



European Journal of Parental Imprisonment

Perspectives on keeping connected during a pandemic: Challenges to child rights and well-being





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*Perspectives on keeping connected during a pandemic:
Challenges to child rights and well-being*
Vol 9 / 2020

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Cover image by a 6-year-old girl and her two brothers, aged 9 and 12. Provided by Bambinisenzasbarre, Italy.

Children of Prisoners Europe (COPE) is a pan-European network of non-profit organisations working on behalf of children separated from an imprisoned parent. The network encourages innovative perspectives and practices to ensure that children with an imprisoned parent fully enjoy their rights under the UN Convention on the Rights of the Child and the EU Charter of Fundamental Rights, and that action is taken to enable their well-being and development.

The European Journal of Parental Imprisonment is a publication that seeks to broaden the study of issues relevant to children affected by parental incarceration and meet a burgeoning interest in the development, implementation and evolution of entitlements, policies and practices that promote their well-being. With a view to fostering new perspectives for children with imprisoned parents, the journal features contributions by eminent scholars and experts in the fields of child rights, child welfare, criminal and social justice, psychology, penal affairs and other disciplines; published articles do not necessarily represent COPE's opinions. Selected articles are editorial screened but not peer-reviewed. The editors are committed to reasoned ideological diversity and welcome suggestions for special issues and contributions.

This journal has been produced with the financial support of the Rights, Equality and Citizenship Programme of the European Union. The contents are the sole responsibility of Children of Prisoners Europe and can in no way be taken to reflect the views of the European Commission.

Children of Prisoners Europe is a non-profit organisation registered in France under French Association law 1901.

SIRET : 437 527 013 00019

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Children with imprisoned parents and the European Court of Human Rights

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This article looks at the rights, under the United Nations Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR), of children with imprisoned parents to maintain family contact through visits and video calls. It looks at case law relevant to the ECHR and concludes by examining the compatibility with the ECHR of restrictions on those rights imposed in the context of the COVID-19 pandemic and considering what impact codification of the rules on children visiting their parents might have.

It is important to recall that although the imprisoned parents, undeniably and importantly, have their own rights to contact with their children, primary consideration must be given to the children's rights and best interests when decisions about providing or restricting visiting opportunities are being contemplated or taken. This is particularly important when visit restrictions are being imposed on a prisoner for disciplinary reasons. The UNCRC – ratified by all States except the USA – makes this clear.

UNCRC, Article 3.1 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.

Article 9 UNCRC goes on to provide for situations where children are separated from their parents, but focuses on situations where the child is separated as a consequence of public law child protection proceedings. In relation to the situation of parental imprisonment, it refers only to the provision of information.

UNCRC, Article 9 states:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or

neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present Article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 9(3) is a provision of general application. Unfortunately, Article 9 does not contain any express direct reference to the right of children to visit imprisoned parents. It is therefore to be welcomed that the UN Committee on the Rights of the Child devoted a Day of Discussion to this topic on 30 September 2011. We consider below the desirability of the Committee drafting a General Comment on this topic as a follow up to those discussions.

The provisions of the UNCRC are relevant to the ECHR through the portal of **Article 53 ECHR** which states:

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms

* Additional research was carried out by Emilie Bouchard, University of Oxford, and Julia Kienast, University of Michigan.

which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

Since all parties to the ECHR are also parties to the UNCRC, any provision of the ECHR must thus be construed in conformity with the standards of the UNCRC.

The bare provisions of the UNCRC are supplemented by a number of General Comments drafted and adopted by the Committee. Of particular importance is paragraph 6 of General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1):

6. The Committee underlines that the child's best interests is a threefold concept:

- a. A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.*
- b. A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.*
- c. A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision*

Family visits are largely seen by the ECtHR as a right attached to the prisoner, as opposed to family members and children, which has led the Court away from seeing cases through the prism of UNCRC standards.

must show that the right has been explicitly taken into account. *In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases [emphasis added].*

This threefold concept must apply when legal frameworks are being designed, when those frameworks are being implemented and during any decision-making process that affects a specific child or an identified group of children. States and their institutions must show that the child or children's best interests have been explicitly taken into account and weighed against other considerations.

ECtHR jurisprudence on prison visits

As will be clear from the brief overview which follows, most of the cases brought to the European Court of Human Rights (ECtHR) about the absence of family visits, or restrictions on them, have been brought by the prisoners themselves. The affected family members are only very rarely the primary applicants – or even additional applicants – in the case. This may be part of the reason why family visits are largely seen by the Court as a right attached to the prisoner and not the right of the family members, particularly the children. This approach has the effect of not drawing the Court to see the cases through the prism of UNCRC standards. It is up to those concerned about the visiting rights of the children with imprisoned parents to bring about a change in this approach by bringing cases which focus on the children, not just on the prisoner.

Under the ECHR the right to respect for family life imposes a positive obligation on States to enable and assist detainees to maintain contact with their close family.¹ This was considered in detail by the ECtHR in the case of *Horych v. Poland*, a case concerning an imprisoned father and his very limited contact with his three daughters. The applicant complained that, due to the unsatisfactory conditions for visits, the applicant's children were negatively affected and he was

¹ *Horych v. Poland*, no. 13621/08, and §131, 17 April 2012.

deprived of sufficient physical contact with them throughout his detention. The applicant alleged a violation of his right to respect for family life under Article 8 of the ECHR (see below for a more detailed analysis of Article 8) on account of this restriction on contact with his family.

The Court noted that restrictions to special visit arrangements on a detainee's family visits constituted an interference but were not in themselves contrary to Article 8.² However, the Court found that even if a detainee has not been arbitrarily denied visits from family members there will be a violation of Article 8 in the absence of adequate arrangements to enable prisoners to be visited by their children. The absence of such arrangements was found to have deeply adverse effects on the children due to the traumatic and distressing exposure to the prison environment which ultimately resulted in them being unable to visit their father. In *Horych v. Poland*,

The applicant stated that his very limited contact with his daughters had been caused by the fact that the Gdańsk Remand Centre and the Kraków Remand Centre did not provide satisfactory conditions for visits by children or minor persons. A visit took place in a room where visitors were separated from a detainee by a Perspex window partition and bars, making it impossible for them to have any direct contact. A visitor, including a child, in order to reach the visiting area in the ward for dangerous detainees had to walk through the entire prison, past prison cells situated on both sides of the corridor. This exposed his daughters to the gaze of inmates and their reaction to the girls' presence constituted an exceptionally traumatic experience for them. During the meeting, they were separated by a window and bars from their father, which was very stressful for them and made it impossible for them to have any normal contact. For that reason, considering that the conditions in which he was allowed to see his family in prison caused too much distress and suffering for his daughters, the applicant had to give up receiving visits from his daughters.

The facilitation of visits must be practical and effective – not theoretical and illusory – if it is to accord with the UNCRC.

No explanation or justification is recorded in the judgment as having been put forward by the Government for these adverse conditions. It will be recalled that it is not enough to permit visits to take place. The facilitation of visits must be practical and effective, not theoretical and illusory, if it is not to fall foul of the Convention.

In *Hagyó v. Hungary*,³ again only the (high profile) imprisoned parent was the applicant. The Court seems to have accepted (without explaining why) that he could not have face-to-face visits with his 11-year-old daughter because of her health problems. His complaint was that he was not permitted unlimited phone calls (above the standard three ten-minute calls per week) to compensate for the lack of personal contact:

*The Court considers that Article 8 of the Convention cannot be interpreted as guaranteeing prisoners the right to make telephone calls, in particular where the facilities for contact by way of correspondence are available and adequate. Where telephone facilities are provided by the prison authorities, these may – having regard to the ordinary and reasonable conditions of prison life – be subjected to legitimate restrictions, for example, in the light of the shared nature of the facilities with other prisoners and the requirements of the prevention of disorder and crime. In this context and to the extent that such conditions may be regarded as an interference with Article 8 rights they may be considered justified in terms of the second paragraph of that Article (see *A.B. v. the Netherlands*, no. 37328/97, §§ 92 and 93, 29 January 2002).*

80. The Court notes that the authorities never restricted the contact between the applicant and his minor child. It was the child's own state of health which prevented them from personal contacts [...] Moreover, regular phone calls and correspondence remained at their disposal, and extra phone calls were authorised on a case-by-case basis. While accepting that in principle the ailments of those relatives with whom a detainee desires to keep contact may warrant special considerations, the Court finds that in the particular case neither the

² Ibid., see also *Hagyó v. Hungary*, no. 52624/10, §84, 23 April 2013.

³ *Hagyó v. Hungary*, no. 52624/10, 23 April 2013.

*child's age nor her illness made it vital to afford the applicant extended possibilities for phone calls. Therefore, denying the applicant extra phone calls on a general basis cannot be considered as a disproportionate measure in the circumstances. It follows that there has been no violation of Article 8 as regards the applicant's contact with his child.*⁴

The Court made no comment on the child's rights to contact with her father.

A few years after the judgments in *Horych* and *Hagyó*, the case of *Khoroshenko v. Russia* came before the Court. This case was relinquished to the Grand Chamber, indicating the importance that the Chamber attached to the issues being considered. It concerned a ban on long-term family visits to life prisoners. The applicant was able to maintain contact with the outside world through written correspondence, but telephone communication and face-to-face visits were restricted. The applicant could only use the telephone in case of emergency, and visits were restricted to one or two adult visitors every six months. These visits would be monitored as well as use a glass partition to separate relatives.

The Court considered its reasoning applied in previous cases regarding visiting rights, reiterating that 'it is an essential part of a prisoner's right to respect for family life' to maintain contact with their relatives.⁵ The Court found that States do 'not have a free hand in introducing restrictions in a general manner without affording any degree of flexibility for determining whether limitations in specific cases are appropriate or indeed necessary'.⁶ Flexibility does not mean unrestricted discretion should be granted to penal authorities to grant or refuse prison visits. It was recently held in *Kungurov v. Russia* that such discretion would not meet the quality of law requirement (see below on Article 8 generally).⁷ This principle of flexibility should also be applied to the manner in which restrictive measures are imposed on visiting rights, particularly with regard to children visiting their parent in order to maintain a meaningful child-parent relationship.

⁴ *Hagyó v. Hungary*, no. 52624/10, §§ 79-80, 23 April 2013.

⁵ *Khoroshenko v. Russia* [GC], no. 41418/04, §123, 30 June 2015.
⁶ *Ibid.*

⁷ *Kungurov v. Russia*, no. 70468/17, §18, 18 February 2020. See below general principles of Article 8.



Additionally, the Court noted in *Khoroshenko* that a fair balance had not been struck between the applicant's right to respect for family life and the aims of the Government. The prison authorities had not given due regard to the importance of the rehabilitative aim of detention. This reaffirms the evolution of European penal policy towards a rehabilitative rather than punitive approach.⁸ Again the Court's dialogue centred around prisoners' rights and primarily considers the impact restrictions have on detainees, not the impact on their children. The Court found a violation of the applicant's Article 8 rights in this case.⁹ The separate concurring opinion of two judges noted in particular that the restrictions imposed had led to a complete breakdown of the relationship between the father and the child who was only four when the imprisonment began:

However, we do not consider regular family visits as a privilege that can be withdrawn, but as an Article 8 right of an inmate and of his or her family, in order to maintain their family relationships. The lives of prisoners and their families are deeply affected by visitation policies, as is clearly seen in the present case, where the father-son relationship was completely lost over the years, due, at least in part, to the loss of any meaningful contact. Restrictions on visitation rights should have a rational basis. Deprivation of these rights should be related to legitimate penological interests and the protection of safety and security [emphasis added].

The Russian Government did not provide the Court with any evidence that in the applicant's particular case the automatic and severe limitation of visitation rights served any other purpose but to reinforce the punitive nature of the prison regime.¹⁰

⁸ See *Dickson v. United Kingdom* [GC], no. 44362/04, §75, 4 December 2012; *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 et al. §§ 11116, 9 July 2013; *Harachiev and Tolumov v. Bulgaria*, nos. 15018/11 et al. §§ 243-246, 8 July 2014.

⁹ It should be noted that litigation at the ECtHR goes beyond the finding of a violation in bringing about change. Following the *Horych* judgment the Polish authorities amended national legislation and the Action Report of 16 February 2016 suggested that measures were taken to eliminate the stress resulting from minors' visits to prisons to prevent future similar violations. Additionally, the question of amending domestic legislation is being discussed by the competent authorities in light of the *Khoroshenko* judgment.

¹⁰ *Khoroshenko v. Russia* [GC], no. 41418/04, 30 June 2015, joint concurring opinion of Judges Pinto de Albuquerque and Turković, §7.

Another case which came before the Court the same month as *Khoroshenko v. Russia* was the case of *Kyriacou Tsiakkourmas and others v. Turkey*, in which one of the complaints concerned various restrictions allegedly imposed on the applicants' private and family lives.¹¹ This was a complex legal and political case involving a Greek Cypriot imprisoned in the Turkish Republic of Northern Cyprus. The thirteen applicants included the first applicant, his wife, their three children and his eight brothers and sisters. This part of the application was held to be 'manifestly ill-founded' because the applicants had not adduced sufficient evidence that the prison administration disproportionately hindered the applicants' efforts to stay in closer touch with each other. A rare case wherein the detainee's children were the applicants failed because it did not appear to the Court to be sound on the facts, as insufficient evidence had been adduced to support the claims.

