



QUAKERS

Canadian Friends
Service Committee

Submission to the United Nations Committee on the Rights of the Child:
*A Response to Canada's Fifth and Sixth Reports on the Convention on the Rights of the
Child: Regarding Children of Incarcerated Parents in Canada*

Submission by:

Canadian Friends Service Committee

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INTRODUCTION

Canadian Friends Service Committee (CFSC) is the peace and social justice agency of The Religious Society of Friends (Quakers) in Canada. CFSC envisions a world in which justice, peace, and human rights are fostered and upheld. The work of the Committee is rooted in the Quaker testimonies of peace, justice, and equality. Objectives are achieved through practical assistance, research, education, and policy dialogues. Canadian Friends Service Committee has a long-standing concern about the impact of the justice system on children of incarcerated parents.

There has been substantial work in this area, both internationally and within Canada. Wide-ranging dialogue, research, and evidence-based projects and initiatives have informed many recommendations that are already well documented (Canadian Friends Service Committee, 2019, pp. 16 – 18; Canadian Friends Service Committee, 2018, p. 4). {See Appendix 1 and Appendix 2}

Numerous studies confirm that “children of incarcerated parents face profound and complex threats to their emotional, physical, educational, and financial well-being” (Martin, 2017, pp. 1–3). This interferes with the opportunity for these children and youth to reach their full potential and has broad-ranging implications for the good health of society at large.

Although Canada is a signatory to the United Nations *Convention on the Rights of the Child* (UNCRC), children of incarcerated parents are an almost invisible population in this country. This report will outline some of the areas where Canada could improve conditions for children of incarcerated parents by undertaking a more robust implementation of the UNCRC, with a particular focus on Article 3 that requires States Parties to ensure that “the best interests of the child shall be a primary consideration” at all levels of the criminal justice system.

Please note that in this report the term “parent” also may refer to legal guardians or other persons legally responsible for the child and members of the extended family or community as provided for by local custom (citing Article 5, United Nations Human Rights Office of the High Commissioner, n.d.).

HOW MANY CHILDREN?

In Canada, all persons who receive a sentence of 24 months or greater must serve their sentence in a federal correctional facility managed by the Correctional Service of Canada. Anyone who receives a sentence less than 24 months, or who is detained while awaiting trial or sentencing, must serve their sentence in a provincial correctional facility.

The exact number of children affected is unknown. It is impossible to provide current numbers of children of incarcerated parents in Canada given the difficulties in retrieving accurate and up-to-date information. Correctional Services Canada (CSC) and Statistics Canada (national statistical office) do not provide data regarding the number of interned persons that are also parents. According to one report, "...it is estimated that over half of federally incarcerated adults report being parents of children under the age of 18, although the proportion increases for females generally, and Aboriginal women particularly..." (McCormick, Millar, Paddock, 2014 citing Barrett et al., 2010; Eljdupovic-Guzina 1999; Vis-Dunbar 2008; Withers and Folsom, 2007).

The most recently available data indicates that 70% of federally incarcerated women report being parents of minor children, and incarcerated women are twice as likely as men to be supporting dependents on the outside. Emerging data also indicates higher percentages of mothers in provincial prisons, however there is little to no data on how many fathers are in provincial prisons (Canadian Friends Service Committee, 2018 citing Office of the Correctional Investigator, 2015).

In 2007, it was estimated that 357,604 Canadian children were affected by parental incarceration. This was conjecture and based on the number of incarcerated persons that were reported at the time (Canadian Friends Service Committee, 2019, p3). The latest data on numbers of incarcerated persons is still the best tool currently available for estimating the number of children affected by this issue. Current figures in the realm of 160,000 to over 200,000 children of incarcerated parents are likely minimum appraisals.

In 2017-18 (most recent figures available) the overall number of adult female admissions to provincial and territorial custody was 35,227. Forty-two percent of the women were identified by Statistics Canada as Indigenous. This is a 66% increase in admissions of Indigenous women since 2007-08.

At the end of the 2017-18 fiscal year, there were 676 women in custody in CSC facilities (Correctional Services Canada, 2019). Forty percent of the women in federal custody were identified by Statistics Canada as Indigenous. This is a 51% increase in admissions of Indigenous women since 2007-08 (Statistics Canada, 2019). {See Appendix 3}. Furthermore, the overall Canadian female inmate population has increased by 32.5% over the past ten years. The number of federally sentenced Indigenous women has increased by 73.8% over the last 10 years (since 2009-10) (The Correctional Investigator Canada, 2019).

