests must be appropriately and consistently applied in actions taken by public institutions on matters which impact them both directly and indirectly. The Committee described best interests as being a ‘threefold concept: (a) a substantive right; (b) a fundamental, interpretive legal principle; and (c) a rule of procedure’.⁹⁷

Article 3 obliges State Parties to the Convention, including Ireland, to consider the impact on children in all decisions about parental imprisonment. Indeed, the Committee has, on many occasions, called on State Parties to take into account the best interests of the child as a primary consideration when sentencing parents, avoiding, as far as possible, sentences for parents which lead to their being separated from their children.⁹⁸

Common law jurisdictions have, for the most

88 Committee on the Rights of the Child, Report and recommendations of the day of general discussion on “children of incarcerated parents”, (30 September 2011) <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf> accessed 24 January 2023.

89 Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents (2019), <https://edoc.coe.int/en/children-s-rights/7802-recommendation-cmrec20185-of-the-committee-of-ministers-to-member-states-concerning-children-with-imprisoned-parents.html> accessed 17 January 2023.

90 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, November 2010. Available here: <https://rm.coe.int/16804b2cf3> accessed 17 January 2023.

91 Constitution of Ireland, Article 42A. <https://www.irishstatutebook.ie/eli/cons/en/html#article42A> accessed 17 January 2023.

92 Guardianship of Infants Act 1964 (as amended), section 3. <https://revisedacts.lawreform.ie/eli/1964/act/7/front/revised/en/html> accessed 17 January 2023.

93 Child Care Act 1991 (as amended), section 24. <https://revisedacts.lawreform.ie/eli/1991/act/17/front/revised/en/html> accessed 17 January 2023.

94 Adoption Act 2010 (as amended), section 19. <https://revisedacts.lawreform.ie/eli/2010/act/21/front/revised/en/html> accessed 17 January 2023.

95 Child and Family Agency Act (2013), Section 9. <https://www.irishstatutebook.ie/eli/2013/act/40/section/9/enacted/en/html#sec9> accessed 17 January 2023.

96 Children and Family Relationships Act 2015, Sections 45 and 63. <https://www.irishstatutebook.ie/eli/2015/act/9/enacted/en/print.html> accessed 17 January 2023.

97 UN Committee on the Rights of the Child ‘General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art.3, para.1)’ (29 May 2013) CRC/C/GC/14.

98 UN Committee on the Rights of the Child, ‘Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (12 July 2016)’ CRC/C/GBR/CO/5.

part, recognised the best interests principle in their legislation or judicial approaches, alongside considering personal circumstances as a mitigating factor. Despite this, with the notable exception of South Africa, it is often the case that children's interests are not routinely considered and, if taken into account at all, only when the impact is deemed to be extraordinary or exceptional in nature, with different interpretations of what constitutes these circumstances.⁹⁹ Instead, historically in common law countries, children have been considered only in relation to mitigating factors related to the offender and the offences, rather than in relation to their own best interests.¹⁰⁰

Consistency in the application of the best interests principle in court decisions is also lacking in many countries, because any guidance tends to be non-binding, with some judges being less inclined than others to consider family circumstances and specifically the best interests of the child.

In South Africa, the law places a lot of importance on the best interests of the child in legal proceedings of any nature, including the sentencing of primary caregivers. The best interests principle is enshrined in the Constitution¹⁰¹ and the 2005 Children's Act¹⁰² which sets out some of the specific factors a court must consider where relevant, including:

The child's age, gender, maturity level, level of education, background and any other relevant characteristic of the child;

The nature of the personal relationship between the parent, or caregiver, and the child;

The capacity of the parent, or caregiver, to provide for the child;

The attitude of the parent in respect of the exercise of parental rights and responsibilities or the attitude of the parent towards the child.

The issue of best interests of the child in relation to the sentencing of primary caregivers reached the South African Constitutional Court in the case of *S v M* [2007].¹⁰³ In this case, the court ruled that a

single mother of three should not be sent to prison – and instead put under correctional supervision – because her imprisonment would not be in the best interests of her children.

The court reasoned that it was clearly in the best interests of the children that they continue to receive primary care from their mother. If the mother were to be sent to jail, the children would suffer loss of maternal and emotional support, loss of home and community, disruption in school routines and transportation, and potential separation from their siblings, all of which could negatively impact their developmental process.

When sentencing primary caregivers, South African courts are required to balance the interests of society and the best interests of the child(ren) of the primary caregiver, with the court in *S v M* having recognised that much will depend on context and proportionality and will need to be determined on a case-by-case basis. Therefore, consideration needs to be given to factors such as ages and special needs of the children; the character of the primary caregiver; the seriousness and frequency of the offence committed; the degree of moral blameworthiness on the part of the accused; and whether the accused has shown a commitment to reform.¹⁰⁴

Regionally, Article 30 of the African Charter on the Rights and Welfare of Children (ACRWC) on 'Children of Imprisoned Mothers' affirms that criminal courts must '*independently recognize and consider the best interests of a dependent child when remanding or sentencing their parent to custody*'.¹⁰⁵

Children's right to express their views and to be heard in matters affecting them

While there have been many efforts led by NGOs and academics to prioritise child participation in relation to parental imprisonment,¹⁰⁶ official efforts in this area remain lacking globally.

Article 12 of the CRC sets out the right of the child to be heard and to have their views taken seriously

99 Millar, Hayli Ann and Dandurand, Yvon, Springer (n.21).

100 Ibid.

101 Constitution of the Republic of South Africa, 1996 <https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-1> accessed 17 January 2023.

102 South Africa Children's Act, 2005 <https://www.gov.za/documents/childrens-act> accessed 17 January 2023.

103 *S v M* [2007] ZACC 18 <http://www.saflii.org/za/cases/ZACC/2007/18.html> accessed 17 January 2023.

104 Ibid. para 110.

105 Organization of African Unity, *African Charter on the Rights and Welfare of the Child*, CAB/LEG/24.9/49 (1990) <https://au.int/en/treaties/african-charter-rights-and-welfare-child> accessed 17 January 2023.

106 See for example, EU-level COPING conference (Children of Prisoners: Interventions and Mitigations to Strengthen Mental Health Project), 'Coping with a Parent in Prison: An Agenda for Policy Reform' Conference Outcome Report. (2013) op. cit. <http://childrenofprisoners.eu/wp-content/uploads/2013/12/ConferenceOutcome.pdf> accessed 17 January 2023.

in any judicial or administrative proceedings affecting them. This is an obligation on all State Parties to the CRC and provides a means by which the views of children can be included in the assessment of his or her best interests. As the Committee's general comment No. 12 points out there is an inextricable link between the best interests of the child principle and the child's right to be heard.¹⁰⁷

Article 12 of the CRC reads as follows:

'1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.'

Article 24(1) of the EU Charter of Fundamental Rights sets out children's rights to participation and to be heard and the CoE Guidelines on child-friendly justice emphasise the importance of children's right to be heard in all proceedings involving or affecting them.¹⁰⁸ This right is clearly laid out in the Irish Constitution, the Child Care Act 1991 and the Adoption Act 2010 in respect of certain proceedings (such as when a child is being taken into care or in adoption proceedings).¹⁰⁹

The child's right to be heard in the context of parental imprisonment may range from the right to have their opinions and best interests taken into consideration at sentencing and can also include seeking their views on issues such as alternative care, prison visits, information provision and family support programmes. They should also be able to express their views on any criminal justice policies that affect them.

A child's right to be heard can also extend to giving them the opportunity to express their opinions on how parental imprisonment has impacted them and their family, and providing them with a forum to make recommendations on what could be done to better mitigate any negative impacts. Research in England and Wales has shown that children would like magistrates and judges to take their feelings, and the impact of a sentence on them, into account. Without this, they can feel invisible and powerless during the process.¹¹⁰

The Child Rights Connect network has stated that '*[t]he failure to consider or consult children of imprisoned parents at all stages of the criminal justice process – from arrest, to trial, to imprisonment, to release, to rehabilitation into the community – can result in their rights, needs and best interests being overlooked or actively damaged.*'¹¹¹

Ireland was the first country in Europe to develop a strategy on child participation in decision-making. The National Strategy on Children and Young People's Decision Making (2015-2020)¹¹² has as its primary goal that children and young people have a voice in their individual and collective everyday lives, including in the courts and legal settings and including as children of prisoners. There are, additionally, many national resources available providing tools to support child participation.¹¹³ Despite many of these positive developments in Ireland, IPRT has previously found that, '*[a] t no point in the Irish criminal justice system do children of persons on trial have a mechanism or an advocate to have their views heard in matters directly affecting them.*'¹¹⁴

107 UN Committee on the Rights of the Child. 'General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1 (2013)) CRC/C/GC/14.

108 Committee of Ministers of the Council of Europe, '*Guidelines on child-friendly justice*' (2010).

109 Constitution of Ireland, Article 42A. (n 91) Child and Family Agency Act (2013), Section 9. (n 95).

110 PRT (n 12).

111 Child Rights Connect, *Children of incarcerated parents* https://childrightsconnect.org/working_groups/children-of-incarcerated-parents/ accessed 17 January 2023.

112 Department of Children and Youth Affairs, *National Strategy on Children and Young People's Decision Making (2015-2020)* (2019).

113 Ombudsman for Children's Office, *Children's Participation in Decision-making - Good Practice Guidance from the Ombudsman for Children's Office* (2018) https://www.oco.ie/app/uploads/2018/12/OCO_Participation-Guidelines_English_WEB.pdf accessed 18 January 2023.

114 IPRT, *Piecing it together: Supporting children and families with a family member in prison in Ireland*, (2021) P. 18. https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf accessed 18 January 2023.

Good practice – Children’s rights to express their views

Sentencing guidelines in Norway stipulate that when a child’s caregiver is being sentenced, ‘external organisations such as the child’s school or day-care centre’ should be consulted by the court in order to determine the best interests of the child. Furthermore, when deemed appropriate, courts are to hear from children regarding their opinions or preferences towards the sentencing of their caregiver. Additionally, advisory groups of young people with a parent in prison are consulted to describe their needs, provide advice and suggestions and contribute to CRC shadow reports.¹¹⁵

Norway’s Organisation for Families and Friends of Prisoners (FFP) recognises children as not merely deserving of being heard, but as helpful agents with ideas. FFP organises workshops that allow children of imprisoned parents to give input on their experience visiting their parents and to provide feedback as to how the experience might be improved.¹¹⁶

There has also been significant good practice developed in Sweden around the right for children to express their views in these matters, with the Swedish Ombudsman for Children, NGOs and others having provided guidance on how to engage the children of prisoners. Children have also been given the opportunity to develop their own wish lists for prisons and recommendations for policy makers.¹¹⁷ One project gathered the views and experiences of children with an imprisoned parent about their views on the right to information, their right to contact their parents, their right to support, how the pandemic impacted them and their wishes and hopes for the future.¹¹⁸

In Scotland, which has incorporated the CRC into its national legislation, the government has committed to ensuring that the needs, views and rights of children must be taken into account as part of sentencing decisions, noting that ‘[f]ailure to do that means that criminal courts do not have a holistic view of the impact of imprisonment’.¹¹⁹

USA – Good practice: Bill of Rights for Children of Prisoners

In 2003 the San Francisco Partnership for Incarcerated Parents published the Bill of Rights for Children of Incarcerated Parents¹²⁰ which presents eight rights that society in the USA should ensure for the children of incarcerated parents. The Bill of Rights also provides suggestions for how to implement each one. The eight rights are:

- I have the right to be kept safe and informed at the time of my parent’s arrest;
- I have the right to be heard when decisions are made about me;
- I have the right to be considered when decisions are made about my parent;
- I have the right to be well cared for in my parent’s absence;
- I have the right to speak with, see and touch my parent;
- I have the right to support as I struggle with my parent’s incarceration;
- I have the right not to be judged, blamed or labelled because of my parent’s incarceration;

I have the right to a lifelong relationship with my parent.