Following cases such as *Khoroshenko*, the Court has gone on to consider in *Andrey Smirnov v. Russia* that 'an interference with a prisoner's right to respect for his family life does not need to amount to an outright ban on family visits, but can consist in various other measures taken by the prison authorities'.¹² In *Andrey Smirnov v. Russia*, the applicant was in a juvenile detention unit and complained on account of the refusal of a parental visit, limitations on the frequency of such visits throughout his detention, and his separation from his parents by a glass partition during their visits. The Court held that such measures constituted a violation of the applicant's Article 8 rights.

Whereas the Court has ruled that restrictive rather than outright prohibitive measures can be contrary to Article 8, in the context of the right of a prisoner to maintain contact with the outside world by way of telephone or online devices, the Court has considered that the usage of these technologies may be subject to restriction. In *Lebois v. Bulgaria* the Court observes that Article 8 does not in itself guarantee a right for detainees to use a telephone if there are adequate alternatives in place to facilitate communication such as written correspondence.¹³ Recently, the Court found in the case of *Ciupercescu v. Romania (no. 3)* that the Convention does not guarantee prisoners a right to access online communication with family

members.¹⁴ In the Court's assessment, it noted that nothing appeared to hinder the applicant's ability to maintain meaningful contact with relatives through alternative means of communication during the temporary absence of a policy which enabled him to communicate online. This case was held manifestly ill-founded on the basis that the restriction was temporary, face-to-face visits with his wife were still permitted quarterly and there was no evidence to suggest that the applicant was unable to make telephone calls.¹⁵

National authorities are granted a wide margin of appreciation in questions of penal policy, particularly if there is no European consensus on the matter.¹⁶ In *Ouinis v. France*,¹⁷ the Commission considered that the prison authorities had acted within their margin of appreciation and had proportionately interfered with the applicant's Article 8 right when refusing the placement of the prisoner in a penal facility close to his home which would have more easily enabled the exercise of his right of access to his daughter.¹⁸ However, it was noted,

As for the necessity of the measure taken in this case, the Commission cannot ignore the fact that the prison authorities do not seem to have done everything in their power to guarantee the effective exercise of the applicant's right of access to his daughter. The Commission wonders whether greater efforts to move the applicant closer to his daughter's place of residence, bearing in mind, in particular, the child's mother's reluctance to let her meet her father, might not have been possible and compatible with the requirements of prison organisation and security.

Nonetheless, the Court has been continuing to narrow the margin of appreciation it grants to contracting States regarding Article 8.¹⁹ For example, in *Polyakova and Others v. Russia* the Court noted the European Prison Rules provide for the prevention of breakdown of family ties, thus a only narrow margin of appreciation will

¹⁴ *Ciupercescu v. Romania (no. 3)*, no. 41995/14 *et al.*, §105, 7 January 2020.

¹⁵ *Ibid.*

¹⁶ *Khoroshenko v. Russia* [GC], no. 41418/04, §132, 30 June 2015.

¹⁷ *Ouinis v. France*, no. 13756/88, Commission decision of 12 March 1990, Decisions and Reports (DR) 65.

¹⁸ It should be noted that this case was decided on 12 March 1990 and France ratified the UNCRC later that year on 7 August 1990.

¹⁹ *Ibid.*

¹¹ *Kyriacou Tsiakkourmas and others v. Turkey*, no. 13320/02, §295, 2 June 2015.

¹² *Andrey Smirnov v. Russia*, no. 43149/10, §37, 13 February 2018

¹³ *Lebois v. Bulgaria*, no. 67482/14, §61, 19 October 2017.

be afforded.²⁰ In *Polyakova and Others* it was found that there had been a violation of Article 8 due to the lack of due regard to the impact on family life when allocating prisoners to remote penal facilities. In particular, the Court observed that the capacity of a prisoner's relatives to visit them in a particular penal facility should be taken into account and assessed on a case-by-case basis to determine the practical possibility of visiting a prisoner in a particular facility.²¹ Although in *Polyakova and Others* the Court took into account the circumstances of the prisoner's relatives, just as in the other cases mentioned above, it did so through the lens of the prisoner's rights.

The use of modern technology to facilitate maintaining family contact is important. Many older children maintain their family relationships and personal friendships through social media irrespective of whether imprisonment is involved. But for some children, particularly younger children, screens may be seen as an additional negative barrier to intimacy, and video and other online forms of communication should never be a routine replacement for face-to-face visits.

It should be noted again that all of the cases mentioned above are rather narrowly focussed on the rights of prisoners when considering restrictions on visiting rights. The impact such restrictions have on children with imprisoned parents and the interference with the child's Article 8 right to family life is yet to be addressed by the Court.

Article 8 of the ECHR: The right to family life

The cases discussed above on prisoners' rights (as opposed to their children's rights) to family visits and contact all relied on Article 8 of the ECHR. To understand this case law correctly, it is important to understand the way in which the European Court approaches Article 8 cases coming under the family life rubric. Article 8 on the right to respect for private and family life, states:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the*

interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

A five-point test is normally applied:

- i. Do the facts disclose protected family life?
- ii. Is there an interference (or a failure to meet a positive obligation)?
- iii. Is the act or omission prescribed by an accessible and clear law?
- iv. Does it pursue a legitimate aim?
- v. Is it proportionate to the legitimate aim pursued?

To the above five points might be added two more:

- vi. Have the best interests of the affected child or children been treated as a primary consideration and fully explored in the reasons given for the decision?
- vii. Have the child's views been heard in accordance with Article 12 UNCRC?

We will first consider what constitutes family life. The UNCRC focuses primarily on the right of children to maintain contact with their parents, but for many children, the most important figures in their lives may not be either of their biological or legal parents but rather their grandparents, older siblings, aunts or uncles, step-parents, the stable partner of one of their parents and even more remote relationships like ex-step grandparents. These may play an important *de facto* role in the children's lives and their imprisonment may have left them feeling quite bereft. The European Court has recognised (in other contexts) that family life warranting protection under Article 8 ECHR may exist in all these relationships depending on the factual situation and the closeness of the relationship.²² These people may or may not be the 'caregivers' mentioned in the Council of Europe 2018 Recommendation (see below). In the context of prison visits, only if Article 3 UNCRC taken together with Article 12 UNCRC are properly observed will it be possible to determine whether the incarcerated individual is sufficiently close to the child for it to be necessary for contact visits to be facilitated in the child's best interests. Obviously contact with biological or legal parents is in principle protected – but this must not be to the exclusion of relationships which may be more

²⁰ *Polyakova and Others v. Russia*, no. 35090/09 *et al.*, §89, 7 March 2017.

²¹ *Ibid.*

²² See for example *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, ECHR 2000-VIII; *Boyle v. the United Kingdom*, 28 February 1994, Series A no. 282-B; *Moretti and Benedetti v. Italy*, no. 16318/07 27 April 2010 amongst many others.

important and more meaningful for the child. It is the importance to the child of having contact with the prisoner which is the key consideration.

A failure to facilitate meaningful contact will constitute an interference (albeit one which may be justifiable). The child of an incarcerated parent may have benefitted from a contact order issued by the civil courts. Imprisonment may justifiably reduce the child's contact arrangements, but should not nullify or impair the very essence of the child's legal right to maintain contact. In *Gluhakovic v. Croatia*, the Court found that a contact order which did not take into account a father's personal circumstances (he was not imprisoned) failed to protect family life.²³ The Court also found a violation in the practice of stripping imprisoned parents of parental responsibility even if the crime for which they were imprisoned had nothing to do with the children.²⁴ A similar violation was found in *Eberhard and M. v. Slovenia*, when a father had been held to forfeit family rights for the failure to pay child support.²⁵ Unfortunately, these decisions and many similar ones looked at the situation only from the right of the parent and not from the perspective of the affected child. In *Eberhard and M.*, the father was not even permitted to represent the child in Strasbourg in a complaint about access rights as he 'only' had the right to contact and the child's mother had 'sole custody'. A breach of *his* rights was found but the child could not be considered an applicant.

A failure by the authorities to take all the steps they could reasonably have been expected to take to facilitate ongoing contact will exacerbate the interference and will gravely impact the assessment of its proportionality. The justification for any such act or omission *must have a basis in a law* which is sufficiently 'precise and ascertainable'. This does not mean that the identities of qualifying relationships or the duration and frequency of visits must be exhaustively set out in the (published) regulations. The regulations must clearly set out an irreducible minimum but also have the built-in flexibility to be appropriately inclusive and proportionate.

Where visits are restricted, those *restrictions must pursue a legitimate aim and be proportionate to that aim*. The best interests of the child will be a primary consideration, as required by Article 3 UNCRC, not the convenience of the prison administration.²⁶ In *Trosin v. Ukraine*, the Court noted:

The Government made reference to practical issues, such as space in the meeting rooms and booths. This reasoning, however, may suggest that the authorities, relying on the inflexible restrictions, did not wish to make any attempts to resolve the issue of limited space.

However, prison security will always carry an important weight. It must certainly be recognised that making arrangements for appropriate visits comes at a cost both in staffing and the provision of physical facilities and that prisons have limited and often constrained budgets. Sadly, visits provision in each establishment is only rarely taken into account when considering staffing or operational budgets or the operational capacity of the prison. A prison with 400 prisoners may have a large visits hall (maybe a capacity of 50 prisoners) so visits can be two hours long and it is easy for families to book a visit when convenient. Or a prison with 800 prisoners may have a very small hall (perhaps 20 capacity), so visits can only be an hour long and sessions book up very quickly. As we shall see below, during a time of unusual circumstances such as the COVID-19 pandemic, those additional resource implications and costs may escalate further.

These administrative resources and costs have a role to play in determining the proportionality of the act or omission. Proportionality is a concept which involves weighing the competing interests of the affected individuals and the State or the community at large.²⁷ In recent years, the Court has moved towards applying a test which requires the State to have considered and excluded reasonable alternatives with less adverse impact on the individual's rights.²⁸ The adoption in 2018 of Recommendation (2018)5 concerning children with imprisoned parents takes such an approach and provides useful guidance as to what is to be considered proportionate.

23 *Gluhakovic v. Croatia*, no. 21188/09, 12 April 2011.

24 See *Iordache v. Romania*, no. 6817/02, 14 October 2008; *Sabou and Pircalab v. Romania*, no. 46572/99, 28 September 2004.

25 *Eberhard and M. v. Slovenia*, nos. 8673/05 and 9733/05, 1 December 2009.

26 See *Trosin v. Ukraine*, no. 39758/05, 23 February 2012; *Khoroshenko v. Russia* [GC], no. 41418/04, 30 June 2015.

27 See amongst many other cases *Sporrong and Lönnroth v. Sweden*, 23 September 1982, Series A no. 52.

28 See for example *Glor v. Switzerland*, no. 13444/04, ECHR 2009.

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

Approximately 2.1 million children in the 47 member States of the Council of Europe have at least one incarcerated parent,²⁹ and as acknowledged by the Council of Europe Strategy on the Rights of the Child (2016-2021), these children are particularly vulnerable and require protection.³⁰ Recommendation CM/Rec (2018)5 of the Committee of Ministers to States concerning children with imprisoned parents was adopted on 4 April 2018 and is a pivotal legal instrument considering the rights of children with incarcerated parents. Children of Prisoners Europe (COPE) was a significant contributor to the elaboration of this instrument. As mentioned frequently above, the narrative around prison visits from children has predominantly been from the perspective of a prisoner's right to maintain contact with the outside world rather than the rights of the child to maintain and develop relationships with their parents. These children have been described as the 'forgotten victims of imprisonment'³¹ and this Recommendation aims to shift the narrative so that prison authorities and member States assume a more child-considerate approach.

The Recommendation's preamble states that 'children with imprisoned parents are entitled to the same rights as all children', and acknowledges the impact imprisonment of a parent may have on a child.³² It recognises that 'the overall management of prisons in member States need to be guided by commonly agreed-upon standards and principles related to the support and protection of children with imprisoned parents'.³³ Furthermore, the underlying values and the basic principles set the foundations for children with imprisoned parents' rights to not only be protected but also considered in the decision-making of prison authorities and policy.

The underlying values encapsulate the best interests of the child referring to the UNCRC

²⁹ Explanatory Memorandum to Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents, 21.

³⁰ Ibid., 24.

³¹ 'Children of Incarcerated Parents', *Child Rights Connect*, available at https://www.childrightsconnect.org/working_groups/children-of-incarcerated-parents/ accessed: 13 October 2020.

³² Council of Europe Recommendation CM/Rec(2018)5, preambular paragraph 4 and 5.

