



ACTION FOR CHILDREN AND FAMILIES OF PRISONERS

11 November 2021

To Whom it May Concern,

We are writing to make a brief submission on behalf of the *Action for Children and Families of Prisoners Network* to the Open Consultation of the Judicial Planning Working Group. Specifically, we wish to contribute to the theme - *the development of judicial skills*.

The Action for Children and Families of Prisoners Network was established in August 2020 by the Centre for Criminal Justice and Human Rights, School of Law, University College Cork (UCC) and the Irish Penal Reform Trust (IPRT). The Network has an overall aim to provide a unified voice for positive policy change for children and families affected by imprisonment, with an overarching goal of a cross-departmental strategy led by the Department of Children, Equality, Disability, Integration & Youth. You can find more information about the Network's most recent activities on our newly established [website](#).

We would like to thank you in advance for taking the time to consider the following submission. If you wish to discuss the content of this submission in further detail, please do not hesitate to contact the co-chairs of the Network (details outlined below).

Kind regards,

For the *Action for Children and Families of Prisoners Network*

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Consultation on Judicial Planning with specific reference to the development of judicial skills

The Network highlights the importance of judicial training and its role, as stated by the Declaration of Judicial Training Principles¹, in ensuring high standards of competence and performance.² Training plays an important role in broadening understanding and knowledge of judiciary of all rights.

In relation to this, the Network notes the need for judicial training in relation to children's rights and their role in all decision-making where a child is affected. Specifically, we note the findings of IPRT's report, [*Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland*](#).³ In particular, Recommendation 4 which focuses on enshrining in law and practice the principle of 'Prison as a Last Resort' for primary caregivers. Specific recommendations were as follows:

Recommendation 4.1

The Sentencing Guidelines and Information Committee should include in proposed sentencing guidelines:

- a) The overarching principles of imprisonment as a last resort:
- b) A presumption in favour of community sentence where a primary caregiver is being sentenced; and
- c) A requirement that the 'best interests' of the child, and the impact of imprisonment on the child, is considered in circumstances where the primary caregiver may be imprisoned.

Recommendation 4.2

The Judicial Studies Committee should provide training to all judges on the impact of imprisonment of a primary carer on children.

Recommendation 4.3

The Department of Justice should consider implementing a formal process whereby a child's voice can be heard in all judicial decisions that may affect the child, including where the child's primary caregiver may be sent to prison.

We would specifically draw attention to recommendation 4.2, which notes the importance of providing training on the impact of imprisonment of a primary carer on children. Further, we would highlight recommendation 4.3, regarding the development of a formal process to ensure that the voice of the child is heard in all judicial decisions, including where a primary caregiver may be sent to prison. This recommendation aligns with the Council of Europe Recommendation CM/Rec(2018)5 of the Committee of Ministers to Member States concerning children with imprisoned parents,⁴ which states that:

¹ International Organisation for judicial training, (2017). *Declaration of Judicial Training Principles*. [Online]. IOJT. Available from: <https://www.enm.justice.fr/sites/default/files/kiosque/Declaration-of-judicial-training-principles-adopted.pdf>. [10 November 2021].

² Ibid – Principle 1 states "Judicial training is essential to ensure high standards of competence and performance. Judicial training is fundamental to judicial independence, the rule of law, and the protection of the rights of all people. "

³ Irish Penal Reform Trust. (2021). *Piecing It Together: Supporting Children and Families with a Family Member in Prison in Ireland*. [Online], IPRT. Available from: https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf. [10 November 2021].

⁴ Council of Europe. (2018). *Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents*. [Online]. CoE. Available from: <https://rm.coe.int/cm-recommendation-2018-5-concerning-children-with-imprisoned-parents-e/16807b3438>. [10 November 2021].

Recommendation 10:

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

This recommendation responds to the fact that international scholarship consistently highlights that alternatives to imprisonment should be prioritised, particularly where children are likely to be adversely affected by parental/carer imprisonment.

The importance of training on the impact of imprisonment on children has been increasingly recognised. In the UK, the Female Offender Strategy adopted by the Government in 2018 committed to rolling out materials for the judicial on [Safeguarding children When Sentencing Mother](#). Dr Shona Minson, a leading expert in this area, has developed materials to support training in relation to sentencing of mothers for England/Wales and Scotland, and has delivered training for the judiciary in Northern Ireland and New Zealand.

The Network would also note that the following key rights underscore the need for judicial training in relation to this issue:

The United Nations Convention on the Rights of the Child (UNCRC) states that:

- no child should be discriminated against or punished because of the status or activities of their parents (Article 2);
- a child's best interests be considered in all proceedings concerning a child (Article 3);
- a child has a right to express their views in all matters concerning them (Article 12); and
- the state has a duty to provide special protection and assistance to a child who is unable to reside with their parent (Article 20).

The European Convention on Human Rights (ECHR),

- Article 8 protects the right to family life.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (*Bangkok Rules*) 2010 state that:

- non-custodial sentences are preferable for women with dependent children, (unless the offence is serious or violent or the woman represents a continuing danger). Even then, a custodial sentence should only be given after considering the best interests of the child and ensuring that appropriate provision has been made for the child.

Concluding Remarks:

In light of the above, the Network would strongly recommend that judicial training on the impact of imprisonment of a primary caregiver on children be adopted as a matter of priority. In addition, that training on the voice of the child as a mechanism for achieving children's rights be adopted and include within the category of child separation the context of parental incarceration.