Key recommendations – Children’s right to express their views

1. The Child and Family Agency (Tusla) and the Department of Children, Equality, Disability, Integration and Youth should work together to develop mechanisms and provide forums to enable children with mothers in prison to express their views on matters directly impacting them in a safe and friendly environment.
2. Relevant agencies such as the Child and Family Agency (Tusla) and others should make efforts to reach out to all children impacted by maternal imprisonment, including those from hard-to-reach groups. This can be done in conjunction with relevant civil society and community groups.
3. If it is not possible for children to express their views directly, these can be collected through child-specialist NGOs, other expert groups or via professionals working with these groups of children. This could include the establishment of multi-agency expert groups.
4. Consideration be given by the Department of Children, Equality, Disability, Integration and Youth or statutory agency such as Ombudsman for Children to adopting – in consultation with children themselves – a Bill of Rights for children with a parent in prison. This should be done with a view to further incorporating such rights into legislation.

115 Children of Prisoners Europe, *Children of Imprisoned Parents - European Perspectives on Good Practice* (2014) <https://childrenofprisoners.eu/wp-content/uploads/2016/01/Children-of-Imprisoned-Parents-European-Perspectives-on-Good-Practice.pdf> accessed 18 January 2023.

116 FFP website <https://ffp.no/> accessed 18 January 2023.

117 *Children of Imprisoned Parents - European Perspectives on Good Practice*, 2014 (no 115).

118 Eriks Development partner, ‘One must know, Voice of children who have a family member in prison’ (2021) https://issuu.com/erikshjalpen/docs/pa_man_m_ste_f_veta_eh_solrosen_buff_engelska?fr=sODdmOTQyMjE2MDQ accessed 18 January 2023.

119 Independent Care Review, ‘The Promise, Scotland’s ambition for children and young people’ (2020) https://www.carereview.scot/wp-content/uploads/2020/03/The-Promise_v7.pdf accessed 18 January 2023.

120 San Francisco Partnership for Incarcerated Parents, *Bill of Rights for Children of Incarcerated Parents* (2003) <https://www.ojp.gov/ncjrs/virtual-library/abstracts/children-incarcerated-parents-bill-rights> accessed 18 January 2023.

Sentencing decisions in Ireland

It has been noted that Ireland systematically overuses imprisonment as punishment.¹²¹ While the average prison population is relatively low, between 2005-2015, Ireland ranked the fourth highest country in the EU in terms of the flow of prisoners through the prison system. This is due to the large numbers of short sentences, with previous research showing that Ireland's average term of imprisonment was just 2.9 months, one of the shortest in Europe at the time.¹²²

Constitutionally, sentencing decisions in Ireland should be governed by the principle of proportionality.¹²³ Case law has made it clear that sentences must be ‘...proportionate to the personal circumstances of the appellant. The essence of the discretionary nature of sentencing is that the personal situation of the appellant must be taken into consideration by the court.’¹²⁴

Despite this, there is no mandatory requirement in Ireland for judges to consider the personal circumstances of defendants in sentencing decisions. In the absence of a statutory requirement and legislative sentencing framework, Irish judges tend to use the principle of proportionality to guide their use of custodial and non-custodial sanctions.

In order to apply the best interests of the child principle effectively in decisions on imprisonment and sentencing, courts need to routinely assess, as a primary consideration, the circumstances of the child and the potential impact of imprisonment and length of imprisonment on them before determining which solution would be in their best interests.

The inclusion of the best interests of the child in sentencing guidelines can help to ensure that the principle is applied fairly and consistently. It should, however, be noted that, even where

sentencing guidelines do include caregiving status as a factor for consideration, awareness and application of these guidelines may still be limited¹²⁵ and evidence suggests that guidelines are often not followed.¹²⁶

In England and Wales, the Joint Committee on Human Rights concluded in 2019 that in practice there is no consistency in sentencing mothers and that judges and magistrates either do not understand their duty to consider dependent children at sentencing or do not have sufficient knowledge of the consequences of maternal imprisonment.¹²⁷

Ireland does not currently have any sentencing guidelines in place. However, the Sentencing Guidelines and Information Committee (SGIC),¹²⁸ recently formed under the Judicial Council Act 2019,¹²⁹ has been tasked with drafting sentencing guidelines, monitoring their operation and collating information on sentencing, with the primary aim of improving consistency in sentencing.

There are different mechanisms which can be used to ensure that courts receive proper assessments of a family situation. Pre-sentence reports are one such mechanism and can play an important role in ensuring that child caring responsibilities are taken into account during sentencing. The use of pre-sentence reports is closely linked to the issuing of non-custodial measures, with research in England and Wales showing that cases with pre-sentence reports are ten times more likely to receive a community sentence.¹³⁰

Pre-sentence assessment reports in Ireland

There are two types of assessments in Ireland where a person has committed an offence,

both prepared for the courts by the Probation Service. The pre-sanction report – also known as the probation report – assesses the person's suitability for a non-custodial measure and the community service report looks specifically at the suitability of community work (and tend to be longer and potentially include information on family circumstances).

While pre-sentence reports themselves do not have a legislative basis and there is no statutory requirement for judges to request and use them, research from 2017 found that judges request and use these reports frequently.¹³¹ There has however been limited research on the impact these reports have on sentencing decisions. Questions have also been raised about consistency in the quality and effectiveness of these reports in Ireland.¹³²

Pre-sentence reports, when requested, consider the causes of offending behaviour and the factors that need to be addressed to reduce the risk of future offending. The reports can include consideration of family situation under the section on ‘relevant offender background and circumstances’, but this is not a prerequisite. Indeed, it has been noted that ‘background’ is an expansive concept comprising not just a person's personal context or history but also their health, educational, work, social and family circumstances.¹³³

Observers have also pointed out that, where this information is used by the court, it is not considered from a child's right perspective and ‘the impact on children could be made clearer and the information delivered in a more systematic way.’¹³⁴ In the absence of specific child impact assessment reports, judges are not encouraged to include a consideration of the best interests of any children affected.

According to a 2015 report, assessments of an individual's suitability for a non-custodial sentence tend to be very short and information about children was only included if deemed relevant to the suitability assessment. This report also noted that, in 2015, the Probation Service was in the process of adapting these assessments to include gender specific considerations.¹³⁵

More recent updates indicate that the Probation Service has continued to develop a gender-informed approach to its work, with a new modular training programme called ‘A Gender-Informed Approach to Working with Female Offenders’ delivered to staff in 2021.¹³⁶ Probation officers and colleagues have further received training in ‘Seeking Safety’, a well-recognised programme that is skills-focused in helping women to attain safety from PTSD and substance misuse and the Service is further progressing the feasibility of expanding a ‘peer mentoring’ model as part of its commitment to the further development of services to women in regional areas.

Promising practice – Information resources on sentencing

In England and Wales, research with people affected by maternal imprisonment has been used to create information resources for criminal justice professionals involved in sentencing decisions to support their understanding of the impacts of parental imprisonment. This includes a guidance for probation officers which states that when a parent is being sentenced, they must request an adjournment for a pre-sentence report. This is necessary to provide the court with information about the impact of a sentence on any dependent children, and the plans for their care should the parent be imprisoned.¹³⁷

121 IPRT, Alternatives to custody. <https://www.iprt.ie/alternatives-to-custody/> accessed 18 January 2023.

122 Aebi MF, Berger-Kolopp L, Burkhardt C, et al. (2019) Prisons in Europe 2005–2015 – Volume 1: Country Profiles. Strasbourg: Council of Europe.

123 *Heaney v Ireland* [1994] 3 IR 593 upheld by the Supreme Court in *Heaney v Ireland* [1996] 1 IR 580 and *D.P.P. v M.* [1994] 3 IR 306.

124 *D.P.P. v M* [1994] (n 119).

125 Crest (n.14).

126 R. Brett. ‘Best Interests of the Child when Sentencing a Parent: Some reflections on international and regional standards and practice’ (2018) <https://www.familiesoutside.org.uk/content/uploads/2018/05/Best-Interests-of-the-Child-when-Sentencing-a-Parent-UPDATD.pdf> accessed 18 January 2023.

127 Crest (n. 14)

128 Judicial Council <https://judicialcouncil.ie/sentencing-guidelines/> accessed 18 January 2023.

129 Judicial Council Act 2019 <https://www.irishstatutebook.ie/eli/2019/act/33/enacted/en/print#sec23> accessed 18 January 2023.

130 Crest (n.14).

131 The Probation Service, ‘Individualising justice, Pre-sentencing reports in the Irish Criminal Justice System’, (July 2017) [http://www.probation.ie/EN/PB/0/5CE45CF7C900AB48802581A9002E00CF/\\$File/INDIVIDUALISING%20JUSTICE%20Pre-Sentencing%20Reports%20in%20the%20Irish%20Criminal%20Justice%20System%20Online%20Edition.pdf](http://www.probation.ie/EN/PB/0/5CE45CF7C900AB48802581A9002E00CF/$File/INDIVIDUALISING%20JUSTICE%20Pre-Sentencing%20Reports%20in%20the%20Irish%20Criminal%20Justice%20System%20Online%20Edition.pdf) accessed 18 January 2023.

132 Andrea Bourke, ‘Pre-Sanction Reports in Ireland: An Exploration of Quality and Effectiveness’ [http://www.probation.ie/EN/PB/0/1730EB7842C517078025802F003C2994/\\$File/IPJ2013pages75to89Abstract.pdf](http://www.probation.ie/EN/PB/0/1730EB7842C517078025802F003C2994/$File/IPJ2013pages75to89Abstract.pdf) accessed 18 January 2023.

133 Irish Prison Service, Individualising justice: Pre-sentence reports in the Irish criminal justice system, July 2017 (n.127).

134 Fiona Donson, ‘Whose rights? What impact? The potential for the development of child impact statements in the Irish criminal justice system’ (2015), European Journal of Parental Imprisonment https://childrenofprisoners.eu/wp-content/uploads/2019/02/EJPI-English_02_2015_Winter_Webversion-1.pdf accessed 18 January 2023.

135 Vivien Geiran, ‘Child impact statements and the Irish Probation Service’ (2015), European Journal of Parental Imprisonment https://childrenofprisoners.eu/wp-content/uploads/2019/02/EJPI-English_02_2015_Winter_Webversion-1.pdf accessed 18 January 2023.

136 Probation Service, Annual Report 2021 (2022) pp.20, 40. <http://probation.ie/en/PB/Pages/WP22000028> accessed 5 January 2023.