³³ Ibid., preambular paragraph 12.

whilst placing emphasis on the need to protect a child's right to maintain their relationship with a parent in prison and not to be treated in conflict with the law.³⁴ Where it is in the best interest of the child to maintain contact with their incarcerated parent, contracting States should take into account six of the seven basic principles set out in the Recommendation which include: the right of a child to be heard, to consider alternatives to custodial sentences, suitable proximity of a child to their parent, to facilitate the distribution of resources in order to maintain contact and the use of training on child-related policies and practices for all staff that are in contact with children and their imprisoned parents. Paragraphs 16 to 31 concern the consideration of children with an imprisoned parent during prison allocation and parental communication, contact and visits. Particular attention is paid to measures ensuring that a child-parent relationship can be maintained. Where difficulties may arise concerning the location of the prison compared to the domicile of the child or other elements of the child's life, these paragraphs promote a flexible approach of penal policies so as not to compromise meaningful child-parent contact.

The scope of the Recommendation extends to all children with imprisoned parents, irrespective of the length of detention. It should be noted in this respect that the Recommendation allows for flexibility and discretion of prison authorities when taking into account an individual child's situation and implementing the Recommendation.³⁵ In summary, this Recommendation is the first formal instrument to suggest that children should not be a peripheral consideration of penal policy when their human rights may be directly or indirectly affected. This Recommendation is undoubtedly a positive step in the right direction to protect the rights of a child with an imprisoned parent and will hopefully continue to encourage decisions to be made that do not narrowly adopt a prisoner's rights perspective. That being said, the relationship between a prison regime and the outside world is a delicate one and one should be cautious in considering that this Recommendation is a basis for further codification. The 'child-friendly' approach adopted by Recommendation CM/Rec (2018)5 has not gone unrecognised and the standards and principles it sets out regarding children of imprisoned parents were recently endorsed in the revised and amended Council of Europe's Recommendation Rec(2006)2-rev on

³⁴ Ibid., underlying values 1-3.

³⁵ Ibid., Explanatory Memorandum, 28.

the European Prison Rules by the Committee of Ministers on 1 July 2020.³⁶

Where does COVID-19 and its associated restrictions fit in to all of this?

A justified interference with Article 8, ECHR

The COVID-19 pandemic has required contracting States to take measures which are often quite drastic to prevent the spread of the virus in the community at large but specifically in penal facilities. Prison is a controlled environment and as a result prisoners are vulnerable to contracting illness more readily.³⁷ Overcrowding, unsatisfactory sanitary conditions and a shortage of staff have long been the subject matter of complaints to Strasbourg.³⁸ These are topics of concern for prison authorities trying to implement COVID-19 restrictions when social distancing measures are undoubtedly difficult to enforce. States have adopted different approaches to address COVID-19 in penal facilities. There has been an increase in the use of house arrest in some States whilst others have opted for the early release of certain categories of prisoners in an attempt to reduce the spread of coronavirus.³⁹ Nonetheless, the first approach adopted by many States was a prohibition on prison visits.

This prohibition raises concerns about interferences with the right to respect for family life under Article 8 of the ECHR for children as well as their imprisoned parents. As discussed above, Article 8 is a qualified right such that a public authority's interference can be justified pursuant to Article 8§2 if the limitation is in accordance with the law, necessary in a democratic society in pursuit of a legitimate aim and proportionate to that aim. It is clear that the prohibition of prison visits (or its restriction) was in pursuit of a legitimate aim for the protection of the health of others, and the prison authorities have a duty to protect all those in the prison estate as well as their staff. Nonetheless, it is necessary for measures to be proportionate so as not to violate Article 8. The ECtHR notes that States must ensure restrictions on visiting rights are justified in

each individual case so as not to be contrary to Article 8.⁴⁰

Period of time consideration

The global COVID-19 pandemic has brought with it much uncertainty and these unprecedented circumstances have made it challenging for States to impose measures with a determined time frame. Due to the prohibition of prison visits many children have been unable to have face-to-face contact with their imprisoned parent for several months and do not know when it will be possible for 'normal' visiting to be resumed. The period of time for which contact rights are restricted is of critical importance when considering whether a State has disproportionately interfered with a child's right to family life. In *Kuimov v. Russia*⁴¹ (not an imprisonment case) the Court considered a two-month period to not be unreasonably long, noting that the applicant was able to visit his adoptive daughter as soon as the quarantine was lifted. However, the Court did find a violation of Article 8 in this case where the applicant was unable to have contact with his adoptive daughter for over a year during her time in an intensive care ward.⁴²

In the context of other restrictive measures, the Court has also taken into account assessing the possibility of whether such interferences could have been lifted sooner so as not to be contrary to Article 8.⁴³ This assessment must be borne in mind with respect to COVID-19 restrictions and the prolonged periods of time that children do not have physical contact with their parents. This is by no means an issue with a straightforward solution given that the justification of an interference with an Article 8 right should be considered on a case-by-case basis whilst being careful to avoid differential treatment amounting to discrimination. During the period of time where prison visits were banned every child with an imprisoned parent had their child-parent contact restricted.

In Recommendation CM/Rec (2018)5, discussed above, it was acknowledged that 'children with imprisoned parents are entitled

36 Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, preamble.

37 Jago Russell, 'COVID-19 in Europe's Prisons – and the Response', *EU Observer*, 18 May 2020, Available at: <https://euobserver.com/opinion/148385> accessed 1 October 2020.

38 See e.g. *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI.

39 Jago Russell (2020).

40 'COVID-19 and the Impact on Human Rights: An overview of relevant jurisprudence of the European Court of Human Rights' (2020), *The AIRE Centre*, p. 67; see *Khoroshenko v Russia* [GC], no. 41418/04, 30 June 2015.

41 *Kuimov v. Russia*, no. 32147/04, 8 January 2009.

42 'COVID-19 and the Impact on Human Rights' (2020), *The AIRE Centre*, p. 62.

43 *Ibid.*, p. 66.; see *Nada v. Switzerland* [GC], no. 10593/08, 12 September 2012.

to the same rights as all children'. In many situations not involving imprisonment, children live in separate households from one of their parents and have only limited contact with the other. Specific measures were adopted in some countries to accommodate children separated from one parent to allow for contact (particularly court-ordered contact) with the other parent to be maintained. Prisons are controlled environments, so such exceptions are more complex to introduce in the context of the rights of children to see their imprisoned parent. With the gradual re-introduction of prison visits, children with imprisoned parents will continue to face difficulties in visiting their parents safely, or as the law asserts is their right, if further lockdowns are imposed, particularly if they require public transport to get to the prison. Many individuals face the same issues with respect to restrictions on family visits and access to public transport and as a result of COVID-19 measures are unable to visit family members. Even though such restrictions may be justified, a lack of contact between a parent and child can have detrimental effects. Research has previously made clear that parent-child visits are vital in mitigating the ramifications of parental incarceration.⁴⁴

Impact on the child: Technology

To compensate for the absence of face-to-face visits, many prison authorities have increased the use of technology into their regimes to facilitate virtual visits.⁴⁵ For example, in Catalonia, Spain, the Ministry of Justice of the Generalitat distributed 230 mobile phones and 28 tablets.⁴⁶ In the United Kingdom, efforts have been made to accelerate the implementation of video conferencing facilities. However, the roll-out of this policy has been criticised for being 'too slow to relieve the frustrations', as prisons face a shortage of resources and have been burdened

44 L. Cramer, M. Goff, B. Peterson, H. Sandstorm (2017), 'Parent-Child Visiting Practices in Prisons and Jails', p. 7, available at: https://www.urban.org/sites/default/files/publication/89601/parent-child_visiting_practices_in_prisons_and_jails.pdf accessed: 28 September 2020.

45 Jago Russell (2020).

46 'Las prisiones catalanas mantendrán las videollamadas tras el estado de alarma', *europapress*, 27 May 2020, available at: <https://www.europapress.es/nacional/noticia-prisiones-catalanas-mantendran-videollamadas-estado-alarma-20200527174726.html> accessed: 23 September 2020.

with implementing video calling without prior preparation⁴⁷. The use of video call facilities is a useful tool to maintain child-parent relationships but it should be clearly reaffirmed that these calls should only be seen as a temporary solution in these exceptional circumstances and be an additional

Video visits should be seen as a temporary solution during the COVID-19 pandemic – and should supplement face-to-face visits as a form of contact between children and parents in prison.

form of communication to face-to-face visits. Communication via telephone, video call or whatever other online device should never be considered an appropriate replacement for the physical contact visits needed to maintain a meaningful child-parent relationship. Also, there are concerns regarding the extent to which a meaningful child-parent

relationship can be maintained through video calls. In some cases, communication by video call may be particularly distressing for a young child who may not yet have reached an age to understand why they have to communicate with their parent over a screen rather than in person. Strong child-parent relationships flourish better through face-to-face contact, rather than through the use of technology.⁴⁸

In addition, many families are facing financial and social adversity during the pandemic. Research has suggested that a child's response to adversity is often contingent on the strength of their family relationships,⁴⁹ thus any efforts being made by prison authorities to further enable and assist children to communicate and have visits with their imprisoned parents as they would prior to the global pandemic should be warmly welcomed.

Impact on the child: COVID-19 restrictions and the return of visits

Once national lockdowns ease, contracting States will start to reintroduce more normal prison visits into their penal regimes. For the time being, COVID-19 measures remain in place. This requires adherence to social distancing measures during prison visits as well as the use of face coverings. On one hand, these non-contact visits

47 Aggregate report on short scrutiny visits by HM Chief Inspector of Prisons (21 April – 7 July 2020), p. 16, available at accessed: <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/08/SSV-aggregate-report-web-2020.pdf> accessed: 1 October 2020.

48 See discussion in M. Wade (2020), 'Risk and Resilience in family well-being during the COVID-19 pandemic 2020', *American Psychologist* 75(5), pp. 631–643, available at: <https://psycnet.apa.org/fulltext/2020-34995-001.pdf> accessed: 1 October 2020.

49 *Ibid.*, p. 63.

may be particularly distressing for a young child who cannot understand the absence of physical affection which could result in a negative change in the child's behaviour.⁵⁰ On the other hand, social distancing measures are equally imposed on the rest of society. It should be acknowledged that this contact during prison visits is not only particularly important for the rehabilitative effects on the incarcerated parent but even more so important for the child to develop positive behaviour.⁵¹ Therefore, it is important to make an assessment of the proportionality of the restriction. To be considered disproportionate, the restricted visiting and contact measures would have to go beyond what affects the rest of the individuals in society.

As far as COVID-19 restrictions go, there are measures that require the mandatory wearing of masks as well as adherence to physical distancing in most situations throughout contracting States, as well as restrictions on visiting. Children with imprisoned parents have the rights to which all children are entitled, but this does not translate to being entitled to more rights than the public at large. One should also take into account that penal facilities' resources are finite and adapting their regimes to adhere to COVID-19 regulations comes at a cost as do all the other measures which have to be adopted to deal with the pandemic. Therefore, it has to be recognised that a lack of online devices to accommodate all inmates in both the male and female estates as well as the necessary PPE and other equipment required to ensure the safety of detainees, staff and visitors is not necessarily due to a lack of willingness but may simply be the result of a lack of funds. Governments must not be allowed to use lack of resources as an excuse for lack of initiative.

Data collection and research

The response of prison authorities to the global pandemic has brought to light potential areas for improvement in prison regimes that could reinforce the rights of children with imprisoned parents. Recommendation CM/Rec(2018)5 in paragraphs 51-54 highlights the importance of research and statistical data on children with imprisoned parents to promote better practice. In a response to a question during a Human Rights (Joint Committee) Evidence Session on 8 June 2020, Lucy Frazer QC MP, Minister of State at Ministry of Justice in the UK acknowledged that

she did not have a figure for *national* data to show how many children under the age of 18 are separated from their mother by their mother's imprisonment, but rather these are collected locally.⁵² This is an example of where public authorities and Governments could improve their practice regarding statistical data and research and this was recognised by the Prisons Minister. Such data could enhance authorities' and society's understanding of how children with imprisoned parents are affected in order to give consideration and protection to the rights of a child with an imprisoned parent.

Judicial endorsement of the principles on family visits

Mention was made earlier of the requirement under Article 8 ECHR that interferences with family rights (or the failure to implement positive obligations) must have a clear legal basis in national law. A clearer basis in international law would also be helpful. We have already discussed Council of Europe Recommendation (2018)5 which is a remarkable achievement and positive step in the right direction, and we noted above that on 1 July 2020 the Council of Europe Committee of Ministers endorsed the Recommendation in its proposed revisions of the European Prison Rules. To date the European Court of Human Rights (ECtHR) has not (as far as we are aware) made express reference to the Recommendation anointing it with judicial approval. It remains 'soft law'. The UNCRC Committee devoted a Day of Discussion to the topic of children of imprisoned parents on 30 September 2011 and explored important aspects of the issue but the Committee has not gone further and committed to drafting and adopting a General Comment on the subject. No cases on this topic that we have been able to find have been taken by children to the UNCRC Committee under the Optional Protocol which permits this to be done in relation to those countries which have agreed to accept this mechanism. Perhaps in those jurisdictions in which this is permitted, where their rights have not been respected children should be considering bringing complaints to the Committee. The cases on family visits that are brought to Strasbourg are, as we saw above, brought by the imprisoned parents who allege that *their* rights have been violated rather than

⁵² Lucy Frazer QC MP, Minister of State, Ministry of Justice response to Question 45 during the Human Rights (Joint Committee), Oral Evidence Session (Virtual Proceeding), The Government's response to COVID-19: human rights implications, HC 265, 8 June 2020.