Incarcerated males are also often parents and Statistics Canada reports that in 2017-18, the overall number of adult male admissions to provincial and territorial custody totalled 204,726. This number represents a 28% increase for Indigenous males since 2007-08 and a 17% decrease for non-Indigenous

male admissions. Overall federal admissions to custody totalled 6,781 for adult males with an increase of 18% for Indigenous male adults. The admissions to federal custody for non-Indigenous males decreased by 25% during this time period (Statistics Canada, 2019). {See Appendix 3}

Any report regarding the effect of incarcerated parents on Canada's children would be remiss not to accentuate the disproportionately high numbers of affected Indigenous children and their families, as suggested by the disproportionately high incarceration rates of Indigenous men and women.

In 1996, the section of the *Criminal Code of Canada* that deals with sentencing was changed to introduce sentencing guidelines. Section 718.2 (e) of the *Criminal Code* states that "all available sanctions other than imprisonment that are reasonable in the circumstances...should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders" (Government of Canada, n.d.). The reforms were intended to encourage courts to look at alternatives that could reduce the overrepresentation of Indigenous persons incarcerated in Canada.

Canadian Friends Service Committee directs the reader's attention to The *Spirit Bear Plan 2017* and calls upon Canada and "GOVERNMENT DEPARTMENTS providing services to First Nations children and families to undergo a thorough and independent 360° evaluation to identify any ongoing discriminatory ideologies, policies or practices and address them. These evaluations must be publicly available" (First Nations Child & Family Caring Society, 2017). {See Appendix 4}

Questions for Canada: How many persons currently incarcerated in federal, provincial and territorial custody are parents of children aged 18 and under? How many children of incarcerated parents are living in Canada?

When and how will Canada meaningfully implement community-based alternatives to incarceration of Indigenous persons both on reserves and in urban centres?

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC)

Canada signed the UNCRC on May 28, 1990 and it was ratified on December 13, 1991. Since that time, Canada has taken positive steps in several areas of society that affect children. For example, there have been improvements to legislation; e.g. *Divorce Act* and its recent inclusion of “best interests of the child” language received Royal Assent in June 2019; youth justice e.g. *Youth Criminal Justice Act* with principles that incarceration is used as a last resort and increasing community-based choices; e.g. Ontario’s *Child Youth and Family Services Act, 2017* increased the age of protection from 16 to 18 years of age.

Canada has varied and fragmented policies for children even in matters that fall within federal jurisdiction, but all the more so in matters that are provincially regulated. Implementation of the Convention on the Rights of the Child continues to be inconsistently applied across the country.

As a result, some children “fall through the cracks” and are left behind without the help and support systems needed in order to develop to their full potential. Children of incarcerated parents are one example of a group harmed by the absence of robust UNCRC implementation. The “best interests of the child” should be a primary consideration at all stages in the criminal justice system, from the time of arrest to incarceration and release. This would help to alleviate some of the enduring harmful effects children currently experience. The UNCRC 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 3, The Convention on the Rights of the Child).

This report will strongly advocate that Canada consider conducting a federal review of the criminal justice system using Child Rights Impact Assessment templates (CRIA) and urge Canada to pledge the submission of the CRIA results to the next *Canada Report to the UNCRC* in 2023. It is recommended that Canada immediately begin to build working partnerships between the “users of the system” and “the administrators of the system” to move this process forward in an authentic manner.

A SAMPLING OF THE ISSUES

Mother-Child Program and Family Contact

In 2015, The Collaborating Centre for Prison Health and Education (CCPHE) published *Guidelines for the Implementation of Mother-Child Units in Canadian Correctional Facilities*. The report was clear that “Women who are expected to give birth while in custody, or who are the primary caregivers of dependent children, should remain in the community wherever possible. The justice system should make all effort to seek supportive community alternatives to custody for these women (CCPHE citing Jones AD, Wainina-Wozna AE. *Children of Prisoners*. UK: University of Huddersfield; p.658).

Mother-child programs are sometimes criticized because prison is viewed as an inappropriate environment for children (Leroux, 2019). It is undeniable that non-custodial sentences for mothers would be more in keeping with the best interests of the child. Canadian Friends Service Committee strongly supports this view. It is also true that there have been repeated studies that confirm the developmental harm caused by the separation of a child from his or her mother and that early mother-infant bonding is widely accepted as an important standard of care. Article 6 of the UNCRC requires that “States Parties shall ensure to the maximum extent possible the survival and development of the child.”

