

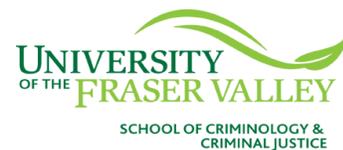


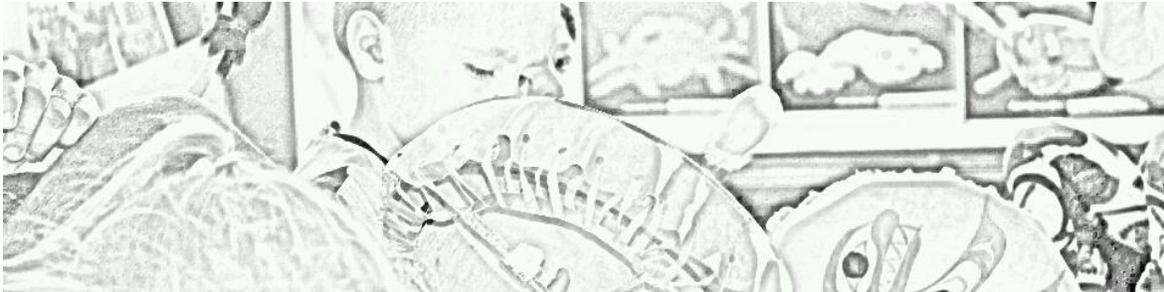
Enhancing the Protective Environment for Children of Parents in Conflict with the Law or Incarcerated

A Framework for Action



INTERNATIONAL CENTRE FOR
CRIMINAL LAW REFORM
AND CRIMINAL JUSTICE POLICY





We offer the present framework to help communities and local organizations in contact with children of parents in conflict with the law cooperate with each other and develop a coherent approach to protecting and supporting these children, especially when their parents are imprisoned. Together, they can strengthen the protective environment around these children and help them thrive in spite of the difficult situation they face.

The purpose of the framework is to encourage agencies and organizations (with different remits and responsibilities), local Indigenous leadership and institutions, and all others who need to be engaged in enhancing the protective environment for children to work together towards the same positive family-focused outcomes for every family affected by the criminal justice system. The framework also encourages greater cooperation between the child protection and the law enforcement and criminal justice systems in support of families. Its objective is to mitigate the impact of criminal sanctions, in particular incarceration, on the children and families of offenders.

As a reference document, the framework may be applied in different ways, for example as a community mobilizing and planning tool, an improvement framework, an audit or assessment tool, or for the development of training programs.



Guiding Principles

The framework is based on the following **guiding principles**:

1. *The rights of the child and the principle of the best interests of the child must be respected at all times**

The specific vulnerabilities of children of incarcerated parents must be considered and taken into account. These children have rights and those rights must be protected. Children should not be discriminated against because of the actions of a member of their family or for any other reason. The best interests of the child must be considered explicitly in all decisions that affect these children (Convention on the Rights of the Child, Article 3).¹ These children must be provided with the opportunity for their views to be heard, directly or indirectly, in relation to decisions which may affect them (Article 12).

2. *Children of parents in conflict with the law require special attention*

The children of parents in conflict with the law have the same basic needs as any other child, but they face different challenges due to the situation of their parents and, generally speaking, the negative social reaction to persons in conflict with the law and their families. These children are at risk of being ostracized and stigmatized by people around them, being victimized in various ways, or developing behavioral problems (including finding themselves in conflict with the law). These risks are real and should be kept in mind, but not overly dramatized so as to avoid further stigmatizing children. Most importantly, the needs and circumstances of these children must be taken into account to provide them with opportunities comparable to those of other children and parents.

¹ That principle is recognized in provincial legislation. British Columbia legislation contains references to the criteria to be considered in determining what is in the best interests of the child. The child's needs and circumstances are to be considered in determining the rights of the child (see: *Child, Family and Community Service Act*, R.S.B.C., 1996, c. C-12, s.4; *Adoption Act*, R.S.B.C., 1996, c. C-5, s. 3; *Family Law Act*, S.B.C. 2011, c. C-25, s. 32).