137 University of Oxford Faculty of Law, Addressing the Impact of Maternal Imprisonment: Developing Collaborative Training: ‘Safeguarding Children when Sentencing Mothers (2018) <https://www.law.ox.ac.uk/addressing-impact-maternal-imprisonment-developing-collaborative-training-safeguarding-children> accessed 18 January 2023.

Promising practice – Child impact assessment project

In England and Wales, a Child Impact Assessment framework was developed by the Prison Reform Trust on children with a mother in the criminal justice system, for use by organisations that work directly with children.¹³⁸

The assessment tool is a resource to support pilot projects to test and evaluate the use of Child Impact Assessments and can also be used as standalone materials to support ongoing work with children and young people. The resources were co-created by children and young people with lived experience of having a mother in the criminal justice system and aims to ensure that children are listened to at every stage of their mother's journey, and that they are meaningfully involved in decisions about their care and support needs.

Promising practice – Sentencing guidelines

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) affirmed the judicial sentencing guidelines developed by the Constitutional Court in *S v M* consisting of a five-part test. The ACERWC called on Member States to review and amend their sentencing procedures in line with this.

This five-part test could, within sentencing guidelines, stipulate that:

“(a) A sentencing court should find out whether a convicted person is a primary caregiver

whenever there are indications that this might be so.

(b) The court should also ascertain the effect on the children concerned of a custodial sentence if such a sentence is being considered.

(c) If the appropriate sentence is clearly custodial and the convicted person is a primary caregiver, the court must apply its mind to whether it is necessary to take steps to ensure that the children will be adequately cared for while the caregiver is incarcerated.

(d) If the appropriate sentence is clearly non-custodial, the court must determine the appropriate

sentence, bearing in mind the best interests of the child.

*(e) Finally, if there is a range of appropriate sentence, then the court must use the principle of the best interests of the child as an important guide in deciding which sentence to impose’.*¹³⁹

In England and Wales, the impact of imprisonment on dependent children has evolved through case law and is reflected in sentencing guidelines. A Guideline issued in 2019 gives an expanded explanation of how decision makers should consider care-giving responsibilities, particularly when the person being sentenced is on the cusp of custody or where the suitability of a community order is being considered. It is noted that for defendants on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependents which would make a custodial sentence disproportionate to achieving the aims of sentencing.¹⁴⁰

Moreover, the case law notes that, in sentencing parents, the best interests of children are a *‘distinct consideration to which full weight must be given’*.¹⁴¹ In other instances, the courts have found that it may be appropriate to suspend a custodial sentence when the person being sentenced is the parent of dependent children.¹⁴² Prior to sentencing, a court is under a duty to make sure that it has relevant information about dependent children before deciding an appropriate sentence.¹⁴³

The Equal Treatment Bench Book issued by the Sentencing Council for England and Wales recognises that the existence of dependent children is a relevant factor in the sentencing process and also highlights the fact that the court has an independent responsibility to consider dependents' rights.¹⁴⁴

The Scottish government has committed to doing *‘all it can to prevent the imprisonment (either on remand or as part of a sentence) of those with parenting responsibility and progress the presumption against short custodial sentences’* and more specifically to *‘do all it can to avoid the imprisonment of pregnant mothers.’*¹⁴⁵

Key recommendations – Sentencing

- Pre-sentence reports and judicial decisions should be monitored and systematically recorded by the Probation Service and Courts Service to establish the extent to which children are considered in probation assessments and whether judges currently consider the best interests of the child when remanding or sentencing a mother.
- Child impact assessments should be incorporated into the Probation Service's pre-sanction reports and judges should be required to request and consider these assessments in sentencing any mothers. Where the Child and Family Agency (Tusla) is already involved with the family, they should be involved in the preparation of such reports.
- If it is not possible to incorporate child impact assessments, the Probation Service should be required to include a mothers' family situation in the pre-sanction and community service reports, and these should include sufficient detail on the family situation and the potential impact of imprisonment on the child in order for the judge to make an informed decision.
- The Sentencing Guidelines and Information Committee should include in proposed sentencing guidelines the requirement that the best interests of the child and the impact of imprisonment on the child be considered when a mother is remanded or sentenced to imprisonment. Where imprisonment is deemed unavoidable, consideration of the impact of maternal imprisonment on her children should be considered in relation to sentence length. Consideration should also include any effect of a sentence on the health of pregnant women and their unborn child. Gender specific sentencing guidelines should also be considered.
- Bodies such as the Judicial Council, Law Society and Bar Council should consider incorporating training on the impact of maternal imprisonment so that judges and other relevant criminal justice officials have sufficient insight into these issues to properly weigh it as a factor in decision making.
- Bodies such as the Judicial Council, Courts Service and legal representative bodies should ensure lawyers and justice sector officials are well informed of, and confident in, non-custodial measures available for women so that they properly consider these at sentencing. It would be good practice for judges to receive feedback on the implementation of non-custodial sentences, for example, with such feedback coming from the Probation Service.

138 Prison Reform Trust, 'This is Me: A Child Impact Assessment Toolkit' <https://prisonreformtrust.org.uk/child-impact-assessment-toolkit/> accessed 18 January 2023.

139 *S v M*, para. 36 (n. 99).

140 Sentencing Council, *General guideline: overarching principles* (2019) <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/#Step%202%20Aggravating%20and%20mitigating%20factors> accessed 18 January 2023.

141 *R v Petherick*, [2012] EWCA Crim 2214, para 19.

142 *R v Modhwadia* [2017] EWCA Crim 501.

143 *R v Bishop* [2011] WL 84407 Court of Appeal.

144 Sentencing Council for England & Wales, *Equal Treatment Bench Book*, (Feb 2021 ed/July 2022 revision) <https://www.sentencingcouncil.org.uk/wp-content/uploads/Equal-Treatment-Bench-Book.pdf> accessed 18 January 2023.

145 *The Promise* (n. 119).



Non-custodial measures

Non-custodial measures at both pre-trial and sentencing stages should be the preferred position for pregnant women and women with dependent children. The use of such measures can help to reduce reoffending, support rehabilitation efforts and is often more economically attractive than imprisonment.

Such measures can also be designed in a way that are gender-specific, take into account the particular characteristics, needs and backgrounds of women and minimise any impact on their children.

In order to become more gender-responsive, prison administrations and other criminal justice stakeholders should follow basic principles when developing and implementing non-custodial measures. These principles have been collated by the UNODC in a *Toolkit on Gender-Responsive Non-custodial Measures*.¹⁴⁶ The Bangkok Rules also call for the development of gender-specific non-custodial measures for women offenders, *'taking into account the history of victimization of many women offenders and their caretaking responsibilities'*¹⁴⁷

In some instances, cases may be disposed of pre-trial by prosecutors, and such measures may benefit pregnant women or those with child caring responsibilities in particular. Under the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules),¹⁴⁸ prosecutors *'should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of the victims'*.¹⁴⁹

In General Comment No. 14 and in the report of its 2011 Day of General Discussion, the Committee on the Rights of the Child has emphasised that alternatives should be considered in sentencing parents with specific reference to their children:

*'...in sentencing parent(s) and primary caregivers, noncustodial sentences should, wherever possible, be issued in lieu of custodial sentences, including in the pre-trial and trial phase. Alternatives to detention should be made available and applied on a case-by-case basis, with full consideration of the likely impacts of different sentences on the best interests of the affected child(ren).'*¹⁵⁰

The UN Bangkok Rules deal specifically with non-custodial measures for female offenders, making it clear that *'women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties'* and that *'[a]lternative ways of managing women who commit offences, such as diversionary measures and pre-trial and sentencing alternatives, shall be implemented wherever appropriate and possible.'*¹⁵¹

¹⁴⁶ For more information see UN Office on Drugs and Crime, 'Toolkit on Gender-Responsive non-custodial measures', (2020) https://www.unodc.org/documents/justice-and-prison-reform/20-01528_Gender_Toolkit_complete.pdf accessed 18 January 2023.

¹⁴⁷ The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules'), 2010 see fn 24 Rule 57

¹⁴⁸ The UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) para 2.3 <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf> accessed 24 January 2023.

¹⁴⁹ Ibid The UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)

¹⁵⁰ UN Committee on the Rights of the Child, 2011 Day of General Discussion: Children of incarcerated parents, (30 September 2011) <https://www.ohchr.org/en/events/days-general-discussion-dgd/2011/2011-day-general-discussion-children-incarcerated-parents> accessed 18 January 2023.

¹⁵¹ The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) 2010 see fn 24

Rule 64 of the Bangkok Rules also states specifically that:

‘Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.’

The Bangkok Rules also favour the possibility of a ‘reasonable suspension of detention’ for women with child caretaking responsibilities, to allow them to make arrangements for their children taking into account their best interests.¹⁵²

On a regional level, the ACERWC, expressly dealing with children of imprisoned mothers, states that courts should always consider a non-custodial sentence when sentencing mothers and that they should establish and promote alternative measures for mothers.¹⁵³ The Inter-American Commission has also noted the importance of non-custodial measures for women stating that, ‘priority should be given to non-custodial measures that would allow [pregnant women and women with dependent children] to provide for their dependents.’¹⁵⁴

Pre-trial alternatives

International human rights standards are clear that pre-trial detention should only be used as a means of last resort and only in very limited circumstances when strictly necessary.¹⁵⁵ At the pre-trial stage, alternatives may include bail, electronic monitoring, curfews, periodic reporting to the police and/or seizure of travel documents.

The use of pre-trial alternatives for mothers is all the more compelling given the impact, associated trauma and wider collateral damage of imprisonment on their children and families.

The UN Office on Drugs and Crime (UNODC) has been clear that non-custodial measures should be available for women at the outset of any criminal legal involvement and the CoE has spoken in similar terms calling on member states to:

‘...ensure that women who are the sole carers of young children are not imprisoned while awaiting trial, except in circumstances where there is a real risk of offending, of absconding, or of interfering with witnesses. The suspension of imprisonment during pregnancy could also be considered.’¹⁵⁶

The bail regime in Ireland is governed by statute,¹⁵⁷ common law and the Constitution and, in most cases, the District Court will consider whether or not to grant bail.¹⁵⁸ A 2016 empirical study conducted by IPRT found that, in a selected number of bail hearings mostly relating to relatively minor offending, women were more likely to be remanded in custody or later have their bail revoked.¹⁵⁹ More recent IPRT research has noted that, from 2016–2019, over one-quarter (26.6%) of women on remand had a charge in the category of ‘theft and related offences’ as their most serious offence. This figure compared to 13% for men.¹⁶⁰ This raises questions around the attention given to the responsibilities of women offenders including

¹⁵² The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) 2010 see fn 24, Rule 2

¹⁵³ African Charter on the Rights of Welfare of the Child, Article 30 (1) (n. 101)

¹⁵⁴ The Inter-American Commission on Human Rights, ‘Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas’ (2017) <http://www.oas.org/en/iachr/reports/pdfs/pretrialdetention.pdf> accessed 18 January 2023.

¹⁵⁵ See UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) see (n 148) para 2.3.

¹⁵⁶ UNODC, ‘Toolkit on Gender-Responsive Non-Custodial Measures’ pg 22 (n. 142); Council of Europe, Parliamentary Assembly 2009 Resolution on Women in Prison <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17733&lang=en> accessed 24 January 2023.