Controversy notwithstanding, Correctional Services Canada reports that “two thirds of incarcerated women have children less than five years old” and posts on its website that goals for the program include parenting skills training, the establishment of a healthy mother child relationship, “all in the best interests of the child...” (Correctional Services Canada, 2007).

Correctional Services Canada (CSC) operates five institutions for women as well as one healing lodge, located in Saskatchewan. The other five institutions are in British Columbia, Alberta, Ontario, Quebec, and Nova Scotia. CSC launched the Mother-Child Program in 1996. The program is intended to provide full-time living arrangements (within special units) for mothers and children up to the age of four years. Children under six may access a part-time (weekends and holidays) version of the program. The current CSC webpages outlining “Quick Facts about Women Offenders,” “Overview of Women’s Corrections” and “Programs for Women” do not mention the Mother-Child Program or make any reference to women as mothers with children (Correctional Services Canada, 2019).

Canada’s Report: Sections 109, 110, and 111 in *Canada’s Fifth and Sixth Reports on the Convention on the Rights of the Child* provide a description of the Mother-Child Program and refer to “fostering positive relationships...[and]...considering the best interests of the child” (Government of Canada, 2018). {See Appendix 5}

On the ground: The Office of the Correctional Investigator (OCI) estimates that 75% of federally incarcerated women are mothers with children. In 2008 the rules were changed and criteria for participation in the program became more restrictive (part-time program changed from children under twelve to children under six, local child welfare agencies required to provide support to the mother, exclusion of women convicted of serious offenses). From 2008 to 2014 only 14 women across Canada participated in the full Mother-Child Program. Current statistics are not available. The OCI has

previously recommended increased access to the program, safe environments, and facilitation of mother-child contact through video links (Canadian Friends Service Committee, 2019, p.11).

Again, the overriding preference for all mothers of infants and children continues to be community-based alternatives to incarceration. We also recognize that healthy options which respect the mother-child relationship and child development principles are essential for incarcerated women in Canada.

The *Interim Report of the Standing Senate Committee on Human Rights* chronicles testimony from 92 witnesses including former federally sentenced persons from Feb 2017 to March 2018. The report states, “While families of federally-incarcerated persons are able to visit penitentiaries, the process for family members to gain access to their loved ones was described to the committee as “intimidating,” “humiliating and demeaning...cancellation and limitations on family visits, particularly visits with children, was also one of the most common concerns raised by men that senators spoke with in federal penitentiaries.” The report emphasizes that the failure of Correctional Services Canada to safeguard regular family contact seems to have a bigger impact on federally sentenced women, because they are more likely to be the sole caregivers for their children. It is the opinion of the *Interim Report* that women do not receive the same level of family support as men. Federally sentenced women are also more often located farther away from their families (given the smaller number of institutions for women) and this results in fewer visits and loss of family connections (Government of Canada, 2019; Thomas-Bernard, The Senate of Canada, Ataulhjan, & Cordy).

Another issue that impedes contact with an incarcerated parent is the current phone system for inmates in both federal and provincial institutions. Inmates are not permitted to call switchboards or cell phones. Generally, phone calls can only be outgoing to land lines and often on a collect-call basis. Correctional Services Canada has a “Smart Card” system that allows funds to be added to an inmate’s account. A telephone account must have a minimum balance of \$80. Funds can only be uploaded once every four weeks. Cards cannot be loaded at any other time (Correctional Services Canada: Inmate phone calls).

Questions for Canada: How many incarcerated women that are mothers are currently in the Mother-Child Program in Canada? What can be put in place to improve Mother-Child units in federal prisons? Current lobbying is underway in several parts of Canada to change the restrictive phone rules for inmates: what actions does Canada plan to take to address this problem? What actions would it take to make the best interests of children of incarcerated parents the primary consideration in legislation, policies, and practices at the federal, provincial, and territorial levels of the criminal justice system in Canada?