3. *Do no harm*

There is unfortunately a risk in directing attention to the challenges faced by a child/children of parents in conflict with the law that it might contribute to their further stigmatization and isolation. It is very important to intervene “lightly”, with proper attention to protecting the privacy of these children, while helping them fight isolation (or worse, association with high-risk groups like a gang). Care must be taken to ensure that no intervention ever contributes directly or indirectly to the stigmatization of these children as “problem children”; they are simply children who need special protection and support. Agency practices should never be detrimental to the physical safety and emotional wellbeing of the children. This requires that a trauma-informed approach be used with children and adults. Situations or processes can raise past experiences of trauma that involved the victimization or potential victimization for both the children and adults.

4. *The views and voice of the child must be heard*

At all stages of any intervention, children’s views should be sought, and children’s voices should be heard. Children should be helped to develop a plan for their own care and support. Strategies and processes are required to make sure that children are appropriately informed about what is happening to their parents (when they are separated), and about the decisions that are made that can affect them.

5. *The centrality of the role of parents*

Parents play an important role in helping children go through the difficult experience of parental incarceration or conflict with the law. That role, however, is subject to some important caveats relating to the child’s safety, wellness, development, etc. It is important to support, as appropriate, the role of the incarcerated parent from the start of detention and after release.

4. *Cultural sensitivity*

Culture is an important element of a child’s development and all interventions must be culturally sensitive and appropriate.

5. *Importance of traditional Indigenous practices*

When Indigenous children are involved, parents, extended family, Elders, and trusted community members must be involved in guiding service providers, caregivers, and foster parents in the customary laws of the community and traditional Indigenous child rearing practices (including adoption).²

² It is important to ensure that traditional Indigenous child rearing practices (including adoption) are recognized as valid, distinct, and acceptable from the point of view of child protection.

Practical Measures and Strategies

1. *Mobilizing the community in order to strengthen the protective environment for the children of incarcerated parents and other parents in conflict with the law*

Everyone in the community who carries a responsibility for the care, education and protection of children (including but not limited to agencies with a formal mandate) must come together to support these children.³

2. *Improving interagency collaboration*

Cooperation among health and child welfare services, the police, correctional officials, officials with responsibility for protecting children and their rights, educational institutions, non-governmental organizations offering support to children and their families, faith-based groups, Indigenous councils, and municipal authorities is required. However, there is no need to “reinvent the wheel”. Communities should make the best use of existing resources and coordination mechanisms. They may need to expand participation in these mechanisms in order to include all those who can play a role in helping this particular group of children.

- Make good use of existing coordination mechanisms.
- As necessary, develop interagency protocols or agreements concerning information sharing and case referrals (with adequate protection for privacy and confidentiality).
- Review existing agreements to determine whether they are sufficient to address the situations of children of parents in conflict with the law.

3. *Improving ways of identifying the children in need of assistance without further stigmatizing them*

Everyone in the community (neighbours, friends of the family, teachers, sports coaches, elders, religious figures, police, etc.) potentially has a role to play in making sure that children affected by their parents’ conflict with the law are identified, assisted, and protected. Relying solely on the children to come forward and ask for assistance is not realistic. Relying on the parents to come forward and seek help for their children is not reliable. Parents often fear the intervention of child protection services. In many instances they already have a history of contacts with these services. Finally, relying on the justice system itself to transmit information to child welfare and protection agencies is not sufficient either.

- Proactively seek to identify children in need of assistance, without labelling or stigmatizing them.
- Increase outreach activities to offer support to the children and their caregivers.