¹⁵⁷ The Criminal Procedure Act 1967, the Bail Act 1997 and the Criminal Justice Act 2007 <https://www.irishstatutebook.ie/> accessed 18 January 2023.

¹⁵⁸ Criminal Procedure Act 1967 <https://www.irishstatutebook.ie/eli/1967/act/12/enacted/en/html> accessed 18 January 2023; the Bail Act 1997 <https://www.irishstatutebook.ie/eli/1997/act/16/enacted/en/html> accessed 18 January 2023.

¹⁵⁹ IPRT, ‘The practice of pre-trial detention in Ireland’ Research Report (2016) https://www.iprt.ie/site/assets/files/6382/ptd_country_report_ireland_final.pdf accessed 18 January 2023.

¹⁶⁰ IPRT, *Progress in the Penal System: Assessing progress during a pandemic* (2020), at p.50. https://www.iprt.ie/site/assets/files/6925/progress_in_the_penal_system_2020.pdf accessed 5 January 2023.

their caretaking responsibilities. Moreover, the lack of robust statistical data on the use of bail and pre-trial detention makes it difficult to ascertain where and how bail is being used in cases involving mothers and primary caregivers.

There have also been calls for judges to take a more individualised approach to bail so that conditions are matched to the circumstances of the offender,¹⁶¹ including the figure set by the Court for bail sureties.¹⁶² In the case of mothers in prison, it may fall to extended family with limited funds to stand as sureties. In such instances, the court should set an appropriate rate that takes account of all the circumstances.

In relation to electronic tagging, IPRT has raised concerns about its application in practice particularly in relation to due process safeguards and other human rights considerations,¹⁶³ and has called for pre-trial electronic tagging schemes to be in full compliance with international human rights standards set by the Council of Europe.¹⁶⁴ Such standards note that the impact on the rights and interests of families and third parties should be a consideration when imposing such measures.¹⁶⁵

The legal framework in Ireland also makes provision for three types of suspended sentence namely a suspended sentence, part suspended or deferred sentence. Recent case law has established that conditions of suspension should be proportionate and ‘afford the offender with a reasonable prospect of compliance, based on his or her personal circumstances’.¹⁶⁶ In deciding whether a sentence should be suspended, personal mitigation is a

relevant factor.

Family circumstances, in particular pregnant women or women with dependent children, has also been noted by the Law Commission as one such factor.¹⁶⁷ When an immediate custodial sentence is necessary, women should be permitted to make arrangements for the care of any dependent children¹⁶⁸ and, if necessary, the court should consider adjourning sentences for this to be done. International human rights standards make clear provision for such care arrangements to be in place.¹⁶⁹

Alternatives at sentencing

The Tokyo Rules sets out a range of different non-custodial measures available at sentencing.¹⁷⁰ The Rules recognise that any sentencing decision should be made in light of the rehabilitative needs of the offender alongside other interests, namely the protection of society and the interests of the victim.

A European Parliament Resolution of 2008 recommends that alternatives to imprisonment be favoured for mothers when the sentence is short and the risk to public safety low, ‘where their imprisonment could result in serious disruptions to family life, in particular if they are single parents or have young children’ and underlines that the judicial authorities should take account of the best interests of the accused parent’s child at sentencing.¹⁷¹

At present in Ireland, there are different non-custodial sentences that a court might give to

¹⁶¹ IPRT (n. 159).

¹⁶² DPP v Bell Supreme Court 2013

¹⁶³ IPRT (n 159); IPRT, ‘Submission on the General Scheme of the Bail Bill (1 September 2015) https://www.iprt.ie/site/assets/files/6360/iprt_submission_on_general_scheme_of_bail_bill_final.pdf accessed 18 January 2023.

¹⁶⁴ Council of Europe Recommendation CM/Rec (2014) 4.

¹⁶⁵ Ibid, Principle 6.

¹⁶⁶ Law Reform Commission, *Report on Suspended Sentences* (LRC 123-2020).

¹⁶⁷ Ibid 95.

¹⁶⁸ The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the UN Bangkok Rules), Rule 2 (2).

¹⁶⁹ See Article 20, UN Convention on the Rights of the Child provides that when a child is deprived of his or her family environment, that child should be ‘entitled to special protection and assistance from the State’ which should ‘ensure alternative care for such a child’. See also Article 2 of the African Charter on the Rights and Welfare of the Child which provides for alternative family care in cases of children permanently or temporarily deprived of their family environment.

¹⁷⁰ See UN Standard Minimum Rules for Non-custodial measures (the Tokyo Rules) (n 148) , para 8; non-custodial measures including (i) verbal sanctions (ii) Conditional discharge (iii) Status penalties (iii) Economic sanctions and monetary penalties, such as fines and day-fines (iv) Confiscation or an expropriation order (v) Restitution to the victim or a compensation order (vi) Suspended or deferred sentence (vii) Probation or judicial supervision (viii) Community Service Order (IX) Referral to an attendance centre (X) House arrest (XI) Any other mode of non-institutional treatment (XII) Some combination of the measures listed above.

¹⁷¹ European Parliament, *Resolution of 13 March 2008 on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life* (2007/2116(INI)).

adults who have been found guilty of a criminal offence including (but not limited to)¹⁷² fines,¹⁷³ probation orders,¹⁷⁴ community service orders,¹⁷⁵ a combination of probation and community service orders, conditional or absolute discharge,¹⁷⁶ curfew and exclusion orders and restriction on movement orders.¹⁷⁷

Given the lack of data available, it is difficult to ascertain how these non-custodial measures are specifically applied to women at sentencing in Ireland.

However, we note the commitment from the Probation Service and IPS to develop women-specific community service and community return options.¹⁷⁸ The work around gender-responsive approaches was also noted as a priority in the 2018–2019 Joint Strategic Plan of the IPS and Probation Service which looked to build upon and expand options and focus on through-care and resettlement into communities.¹⁷⁹ Examples of work being done in this area include the availability of two female specific programmes for women on Community Service Orders (CSOs) and/or supervision orders, with such programmes facilitated through partnerships with community-based organisations. Another example of gender-informed practice is the ability of the Probation Service to allocate 50% of CSO hours as ‘Integrated Community Service’ for females as compared to the 33% allocation for males.¹⁸⁰ Civil

society organisations have, however, continued to reiterate the need for nationwide gender-specific non-custodial options which take into account the complex needs and histories of women in conflict with the law.¹⁸¹

CSOs may be imposed by judges as an alternative to a custodial sentence of 12 months or less.¹⁸² Under the Criminal Justice (Community Service) (Amendment) Act 2011,¹⁸³ the courts are obliged to consider a CSO when considering imposing a custodial sentence of 12 months or less and may request a Community Service Report from the Probation Service to assess the suitability of such an order. In 2021, the Probation Service managed 1,360 CSOs, 162 of which were in respect of female offenders.¹⁸⁴

CSOs usually entail around 40–240 hours of community work either in small work groups or in individual placements. At present, CSOs are underutilised in Ireland as a non-custodial measure¹⁸⁵ and previous research has indicated that unemployed, young, single men with poor education and living in the parental home are the most likely beneficiaries of CSOs by the Irish courts.¹⁸⁶

Previous research has indicated that the use of CSOs for women is far less common and figures declined between 2012 and 2015 with a small increase from 175 in 2015 to 215 in 2016.¹⁸⁷ More recently the percentage of women receiving

172 Citizens Information, ‘Types of sentences’ https://www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/types_of_sentences.html accessed 18 January 2023.

173 Fines Act 2010.

174 Probation of Offenders Act 1907.

175 Criminal Justice (Community Service) Act 1983 as amended by the Criminal Justice (Community Service) (Amendment) (No 2) Act 2011.

176 Probation of Offenders Act 1907 (n 171).

177 Criminal Justice Act 2006.

178 Joint IPS and Probation Service (n.4).

179 Irish Prison Service & Probation Service, *Strategic Plan 2018-2020* (2018) https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-PS-Strategic-Plan-2018-2020.pdf accessed 18 January 2023.

180 Information received by Probation Service on 31 January 2023.

181 IPRT, *Briefing on Women in Prison in Ireland* (2017) https://www.iprt.ie/site/assets/files/6391/iprt_submission_in_advance_of_the_examination_of_ireland_under_cedaw_final_20jan2017.pdf accessed 18 January 2023.

182 Irish Probation Service, ‘Community Service’ <http://probation.ie/EN/PB/Pages/WP16000055> accessed 18 January 2023; Criminal Justice (Community Service) (Amendment) Act 2011 (n.171).

183 Criminal Justice (Community Service) Amendment Act 2011 (n. 171).

184 Probation Service, *Annual Report 2021*.

185 IPRT ‘*Community Service in Ireland*’ (IPRT 2017). https://www.iprt.ie/site/assets/files/6445/iprt_discussion_paper_-_community_service_in_ireland_final.pdf accessed 18 January 2023; Irish Probation Service, ‘An Evidence Review of Community Service Policy, Practice and Structure’ (2022) <http://probation.ie/en/PB/Pages/WP22000035> accessed 6 January 2023.

186 O’Hara, K. & Rogan, M. (2015). Examining the Use of Community Service Orders as Alternatives to Short Prison Sentences in Ireland. *Irish Probation Journal*, 12, 22–45. <https://arrow.tudublin.ie/cgi/viewcontent.cgi?article=1069&context=aaschsslarts> accessed 24 January 2023.

187 Ibid 9.

CSOs has fluctuated, with women accounting for 12.6% of all CSOs in 2019; 14% of all CSOs in 2020; and 11.9% of all CSOs in 2021.¹⁸⁸ There is no data to show how many (if any) community sanctions provide gender-sensitive services or interventions¹⁸⁹ but some reporting has suggested that a lack of suitable community service options has resulted in the imprisonment of more women.¹⁹⁰ In the view of one civil society organisation, Care After Prison, CSOs are not flexible enough to allow for the fact that some women have child caring responsibilities.¹⁹¹ Further, the paucity of data relating to the number, type and uptake of community sanctions makes it difficult to identify gaps in service provision. That said, it is worth noting that women on CSOs are, in the main, placed with community-based organisations and individual placements rather than group sites.¹⁹²

In August 2022, the Department of Justice issued a *Review of Policy Options for Prison and Penal Reform* together with an associated *Priority Penal Policy Action Plan*.¹⁹³ The review takes a forward look at penal policy and includes six priority actions to reduce reoffending, support desistance from offending, avoid prison overcrowding, and reduce reliance on custodial sentences.

As part of its priority actions, the review calls for the expansion of the range of non-custodial measures, with a focus on community-based sanctions and a move away from short custodial sentences of less than 12 months.¹⁹⁴ Whilst the review does not address the issue of mothers in prison *per se*, it does recommend that the overall

approach to community sanctions include the development of ‘*diversity sensitive approaches*’ to offenders including the Traveller community and other marginalised groups.¹⁹⁵ Moreover, the Action Plan seeks to explore the feasibility of providing a structured rehabilitative response for women.

Recent research published by the Probation Service on community service policy, practice and structure further makes a range of recommendations for the development of community service in Ireland in a way that advances the principles of desistance, restorative justice and social justice.¹⁹⁶ While the research does not address mothers explicitly, implementation of these recommendations will undoubtedly be of benefit to mothers who find themselves caught up in the criminal justice system.