Recommendations:

- At the arrest, pre-charge, and charge stages, options for restorative processes including diversion should always be considered. Applying similar principles that exist in family law proceedings regarding conferencing (or other high conflict situations that meet Mandatory Mediation standards) could provide alternate solutions to incarceration. Children and their families are unique and therefore restorative practices should remain flexible and diverse in nature and will be different in each situation. This requires the application of *Article 12* of the UNCRC: “the right of the child to express his/her views, in all matters affecting him/her, and for those views to be given due weight according to the child’s age and maturity.”
- Increase non-custodial options to remand for mothers i.e. promise to appear or house arrest to reduce incarceration of mothers.
- Support Indigenous led community alternatives to custody that support the best interests of the child and family.
- Improve conditions and increase opportunities for positive parent-child visits.
- Safeguard the right of each infant to stay with the mother for short-term and long-term health benefits regardless of the institutional program/policies.
- Examine the restrictive eligibility criteria of the Mother-Child Program with a goal to expand eligibility and improve the program’s responsiveness to principles regarding the best interests of children. Engage incarcerated women who are also mothers in this review process.

Sentencing Practices and Arrest

On the ground: In 2016 Canadian Friends Service Committee commissioned a review of sample case law to determine if the “best interests of the child” were considered in the sentencing of parents in Canada. Across Canada, judicial decision-makers from pre-trial to sentencing vary in their approach to considering a person’s parental or caregiving responsibilities and the rights of their children. Children are not direct parties to the proceedings, may not attend court, and are not considered part of traditional sentencing principles of proportionality in Canada. In general, judges made no reference to International Conventions or Rules and did not refer to a “best interests of the child” framework. It appeared that children were regarded as one possible factor on the list of considerations for persons being sentenced. General circumstances relating directly to children seem to have little impact on sentencing. Being Indigenous did not appear to impact the weight given to children when sentencing Indigenous parents. The existence of the CSC’s Mother-Child Program was not a listed factor in the sentencing of mothers (Canadian Friends Service Committee, 2018, pp. 14-16).

The International Association of Chiefs of Police published a report in 2014 entitled, *Safeguarding Children of Arrested Parents* (International Association of Chiefs of Police, 2014). {See Appendix 6} The report acknowledges the trauma that may be caused by a parent’s arrest and the potential disorder and displacement that may result. It provides a model policy for police services to consider when arrested persons have children who may or may not be present at the time of arrest. At present Canada does not seem to have a coordinated framework for policy and/or practices of police services for the children of arrested parents. Again, there is a lack of current data available regarding this issue.

Questions for Canada: Canada needs a rights-based framework for arrest and sentencing. What action will Canada take to make this happen? A Child Rights Impact Assessment (CRIA) uses a systematic process to take possible impacts on children into account in policy, legislation, and other administrative decisions. Would Canada consider a Child Rights Impact Assessment? (UNICEF, 2015)

Recommendations:

- Introduce rights-based language and directives into current legislation and policy as mandatory requirements in accordance with the UNCRC (possibly via Regulations and policy development for the *Criminal Code of Canada*; the *Corrections and Conditional Release Act*; the *Child, Youth and Family Services Act, 2017*; and *Immigration and Refugee Protection Regulations*). Consider using language and principles highlighted in the jury recommendations from the *Katelynn Sampson Inquest* as a guide i.e. alterations to *Recommendation No. 1* could read, “The child must be at the centre of the decision-making process where their parent/s are the subject of arrest, detention, incarceration and/or receiving services through the criminal justice system. A child should be at the forefront of all service- related decision-making.”
- Implement regulations for police officers to ensure that the best interests of the child are considered when parents and caregivers come into conflict with the law.
- At the first point of parental contact with the justice system, assign each child/youth a fully trained representative/case navigator. This representative would stay with the child throughout all stages of the criminal justice process. If necessary, the child representative would ensure the parent has adequate time and agency to arrange care-taking plans. Responsibilities could include gathering a circle of support i.e. relatives, neighbours, teachers, social workers, etc. They would ensure critical information sharing occurs. The representative would also prepare a detailed impact assessment report for the court that attaches to the pre-sentencing report and becomes mandatory in the court envelope.
- Implement training and education that make the best interests of children the primary consideration in all legal processes. Training for relevant professionals to include judges, crown attorneys, lawyers, police officers, child welfare workers, probation officers, etc. Ensure persons with *lived experience* inform the content of the training. Use materials and techniques that incorporate Adult Learning Theory into training approaches.
- Initiate a Child Rights Impact Assessment to begin a systematic focus on the rights, needs and interests of children of incarcerated parents during legal processes surrounding arrest, detention and sentencing. Incorporate parallel processes which affect children e.g. child welfare, education, mental health, etc. (UNICEF, 2015).