³ See: Public Safety Canada, “Community Readiness and Mobilization”.
<https://www.publicsafety.gc.ca/cnt/rsracs/pblctns/2017-h02-cp/index-en.aspx>

- Ensure that people working with or coming in contact with children as part of their professional responsibilities recognize the children’s signs of distress, isolation, need for assistance.
- Improve inter-agency sharing of information concerning the children while protecting their privacy and ensuring the confidentiality of that information.
- Ensure that all agencies and organizations have a proactive child protection policy that acknowledges the particular issues and needs of children who have a key relationship with a parent in conflict with the law.

4. *Improving information exchange among those who can offer support and assistance to the children*

One must attempt to facilitate the exchange of information among those agencies, institutions, and services that are able to offer care and assistance to children of parents in conflict with the law. At the same time, the privacy protection measures guiding information exchange must be respected. In that way, organizations are provided with the mandate and capacity to collaborate and share information to provide a continuum of care to the children and their families.

- Remove obstacles that hinder outreach activities and the identification of children of parents in conflict with the law by those who can offer them support and assistance. This may involve re-examining, in the light of the principle of the best interests of the child, any privacy and confidentiality protection measure or other factors hindering information exchange and collaboration among and between agencies and significant community resources. For example, the *Freedom of Information and Protection of Privacy Act* can be upheld through individuals and families controlling access to and disclosure of personal information through informed consent.
- Develop interagency protocols regarding the sharing of information in order to facilitate supportive interventions, or review existing cooperation protocols.
- Ensure that interagency protocols clearly specify the situations in which a guardian’s or a family’s permission to share information is not required, for example when there are child and adult protection issues.

5. *Increasing the support available for children of incarcerated parents*

- Provide children with access to emotional and psychosocial support, including help in dealing with stress, trauma, and feelings of stigma, blame and shame.
- Ensure the children’s safety and, if necessary, develop and implement child safety plans⁴; allow the child to stay in his/her home under a “supervision order” with conditions that the parents must follow; and, remove the child if the child safety cannot be ensured.⁵
- Improve the children’s access to existing programs (sport, recreation, mentoring, etc.).

⁴ When a child may be in danger, the Director of Child Protection may enter into a child “safety plan” to protect the child while keeping him/her with their family.

⁵ *Plain Language Guide* (<https://aboriginal.legalaid.bc.ca/resources/pdfs/pubs/Wrapping-Our-Ways-Around-Them-eng.pdf>), *Wrapping or Ways Around Them – The CFSA, Aboriginal Communities and Parents*.

- Facilitate the integration of children into a new school or a new community when they have to relocate.
- Help normalize the child's life (increased adult support and conversations, new relationships, activities, etc.).
- Offer support to children who have developed behavioural issues that affect their adaptation in school, participation in sports, or enjoyment of recreational and sport activities.

6. *Increasing support for the families*

The incarceration of one parent often results in various forms of hardship for the rest of the family, particularly the children. Imprisonment disrupts positive, nurturing relationships between many parents—particularly mothers who are often the sole or primary caregiver—and their children. Children and their families suffer economic strain and instability when a parent is imprisoned. Family members are not guilty of anything. All agencies and services involved with the families should try to mitigate the impact on family members at all stages of the criminal justice system, ensure their rights are upheld, and ensure they are not discriminated against because of the actions of their family member. Supporting the families and strengthening the children's positive family connections are necessary to ensure a healthy child development. Different forms of support are needed.⁶

- Encourage the various agencies and services involved with the children to work towards positive family outcomes and to adopt consistent practices in the support of families and positive life outcomes for the children.
- Ensure that families understand the criminal justice process and are aware of the supports available.
- Provide information to families and ensure that the information provided is timely and accurate.
- Encourage and support parents and caregivers to explain procedures, decisions and the truth of the situation to children in an age appropriate manner.
- Ensure that families have access to information and assistance on a range of issues such as housing, benefits and finances, legal issues, health, or childcare.
- Facilitate appropriate contacts between family members and the incarcerated parent.
- Provide guidance to agencies dealing with families of parents in conflict with the law.
- Conduct family impact assessments when new policies and practices are developed that may affect the families of people in conflict with the law.