⁵⁰ L. Cramer, M. Goff, B. Peterson, H. Sandstorm, p. 7.

⁵¹ *Ibid.*, p. 3.

being brought by the children complaining about violations of *their* rights.

There is no reason why children should not bring their own cases highlighting that it is their rights which are being infringed. Children can bring cases to Strasbourg, either themselves or represented by a parent (but see *Eberhard and M. v. Slovenia* discussed above) or represented by someone who acted for them in the national courts (see *Z and Others v. the United Kingdom* [1], no. 29392/95, ECHR 2001-V amongst many others). But in all cases the child applicants must have ‘exhausted domestic remedies’ before they can go to Strasbourg (or the UNCRC Committee), that is, they must have brought their complaint before the national courts if there is a remedy procedurally available to them. Complaints to Ombudsmen, including special children and prison Ombudsmen, unless their rulings are binding, will not suffice. The case of *HS v. the United Kingdom* concerned the refusal to transfer a prisoner to serve his (long) sentence in the country where his wife and children lived. It was brought by the children, as the first two applicants, the wife as the third with the prisoner only added as a fourth applicant. The submissions made clear that this was a case about the non-imprisoned family members’ and particularly the children’s rights. But, after prolonged litigation, the Government eventually agreed to the transfer. The case was required to settle without due consideration being given to the past violations of the children’s rights. COPE, in its previous incarnation as Eurochips, was a helpful intervenor in that case.

It will always be particularly important at the international level to ensure that the cases that are taken are sound on their facts (see e.g., *Kyricou Tsiakkourmas*, discussed above) and will not be excluded by the admissibility requirements, in particular that the children have not suffered a significant disadvantage. Building up a bank of positive national and international jurisprudence in this field, focussed on the rights of the children, would be a huge contribution to the improvement of awareness of Governments, prison administrations, social workers, NGOs and the affected children themselves and may be a necessary precursor to any proposals for codification.

This is an area where better observance at both national and international levels of the threefold concept in Article 3 of the UNCRC on the child’s best interests (alluded to above and more fully elaborated upon in General Comment No. 14,

para. 6), taken together with Article 12 UNCRC on the right to be heard and its General Comment No. 12, would help to focus the attention of both national and international courts more sharply on this as a children’s right issue rather than simply an issue of prisoners’ rights. General Comment No. 12 on the right to be heard notes in its introduction that ‘*children belonging to marginalised and disadvantaged groups face particular barriers in the realisation of this right*’. This is particularly true of dysfunctional families and those living in poverty, but even the children of wealthy criminals will often be adversely affected and marginalised by the incarceration of a parent. The voices of all children must be heard in order to make appropriate best interests determinations.

Would codification help? Many of the cases referred to in this article arose as a result of the over-rigid application of rules which were themselves over-rigid. There is always a risk that, when devising a codification schema that would gain the necessary national or international approval, it might sink to the lowest common denominator rather than aspiring to the highest standards of good practice. The ECtHR has always focussed on the ‘margin of appreciation’ principle which permits States to find the most suitable ways in their own jurisdictions to comply with their Convention obligations. What is important is that the standards of the UNCRC are clearly and explicitly incorporated into any set of rules adopted in this field. They must also, more importantly, be observed. Rules must be clear and enforceable – not just guidelines – but they must also have built-in provisions which allow for their flexible application in favour of a particular child or children. (see paras. 50, 87 and 97 of General Comment No. 14) In all cases the overarching – and expressly stated – principle must be that the best interests of the child are duly assessed and given the weight to which they are entitled. All this may, indeed will, have costs implications but many significant improvements can already be made – as the explanatory report to the Council of Europe 2018 Recommendation makes clear – by a shift in attitude from focussing on the prisoner to focussing on the child.

As one prison officer, writing anonymously recently said, ‘Nothing can replace the hugs and kisses they would get from family members and friends’.⁵³

⁵³ ‘As a prison officer, I’m afraid of what COVID restrictions are doing to inmates’, *The Guardian*, 8 October 2020.

The impact of COVID-19 worldwide on children with an incarcerated parent

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In April 2020, the International Coalition for Children with Incarcerated Parents (INCCIP) circulated a survey throughout their network to gather information around what impact the COVID-19 pandemic was having on children with incarcerated parents around the globe. Responses were received from 57 people in 14 different countries across six continents. It is not surprising that, despite being on different continents thousands of miles away from each other, there was a solidarity amongst families affected by imprisonment as they experienced similar practical and emotional difficulties with regard to contact and concern for their loved one.

With the world entering various versions of lockdown during this time, visits in prisons were not able to continue as they usually would. Visits and contact between children and their parent in prison are highly important practices at any time; children need to be able to bond with their parents and be given the chance to maintain or develop nurturing relationships. Thanks to the UN Convention on the Rights of the Child (UNCRC), these rights have been enshrined in law in many countries in Europe. However, upholding these effectively during the COVID-19 pandemic has been challenging, and the impact on children and their families has been severe.

The INCCIP survey was completed in April, just weeks after restrictions had been implemented in most countries. By then, almost all respondents (89 per cent) noted that visits had been suspended in their countries. There was no way of knowing at that time that this would result in children all over the world not having any kind of physical contact with their incarcerated parent for up to four to five months. While this decision to suspend visits will have been taken to protect both the people who live and who work in the prisons, and their families, it has been extremely challenging for the families who could no longer see each other.

Replacing the physical visits people are used to with reasonable substitutes was going to be what made the difference for children and families. According to the survey, only a quarter of responses suggested that virtual visits (via video link) have been put in place, a practice that seemed to be most common in Australia. Virtual visits had already been utilised in some countries prior to

the crisis, but others were now in a position where this option had to be developed. The practice of virtual visits did seem to become more ubiquitous in the ensuing months but they were not available in many countries at the time of the survey. Other alternatives to visits introduced included making greater use of Email-a-Prisoner schemes; providing phone credit; increasing phone time allowed; and providing phones for legal and compassionate calls. However, as the pandemic persisted, these alternatives did not satisfy children's need for direct parental contact, nor were they suitable alternatives for very young children.

In the subsequent months, post-survey, other countries did in fact implement virtual visits. Their introduction was not without challenges, and it would be inaccurate to assume that all children have had access to them. Certain challenges regarding virtual visits initially highlighted in the survey by a respondent from Canada were subsequently observed in other countries. There were tight restrictions around utilising video visits, which prevented many families from accessing them. This included families not having specific and up-to-date technology that was required to access the visits successfully. A recurring theme throughout the pandemic has been the ever-growing divide between the wealthy and the poor. It is now clear that education for children from deprived areas has experienced a greater interruption than for children from affluent ones. Families often did not have the financial resources to purchase technological devices in order to access virtual visits, nor did they all possess the specialised knowledge or confidence to operate them. This has been evident in many countries where non-profit organisations and governments have had to provide devices and support around using them for many families. This situation proved particularly challenging, considering most support services were now operating remotely and therefore were only in a position to support families by telephone to access virtual visits. In Scotland, the prison service provided a demonstration video to assist families with registering for virtual visits in an attempt to alleviate some of their difficulties, along with a family helpline.

A respondent from Canada also noted that, in order for children to access video visits, the presence of their other parent was required. This condition was being upheld despite relationship breakdowns, or incidences of family violence which put parents in a position of choosing between their own well-being and that of their child. Although logistics can be tricky when taking into account protection policies, considering a not uncommon set of circumstances and being flexible in such circumstances would allow children to access the visits they are entitled to.

The survey collected responses around the impact of COVID-19 on children and families where a parent was incarcerated, and the support available to them. They were asked what specific challenges this demographic faced – a multi-faceted issue with most of those surveyed (61 per cent) selecting two or more areas where families were being impacted.

Areas identified by most respondents included increased worry about the person in prison and increased stress on the family. Not only were children and families unable to see the person in prison as a result of pandemic procedures and staff absences in many prisons, but the people in prison were not always able to make phone calls regularly, which caused additional worry for their families. More than 75 per cent of those surveyed identified that a particular challenge facing families in their countries was an increased difficulty staying in contact with the person in prison, highlighting this as a problem worldwide for families affected by imprisonment. Although prisons attempted to counteract the lack of visits with the introduction of free phone calls, the amount of time people in prison were spending out of their cells was hugely reduced. This resulted in them having a small window of time where they had to complete personal hygiene tasks and wait in long queues to make phone calls. They also faced the very real concern of cross-contamination through the shared telephone.

The fear of the unknown and the fact of feeling powerless to take any action are extremely distressing and debilitating for children and families. One respondent specifically mentioned children being worried that if the virus entered the prisons, their parent would die. With sensationalist reporting from the media fuelling this fear, families were reliant on support

agencies and prison services being candid and releasing up-to-date and accurate information to alleviate their anxieties.

Along with the emotional challenges families faced, practical concerns were evident too. Financial and employment concerns were selected in almost two-thirds of the completed surveys, and there has been a high demand on government and non-profit sectors to provide support to access essentials for many families. This was coupled with the fact that families had lost supports that were previously in place, for example counselling services and wider social support, exacerbating an already extreme set of circumstances. On a positive note, one person surveyed mentioned that video visits in Australia seemed to be improving contact for families. This is because they were not having to make the journey to the prison and resulted in them speaking with their family member more regularly.

With regard to support available for children and families at this time, many people who completed the survey felt that this was not in abundance, particularly since most organisations were under instruction to cease all face-to-face services that were not deemed essential. That being said, the shift towards digital support (which has now become commonplace) was evident from some responses, be that for virtual visits with people in prison, video support for individuals and groups, or online learning for children to continue with their education. As acknowledged previously, this came with the challenge of reaching families who struggled with access to technology.

Much of the support mentioned seemed to be provided by the charitable/not-for-profit sector. However, some responses mentioned government initiatives that had been implemented to ease the pressure on families and their children. This came in the form of covering wages, welfare increases, or delivering food provisions. Urgent 24-hour childcare support was available in South Korea where necessary, while energy companies in Scotland were supporting vulnerable families by providing credit for pay-as-you-go gas and electricity metres if people were self-isolating.

In Croatia, despite having the extra challenge of a second crisis – an earthquake – some good support seemed to be in place. Helplines provided



psychological support, and authorities were providing information and answers to their citizens via websites. The Ombudsman for Children had requested child-friendly information around COVID-19 from the Department of Justice along with procedural information around many relevant circumstances children and families may find themselves in.

Very little support specific to families affected by imprisonment seemed to exist, apart from the mention of video visits and free phone calls. A small number of respondents mentioned the prison service implementing a national helpline and providing updates through their website or social media. An organisation in Uganda whose focus is working with children with imprisoned parents continued to provide support for them with food, essentials and education, as the children either had no home, or would be at risk of abuse were they to return there. These challenging times have demanded a change in normal practice and delivery of services. The survey investigated what innovations and good practice respondents had recognised in their countries/areas. Responses mainly focused on digital resources, citing support groups and communities, delivering activities, and reading stories virtually, to name a few. Technology has been embraced during this time, although the challenges around online security were acknowledged in the survey, particularly when being utilised for confidential services.

The provision of devices through organisations had already begun when the survey was circulated, with one organisation mentioning sourcing devices for children and attempting to fund broadband packages for disadvantaged families. The New Zealand government had already committed to providing technology to all school children who did not have access to it and was looking to provide an Internet connection for them. This practice became commonplace and a high priority for many organisations/governments as the months have gone on.

Non-digital innovations also took place across the globe, including supporting children to write songs and plays about having a parent in prison, encouraging them to document their experiences and teaching them about other countries and how they are responding to the current situation. Unfortunately, a large proportion also responded that there were no supports, or nothing that they were aware of, being put in place in their areas, although this may have improved as time went on.

It is fair to say that organisations worldwide have shown a high level of resilience by their ability to adapt to the unusual circumstances we have found ourselves in. Many good practice examples were provided through the survey, with some common examples being staying in regular contact (with organisations and families); keeping families updated of any changes; and raising awareness around facts whilst disproving misinformation. The correcting of misinformation has become particularly valuable during the crisis. This is a direct result of the global culture of social media that has developed, where misinformation is available in abundance. By providing children with accurate information, and the skills to recognise something false, we help them feel less anxiety about their parent in prison.

Finally, the survey questioned whether we can learn from this, with the general consensus being yes, we absolutely can. Some people reserved judgement around what that may be, whereas others felt that improved communication between family members and those in prison, particularly via video, had been extremely important. Respondents also noted that some of the measures implemented are things that had been requested for quite some time, with some discontent that it has taken a crisis for policy and practice to change.