Agencies and Organizations

On the ground: There are many agencies and organizations across Canada that have done tremendous work with the children and families of incarcerated persons. One example of this work is *The Framework for Action: Enhancing the Protective Environment for Children of Parents in Conflict with the Law or Incarcerated*. *The Framework* describes the experiences and lessons learned from working with various stakeholders including caregivers, grandparents, aunts, foster parents, provincial court judges, duty counsel, legal services, and First Nations Courts (Elizabeth Fry Society of Greater Vancouver,

International Centre for Criminal Law Reform and Criminal Justice Policy, and University of the Fraser Valley: School of Criminology and Criminal Justice, 2018). (See Appendix 7).

There are “pockets” of collaboration across Canada that rely on persons, leadership, or individual agencies to address issues and/or provide support services to the children of incarcerated parents. Coordinated, across the board, rights-informed legislation, policy, and practice does not currently exist for this group of children in this country.

In January 2019, over 35 organizations and individuals from across Canada gathered at Friends House in Toronto, Ontario, to share, educate, collaborate, and strategize about the impact and future of children of incarcerated parents in Canada. Following the dialogue, a *Canadian Coalition on Children of Incarcerated Parents* was formed to move forward and begin to take action on some of the recommendations that resulted from the dialogue (Canadian Friends Service Committee, 2019, pp.4-19).

Recommendations:

- Encourage continued collaboration and dialogue between all agencies and sectors that intersect with the criminal justice system (justice, child protection, mental health, education, judges, Gladue writers, etc.) with a view to increasing viable alternative community-based options to incarceration.
- Ensure that the voices of children and youth are at the table.
- Educate all stakeholders on the UNCRC and key articles that apply specifically to children of incarcerated parents.
- Invite representatives from the *Canadian Coalition on Children of Incarcerated Parents* to join a CRIA process to begin a systematic focus on the rights, needs and interests of children of incarcerated parents affected by the decisions and actions of governments, institutions and others (UNICEF, 2015).

The Silence of Children, Systemic Invisibility, and Social Stigma

The absence of statistical data, failure to include children as parties to the court process, and the lack of a child rights-based framework at all stages of the criminal justice system are some of the factors that contribute to the absence of the voices of children and youth.

Dr. Else Marie Knudsen has identified the theme of “systemic invisibility” across families, society, and institutions in her research. “There exists a culture of secrecy within families, communities and children who were keeping secrets and keeping a low profile, which isolated them from community support... [there is] lack of knowledge, expertise, or policy attention within relevant organizations, services and systems such as schools, child protection... Without data or funding, no attention is paid to this group of children by institutions, which includes the lack of parenting, programs and supports... Finally, [there is] the lack of overall data, policy attention or complaint mechanisms” (Canadian Friends Service Committee, 2019, p. 12).

Comment must be made here that children impacted by parental incarceration and their invisibility in the system carry heavy consequences. Adverse Childhood Experiences (ACEs) are traumatic events that occur before the age of 18, including all types of abuse, neglect, divorce, mental illness and incarceration. A landmark study in the 1990s found a significant relationship between the number of ACEs a person experiences and a variety of negative outcomes that move into adulthood (citing US Department of Health and Human Services, n.d.). {See Appendix 8}

Other studies “generally suggest that children with one or both parents incarcerated face increased risks for antisocial or other delinquent behaviours, and future involvement with the criminal justice system” (McCormick, Millar, Paddock, & University of the Fraser Valley’s Centre for Safe Schools and Communities, 2014, pp. iii-v).

Furthermore, children of incarcerated parents are more likely to come into contact with child welfare agencies and end up in residential placements which could be far away from their home communities. Findings from a recently published research study show a definite link between involvement with the child protection system and subsequent association with both the youth justice system and criminal justice system (Contenta, 2020). {See Appendix 9}

Recommendations:

- Create an Advisory Group of children/youth of incarcerated parents to advocate for children’s rights across Canada and to fully participate in a CRIA process.
- Increase education and public awareness about children and youth of incarcerated parents. Include information about harmful effects as well as proven strategies for children and families that are supportive. Public awareness: consider successful strategies from previous public awareness campaigns as models i.e. Kids Help Phone, Covenant House, Mothers Against Drunk Driving. These PSA campaigns placed the child/youth/family’s lived experience at the centre. Engage children and their families (focus groups, advisory groups) to inform content and strategies. Form partnerships with other like-minded organizations for awareness raising events.
- Initiate a CRIA process to begin a systematic focus on the rights, needs, and interests of children of incarcerated parents affected by the decisions and actions of governments, institutions, and others.