Post-sentencing dispositions

The early release system in Ireland includes various mechanisms such as remission, temporary release, parole and commutation or remittal of sentence.¹⁹⁷ The day-to-day release scheme offers an important opportunity for offenders to strengthen family ties in advance of their return to the community. Prisoners are granted temporary release following a risk assessment and on a case-by-case basis: women (including mothers) should be prioritised under these schemes given, *inter alia*, their caretaking responsibilities.

The Community Return Scheme is a flagship earned early release programme with a 90%

188 Probation Service, *Annual Report 2021* (2022), 48, 50. <http://probation.ie/en/PB/Pages/WP22000028> accessed 6 January 2023.

189 IPRT, ‘*Progress in the Penal System: the need for transparency*’ (2021) https://www.iprt.ie/site/assets/files/7050/progress_in_the_penal_system_2021_final.pdf accessed 24 January 2023.

190 Gabija Gataveckaite et al, ‘*Almost all women in Irish prisons are there for committing petty crime*’ *The Journal* (23 April 2019) <https://www.thejournal.ie/women-prison-ireland-petty-crime-4596708-Apr2019/> accessed 24 January 2023.

191 Ibid.

192 Information received by Probation Service on 31 January 2023.

193 Department of Justice, ‘*Review of Policy Options for Prison and Penal Reform 2022-2024*’ (2022) https://www.gov.ie/en/collection/00924-review-of-policy-options-for-prison-and-penal-reform-2022-2024/?referrer=http://www.justice.ie/en/JELR/Review_of_Policy_Options_for_Prison_and_Penal_Reform.pdf/Files/Review_of_Policy_Options_for_Prison_and_Penal_Reform.pdf accessed 24 January 2023.

194 IPRT, ‘*IPRT welcomes Penal Policy Review and Action Plan as a Major Step in the Right Direction*’ (2022) <https://www.iprt.ie/latest-news/iprt-welcomes-penal-policy-review-and-action-plan-as-a-major-step-in-the-right-direction/> accessed 24 January 2023.

195 Ibid 44.

196 Probation Service, ‘*An Evidence Review of Community Service Policy, Practice and Structure*’ (2022). <http://probation.ie/en/PB/Pages/WP22000035> accessed 6 January 2023.

197 IPRT Position Paper, ‘*Reform or Remission, Temporary Release or Parole*’, (2012) https://www.iprt.ie/site/assets/files/6315/iprt_position_paper_reform_of_remission_tr_parole_oct_2012.pdf accessed 6 January 2023; Parole Act 2019.

success rate in terms of recidivism.¹⁹⁸ The scheme is subject to a strict selection criterion and is open to prisoners serving a sentence of more than one year and less than eight years on the condition that they have completed at least half of their term and are not judged a threat to the community. Participants perform community service in return for early release. However, there have been suggestions that the programme in the past has been less successful for female prisoners.¹⁹⁹

Promising practice - Non-custodial measures for pregnant women and mothers

There are pockets of promising practice globally where authorities have taken into consideration the caretaking responsibilities of women offenders and prioritised non-custodial measures for pregnant women and mothers. The promising practice mentioned below is provided in Penal Reform International's *Global Prison Trends Report 2022*.²⁰⁰

In Brazil, pre-trial detention is substituted for house arrest for all pregnant women. In Sierra Leone, bail regulations mandate the court to consider an alternative to detention in the case of a defendant who is a primary caregiver, or a pregnant or lactating mother.

Eleven countries have enacted laws which either prohibit or severely limit the imprisonment of pregnant women. In Georgia, pregnant women can have their sentence suspended until their child is one year old, at which point the court can consider exempting them from serving their sentence or commuting it. In Armenia, detention is not imposed on pregnant women or on persons with a child below the age of eight in their care. Both Italy and Portugal have laws that protect pregnant women from being sent to prison.²⁰¹

Some countries specify stages of pregnancy where detention is to be limited or prohibited, such as the later stages of pregnancy including Costa Rica, Nicaragua, Colombia and Mexico (includes nursing mothers).²⁰² In Ecuador, house arrest or electronic monitoring may be available during pregnancy or the first 90 days after childbirth, plus another 90 days in the case of neonatal illnesses.²⁰³

198 IASIO, 'The Community Return Scheme' <https://www.iasio.ie/services-information-for-clients/the-community-return-scheme/> accessed 24 January 2023; Conor Gallagher, 'Prisoner numbers in highly successful rehabilitation scheme cut by half', *Irish Times* (29 April 2019) <https://www.irishtimes.com/news/crime-and-law/prisoner-numbers-in-highly-successful-rehabilitation-scheme-cut-by-half-1.3874326> accessed 24 January 2023.

199 IPRT, 'Ireland's unequal treatment of women in the criminal justice system raised with the UN by IPRT' (2017) <https://www.iprt.ie/latest-news/irelands-unequal-treatment-of-women-in-the-criminal-justice-system-raised-with-the-u-n-by-iprt/> accessed 24 January 2023.

200 Penal Reform International, *Global Prison Trends Report 2022* (2022), 27. <https://www.penalreform.org/global-prison-trends-2022/> accessed 24 January 2023.

201 Centre for Crime and Justice Studies, 'We should stop sending pregnant women to prison', (2022) <https://www.crimeandjustice.org.uk/resources/we-should-stop-sending-pregnant-women-prison> accessed 24 January 2023.

202 Ibid.

203 Penal Reform International, *Global Prison Trends Report 2022* (2022), <https://www.penalreform.org/global-prison-trends-2022/> accessed 24 January 2023.

Key recommendations – Sentencing

11. In light of women's caretaking responsibilities, non-custodial measures should be considered by justice sector officials at every stage of the criminal justice process. Sentencing bodies should impose the least interventionist non-custodial sentence which takes into account a woman's personal circumstances.
12. Alternatives to prosecution and diversionary measures should be considered and strengthened where a woman does not pose a danger or serious threat to safety and society. Alternative measures may include case dismissal or gender-responsive diversion and community-based treatment programmes.
13. Policy officials should review and expand the diversity of sentencing options for women with an emphasis on gender-responsive community-based approaches.
14. Ensure that justice sector officials promote the use of gender responsive Community Service Orders for women offenders, developed to meet their specific needs including caretaking responsibilities.
15. The Probation Service should commission further research into the number, type and uptake of community sanctions to ascertain gaps in service provision and areas for development with respect to gender-sensitive options.
16. Relevant authorities such as the Department of Justice and/or Sentencing Guidelines and Information Commission should undertake research on the current use of suspended sentences and the extent to which child caretaking responsibilities are taken into account to support decisions on suspended sentences in Ireland.
17. The Department of Justice and/or Courts Service should undertake research, data collection and analysis on the use of bail and other pretrial alternatives as options for women with caretaking responsibilities.
18. Any new sentencing guidelines should include the position that pretrial non-custodial alternatives should be the *de facto* position for pregnant women / women with dependents regardless of the offence in question.
19. Decisions on early release should take into account women offenders' caretaking responsibilities in line with Rule 63 of the Bangkok Rules. Women offenders with caretaking responsibilities should be prioritised for early release programmes.



Mitigating the negative impacts of maternal imprisonment

When mothers are sent to prison, there are many things authorities can do to mitigate the impact on them and their children, including in relation to family visiting arrangements, services and facilities available as well as rehabilitation opportunities. While these issues were explored in depth in IPRT's 2021 *Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland* report,²⁰⁴ this section will briefly examine existing arrangements in place in Ireland and highlight any shortfalls or deficits.

At the policy level, the Irish government appears to be sympathetic to the challenges facing children of imprisoned parents and both probation and prison services have made some efforts to develop supportive programmes for children of offenders. Of note, the previously named Department of Children and Youth Affairs has recognised and committed to ensuring a child-friendly environment for family visits and adequate access by children to an imprisoned parent.²⁰⁵ The IPS also made commitments regarding families of prisoners in its 2016–2018 Strategic Plan stating that 'one of the core values of the Irish Prison Service is to endeavour to help prisoners, where possible and appropriate, to maintain and develop positive relationships with their families.'²⁰⁶ However, it has been noted by some that, in practice, the needs of children of imprisoned parents are not being adequately met in the criminal justice system.²⁰⁷

Initiatives such as the Family Links Programme²⁰⁸ to support fathers in prison provides a positive example of strong inter-agency cooperation between the IPS and third sector organisations. The programme saw changes to visiting arrangements, parenting education for families, designated Family Liaison Officers and prison officer training in communication and child protection issues. However there have been no Family Links activities since early 2018.²⁰⁹

The creation of a national working group, the Families and Imprisonment Group (FIG),²¹⁰ by the IPS should be viewed as a valuable initiative in supporting families affected by imprisonment and their efforts to improve national policies, particularly in the area of visiting conditions, should be noted. However, the FIG is not currently operating and key policies/standards including on visiting regimes remain unpublished.

There are clearly shortcomings and service gaps in relation to supporting mothers in prison and their families in Ireland. Most strikingly, at present there is no national service provided by the State which specifically supports children of imprisoned parents or any cross-sectoral strategy for children affected by a family member's imprisonment.²¹¹

The importance of implementing family-focused and children's rights training for prison staff working with women prisoners and their families cannot be underestimated. International standards support such measures and call for training to be delivered on the 'gender-specific needs and

²⁰⁴ Irish Penal Reform Trust, *Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland* (2021) https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf accessed 6 January 2023.

²⁰⁵ Department of Children and Youth Affairs, 'Better Outcomes, Brighter Futures, The National Policy Framework for Children and Young People' (2014), 82. <https://www.gov.ie/en/publication/775847-better-outcomes-brighter-futures/> accessed 24 January 2023.

²⁰⁶ Irish Prison Service, *Strategic Plan 2016-2018* (2016) http://www.irishprisons.ie/wp-content/uploads/documents_pdf/strategic_plan_2016.pdf accessed 24 January 2023.

²⁰⁷ Donson and Parkes, 'Rights and Security in the Shadow of the Irish Prison: Developing a Children's Rights Approach to Prison Visits in Ireland' in Condry and Smith (eds), *Prisons, Punishment, and the Family: Towards a New Sociology of Punishment* (Oxford University Press 2018)

²⁰⁸ Childhood Development Initiative, 'Family Links' (2019) <https://www.cdi.ie/our-programmes/family-links/> accessed 24 January 2023.

²⁰⁹ Childhood Development Initiative, 'Prisoners Returning Home: Prisoners and Family Reintegration' (2019) <https://www.cdi.ie/wp-content/uploads/2019/12/CDI-Prisoners-Returning-Home-min.pdf> accessed 24 January 2023.

²¹⁰ The FIG does not have a website but is referenced in the following report: Bradshaw and Muldoon "Family Links" Evaluation' (2017) http://www.irishprisons.ie/wp-content/uploads/documents_pdf/Final-Family-Links-Evaluation-Report-January-2017.pdf accessed 24 January 2023.