It has become evident over this time that technology is an essential resource. We have now witnessed the impact that a lack of technology has on disadvantaged families. This can include poorer outlooks that persevere into adulthood and successive generations. There is a clear need for greater awareness and support around this. Other areas identified as having potential for improvement are inter-organisational communication; the level of preparedness with regard to health and procedures within prisons; and having low-cost or free phone calls for people in prison at all times to aid greater communication with their families. It has been said over and over again throughout this pandemic that we must continue the good practice that has been taking place during this time. Will children continue to have access to virtual visits, to supplement and not replace the physical ones? Can we ensure that children are consulted around how they would like to visit with their parents and access services, now that there are other options? We must continue to have these conversations while the world adapts to post-lockdown living.

Report on prison and video visits in the United Kingdom

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Following initial COVID-19 related prison lockdowns, some prisons in the United Kingdom re-opened for social visits in the summer and early autumn of 2020, but there continued to be restrictions, and whilst the pandemic continued, prisons did not return to pre-pandemic visiting regimes. Some prisons did not allow children to visit whilst others imposed an age limit, or maximum number of children who could attend. No physical contact was allowed between children and parents and in at least one instance when a one-year-old touched her father, both mother and child were told that they were banned from all further visits.¹



Many caregivers and parents took the decision not to bring children to visit as they believed that for a child to see their parent after several months of absence, and yet not to be allowed to touch them, would be an added stress for the child. It is relevant to note that the Scottish prisons allowed physical contact between children under 11 and their parents.² There have been two further periods of national lockdown in England (5 November to 2 December 2020 and 5 January 2021 to present writing), in addition to several more localised lockdowns during which all prison visits were prohibited.

Across the world, prisons have sought to provide prisoners with access to video calls in order to maintain contact with family during the pandemic. Such provisions have been slow to come in parts of the UK; it wasn't until 28 January 2021 that the Ministry of Justice announced that all prisons in England and Wales have the ability to provide video calls. According to Ministry of Justice statistics, 90,000 calls have been made since March 2020, which, with a prison population of approximately 78,700 in December 2020, equates to just over one call per person across a 10-month period.³ By contrast, in Northern Ireland, fortnightly video calls were made available to prisoners within weeks of the first lockdown being announced.⁴

Although in the surveys and interviews conducted during the lockdown many caregivers thought that video calls would be very helpful for maintaining contact, making video calls to parents in prison has turned out to have some difficulties embedded in the system.⁵

Firstly, in order to make video calls, families must have the appropriate digital equipment and the ability to use it. Many children with a parent in prison live in low-income households without computers or tablets, WIFI or phones with adequate data, and without the financial means to purchase these devices. Charities such as Children Heard and Seen stepped in to try to provide families with laptops, but for many families it is likely that digital access remains a barrier to contact. There was

¹ Shared with permission of the family involved.

² Scottish Prison Service, COVID-19 Resumption of prison visits, 'As within the community, children aged 0-11 (under 12) do not have to physically distance from adults' <https://scottishprisoneradvocacy.com/COVID-19-updates>, accessed 6 August 2020.

³ Ministry of Justice, 18 January 2021, 'Secure video calls help all prisoners maintain essential family ties during pandemic', <https://www.gov.uk/government/news/secure-video-calls-help-all-prisoners-maintain-essential-family-ties-duringpandemic>.

⁴ Northern Ireland Department of Justice, 10 April 2020, 'Long welcomes launch of virtual visits for prisoners,' <https://www.justice-ni.gov.uk/news/long-welcomes-launch-virtual-visits-prisoners>.

⁵ Prison Reform Trust (2020), 'How prisons are responding to COVID-19, Briefing #1 Families and Communications,' http://www.prisonreformtrust.org.uk/Portals/0/Documents/CAPPTIVE_families_webfinal.pdf.

further financial cost to families as video call applicants are required to have government-issued photo ID.

Secondly, the video calling software was not fit for purpose. The technology used is designed to work when all those taking part in the call sit still and do not move for the duration of the call. With young children this is impossible to achieve. The Prisons Minister is quoted as saying that the ‘video calls had allowed prisoners to see their toddlers take their first steps’⁶ but users reported calls stopping if any movement was detected.⁷

Thirdly, there has been very limited availability of video calls to people in prison. has already been noted, not all prisons had video calling facilities until January 2021, but even in the prisons which had the facility available in 2020, most prisoners could make one call once a month for a total duration of 30 minutes. Reports from families suggested that often the movement to and from the call room was taken out of the 30 minutes, and very often there were technical difficulties which reduced the ability of users to hear each other. In addition, due to limits on how many people could be on a call, larger families had to choose which children would be allowed to see their parent. The children not ‘chosen’ had to wait another four weeks to see their mother or father.

* Dr. Minson’s report entitled ‘The impact of COVID-19 prison lockdowns on children with a parent in prison’, published March 2021. The full report can be accessed online at https://www.law.ox.ac.uk/sites/files/oxlaw/the_impact_of_COVID-19_prison_lockdowns_on_children_with_a_parent_in_prison.pdf.

⁶ See footnote above.

⁷ For further information from families who have experienced this, see the ‘Life in Lockdown’ report by Children Heard and Seen who report that only 29 per cent of their respondents had experienced a video call and 100 per cent of those respondents had experienced difficulties with the calls. <https://www.childrenheardandseen.co.uk/wp-content/uploads/2020/10/Life-In-Lockdown-Report-2020.pdf>



Visiting Imprisoned Parents: Reflecting on Then, Learning from Now, Planning for Later

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Looking back

Earliest attention paid to children and families with incarcerated loved ones worldwide began in the 1970s. In the United States a few programmes that primarily served incarcerated parents in prisons and jails began to include the children through visiting programmes. More visiting and parenting programmes continued to emerge throughout the next two decades. The seeds of child-friendly visiting were planted then, when correctional facilities collaborated with community organisations to design and create spaces within designated visiting areas that included toys, books, art supplies and sometimes snacks. Incarcerated parents were often required to take part in parenting programmes in order to be eligible for these enhanced visits. This provided them with pre- and post-visit supports and, in some cases, resources that could be shared with the child(ren)'s caregiver. These pioneer programmes were joined by more and more initiatives during the 1990s as pilot sites funded by The Federal Resource Center on Children of Prisoners.¹

The policy shifts of the early 2000s launched an often-unnamed campaign against connecting children with their incarcerated parents and focused instead on children in the community. Funding for mentorship programmes was based on a rationale that the children's negative reactions to parental incarceration were linked to the parents' crime rather than the child's experiences of loss and trauma. Federal grants, then, did not allow for the use of funds for assisting caregivers or supporting visiting or communication with incarcerated parents. Fuelled by the myth that 'the child is better off without the parent', visiting programmes in many jails and prisons became more restrictive.

The last decade has seen another shift in perspectives with youth and adults with lived experience, leading the charge to more accurately study the issues, define the challenges and design solutions. New research validates and confirms the importance of the children's love and positive

regard for their incarcerated parents,² the parents' need to maintain parental identity as an element of recidivism prevention³ and caregiver's concerns for responding to the children in their care in ways that will support their overall well-being.⁴

Within this current context, the U.S. federal Bureau of Justice Assistance (BJA) and the National Institute of Corrections (NIC), in collaboration with the Urban Institute and Community Works West, developed *Model practices for parents in prisons and jails: Reducing barriers to family connections* to facilitate parent-child communication and contact during parental incarceration. The recommendations are focused on removing barriers that inhibit children from cultivating or maintaining relationships with their incarcerated parents during and immediately after incarceration.⁵

The present as a reality check

The COVID-19 pandemic hit correctional facilities in the U.S. as this National Institute of Corrections Project was in its final stages. A variety of programmes, policies and practices included in the *Model practices for parents in prisons and jails* document were piloted in five facilities across the U.S. Although the case studies from the pilot sites could be available by the end of 2021, the current state of visiting and communications between incarcerated parents and their children and families will clearly interrupt the implementation of any recommendations or guidelines from these studies.⁶ At this writing in December 2020, the U.S. is facing a surge of COVID-19 cases surpassing any other country. The impact on the incarcerated and their families has been devastating, with estimates

2 Dunlea, J.P., Wolle, R. & Heiphetz, L. (2020), 'Enduring positivity: Children of incarcerated parents report more positive than negative emotions when thinking about close others,' *Journal of Cognition & Development* 21(4), 494-512.

3 Arditti, J. A. (2012), *Parental incarceration and the family: Psychological and social effects of imprisonment on children, parents, and caregivers*, New York, NY: NYU Press.

4 Adalist-Estrin, A. (in press), *Maryland caregiver's guide: A handbook for caregivers of children impacted by incarceration*, Maryland Governor's Office of Crime Prevention, Youth and Victim Services.

5 Peterson, B. E., Fontaine, J., Cramer, L., Reisman, A., Cuthrell, H., Goff, M., ... & Community Works/West (2019), *Model practices for parents in prisons and jails: Reducing barriers to family connections*, Urban Institute.

6 Visit the National Institute of Corrections at <https://nicic.gov/children-of-incarcerated-parents> for updates.

1 Bush-Baskette, S., & Patino, V. (2004), *The National Council on Crime and Delinquency's evaluation of the project development of national institute of correction's/child welfare league of America's planning and intervention sites funded to address needs of children of incarcerated parents*, Oakland CA, National Council on Crime and Delinquency.

that positive cases in prisons and jails number five to six times those of the general public. The continuously changing realities related to the coronavirus in prisons and jails combine with the impact of the incarceration, already a source of trauma and toxic stress for children and families.

*This pandemic has wreaked havoc on our country, and it has hit children of incarcerated parents especially hard. Even one night away from a parent can be destabilizing, and the trauma of separation is compounded as prisons and jails around the nation have suspended in-person visits. Children want and need meaningful relationships with their parents. When those relationships are disrupted, kids are more likely to show signs of depression, anxiety, and aggression.*⁷

As the pandemic surged in the spring of 2020, correctional facilities were faced with decisions affecting those in custody as well as their families. By mid-March, Departments of Corrections (DOCs) in all 50 states had suspended in-person visits to state prisons. Guidance from the Centers for Disease Control and Prevention published on 30 March and updated regularly acknowledges the importance of visiting on the mental health of incarcerated people and recommends maintaining contact between incarcerated people and their support systems through promotion of ‘non-contact visits’ and by increasing telephone privileges and providing access to virtual (or video) visiting options under this recommendation. They also recommended ‘reducing or temporarily eliminating’ the cost of telephone calls to address the financial burden of family contact in most custody facilities:

*Suspending visitation should only be done in the interest of incarcerated/detained persons’ physical health and the health of the general public. Visitation is important to maintain mental health. If visitation is suspended, facilities should explore alternative ways for incarcerated/detained persons to communicate with their families, friends and other visitors in a way that is not financially burdensome for them.*⁸

⁷ ‘Honoring children of incarcerated parents,’ 6 October 2020, *Fwd.us*, <https://www.fwd.us/news/see-us-support-us/>.

⁸ Centers for Disease Control and Prevention (2020), *Interim guidance on management of coronavirus disease 2019 (COVID-19) in correctional and detention facilities*, www.cdc.gov/coronavirus/2019-ncov/downloads/managing-COVID19-in-correctional-detention.pdf.

In the early fall of 2020, with varying rates of infection in different communities and advocates for in-person visits urging for visits to resume in keeping with public health guidelines, some DOCs began to allow visiting to resume. As of 6 October 2020, twelve states have resumed visits with restrictions, such as holding visits outside or across non-contact plexiglass barriers.⁹ It is unclear as to the number of facilities that have maintained free or reduced rate phone calls and or video or other electronic visiting.

Across the U.S., panels of children and caregivers have been convened to discuss these issues. They have highlighted the importance of in-person visits as being in most children’s best interests. But youth and families also emphasised the increased anxiety of separation during COVID-19. The stress of not knowing if their loved ones are safe inside prison combined with reported technical difficulties with phone and video calls to compound the emotional impact of parental incarceration. There have been no coordinated or widespread efforts to assess the needs of families related to contact versus non-contact visits or video call infrastructure or the efficacy of offered free calls. Outreach to families, surveying their needs and including them in defining the issues and designing solutions is necessary as we move forward.

The road ahead

An important source of the trauma and anxiety children experience when their parent is incarcerated is not being able to see, hear, or touch their parent.¹⁰ This need is magnified by COVID-19, as families cope with prison lockdowns, illnesses and deaths of family and community members and other losses such as cancelled graduations and eliminated holiday celebrations. Correctional facilities can reduce some of the negative impacts of the separation loss and parental incarceration trauma by implementing and supporting all available communication and connections policies, as well as designing child- and family-friendly visiting practices that can be implemented as soon as it is safe to do so.

Step 1: Assessing

In the most comprehensive guidelines to date on parent-child visits in general, *Parent-child*

⁹ The Marshall Project (2020), ‘How prisons in each state are restricting visits due to coronavirus,’ <https://www.themarshallproject.org/2020/03/17/tracking-prisons-response-to-coronavirus>.