Legislation and Rights

UNCRC: GENERAL COMMENT No. 5 (2003) on the General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) states clearly that Article 3 “(1): the best interests of the child as a primary consideration in all actions concerning children “requires active measures throughout Government, parliament and the judiciary... by systematically considering how children’s rights and interests are or will be affected by their decisions and actions - by, for example, a proposed or existing law or policy or administrative action or court decision,

including those which are not directly concerned with children, but indirectly affect children.” {See Appendix 10}

GENERAL COMMENT No. 14 (2013) on the right of the child to have his or her best interests taken as primary consideration: “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... 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... 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. To ensure compliance, States parties should undertake a number of implementation measures... Reviewing and, where necessary, amending domestic legislation and other sources of law so as to incorporate article 3, paragraph 1, and ensure that the requirement to consider the child’s best interests is reflected and implemented in all national laws and regulations, provincial or territorial legislation, rules governing the operation of private or public institutions providing services or impacting on children, and judicial and administrative proceedings at any level, both as a substantive right and as a rule of procedure.” {See Appendix 11}

On the ground: The *Corrections and Conditional Release Act* (CCRA) is the law that governs the Correctional Service of Canada (CSC) for persons serving a sentence of two years or more. The CCRA also governs the Parole Board of Canada. The CCRA does not make mention of the best interests of children or children’s rights.

The *Criminal Code of Canada* contains most criminal law in Canada. The federal government has the exclusive responsibility to enact the law and the provinces have the authority to administer criminal law. The *Criminal Code* does not make mention of the best interests of children or children’s rights.

Recommendations:

- Consider using the recent changes to the *Divorce Act* (June 2019) and the inclusion of “best interests of the child” language as “guides” for introducing child rights-informed principles and language to legislation.
- Initiate a Child Rights Impact Assessment to ensure that the rights, needs, and best interests of children of incarcerated parents are incorporated into legislative changes.

Absence of Current and Disaggregated Data

On the ground: The lack of available data and information regarding the children of incarcerated parents in Canada was frequently raised in presentations and discussions at the January 2019 Dialogue at Friends House in Toronto. “Participants identified that there is little data regarding the number of incarcerated persons with children at the federal, provincial and territorial levels. There is no data regarding the number of children of each parent, the age of the children, where they reside or who is caring for them. Information about the number of children born in jails and prisons, the number of visits to institutions, or how many children are Indigenous, racialized, have a disability, or the gender of children is not available. Current data consists of broad estimates and can be inaccurate i.e. numbers are based on rates of admission rather than the number of individuals actually incarcerated at any one time.” The lack of data raises concerns regarding transparency and accountability (Canadian Friends Service Committee, 2019, p. 15).

Questions for Canada:

Will Canada commit to collecting and providing reliable and current data that can be publicly accessed?
Will Canada create timelines for such action?

Recommendations:

- Increase quality of research and data collection and make same publicly available on a regular basis
- Allow access to current data from Correctional Services Canada
- Consider contacting Centres of Innovation (COI) at colleges and universities. COI’s seek to bring together interdisciplinary teams of faculty, students, and community and industry partners to help solve complex, real world problems. Connect and liaise with community college and/or university programs that might be interested in related research studies, projects, and initiatives.

SUMMARY OF RECOMMENDATIONS

General Measures of Implementation (Arts 4, 42, 44.6)

General Principles (Arts 2, 3, 6, 12) VI

1. Canada to conduct a federal review of the criminal justice system using Child Rights Impact Assessment templates (CRIA) and urge Canada to pledge the submission of the CRIA results to the next *Canada Report to the UNCRC* in 2023. The CRIA process typically includes a systematic focus on the rights, needs and interests of children affected by the decisions and actions of governments, institutions and others. This CRIA should include integration of the best interests of the child during legal processes surrounding arrest, detention and sentencing. The incorporation of a rights assessment of the parallel processes which affect children e.g. child welfare, education, mental health, etc. must also be included. Child rights-based practices and language must inform and be present in legislative changes. Canada is encouraged to immediately begin to build working partnerships between the “users of the system” and “the administrators of the system” to move this process forward in an authentic manner (UNICEF, 2015).