²¹¹ IPRT, 'Thematic Submission by IPRT for the 93rd Pre-Sessional Working Group of the UN Committee on the Rights of the Child' (2022) https://www.iprt.ie/site/assets/files/7116/iprt_submission_to_united_nations_committee_on_the_rights_on_the_child_august_2022.pdf accessed 24 January 2023.

human rights of women prisoners'.²¹²

For children in prison with their mothers, the Bangkok Rules require that prison staff are trained on child development and child health care.²¹³ Appropriate training should also be available to criminal justice professionals who work with children of prisoners in the community to improve their understanding and empathy around family issues. In a recent report, the Childhood Development Initiative recommended the modalities for such an awareness raising programme, taking inspiration from the Family Links programme.²¹⁴ The recent efforts undertaken by the Probation Service to support staff to become more gender-informed and develop their knowledge in working with girls and women, and the launch of a new modular training programme in this area, are to be welcomed.²¹⁵

As service provision for families affected by imprisonment lacks a national governmental structure, it is instead delivered through a network of third sector bodies.²¹⁶ These organisations offer much needed support to prisoners and their families, but they should not replace government support in any way and should be seen as supplementary to statutory support.

Prison authorities can play a vital role in supporting mother and child ties through adapting visiting regimes and implementing other measures to meet the needs of families. For mothers with children outside prison, such measures may include a combination of home leave and early release schemes, flexible and 'child friendly' visiting hours, extended family visits and other forms of

communication such as video visits.

The COVID-19 pandemic had a profound impact on families separated through imprisonment and authorities had to act quickly to find creative workarounds and innovative solutions. Prior to the pandemic, visiting hours had become somewhat more flexible but COVID-19 saw a sea-change in terms of family contact. In-cell phones were introduced in a number of prisons and the IPS has indicated that they intend to introduce phones in all prison cells across the estate as a matter of priority.²¹⁷

Similarly, following the suspension of in-person visits in 2020, video calls were rolled out across the prison estate which, according to a Minister of State at the Department of Justice, will be retained.²¹⁸ Such measures will be of huge benefit to mothers in prison in terms of facilitating ongoing contact with children outside prison but should not replace in-person visits in any way.

Prison visits can be frightening, confusing and upsetting experiences, especially for young children. The strict visiting rules, unfamiliar prison environment and lack of physical contact during visits can have a profound impact on children and increase difficulties in maintaining the parent-child relationship.²¹⁹

The right of a child to maintain a family life and close personal relations with a parent or parents from whom they are separated is a core part of the CRC.²²⁰ The Bangkok Rules provide detailed guidance on women prisoners' contact with their families, including their children, noting that this contact should be 'encouraged and facilitated by

212 The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders 'the Bangkok Rules', (2010) Rule 33 https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

213 Ibid. Rule 33.3

214 Childhood Development Initiative, 'Prisoners Returning Home: Prisoners and Family Reintegration' (2019) 68-69. <https://www.cdi.ie/wp-content/uploads/2019/12/CDI-Prisoners-Returning-Home-min.pdf> accessed 24 January 2023.

215 Irish Probation Service, Annual Report 2021 (2021) [http://www.probation.ie/EN/PB/O/B8B4CE7423E8D339802588BB0052DBD9/\\$File/Probation%20Service%202021%20Annual%20Report.pdf](http://www.probation.ie/EN/PB/O/B8B4CE7423E8D339802588BB0052DBD9/$File/Probation%20Service%202021%20Annual%20Report.pdf) accessed 24 January 2023.

216 Key service providers include the St Nicholas Trust (Cork), the Bedford Row Family Project (Limerick and Clare), Care After Prison and New Directions.

217 Darragh McDonagh, 'Landline phones being installed in every prison cell in Ireland', *Irish Examiner* (19 June 2022) <https://www.irishexaminer.com/news/arid-40899083.html> accessed 24 January 2023; Houses of Oireachtas, Prison Service (25 May 2022) <https://www.oireachtas.ie/en/debates/question/2022-05-25/159/?highlight%5B0%5D=cell> accessed 6 January 2023.

218 House of the Oireachtas, 'Prison Service' (15 June 2021) <https://www.oireachtas.ie/en/debates/question/2021-06-15/1097/> accessed 24 January 2023.

219 Re-Unite/Commonweal Housing, 'Children on the Edge: Children affected by maternal imprisonment' (2016) <https://www.commonwealhousing.org.uk/static/uploads/2014/02/Children-on-the-Edge-Children-affected-by-maternal-imprisonment-final-1-1.pdf> accessed 24 January 2023.

220 UN Convention on the Rights of a Child (CRC), Article 9.3

all reasonable means.'²²¹ Visits involving children should take place in an 'environment that is conducive to a positive visiting environment', including open contact between mother and child and extended contact visits where possible.²²² The European Parliament has noted that visiting environments should be positive, 'with an atmosphere distinct from that of prison that allows joint activities and the appropriate emotional contact'.²²³

The European Court of Human Rights has emphasised that there is a positive obligation on States under Article 8 to secure child-friendly visiting arrangements, noting that 'visits from children ... in prison require special arrangements and may be subjected to specific conditions depending on their age, possible effects on their emotional state or well-being and on the personal circumstances of the person visited'.²²⁴

In some cases, the breakdown of contact between children and parents that may arise when a parent is incarcerated may constitute a breach of children's rights under the CRC, the European Charter of Fundamental Rights and the European Convention on Human Rights.²²⁵

Children living in prison with their mother in Ireland²²⁶

Under the 2007 Irish Prison Rules,²²⁷ children may remain in prison with their mother until they are 12 months old 'to facilitate breastfeeding'. This includes those born before the term of imprisonment as well as those born during the prison term. After the child has reached 12 months of age they are not permitted to stay with their mother 'except under special circumstances.' The rules require prison management to provide 'the necessary requirements for the maintenance and care of a child admitted to a prison'.

Until 2019, figures were not released about the number of pregnant women in custody due to concerns around patient confidentiality. In 2019, 19 pregnant women were cared for in the Dóchas Centre and four at Limerick Prison.²²⁸ The maternity care provided to women in custody is reported to be comparable to the wider community and is provided on a shared care arrangement between the maternity hospital and the Healthcare Team in prison. The Health Service Executive is responsible for ante-natal education services. Expectant mothers are always facilitated to have their children born in hospital.

As part of the ongoing review of the Prison Rules, IPRT and the Action for Children and Families Network have made several recommendations as to how the rules on children of female prisoners can be strengthened and aligned with international standards.²²⁹

221 The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules'), (2010) Rule 26. https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

222 Ibid Rule 28.

223 European Parliament, Resolution on the particular situation of women in prison and the impact of imprisonment of parents on social and family life (2008) https://www.europarl.europa.eu/doceo/document/TA-6-2008-0102_EN.html accessed 24 January 2023.

224 Horych v Poland No 13621/08 (2012) <https://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22:%5B%22906236%22%22%22%22%22001-110440%22%22%7D>.

225 Article 9(3) of the CRC calls on States to respect the rights of a child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis; Article 24(3) of the European Charter of Fundamental Rights protects the right of the child to maintain on a regular basis a relationship and direct contact with both parents; Article 8 of the European Convention on Human Rights - right to respect for private and family life.

226 Houses of the Oireachtas, 'Prisoner Data' (1 October 2019) <https://www.oireachtas.ie/en/debates/question/2019-10-01/266/> accessed 24 January 2023.

227 Prison Rules, 2007 (2007) S.I. No. 252/2007 <https://www.irishstatutebook.ie/eli/2007/si/252/made/en/print#article4.>

228 House of Oireachtas, 'Prisoner Data' (1 October 2019) <https://www.oireachtas.ie/en/debates/question/2019-10-01/264/> accessed 17 January 2023.

229 IPRT, 'IPRT Submission to the Irish Prison Service Public Consultation on the Review of Prison Rules' (2021) <https://www.iprt.ie/latest-news/iprt-submission-to-the-irish-prison-service-public-consultation-on-the-review-of-prison-rules/> accessed 6 January 2023; Action for Children and Families Network, 'Network Submission to the Review of Prison Rules' (2021) <https://www.actionforfamilies.ie/2021/10/14/submission-to-the-review-of-prison-rules/> accessed 6 January 2023.

The Irish Prison Rules do not specify particular arrangements that need to be in place for children visiting their mother in prison and there are different practices and arrangements in place at Limerick and the Dóchas Centre. There has been some criticism levelled at the visiting regime in Ireland which has been viewed by some as lacking a ‘child-centred’ approach and failing to meet the needs of families.²³⁰

In particular, there has been concern about the IPS engagement and understanding of children’s rights and children as rights holders,²³¹ with the focus on child protection issues and an overemphasis on security issues. The visits themselves, particularly non-contact visits, have been found to have a negative effect on young children.²³² Civil society organisations have lobbied the authorities to amend the Prison Rules to allow for a more flexible regime with families in mind.²³³ Moreover, the much anticipated national policy on visiting conditions standards which would set a clear and consistent benchmark in terms of acceptable visiting standards are, as yet, to be published by the IPS FIG.

The Irish authorities have undertaken to improve conditions for family visits through various recommendations, actions and commitments.²³⁴ The IPS has committed to making visits as easy as possible for visitors and recognises the importance of maintaining and developing relationships with family and friends.²³⁵ One such example is the initiative, *The Sitting Room*, co-created in Limerick Prison by the BRFP which tries to improve women’s experiences during

visits. The space prioritises children by creating a more relaxed and normalised environment. Such measures are an encouraging step towards integrating a more child-centred approach.

In some cases, mothers in prison may not have the financial means to maintain regular contact with their children. The Council of Europe Committee for the Prevention of Torture (CPT) has recommended that Irish authorities make funds available to support this group but, to date, no such scheme has been put in place by the Government.²³⁶

The provision of information to children and families about prison visits is a vital element of a child-centred approach to penal policy. To this end, the IPS has created a *Family Information Booklet for People in Our Custody* which provides advice and guidance to prisoners and their families about the modalities and logistics for video calls and physical visits.²³⁷ The booklet is available on the IPS website. Similar booklets have been prepared by third-sector organisations.²³⁸

In overview, the IPS has made some efforts to improve the visiting regime for women in the prison estate and IPRT recognises that the new facility at Limerick Prison, expected to become operational in early 2023 and designed around the principle of rehabilitation and normalisation,²³⁹ is likely to enhance and improve the visiting environment for children of prisoners. These steps show a willingness on the part of the authorities but much more can be done to fully adopt a child-centred approach across the prison estate and for all children of mothers who end up in prison.

230 IPRT, ‘Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland’ (2021) https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf accessed 24 January 2023; Donson and Parkes, ‘Rights and Security in the Shadow of the Irish Prison: Developing a Children’s Rights Approach to Prison Visits in Ireland’ in Condry and Smith (eds), *Prisons, Punishment, and the Family: Towards a New Sociology of Punishment* (Oxford University Press 2018)

231 Ibid

232 IPRT, ‘Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland’ (2021) https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf accessed 24 January 2023.

233 Action for Children and Families of Prisoners Network, Submission to IPS Prison Rules Review (14 October 2021) https://www.iprt.ie/site/assets/files/7006/action_for_children_and_families_network_submission_to_the_review_of_prison_rules_2007.pdf accessed 24 January 2023.

234 Government of Ireland, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People* (2014) <https://assets.gov.ie/23796/961bbf5d975f4c88adc01a6fc5b4a7c4.pdf> accessed 24 January 2023.