¹⁰ San Francisco Children of Incarcerated Parents Partnership (2003), *The children of incarcerated parents’ bill of rights*.

visiting practices in prisons and jails: A synthesis of research and practice notes:

When considering policies about visits and other forms of contact between incarcerated individuals and their loved ones, prison and jail administrators should include those who are directly impacted in the decision-making process as stakeholders in the process. Our experts recommended that correctional staff members work with parents and children to provide appropriate opportunities for visits while remaining attentive to the needs of each family.¹¹

But assessment of the needs of children, families or incarcerated parents themselves as related to visits is rare. While the literature on parent-child contact and visits has grown over the last decade, few studies have included in-depth surveys of the preferences and perspectives of the visitors or those visited. Two notable exceptions, Siegel & Napolitano¹² and Kramer & Burton,¹³ can guide jurisdictions and facilities as they seek to collect data on children and families and use that information to improve visiting practices. As decisions are made related to reopening or restructuring prison and jail visiting it is imperative that families of the incarcerated be included as stakeholders in the process.

Step 2: Defining and interpreting

Family perspectives on visiting prisons and jails will most likely vary based on many factors, including relationships with the incarcerated parent, logistics of transportation and costs, child preferences and prison visiting environments. The latter, however, is most often the focus of advocacy and reforms with the ubiquitous call for child-friendly visiting spaces. What does it mean, though, for visits to be ‘child-friendly’? There is no one definition, but according to the authors of *Model practices for parents in prisons and jails: Reducing barriers to family connections*,

Visits can be most beneficial for children when they can have contact with their parent, see that they are safe, and spend time together engaged in regular family activities (e.g., playing games, conversing, sharing a meal) [...] Play activities are an important component of child development and offer ideal opportunities for parents to interact and engage with their children.

In addition, National Resource Center on Children and Families of the Incarcerated (NRCCFI) focus groups with families have also indicated that ‘child-friendly’ should include protocols for search procedures that are the least invasive and frightening for children, and training for correctional staff in strategies for engaging with children and families. These issues are also addressed in the *Model practices for parents in prisons and jails* document, as well as ideas for making visitor lobbies or waiting rooms child-friendly and for providing support for caregivers.

Step 3: Creating spaces

Child-friendly spaces and practices were increasing in number prior to the COVID-19 pandemic. Pioneers in this work such as PB&J Family Services Programs for Families Impacted by Incarceration¹⁴ (New Mexico), The Osborne Association FamilyWorks¹⁵ and Hour Children/Bedford Hills Children’s Center¹⁶ (New York) have been joined by newer but still veteran programmes such as Community Works/San Francisco County Jail One Family and Parenting from Prison (California)¹⁷ and Allegheny County Jail Collaborative (Pennsylvania).¹⁸

More recently, state-run visiting programmes in Connecticut, Virginia and Oregon have designed or expanded on child-friendly visiting models and will be looking to full implementation post-COVID-19. These and other child-friendly models include providing play materials and less restrictive environments for child-parent visits. Some have enhanced barrier visits to include puppets and writing materials for parent and child on each side of the barrier; others have infused

11 Cramer, L., Goff, M., Peterson, B., & Sandstrom, H. (2017), *Parent-child visiting practices in prisons and jails: A synthesis of research and practice*, Urban Institute.

12 Siegel, J.A. & Napolitano, L. (in press), ‘Adult and child visiting at urban jails: Perspectives on visiting experiences and policies among visitors and people in jail,’ *The Prison Journal*.

13 Kramer, K. & Burton, C.F. (2018), ‘What little we know: A system-wide descriptive study on children of incarcerated parents in two U.S. jurisdictions,’ in L. Gordon (Ed.), *Contemporary research and analysis on the children of prisoners: Invisible children*, Newcastle upon Tyne, UK: Cambridge Scholars Press.

14 <http://pbjfamilyservices.org/programs/>

15 <http://www.osborneny.org/programs-down/reconnecting-families/familyworks/>

16 <https://hourchildren.org/how-we-help/prison-based-family-services-programs/>

17 <http://communityworkswest.org/program/one-family/>

18 <http://www.alleghenycounty.us/Human-Services/About/History/Jail-Collaborative.aspx>

important guiding principles¹⁹ into the design and planning, such as including the incarcerated parents in every step of the planning, minimising trauma and toxic stress by using stuffed dogs, for example, to prepare children for canine searches and using waiting areas and websites to help children and caregivers to prepare for the visits.

Step 4: Supporting relationships and resilience

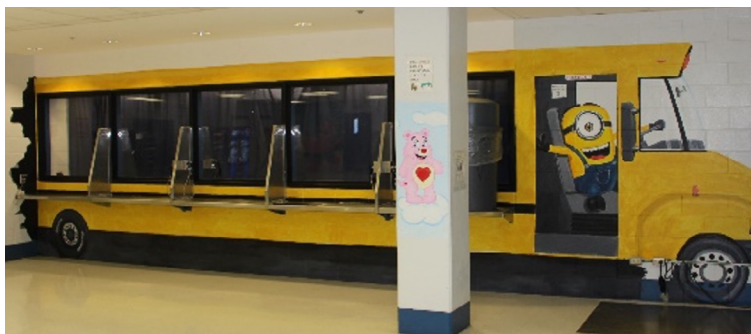
Supporting relationships between children and their imprisoned parents must go beyond simply providing child-friendly spaces. Even prior to the pandemic, families struggled with visiting. The cost of transportation to facilities, the cost of lodging when the distance is too great for a day trip and the difficulties that children and their parents have with what to say or how to feel about it all leads many to avoid visiting altogether. Correctional programmes and community organisations in the U.S. and in Europe can provide supports and resources before, during and after visits that can minimise this distress and support families.

There are initiatives that can serve as models now as we wade through the uncertainties of COVID-19 and on into the future. Here are some things to keep in mind:

- *Knowledge is power.* Websites for corrections departments and individual facilities can provide information about COVID-19 and fluctuating rules for visiting. In the long term, many states are creating and posting booklets for families that include helpful information about what to expect from children and how to talk to them about incarceration and visits. The most recent of these will be available in early 2021 from Maryland and Louisiana, which will also post a video that prepares children for visits. These efforts increase the capacity of families to support children and to make informed decisions about visiting.

19 Adalist-Estrin, A. (2018), 'Responding to the needs of children and families of the incarcerated: Twelve guiding principles,' in L. Gordon (Ed.), *Contemporary research and analysis on the children of prisoners: Invisible children*, Newcastle upon Tyne, UK: Cambridge Scholars Press.

- *The best support is comprehensive.* Programmes like the Greater Hudson Promise Neighborhood in Hudson, New York build on existing community services and bridge them to correctional facilities' programmes for parents. The Greater Hudson Children of Incarcerated Parents Initiative (GHCPI) provides support for caregivers and children before and after visits. Information about helping children cope, assistance with preparation and logistics in getting to the prison and peer support for children after visits are components of their Enhanced Visiting Program. During visits, incarcerated parents can play with their children, read together and help children with homework. Support staff is available as needed. This programme is scaffolded by the relationship between the community organisation and the correctional administration, so even with visits suspended, GHCPI can facilitate connections between the incarcerated parents and their children.



Incarcerated parents designed and painted this bus mural as a frame for plexiglass visiting barriers (Virginia Department of Corrections).

- *Video visiting should enhance – not replace – contact visits.* Video visits or calls can be important supplements to in-person visiting. When children and families can

visit remotely from their homes, they may be more relaxed and will have the opportunity to access 'stuff' to show parents like new shoes or artwork they made. But video visits should replace in-person visiting ONLY when contact visits are temporarily suspended, such as during the COVID-19 pandemic.

Research

There is much we need to learn. While barrier visits may cause distress, especially for young children,²⁰ there are no studies that compare distress levels of various visit modalities or that measure the trauma of the separation against the trauma of prison visits of any kind. Nor are there studies that look at children's reactions after prison visits compared to reactions after

20 Poehlmann-Tynan, J., & Arditti, J. A. (2017), 'Developmental and family perspectives on incarcerated parents,' in C. Wildeman, A. R. Haskins, & J. Poehlmann-Tynan (Eds.), *When parents are incarcerated: Interdisciplinary research and interventions to support children*, Washington, DC: American Psychological Association.

visits with military parents or parents living at a distance for other reasons.

When evaluating prison visits for children, there is a crucial need to ‘unpack’ children’s experiences, as their responses may have little to do with the prison visit itself but with other factors. Children’s negative reactions after visits can surely be caused by traumatic prison environments,²¹ but they are also connected to repeating the separation, to caregiver stress and reactions and to the absence of support after visits. Research paradigms and questions must be assessed for implicit bias and assumptions about trauma and about contact.

Ethics

While video may be the way of the world now, transitioning to video contact exclusively for correctional facilities raises moral and ethical concerns regarding questionable business contracts between communication providers and detention systems that can include unjust and excessive charges related to telephone, video conferencing and email services.²² Concerns must also be addressed related to the location of video sites, infrastructure and access, quality and cost of this mode of visiting for families.²³

Inclusivity

Truly supporting child-parent relationships will require that we heed the cry from families across the U.S. and abroad. They need contact with their loved ones: contact now, through better communication to combat increased anxiety and mental health concerns of children and families, and contact later, post-COVID-19, through

resumed in-person visits. Administrators must recognise that the benefits associated with visiting are essential. Thoughtful and safe resumption of in-person visiting is critical, as are ongoing efforts to increase and sustain contact through other forms of communication between incarcerated people and their loved ones.²⁴

Codification

Until now, there have been no efforts to codify visiting for children and their incarcerated parents anywhere in the U.S. Legislative initiatives may be necessary in the aftermath of COVID-19. The New York-based organisation We Got Us Now has launched the first advocacy petition on the codification of visits based on a bill pending in the New York State Senate. It calls for the codification of in-person visits for incarcerated persons but does not include specifics about children or child-friendly visiting practices.

Conclusion

As the world recovers from the COVID-19 pandemic, the implications for children with imprisoned parents related to communication and visiting are slowly being responded to worldwide. We must frame ‘the best interests of the child’ in the context of the substantive research on trauma and children²⁵ and also on the importance of parents as buffers²⁶. Now is the time to apply this knowledge about children with incarcerated parents to policy and practice and, as we emerge from the pandemic, to create and recreate child-friendly and family-supportive visiting practices for imprisoned parents and their children and families worldwide.

21 Arditti, J. A., & Salva, J. (2013), ‘Parental incarceration and child trauma symptoms in single caregiver homes,’ *Journal of Child and Family Studies* 24(3), 551-561.

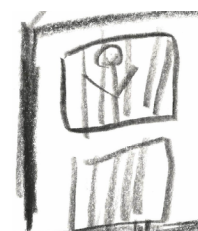
22 Dallaire, D., Shlafer, R. Goshin, L., Hollihan, A., Poehlmann-Tynan, J. Eddy, J.M. & Adalist-Estrin, A. (in press), ‘COVID-19 and prison policies related to communication with family members,’ *Psychology, Public Policy, and Law*.

23 Hollihan, A. & Portlock, M. (2014), ‘Video visiting in corrections: Benefits, limitations, and implementation considerations,’ National Institute of Corrections.

24 Dallaire, D. et al. (in press).

25 De Bellis M.D., Zisk A. (2014), ‘The biological effects of childhood trauma,’ *Child and Adolescent Psychiatric Clinics of North America* 23(2), 185-222.

26 ‘A guide to toxic stress,’ Center on the Developing Child, Harvard University, <https://developingchild.harvard.edu/guide/a-guide-to-toxic-stress/>.



The response of Catalonian prisons to COVID-19 with a focus on the child-parent relationship

The spread of COVID-19 in Europe and other parts of the world continues to have a strong impact on all aspects of the penal system. The Catalonian Secretariat of Criminal Sanctions, Rehabilitation and Victim Support, responsible for prison administration, has had to tackle the effects of SARS2-COVID-19 in Catalonia's prisons.

Since the beginning of the global pandemic, Catalonia's Crisis Committee, under the Secretariat of Criminal Sanctions, has followed the recommendations of Catalonian health authorities to implement preventative measures for prison staff and prisoners at all times. Three main types of measures were introduced:

1. Measures to prevent contact between those in prison and the outside world, as this contact is one of the main sources of spread inside prisons;
2. Internal separation measures within prisons;
3. Epidemiological surveillance and control measures to avoid new outbreaks and for the treatment of sick inmates.

In total, more than 100 high-impact measures were implemented during lockdown, which has stretched the prison service's capacity for adaptation and resistance to its limits. A full list of State reactions from the first national lockdown in March/April 2020 are available on the EuroPris website¹ and the Catalonian Prison Service website.² A few measures to be highlighted include:

- *Assessment of all cases individually so as to determine eligibility for early release.* Careful attention has been paid to prisoners with special needs, the elderly, women, cases where the prisoner required family support, and significantly, when children were involved. Social workers ensured that prisoners' residences met conditions whereby stipulated health rules would be followed. As a result, more than 1,400 prisoners spent the spring lockdown in their homes. It required a huge effort for everyone involved to reach this objective, particularly that of the treatment teams who reviewed each case individually, and who have been following up on these cases in the months after the lockdown.