General Measures of Implementation (Arts 4, 42, 44.6)

2. Invite representatives from the *Canadian Coalition on Children of Incarcerated Parents* to join a CRIA process to begin a systematic focus on the rights, needs and interests of children of incarcerated parents affected by the decisions and actions of governments, institutions and others (UNICEF, 2015).
3. Consider using the recent changes to the *Divorce Act* (June 2019) and the inclusion of “best interests of the child” language as “guides” for introducing child rights-informed principles and language to legislation.
4. Educate all stakeholders on the UNCRC and key articles that apply specifically to children of incarcerated parents.
5. Encourage continued collaboration and dialogue between all agencies and sectors that intersect with the criminal justice system (justice, child protection, mental health, education, judges, Gladue writers, etc.) with a view to increasing viable alternative community-based options to incarceration.

General Principles (Arts 2, 3, 6, 12) VI

6. Ensure that the voices of children and youth are at the table by the formation of an Advisory Group comprised of children/youth of incarcerated parents to advocate for children’s rights across Canada and to fully participate in a CRIA process.
7. Introduce rights-based language and directives into current legislation and policy as mandatory requirements in accordance with the UNCRC (possibly via Regulations and policy development for the *Criminal Code of Canada*; the *Corrections and Conditional Release Act*; the *Child, Youth and Family Services Act, 2017*; and *Immigration and Refugee Protection Regulations*). Consider using language and principles highlighted in the jury recommendations from the *Katelynn Sampson Inquest* as a guide i.e. alterations to *Recommendation No. 1* could read, “The child must be at the centre of the decision-making process where their parent/s are the subject of

arrest, detention, incarceration and/or receiving services through the criminal justice system. A child should be at the forefront of all service- related decision-making.”

8. Implement regulations for police officers to ensure that the best interests of the child are considered when parents and caregivers come into conflict with the law.
9. Implement training and education that make the best interests of children the primary consideration in all legal processes. Training for relevant professionals to include judges, crown attorneys, lawyers, police officers, child welfare workers, probation officers, etc. Ensure persons with *lived experience* inform the content of the training.

Use materials and techniques that incorporate Adult Learning Theory.

10. Allow access to current data from Correctional Services Canada
11. Increase quality of research and data collection and make same publicly available on a regular basis
12. Consider contacting Centres of Innovation (COI) at colleges and universities. COI's seek to bring together interdisciplinary teams of faculty, students, and community and industry partners to help solve complex, real world problems. Connect and liaise with community college and/or university programs that might be interested in related research studies, projects, and initiatives.

Civil Rights and Freedoms (Arts 7, 8, 13 14, 15, 16, 17, 19, 37 (a))

13. Improve conditions and increase opportunities for positive parent-child visits.

Family Environment and Alternative Care (Arts 5, 9, 10, 11, 18, 20, 21, 25, 27.4, 39)

14. Increase non-custodial options to remand for mothers i.e. promise to appear or house arrest to reduce incarceration of mothers.
15. Support Indigenous led community alternatives to custody that support the best interests of the child and family.
16. At the first point of parental contact with the justice system, assign each child/youth a fully trained representative/case navigator. This representative would stay with the child throughout all stages of the criminal justice process. If necessary, the child representative would ensure the parent has adequate time and agency to arrange care-taking plans. Responsibilities could include gathering a circle of support i.e. relatives, neighbours, teachers, social workers, etc. They would ensure critical information sharing occurs. The representative would also prepare a detailed impact assessment report for the court that attaches to the pre-sentencing report and becomes mandatory in the court envelope.
17. At the arrest, pre-charge, and charge stages, options for restorative processes including diversion should always be considered. Applying similar principles that exist in family law proceedings regarding conferencing (or other high conflict situations that meet Mandatory Mediation standards) could provide alternate solutions to incarceration. Children and their families are unique and therefore restorative practices should remain flexible and diverse in nature and will be different in each situation. This requires the application of *Article 12* of the UNCRC: “the right of the child to express his/her views, in all matters affecting him/her, and for those views to be given due weight according to the child’s age and maturity.”