235 Irish Prison Service, ‘Requesting a Visit - Dochas Centre’ <https://www.irishprisons.ie/requesting-a-physical-visit/requesting-family-visit-dochas-centre/> accessed 24 January 2023.

236 IPRT, ‘Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland’ (2021) https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf accessed 24 January 2023.

237 IPS, *Family Information Booklet for People in Our Custody* <https://www.irishprisons.ie/wp-content/uploads/documents/pdf/Family-Information-Booklet-September-2020.pdf> accessed 24 January 2023.

238 Including the St Nicholas Trust, the Family Support Network and U-Casadh. See, for example: U-Casadh, ‘Families Matter Too’ (2016) https://www.iprt.ie/site/assets/files/6437/families_matter_too_18.pdf accessed 24 January 2023.

239 Houses of Oireachtas, Prison Service (6 December 2022) <https://www.oireachtas.ie/en/debates/question/2022-12-06/33/> accessed 6 January 2023.

Promising practice – Visiting arrangements

In Sweden, the prison authorities have created special visiting apartments where prisoners can stay with their families for longer periods of time.²⁴⁰

In Germany, a tool has been developed to help guide children through prison. ‘Bear Buddy’ is described in a picture book that children can read while visiting their parent, with paw prints located at various stages in the prison. Children are given a ‘buddy bear’ at the end of their first visit to take home.²⁴¹

In Croatia, the organisation RODA has published a booklet for prison staff on how to recognise the needs of children visiting a parent in prison. The booklet was distributed to all correctional facilities in Croatia.²⁴²

The imprisonment of a mother requires the State to provide appropriate services and facilities to women and their children, be it wraparound family support and care, joined up planning and support between services or the provision of support to pregnant/nursing mothers in prison.

The provision of these services and facilities is clearly set out in international human rights standards including the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the CRC.²⁴³ Most importantly, the State should acknowledge the need for appropriate support and commit to its delivery. Scotland offers a good practice model with the publication of *The Promise* by the Independent Care Review which sets out Scotland’s ambition and plans for every child in care in Scotland.²⁴⁴ *The Promise* makes specific commitments to parents and children in the criminal justice system with

respect to wraparound support for the family, care for pregnant and nursing mothers and other essential needs.²⁴⁵

In Ireland there is a need to ensure that services such as child mental health and child protection services are available for all children in the community, including children of prisoners. Targeting such services so that they can meet the needs of this cohort is further needed, with good inter-agency cooperation crucial to ensuring this.²⁴⁶

Women with children require structured, tailored and coordinated pre- and post- release support to ensure that they are given the best possible opportunity to resume full caretaking responsibilities and reintegrate into society. International standards recognise the importance of social reintegration and call on authorities to design pre- and post- release integration programmes which take into account the gender-specific needs of women.²⁴⁷

The needs of pregnant women, nursing mothers and women with small children in prison should also be identified and addressed to accommodate activities such as breastfeeding. Times and childcare facilities should be available to allow mothers to participate in rehabilitative activities within the prison.

In Irish prisons, the Resettlement Service, managed by the Irish Association for Social Inclusion Opportunities (IASIO), works in partnership with the IPS and the Probation Service to provide resettlement and reintegration support. For women, the Probation Service delivers rehabilitation services via a ‘through care’ model which links them to appropriate services

240 Europris, ‘Information Sheet for Swedish Prisoners in the European Union’ <http://www.europris.org/wp-content/uploads/Sweden-EN-prisoner-information-sheet.pdf> accessed 24 January 2023.

241 Children of Prisoners Europe, ‘Bear Buddy’ https://childrenofprisoners.eu/database/bear-buddy/?fwp_locations=croatia accessed 24 January 2023.

242 Children of Prisoners Europe, ‘Manual for prison staff on the needs of children - A booklet for Prison Services’ <https://childrenofprisoners.eu/database/manual-for-prison-staff/>; and handbook <https://kakodalje.eu/media/brosure/Priručník%20za%20zaposlene%20u%20zatvorskom%20sustavu.pdf> accessed 24 January 2023..

243 Article 12, CEDAW which requires States to supply “appropriate services in connection with pregnancy, confinement and the post-natal period... as well as nutrition during pregnancy and lactation” <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>; UN CRC, Article 20 outlines that “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

244 Independent Care Review, Scotland ‘The Promise’ (2020) https://www.carereview.scot/wp-content/uploads/2020/03/The-Promise_v7.pdf accessed 24 January 2023.

245 Ibid 53.

246 IPRT, ‘Principles of action for children with a parent in prison’ https://www.iprt.ie/site/assets/files/6421/action_plan_explanatory_doc.pdf accessed 24 January 2023..

247 The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ‘the Bangkok Rules’, (2010) Rule 46. https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

in the community. However, it is not clear if these rehabilitation services support mother-child relationships. According to one report, IASIO do not currently work with family members on family issues²⁴⁸ and it appears their mandate is limited to the Gate Service (training and employment) and Resettlement Service (a primary needs resettlement support service) with no focus on family issues.²⁴⁹

Research indicates that post-release support for women offenders is patchy, but recent measures such as the Outlook Women's Programme, a joint endeavour between the IPS, the Probation Service and Focus Ireland, is a step in the right direction in terms of supporting rehabilitation, reintegration and helping women as they move from custody.²⁵⁰ As part of the programme, a new step-down facility was opened in Dublin in 2019 which has capacity for 10 beds.²⁵¹

Civil society organisations have taken an active role in supporting mothers as they transition out of prison. The BRFP has organised 'good visits' with family members and facilitated meetings between mothers and their children at their offices.²⁵² BRFP has also delivered a formal parenting programme in conjunction with the Education Unit in Limerick Prison as part of their work supporting mothers in prison.

248 Childhood Development Initiative, 'Prisoners Returning Home: Prisoners and Family Reintegration' (2019) 57. <https://www.cdi.ie/wp-content/uploads/2019/12/CDI-Prisoners-Returning-Home-min.pdf> accessed 24 January 2023.

249 IASIO, 'The Gate and Resettlement Service' <https://www.iasio.ie/services-information-for-clients/what-are-our-services-for-those-serving-a-prison-sentence/> accessed 24 January 2023.

250 Irish Probation Service, 'Annual Report 2019' (2020) [http://www.pprobation.ie/EN/PB/O/DOF9CB8CA4151F85802585BB005D109B/\\$File/Probation%20Annual%20Report%202019%20Final%20Version%20A4.pdf](http://www.pprobation.ie/EN/PB/O/DOF9CB8CA4151F85802585BB005D109B/$File/Probation%20Annual%20Report%202019%20Final%20Version%20A4.pdf) accessed 24 January 2023.

251 Conor Gallagher, 'Prisons struggling to cope with 20% jump in female inmates' *The Irish Times* (14 October 2019) <https://www.irishtimes.com/news/crime-and-law/prisons-struggling-to-cope-with-20-jump-in-female-inmates-1.4049181> accessed 24 January 2023.

252 Bedford Row Family Project, 'Holding the Suffering' (2017) 35. <https://www.bedfordrow.ie/wp-content/uploads/2013/08/BEDFORD-ROW-RESEARCH-REPORT-2017-FULL.pdf> accessed 24 January 2023..

Key recommendations – Mitigating the impact of maternal imprisonment

20. The State should recognise children with imprisoned parents as a specific cohort in need of support and establish and fund a national support service to provide integrated support services to children and families with a family member in prison, including providing financial support to prisoners' families where needed.
21. The Department of Justice should conduct a centralised mapping and review of support services and other initiatives available to children of mothers in prison. This should include services provided by government agencies as well as by voluntary sector organisations and should analyse the services available and the extent that they are used. This will allow authorities to determine gaps in service provision and identify where improvements are needed.
22. All relevant departments, including the Department of Children, Equality, Disability, Integration and Youth and Department of Justice, ensure that the specific support needs of children whose mothers are in prison are identified and included in policy commitments of all relevant agencies and that this forms part of an integrated national response to the needs of this group of children.
23. Agencies such as the Irish Prison Service and Probation Service should ensure that support services available to women in prison, as well as pre-release programmes and post-release services, take into account their needs as mothers and are designed accordingly. This includes tailoring services to meet the needs of particular groups of mothers.
24. Staff who come into contact with women and children in the criminal justice system should be trained on trauma and gender-informed practice to enable them to support women, mothers and children in a meaningful way.

Research and public awareness raising

The UN Bangkok Rules call for efforts to be made to:

‘...[o]rganize and promote research on the number of children affected by their mothers’ confrontation with the criminal justice system, and imprisonment in particular, and the impact of this on the children, in order to contribute to policy formulation and programme development, taking into account the best interests of the children.’²⁵³

The Rules also call for efforts to be made to organise and promote research on women in the criminal justice system and to review, evaluate and make public the trends, problems and factors associated with offending behaviour in women and *‘the effectiveness in responding to the social reintegration needs of women offenders, as well as their children, in order to reduce the stigmatisation and negative impact of those women’s confrontation with the criminal justice system on them.’²⁵⁴*

Despite the increasing interest in the impacts of maternal imprisonment, there remains a shortage of specific research on the topic. Moreover, the continuing rise in the numbers of women in prison globally suggests that there have been no significant changes in sentencing patterns or use of non-custodial measures for mothers. This may be partly explained by the fact that little research has originated from criminal justice authorities and those in a position to make decisions or influence policy. Moreover, there remains a significant gap in available data about the numbers of children impacted by maternal imprisonment.

The Bangkok Rules state that the number and personal details of the children of a woman being admitted to prison should be recorded at the time of admission, with the records including at least their names, ages and, if not accompanying their mother, their location and custody or guardianship status. The Rules further note that all information related to the children’s identity be kept confidential and that its use must always take into account the best interests of the children.²⁵⁵

The Parliamentary Assembly of the CoE has also called on member states to record the number, age and location of a prisoner’s children immediately upon arrival to the prison.²⁵⁶ Despite this, there are very few countries which make efforts to systematically collect and record this information. The lack of data and knowledge about the situation of children of prisoners is unfortunately matched by a lack of State action and coordinated care and support to address the needs of these children.

Recording information about children outside of prison allows authorities to assist women to maintain contact with their children and also enables authorities to contact those children or their guardians if needed. When this information is collected systematically and consistently, authorities will gain a better knowledge about imprisoned mothers and the situation of their children and can amend policies and procedures accordingly.

Without this data, it can be very difficult for authorities to identify and meet the support needs of children of prisoners and to coordinate planning and resourcing around this. As has been noted by COPE, *‘good data on children of prisoners allows governments, charities and NGOs to target their efforts and resources where they are needed most... [and] permits the long-term evaluation of support initiatives for children of prisoners.’²⁵⁷*

Gathering information on the children of prisoners does not come without challenges.

Mothers should receive information about the reasons for collecting this information and, while they should be encouraged to provide the information, they may have reasons for not wishing to disclose this information and should not be forced to do so.²⁵⁸ For women in prison, these reasons might include the fear that their children might be taken into care if they disclose information about them.

Research into maternal imprisonment and the impact on children of prisoners links closely

with the need to raise awareness among the judiciary, prison authorities, the media and the general public about the impacts of maternal imprisonment. Currently in Ireland, as elsewhere in the world, much of these efforts are led by NGOs and do not form part of an official programme or strategy.