¹ <https://www.europris.org/COVID-19-prevention-measures-in-european-prisons/>

² www.genocat.cat/justicia

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- *Close collaboration with interagency community groups* to look for housing for inmates without family support and to follow up on those placements.
- *Reviewing current regulations* in production and professional workshops in prisons.
- *Pausing work* with partners and volunteers inside prisons.
- *Implementing new functions* and schedules for workers.

Since June 2020, the main challenges have been in ensuring that the prison operates as normal and as humanely as possible, in order to advance towards a new normality in closed and open prisons. This work has included rekindling the intervention groups and workshops' production, allowing inmates leave permits and collaborating again with partners inside prison. The Crisis Committee under the Secretariat of Criminal Sanctions developed *Guidelines for this new normality* establishing how rules should be followed. The main goals of the Guidelines have been:

- to restore a maximum of normalcy to the prisoners' lifestyle inside the prison;
- to prevent the spread of COVID-19 or the emergence of new outbreaks;
- to ensure the protection of prison professionals and personnel;
- to adapt the prison organisation to COVID-safe measures;
- to adapt the regulations and organisation of professionals;
- to ensure the ability to quickly identify, track and isolate cases and contacts;
- to provide the resources and procedures necessary to face future disease outbreak scenarios; and,
- to assess the results of the management of the pandemic crisis and evaluate how operations are currently being carried out.

One of the most basic principles throughout the decision-making process has been to maintain a balance between adopting measures to prevent contagion while respecting the legally established rights for the entire prison population.

What is springing up in response to COVID-19 and the suspension of visits?

First and foremost, in response to suspended visits last March, the Catalonia Prison Service

Social Division looked for a quick solution that would allow prisoners to remain in touch with their loved ones as much as possible. Although the suspension of visits was a necessary measure, it was often difficult for prisoners and their families, especially for children.

To achieve this goal, treatment teams comprised of social workers, educators, lawyers and psychologists, along with cultural mediators and artistic facilitators, worked together with the Catalonia Prison Service Communication Department to support the Directorate of Brians 2 Prison. They carried out the following functions:

- Informing each family about suspended visits and the new procedures through a new system of weekly video calls, which allowed inmates to remain in touch as they did before the pandemic. Social workers provided support to handle any issues such as rescheduling video calls and liaising with prisoners with regard to their concerns about their family following the calls.
- Allowing for additional phone calls and contacts.
- Providing information about new regulations for sending money and for receiving packages/parcels.
- Proactively calling families so as to give support and information, especially when children were concerned; this was carried out by social workers. They operated a Frequently Asked Questions session for families, using a direct phone line to give support and information and to provide assessments on economic help for families in vulnerable situations.

It was a pleasure to see how these measures and new lines of family communication allowed us to keep track of reactions and relationships between prisoners and their families during lockdown, as well as with respect to calls dealing with unexpected situations.

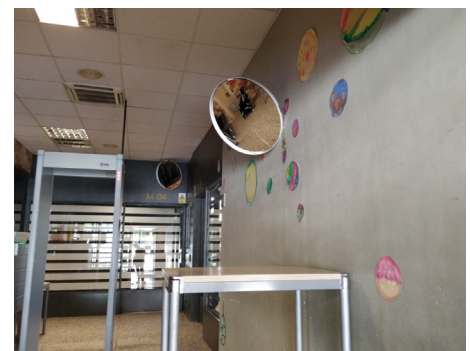
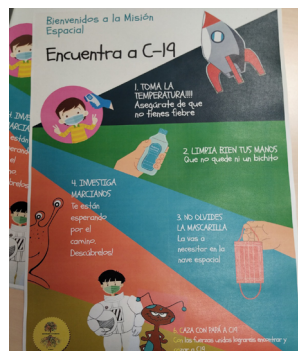
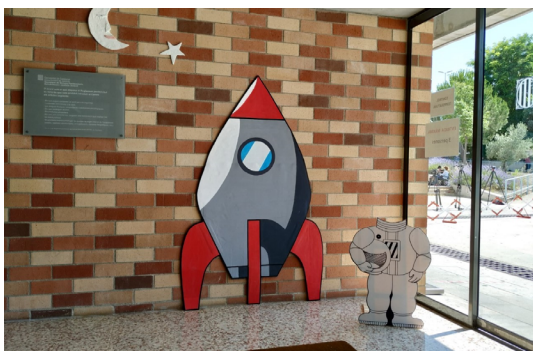
What happened with family visits?

The state of family visits in Catalonia's prisons has been in flux since the onset of the COVID-19 pandemic. In normal times, prisoners can have five kinds of family communication: visits with a glass partition, family visits, visits for families with children under age 12, conjugal visits and special visits. All of them, except the visits with a glass partition, take place in a room for each family.

Catalonia reopened all types of family visits in June 2020. All visitors had to follow the usual visiting rules as well as those concerning COVID-19's health measures: temperature-taking, hand washing, use of masks and social distancing. Families were provided with gloves and masks, and protective measures were introduced.

For certain types of visits, Brians 2 Prison could only accommodate 60 per cent of its usual capacity. We allowed some physical contact (with elbows), but this was restricted to the individual visiting rooms, especially visits for families with children under 12, as many children missed physical contact with their fathers more than ever. It can be a controversial point, but it made us reflect on the need for physical contact and what happens to us as individuals when this loving physical touch is not received. It must be stated that no case of coronavirus has been reported as a result of family visits.

The Parental Responsibility and Education Participation Group at Brians 2 Prison provided training to parents on how to describe their experience of COVID-19 to their children and submitted a protocol for cleaning educational materials and selected toys. A special programme in the hall of the prison helped to make it easier and more fun-filled for children to follow rules and to avoid visits ending early, as can be seen in the images below:



Two key aspects of the Parental Responsibility and Education Participation Group are its composition – it involves prison workers from officers, teachers, educators, teachers and social workers to artistic facilitators and prisoners – and the group work participation method. The main goal is to promote the parenting role through participative experiences.

In July, family visits were once again prohibited in Catalonia due to local outbreaks of COVID-19, which made screened visits the only authorised alternative. It was a preventive measure, but caution and following the recommendations of health authorities are of the utmost importance. This has taught us that we have to be ready to take a step forward and a step back when necessary for public health reasons. This was a difficult and emotional experience for families and prisoners, of course.

In response to these delayed visits, video calls once again became the primary source of contact between prisoners and their families, despite the fact that video visits are considered supplementary to in-person visits. We have seen that some families like video calls because they save time and money, and children are used to having on-screen relationships. For the first time, as in many prisons, internet communications are being used which have been of particular benefit for families, especially for foreign prisoners with family members abroad. It has been very moving to observe parents seeing their children after years of being apart.

The Parental Responsibility and Education Participation Group at Brians 2 Prison was thrilled that in September the prison governor authorised a system of screen-printing during family visits partitioned by a glass screen, whereby inmates and their children can interact by painting and writing together on the glass partition during the visit.

In October, a state of emergency was declared until May, and the Catalan government introduced new compulsory measures. One of the measures that affected family visits was the ban on leaving the municipality of residence on weekends (Friday at 18:00 to Monday at 6:00). Fortunately, the Territorial Civil Protection Plan of Catalonia considered family visits to prisons as essential. For this reason, visits in prisons in Catalonia have

been able to take place, despite the existence of weekend confinements, until new order. This may change only if the health situation in prisons worsens.

What kind of creative initiatives at Brians 2 prison have been done to maintain ties with families?

In the early days of the lockdown, the artistic facilitators in prisons in Catalonia headed some positive initiatives for families, children and frontline workers, with the mottos: *Everything will be fine* and *Stay home, save lives*. The workers of Unit 11 (which includes prisoners, officers and treatment teams) at Brians 2 Prison have made two videos for families using those same mottos and messages for them – the videos can be accessed online in COPE's April newsletter.³

Since May, the Parental Responsibility and Education Participation Group has also been working on creative activities to keep families and prisoners in touch. Prisoners created stop-motion videos to send their children positive, hopeful and warm messages in a creative and dynamic way from inside the walls of the prison,⁴ as you can see in the following montage:



Secondly, due to recent postponements of family visits, the Parental Responsibility and Education Participation Group created a guessing game for prisoners and their children to play during video calls, featuring films, animals or traditional riddles. Initiatives were child-appropriate in terms of age and were followed by a warm message. The family then sent a video featuring the prisoner's children figuring out the word or

³ https://mailchi.mp/d1968220c750/timeforaparadigmshift_cope

⁴ <https://childrenofprisoners.eu/a-message-from-parents-to-their-children-brians-2-prison-catalonia/>

name of the film that was missing. Afterwards, an extra video call was arranged. It was fun to see the pleasure prisoners got out of choosing the words for the guessing game for their children, and how children tried to solve them.

At Christmas, Bruguera paints company contributed to the well-being of children and families at Brians 2 Prison, collaborating on a project to improve family communications, where parents met their children and sent messages to them.



The Parental Responsibility and Education Participation Group is also planning on launching a Kids & Emotions workshop, with the main goal being to set up a new artistic communication tool using videos with animations for prisoners and their children. It involves a short introductory training phase so parents can feel comfortable using the application, stop-motion and animation tools, thus allowing for a rich exchange of messages between fathers and children. The Participation Group is additionally working on online family activities and also on messages for Father's Day. The idea is that children will send a message for their parent in prison on that particular day.

The proposal for improved visiting spaces

Every cloud has a silver lining says the proverb, and out of this challenging time has emerged a

project proposal to soften the visiting environment for families visiting Brians 2 Prison. To achieve this goal, the Participation Group has forged collaborative alliances with the FC Barcelona Foundation and the Ombudsman for children's rights, and has joined platforms that work to protect children's rights in Catalonia. We are currently looking for sponsors to help us.

Despite the fact that this Global emergency has resulted in a terrible loss of lives and time, it is not an overstatement to say that it is also a great opportunity to learn. Not only have we had to introduce new family approaches, but it has allowed us to eliminate bureaucratic procedures and implement measures which did not seem feasible prior to the coronavirus crisis. It has also fuelled the vivid imagination of everyone involved. This is in large part thanks to the Secretariat of Criminal Sanctions, Rehabilitation and Victim Support and the Brians 2 Prison's Governor for supporting and promoting the proposals of the Parental Responsibility and Education Participation Group.

We now know that the COVID-19 crisis will last a long time. And while the rollout of the COVID-19 vaccine in Catalonia will allow healthcare workers and high-risk prisoners to receive priority vaccinations, this crisis is a long-distance race. We will have to come out of the lockdown bit by bit, following the steps which experts have recommended to the government. As a result, we will continue to spread our inspiration and ideas when working with families and children, especially during this period.



Visits: A window into prison

Kate Philbrick, OBE
Former COPE President

Like many others during lockdown I have taken to walking our local urban streets as exercise – a favourite time is at dusk when people have turned their lights on but have not yet drawn their curtains or shutters, and the casual passer-by can have a glimpse into their homes and lives.

In late 2019, the window I glimpsed into was the Cyprus Prison Service, which operates on a single prison site. Prisoners on remand are kept separate from convicted prisoners, and prisoners under 21 as well as female prisoners have their own blocks. The prison is divided into three sections: the closed prison; the open prison for good conduct prisoners who have served at least one third of their sentence; and the more relaxed Guidance and Reintegration Centre for out of Prison Employment and Rehabilitation of Prisoners, for good conduct prisoners within 18 months of release who can work outside the prison. Following damning reports from the Ombudsperson and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2014, since November of that year the prison service has been run by the dynamic, energetic, creative and principled duo of governor and deputy governor Anna Aristotelous and Athena Demetriou. Coming from legal and police backgrounds respectively, the two have a wide range of experience in international policing and human rights. Seeking to create a model society and to achieve high standards within all areas of the prison, they have achieved huge success over this short period, stemming from their clearly stated and embodied values: they believe everyone deserves a second chance; everyone can become a better person; and there needs to be respect for all.

Visits are the most obvious way outsiders see through a window into a prison: the respect which prisons afford their prisoners and families are manifest in the visits, as are the warm relationships between staff and visitors. The importance of prisoners and their families and friends is gauged by how visits are catered for: the Cypriot lockdown due to the COVID-19 pandemic, and resulting cancellation of physical visits to prisons, was announced on 10 March and by 17 March all families had been offered video visits (previously available primarily to foreign nationals) which have been running smoothly

since then. Video visits were adopted and kept as a useful optional alternative to physical prison visits, in particular for older children who may feel stigmatised by visiting prisons. Furthermore, extended time for unlimited phone calls until late in the evening is another option for contact with the outside world, available since the beginning of the COVID-19 pandemic. As soon as possible after lockdown, restrictions were eased and physical visits for children were re-established with large, easy-to-clean toys and safe distancing measures; for many younger children, direct contact with a parent in prison is important. A family day, rather like a village fete, was held in late July when restrictions were more relaxed and included clowns, juggling, inflatable outdoor toys like a bouncy castle, face painting, bubbles and gymnastic activities, as well as other activity stations for children and food catering services.