⁶ Framework for the support of families affected by the Criminal Justice System. <https://www.familiesoutside.org.uk/content/uploads/2016/03/Families-Framework-FINAL-July-2015-v3.pdf> . For some concrete action suggestions, consult: Reducing re-offending: supporting families, creating better futures: A Framework for improving the local delivery of support for the families of offenders. https://dera.ioe.ac.uk/207/7/reducing-reoffending-supporting-families_Redacted.pdf.

- Keep incarcerated parents informed about the situation and well-being of their children and other family members, and support them in managing family concerns as appropriate.

7. Increasing support for alternative caregivers

- Support relatives who are taking care of the children. For example, see the EFry Brochure on “Raising a Relative’s Child”.⁷
- Support foster parents and work with the agencies responsible for foster care arrangements to provide them with information, resources, and training.

8. Helping parents and caregivers deal with family law and other legal issues

- Provide relevant and accessible legal information to parents.
- Provide legal information to children in an age-sensitive manner.
- Provide timely access to legal assistance (e.g., through legal assistance phoneline, Family Law Centres, etc.).
- Help parents and caregivers deal with child custody and child protection matters.
- Provide legal advocacy for the children and protect their rights in all contacts with the legal system.

9. Minimizing the impact of the parents’ contacts with the criminal justice system on the children

Decisions concerning the parent in conflict with the law should, wherever possible, consider whether the parent has dependents or responsibilities for the care of children, whether the offender is a sole or primary caregiver, the age and developmental needs of the children involved, and the best interests of each of the children involved. To that end, a number of measures can be taken at each stage of the criminal justice process.

At the time of arrest

The arrest of a parent can be a traumatic experience for children. It is almost always very disruptive and stressful for the family. It is important to try to mitigate these effects on the children. Also, temporary care arrangements must be made when the parent is the sole caregiver for the child.

- Try to mitigate the impact that arrest of a parent may have on any child present.
- Wherever possible, carry out the arrest in the absence of the child or, at a minimum, in a child-sensitive manner.
- Inquire, at the time of arrest, about the arrangements made for the children.⁸

⁷ <https://elizabethfry.com/wp-content/uploads/2018/12/efs-raising-a-relatives-child-handbook.pdf>

⁸ The International Association of Chiefs of Police has developed a model policy on Safeguarding Children of Arrested Parents. Keeping in mind the wide range of challenges that law enforcement officers face surrounding the arrest of parents and the corresponding impact on children under their supervision, the Model Policy identifies operational policies and procedures that law enforcement can implement to help mitigate the potential trauma to children during the arrest of a parent,

- Give the arrested parent who has sole custody of a child a reasonable opportunity to select a caregiver unless the arrest is for child abuse or neglect.
- Work together with local agencies to find appropriate ways to support children and other family members during and after an arrest. For example, prior to a planned arrest, agencies and community resources could be made aware, when appropriate, of any dependent or family members that might be present at the arrest.
- Develop protocols and policies concerning arrests and temporary care of children of the arrested individuals.
- Provide guidance to all concerned agencies and organizations, and their personnel, on how to support children and family members during and after an arrest.

Before trial

Pre-trial detention of a parent can be very disruptive for the child. It is a stressful time of transition. At the same time, as bail and other pre-trial decisions are being made concerning a parent, one cannot necessarily rely on that individual to disclose their parenting status and the situation of their children. Parents facing imprisonment have difficulties in arranging care for their children. They have limited time and resources to do so. They have limited time and resources to do so, and may not want to disclose that they have children because of concern that child welfare authorities will become involved. In some instances, chaotic family circumstances may make it difficult for the parents to make suitable care arrangements for their children, particularly in what may be a crisis situation for the family.

Delays in criminal proceedings (particularly when a parent is remanded in custody) can be disruptive and have a significant impact on a child. Delays can add to the anxiety and fear experienced by the children. Children need help understanding what is happening to their parent and to themselves.