The Bangkok Rules note that the media and the public should be informed about the reasons that lead to women coming into conflict with the law and that research and good practice should be used to help form policies to improve outcomes and fairness to women and their children.²⁵⁹ This sharing of information can also help to reduce the stigma associated with maternal imprisonment. Efforts must, however, be made to ensure that public awareness raising does not lead to any further stigma or other negative consequences.

It is equally important that research and information about maternal imprisonment is shared with women with experience of imprisonment and their children. In England and Wales, a series of films and briefing papers entitled *Safeguarding Children when Sentencing Mothers* included a film made for women facing imprisonment to help them understand why it is important that the court know about their children and how the court should use that information.²⁶⁰ Other materials for primary carers in England and Wales are designed to help them to make sure judicial decision makers think about the effects on children of any decision being considered. Women are also encouraged to share this information with their legal representative.²⁶¹

There is no systematic collection of data about

the children of imprisoned mothers in Ireland. Disappointingly, the 2011–2016 National Strategy for Research and Data Collection on Children’s Lives²⁶² did not include any mention of children of prisoners. Indeed, IPRT have relied on media reports to identify cases where caregiving responsibilities were taken into account at sentencing.²⁶³ There also appear to have been very few governmental efforts to conduct systematic research on the impact of maternal imprisonment on children.

Currently, there is no requirement in Ireland for the courts to record whether women sent to prison have dependent children or not. Court service statistics provide only basic administrative statistics and do not include information on sentence length or the rationale behind sentencing decisions.²⁶⁴

For a limited period of time, the Irish Sentencing Information System (ISIS) recorded information about sentencing decisions, including in some cases information about an offenders’ personal background, but this project was limited and did not provide any meaningful insight into sentencing practice in relation to family circumstances.²⁶⁵ The work of the former Judicial Research Office (now the Research Support Office) might have included some data relevant to parental imprisonment but such data was only available to the judiciary in any event.²⁶⁶

Under the Irish Prison Rules,²⁶⁷ there is no specific requirement to record details of a prisoner’s children upon their admission to prison. However, according to a survey conducted by COPE,²⁶⁸ this information has been requested and provided on

²⁵³ The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (‘the Bangkok Rules’), (2010) Rule 68. https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

²⁵⁴ Ibid Rules 67 and 69.

²⁵⁵ Ibid Rule 3.

²⁵⁶ Parliamentary Assembly of the Council of Europe, Women in Prison (28 April 2009) COE Parliamentary Assembly Resolution 1663, pt. 3. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17733&lang=en>.

²⁵⁷ COPE, ‘Data collection and children of imprisoned parents’ https://childrenofprisoners.eu/facts_and_figures/children-separated-from-mother/ accessed 24 January 2023.

²⁵⁸ UNODC, Commentary to the Bangkok Rules (2019) https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf accessed 24 January 2023.

²⁵⁹ The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (‘the Bangkok Rules’), (2010) Rule 70. https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

²⁶⁰ University of Oxford, ‘Addressing the Impact of Maternal Imprisonment: Developing Collaborative Training: ‘Safeguarding Children when Sentencing Mothers’ (2018) <https://www.law.ox.ac.uk/addressing-impact-maternal-imprisonment-developing-collaborative-training-safeguarding-children> accessed 24 January 2023.

²⁶¹ Dr Shona Minson, ‘Information for primary carers facing sentencing in the criminal courts’ <https://shonaminson.com/information-for-primary-carers-facing-sentencing-in-the-criminal-courts/> accessed 24 January 2023.

²⁶² Department of Children and Youth Affairs, ‘National Strategy for Research and Data on Children’s Lives 2011 – 2016’ (2011) https://www.cypsc.ie/_fileupload/Documents/Resources/National%20Strategy%20for%20Research%20and%20Data%20on%20Childrens%20Lives%202011%20-%202016.pdf accessed 24 January 2023.

²⁶³ IPRT, ‘Piecing it together: Supporting children and families with a family member in prison in Ireland’ (2021) 18. https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf accessed 24 January 2023.

²⁶⁴ Irish Courts Service, ‘Annual Report 2021’ (2022) <https://www.courts.ie/annual-report> accessed 24 January 2023.

²⁶⁵ Eoin Guilfoyle & Ian D Marder, ‘Using data to design and monitor sentencing guidelines: The case of Ireland’ (2021) 50 (2–3) Common Law World Review 103–119 <https://doi.org/10.1177/1473779520975193>.

²⁶⁶ Judicial Council, ‘Assessing Approaches to Sentencing Data Collection and Analysis: Final Report’ (2022) <https://judicialcouncil.ie/publication-of-sentencing-data-research-report/> accessed 6 January 2023

²⁶⁷ Prison Rules, 2007 (2007) S.I. No. 252/2007 <https://www.irishstatutebook.ie/eli/2007/si/252/made/en/print#article4>.

²⁶⁸ COPE, ‘Data Collection - Number of Children with a Parent in Prison’ (2021) <https://www.europis.org/wp-content/uploads/2021/03/Copy-of-Data-collection-Number-of-children-with-a-parent-in-prison-final.pdf> accessed 24 January 2023.

a voluntary basis in Irish prisons since June 2018 and there are very few refusals to provide this information.

According to information provided to COPE, new committals to prison in Ireland are asked if they have children under the age of 18 and whether they have any concerns about the child's welfare during their initial committal interview. This information is subsequently recorded in the prison's IT system. This data was not systematically collected before June 2018, but based on information collected between this date and March 2021, 3,209 people being committed declared that they had 5,157 children, or an average of 1.6 children per prisoner.²⁶⁹

Other information provided by Ireland's Minister for Justice, however, suggests that there is not in fact a distinction made between prisoners with an adult child versus a child under 18 (at least in the collated figures provided – upon request – to the public).²⁷⁰ Other limitations of the data include the fact that it relies upon self-reporting and is not routinely collated or made available to the public, nor does it ask detail around general geographic location of the children which makes it difficult to map service provision.²⁷¹

Research and data collection – Europe regional overview

According to a survey conducted by COPE,²⁷² only one third of the administrations that responded (Croatia, Slovakia, Greece, Turkey and some of the German states) said that they collect information about the number and ages of children whose parents have been imprisoned.

A number of countries, including Austria, Hungary, Norway, Scotland and Sweden, also collect this data on a voluntary basis within individual prisons, but this information is for the individual prisoner file and there have been no efforts to extract the statistical data to form a national overview of the numbers of children impacted by imprisonment. In the Netherlands and Switzerland, information is collected in some prisons but there is no national requirement to do so.

In Italy, a Memorandum of Understanding on Children with Imprisoned Parents, signed between the Minister for Justice, the National Ombudsman for Childhood and Adolescence and NGO Bambinisenzasbarre ONLUS²⁷³ mandates the Department of Penitentiary Administration and the Department for Juvenile Justice to 'systematically collect information about the number and age of children whose parents are detained on remand or in prison, along with any other relevant information.'²⁷⁴

In Cyprus, newly admitted prisoners are asked to provide information about the number of their children, their ages, any disabilities and details of their caregiver. This information is later updated based on information received during the prison term. Statistics from each prison are then used to estimate numbers of children impacted nationally. Prison authorities in Slovakia and Romania are also able to collect information from different prisons to estimate the numbers of children whose parents are in prison nationally.

²⁶⁹ Ibid.

²⁷⁰ Houses of Oireachtas, 'Child Protection' (10 May 2022) https://www.oireachtas.ie/en/debates/question/2022-05-10/659/#pq_659 accessed 6 January 2023.

²⁷¹ Irish Penal Reform Trust, 'Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland' (2021) <https://www.iprt.ie/children-of-prisoners/piecing-it-together-supporting-children-and-families-with-a-family-member-in-prison-in-ireland/> accessed 6 January 2023.

²⁷² COPE, Establishing Baselines Data collection towards better safeguarding children with a parent in prison (2018) https://childrenofprisoners.eu/wp-content/uploads/2019/09/CoE_data_report-2018.pdf accessed 24 January 2023.

²⁷³ Bambinisenzasbarre, Home page <https://www.bambinisenzasbarre.org/> accessed 24 January 2023.

²⁷⁴ Children of Prisoners, 'Memorandum of Understanding' (2015) <https://childrenofprisoners.eu/wp-content/uploads/2019/02/Memorandum-of-Understanding-English-16.12.2015.pdf> accessed 24 January 2023.

Key recommendations – Research, data collection and awareness raising

25. The Irish Prison Service should ensure that all prisons confidentially record the names, ages, location and custody status of children of women admitted to prison, and that the reasons for collecting this information are clearly explained and the questions are framed in a way that will establish trust.
26. The Irish Prison Service should ensure that data on children of prisoners collected by each prison is made available in a format that can be used to estimate national statistics of children impacted by imprisonment, disaggregated by the gender of parent and child. These statistics should be publicly available.
27. The Department of Justice and/or Department of Children, Equality, Disability, Integration and Youth should provide relevant agencies with the resources needed to conduct research and data collection related to women and the children of women in the Irish criminal justice system, including the impact of imprisonment and their support needs and research on the impacts on specific groups of women and children.
28. The Department of Justice and Department of Children, Equality, Disability, Integration and Youth should lead in developing a centralised knowledge base to collect and analyse all relevant findings and share findings between different sectors involved with prisoners and the children of prisoners.
29. The Department of Justice and Department of Children, Equality, Disability, Integration and Youth should ensure that the findings and recommendations of research are used to adjust and improve policies to reduce or mitigate against any negative impacts and to meet the needs of this group of children through targeted services. Judicial decision makers should also be sensitised to the impacts of maternal imprisonment.

Conclusion

There is no doubt that, in the majority of cases, the imprisonment of a mother will have negative impacts for her children and the mother-child relationship. Conversely, preserving the family environment and maintaining family relations through the use of appropriate non-custodial measures can produce positive outcomes for both mother and child.

This research has found that the caretaking responsibilities of women and the best interests of any children affected are not currently prioritised to a sufficient extent in the Irish criminal justice system, particularly when it comes to sentencing, nor are the impacts of imprisonment on both mother and child well understood or acknowledged.

It is recognised that, in sentencing mothers, judges need to find a balance between the principles of law and the individual circumstances of the case, including the caretaking responsibilities of the defendant. Indeed, there will be situations where the imprisonment of a mother is necessary. However, it is clear that there remains much scope for increasing the use of non-custodial measures for mothers in Ireland, including at pre-trial stage.

The key to reducing the impact on children of maternal imprisonment lies firstly in reducing the numbers of mothers imprisoned. This can be achieved not only through detention alternatives, but also through crime prevention initiatives, supporting mothers at risk of offending, targeted programs to tackle the root causes of crime and early intervention services to families at risk.

The impact of imprisonment can be reduced by ensuring better coordination around the support needs of children. To achieve these, authorities should adopt a family-friendly framework at all stages of decision making and a coordinated '*whole of government approach*' to the individual needs of children of prisoners.

It is fair to say that the measures outlined above to support mothers in prison are all achievable in the medium to long term but will require commensurate resources (both financial and non-financial) as well as political buy-in from the relevant criminal justice stakeholders to implement. In some instances, these measures may even be implemented on a 'no-cost' or 'low cost' basis. Accordingly, we would urge the authorities to continue to embed a child-friendly culture within the prison estate and build on the good practice already in place.



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