This visits window opens onto a holistic programme of dignity and respect within the Cypriot prison system: the incidence of self-harm and prisoner violence have fallen to virtually nothing from their previously high levels^{1,2} and prisoners are encouraged to support others in the community, to exercise and to increase learning opportunities. Some examples of initiatives since the initial COVID-19 lockdown in March 2020 demonstrate how prisoners collectively can be active citizens: prisoners raised funds for a project providing support to the Lebanese explosion crisis in August 2020. Women prisoners are creating artefacts for charity projects, designing and selling a 2021 calendar supporting an anti-trafficking NGO, and creating shelters and dog tags for stray dogs. The prison service encourages and supports prisoners to donate blood. Community engagement was even more explicit when prisoners designed and submitted a poster and created activities relating to ‘the prevention of violence and juvenile delinquency and the promotion of active citizenship’ and received a best practice award from the Prevention of Violence in Schools Observatory of the Ministry of Education and Culture.

1 <https://www.ekathimerini.com/216868/article/ekathimerini/news/cyprus-says-sweeping-changes-have-reduced-prison-suicides>

2 Demetriou, A. (2019, 21-22 May), *Workshop I: Prevention of Suicides & Violence in Prisons* [Conference presentation], 24th Council of Europe Conference of Directors of Prison and Probation Services (CDPPS), Ayia Napa, Cyprus. <https://www.coe.int/en/web/prison/agia-napa-cyprus>

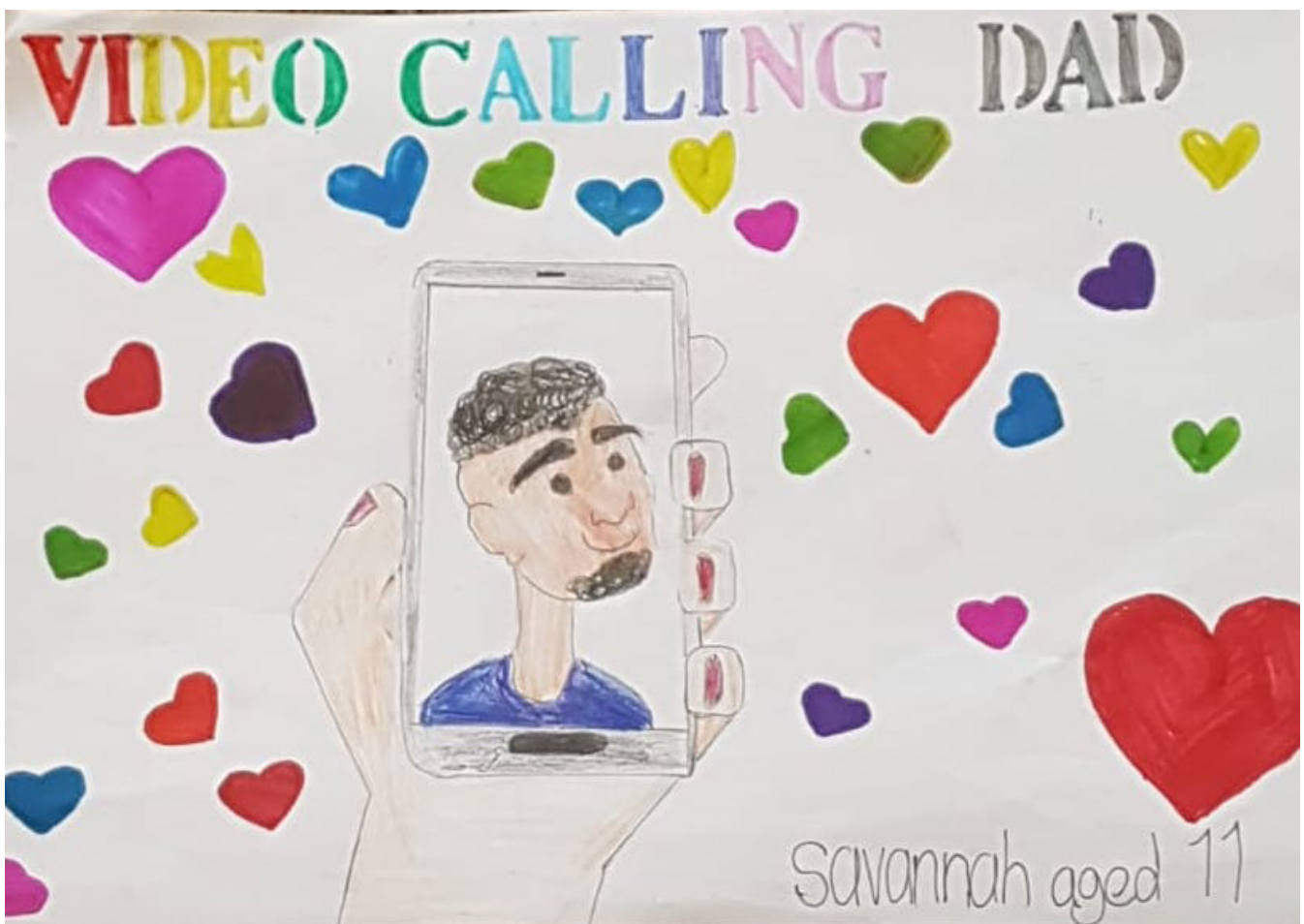
The European Prison Regime has awarded the Cyprus Prison Service for prison education in 2017 and 2018, in Rome and in The Hague respectively. On a more personal level, when I visited in late 2019 one female prisoner had been given access to a piano, and she was keen to play some Chopin!

Sports and exercise are encouraged, with timed slots for exercise daily, and with both men and women prisoners and staff and governors joining the national 'be active week' in September – with basketball and athletic events.

The 'all equal' football match involving prisoners and staff demonstrates the warmth and respect of their relationship. After the lockdown regime was eased this year, all the prisoners were treated to a summer barbeque as a thank you for complying with the restrictions. Later in the summer, women prisoners enjoyed a barbeque and a singing and dancing event with staff and governors.

Of course nothing is perfect – there is overcrowding in the prisons, especially in the closed prison for men and those awaiting trial; a high number of prisoners in for short-term sentences, or because of immigration status; prisoners with mental health problems; insufficient use of alternatives to imprisonment, particularly in the pre-trial phase, where these would be effective – perhaps as so often the prison is a victim of its own success – offering sentencers more certainty of good treatment for prisoners.

Dostoevsky said, 'The degree of civilisation in a society can be judged by entering its prisons': the Cyprus Prison Service offers a civilised model for how we might all treat one another and is certainly a window to look into if you have a chance.



Creative connection ideas for prison visits

Sarah Higgins

Family Engagement Worker
Barnardo's

With video visits being rolled out across prisons in the United Kingdom as an answer to the COVID-19 pandemic, children and young people have been asked for feedback on their experiences of virtual and closed visits. Often the response is: 'It is nice, but all I want is a hug'. Where a hug isn't possible, the question to answer is, *How do we connect with children when there are physical barriers in place?*

As a Family Engagement Worker in a prison setting, I am tasked to support connection and relationships between prisoners and their children. I am an advocate, enabling the voice of the child to be heard. My role is to support communication between prisoners and their children, to ensure that it is child-focused and that the imprisoned parent is assisted and encouraged to be responsive to their child's needs.



This article offers some creative ideas to encourage connection through a digital or physical screen. Video visits will be discussed first, followed by ideas for facilitating non-contact in-person prison visits across a glass or perspex screen.

Video calls

1. Tips for supporting the child in the community



Schedule video calls strategically. Discuss with the child's family member in prison what time of day would be best for your child for a video call. Video chat means children have to sit quietly and focus on the screen. Try to avoid calls at times when your child may be hungry, tired or restless.

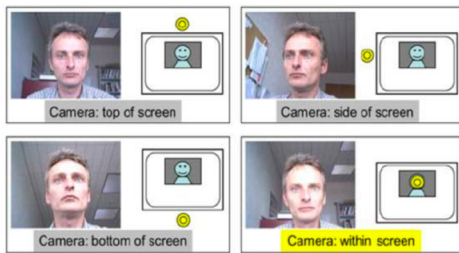
1.  Eyes are watching
2.  Ears are listening.

Be aware of your child's sensorial experience. When children interact face to face (like adults) they pick up on many different communication cues – sight, sound, smell, and touch. As video chat involves sight and sound only, help your child to concentrate on those senses. You may find it helpful during the call to repeat questions raised by their relative or point things out in the picture of things that your child can identify or see.



Be creative. Have items next to you before the video call starts to help engage your child – perhaps storybooks, musical instruments, your child's latest artwork or whatever you plan to show the other person, so your child doesn't lose interest as you scramble to find something.

2. Top tips for the imprisoned family member



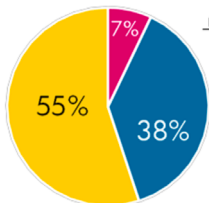
Practice looking at the camera. This is hard to do, as your eye will automatically wander during the call to either your own image or the image of your child, but to help the child process being looked at, try to look directly down the camera lens. This will help you really make eye contact and it is much better for interactive communication.



Play games to hold interest. Keep very young children engaged with you by playing 'peek-a-boo' – or hold your child's interest by showing them a book, a toy, or something else that you want to talk about.



Make sure to use the same greeting each time and in the same tone of voice. Infants and toddlers learn to recognise and feel comfortable with a real person on the screen when they hear that same sound each time they see the person. This is important because they often depend more on smell and touch when meeting a person – so they need more visual and sound cues to recognise you on video chat. And sign off in the same way – a kiss or hand to the screen.



Dr. Albert Mehrabian's 7-38-55% Rule

Elements of Personal Communication

- 7% spoken words
- 38% voice, tone
- 55% body language

Use a lot of gestures and hand movements. A talking head is not as attention grabbing as your hands and body movements – remember communication is 55 per cent body language.

Both adults taking part in the video call have a role to play to support the child. For the adult sat next to the child during the video call, it is important to consider a few other things:

- *You are the 'hands and heart' of the person on-screen.* So if the person on the screen (the imprisoned parent) 'tickles' your baby's tummy, you can give her tummy a tickle in real life. When the imprisoned relative leans toward the screen to 'kiss' your toddler, you can give him a kiss on the cheek. By taking this role, the adult in the room nurtures the relationship between the child and the parent on the screen.
- *Technical issues may occur.* Explain to the child why the video chat partner may appear to 'freeze' on the screen or why the call may be dropped. Explaining these experiences in child-friendly language helps children better understand the technology, and not feel that the connection has been broken by the imprisoned parent.
- *Make video chat a social, back-and-forth experience.* A successful video chat will feel like everyone is playing together, even when they're apart.
- *Take advantage of what video calls offer.* There are bonuses to video visits, as they bypass

the difficulty of visiting in prison. Video calls may be held in different rooms of their home or around the meal table. While physical visits are still very important, video calls can be meaningful and may be less disruptive to the child/young person than a trip to a prison.

We must press that video calls are to be a substitute whilst physical visits are not possible, but that they should not substitute actual physical visits in the long term.

Non-contact visits

How can children be engaged across a barrier? The window can be seen as a restriction to their connection, but if it is used as an that encourages playfulness, the barrier can be a tool to help families connect.

To support children during non-contact visits, there is the option of a play box, to help them enjoy the session. This would include some colouring materials, perhaps a toy car and some books. However, there may be hygiene issues with these items and we would need to ensure that they are disinfected before another visitor used them. Also, these play boxes can be a distraction, keeping children occupied but allowing them to disengage from person on the other side of the screen.

NB: Some closed visits spaces will rely upon a microphone and therefore only one of the visitors may be able to use it at a time if the phone is a handset, so games that don't require the use of voice conversation can be useful when there are multiple visitors.

Marker pens are a good way to engage across a glass or perspex barrier, especially as they are impermanent and hygienic. Be creative about the way you use drawings to connect with children. Here are some ideas for games that can be played across a barrier:

- Drawing around each other's faces, which encourages eye contact.
- Playing Pictionary, which sidesteps literacy barriers
- Noughts and Crosses
- Charades
- Playing the game 'squares'
- Drawing a scene together
- A drawing conversation - You could take it in turns to draw a line/shape at a time and see what you create! Encourages turn taking, reciprocation needed to develop social skills or adult draws a line and child/young person turns it into a picture

Barnardo's hope that you have found these tips and ideas helpful and that it may encourage creativity when planning visits at your prisons.



European Journal of Parental Imprisonment
www.childrenofprisoners.eu

Children of Prisoners Europe is a non-profit organisation registered in France
under French Association law 1901.

SIRET : 437 527 013 00019



This journal has been produced with the financial support of the Rights, Equality and Citizenship Programme of the European Union. The contents are the sole responsibility of Children of Prisoners Europe and can in no way be taken to reflect the views of the European Commission.