Basic Health and Welfare (Arts 18, 23, 24, 26, 27)

18. Safeguard the right of each infant to stay with the mother for short-term and long-term health benefits regardless of the institutional program/policies.
19. Examine the restrictive eligibility criteria of the Mother-Child Program with a goal to expand eligibility and improve the program's responsiveness to principles regarding the best interests of children. Engage incarcerated women who are also mothers in this review process.
20. Increase education and public awareness about children and youth of incarcerated parents. Include information about harmful effects as well as proven strategies for children and families that are supportive. Public awareness: consider successful strategies from previous public awareness campaigns as models i.e. Kids Help Phone, Covenant House, Mothers Against Drunk Driving. These PSA campaigns placed the child/youth/family's lived experience at the centre. Engage children and their families (focus groups, advisory groups) to inform content and strategies. Form partnerships with other like-minded organizations for awareness raising events.

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APPENDICES

APPENDIX 1

Report 2019

Canadian Friends Service Committee

Breaking the Silence: Dialogue on Children of Incarcerated Parents

<https://quakerservice.ca/wp-content/uploads/2019/05/Breaking-the-Silence-Report-2019.pdf>

APPENDIX 2

Report 2018

Canadian Friends Service Committee

Considering the Best Interests of the Child when Sentencing Parents in Canada: Sample Case Law Review

<https://quakerservice.ca/wp-content/uploads/2018/12/Considering-the-Best-Interests-of-the-Child-when-Sentencing-Parents-in-Canada.pdf>

APPENDIX 3

Statistical Data: Admissions to Custody

Statistics Canada

Adult and youth correctional statistics in Canada, 2017/2018

Table 5: Admissions to adult custody, by sex, Aboriginal identity and jurisdiction, 2017/2018

<https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010/tbl/tbl05-eng.htm>

APPENDIX 4

Action Plan

First Nations Child & Family Caring Society

Spirit Bear Plan 2017

<https://fncaringsociety.com/spirit-bear-plan>

APPENDIX 5

Excerpt from Report 2018

Government of Canada

Canada's Fifth and Sixth Reports on the Convention on the Rights of the Child
pp. 26-27

CRC/C/CAN/CO/3-4, para. 56(e)

Children of incarcerated mothers

109. The governments of Canada, Nova Scotia, Newfoundland and Labrador, and British Columbia offer Mother-Child Programs that aims to foster positive relationships between incarcerated women offenders and their children. Residential components of these programs enable children to stay with their mothers on a part-time or full-time basis. Non-residential components offer other opportunities for women inmates to interact with their children.

110. The best interests of the child, namely the safety and security, as well as physical, emotional, and spiritual well-being of the child, are elements considered for participation in the Mother-Child Programs.

111. Mothers receive parenting courses and all correctional officers, supervisors and managers receive ongoing training to support mothers and babies.

APPENDIX 6

Model Policy 2014

International Association of Chiefs of Police

Safeguarding Children of Arrested Parents: 2014

<https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/IACP-SafeguardingChildren.pdf>

APPENDIX 7

Report: Framework 2018

Elizabeth Fry Society of Greater Vancouver, International Centre for Criminal Law Reform and Criminal Justice Policy and University of the Fraser Valley: School of Criminology and Criminal Justice

The Framework for Action: Enhancing the Protective Environment for Children of Parents in Conflict with the Law or Incarcerated

<https://icclr.org/wp-content/uploads/2019/06/Enhancing-the-Protective-Environment-Framework.pdf?x30145>

APPENDIX 8

Webpage 2020

US Dept of Health and Human Services

Child Welfare Information Gateway: Adverse Childhood Experiences (ACEs)

<https://www.childwelfare.gov/topics/preventing/preventionmonth/resources/ace/>

APPENDIX 9

Newspaper Article: (Online) Research Study Results 2020

The Toronto Star; Thestar.Com

J. Rankin, S. Contenta

A shocking report details how Ontario's most vulnerable youths are shuttled from child protection to the justice system

<https://www.thestar.com>

APPENDIX 10

General Comment No. 5 (2003)

United Nations Convention on the Rights of the Child

Committee on the Rights of the Child: Thirty-fourth Session

General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)

https://resourcecentre.savethechildren.net/node/9689/pdf/general_comment_no_5_crc.pdf

APPENDIX 11

General Comment No. 14 (2013)

United Nations Convention on the Rights of the Child

Committee on the Rights of the Child: Sixty-second Session

On the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)

<https://resourcecentre.savethechildren.net/library/general-comment-no-14-2013-right-child-have-his-or-her-best-interests-taken-primary>