- Ensure that arrest and detainment procedures take into account the responsibility of parents to arrange care for their children in addition to addressing their legal circumstances.
- Ensure that bail and pre-trial detention decisions take into account, as much as is possible, the likely impact of the decision on the family and the children of the accused.
- Ensure that reporting requirements and conditions attached to a bail supervision order take account of, and do not negatively affect, an offender's child caring responsibilities.
- Inform families about the conditions imposed by a bail supervision order.

whether or not they are home at the time. *Safeguarding Children of Arrested Parents*, http://www.theiacp.org/model-policy/wp-content/uploads/sites/6/2017/07/Safeguarding-Children-of-Arrested-Parents-Final_Web_v3.pdf. See also: McCormick, A. V, Cohen, I.M., and Ashton, A. (2018). Modifying the 'how' of an arrest: reducing the interacting effects of childhood exposure to intimate partner violence and parental arrest, *Police Practice and Research*, December 2018.

- Avoid unnecessary delays in proceedings concerning a parent/parents in pre-trial detention.
- Assist parents facing pre-trial detention in communicating with their family and arranging temporary care for their children.

At the time of sentencing

The best interests of the child should be considered when dealing with offenders with parental responsibilities. Decision making at the time of sentencing can be improved by ensuring that the impact of the decision on the offenders' children is considered.⁹ Minimize children's separation from their parents in conflict with the law by limiting the use of imprisonment whenever possible and appropriate.¹⁰

- Provide courts with accurate information about an accused's family situation and the potential impact of sentencing and bail decisions on family members, including through a pre-sentence, Gladue or cultural impact assessment report.
- Introduce the use of children/family impact assessments or statements at the time of sentencing.¹¹
- Where a custodial sentence is being contemplated, take into consideration the rights and best interests of any affected child and a child's right to have their views considered.
- Use alternatives to detention or community-based sentences, as far as possible and appropriate, especially in the case of a parent who is a primary caregiver.
- Ensure that non-custodial sentences take account of an offender's parental responsibilities.

Imprisonment

The incarceration of a parent, particularly a mother who is a primary or sole caregiver or who has very young children, can have a very detrimental impact on the child/children.¹² Various measures can be taken during incarceration, when appropriate, to help maintain the bond between children and their parent, facilitate

⁹ The courts should be provided with accurate information about an accused's family situation and the potential impact of sentencing and bail decisions on family members.

¹⁰ Millar, H. and Dandurand, Y. (2018). The best Interests of the Child and the Sentencing of Offenders with Parental Responsibilities, *Criminal Law Forum*, 22 (2): 227-277.

¹¹ Information on the children involved (and their family) should be collected as soon as possible and shared (responsibly and confidentially) with those in a position to offer support and assistance. Child and Family Impact assessments should inform all key decisions about the offenders. An assessment of the impact on children should consider financial impact, impact on practicalities such as housing or ability to stay close to family support; and, psychological and emotional impact. These assessments should involve the participation of the children themselves and be guided by the principle of the best interests of the child.

¹² See: *Children on the Edge ; Children affected by maternal imprisonment* <http://www.womensbreakout.org.uk/wp-content/uploads/downloads/2016/10/Children-on-the-Edge-Children-affected-by-maternal-imprisonment-final-1.pdf>; A Shared Sentence: The devastating toll of parental incarceration on kids, families and communities <http://www.aecf.org/m/resourcedoc/aecf-asharedsentence-2016.pdf>

contacts between them, and prepare for their eventual reunification. Contact between a child and his or her incarcerated parent can positively impact the child.

- Prior to, or on admission, enable individuals with parental responsibilities to make arrangements for those children, taking into account the best interests of the child.
- Ensure that prison administrations collect information at intake and later regarding the children of detainees, keep that information up-to-date, and protect its confidentiality.
- On admission and on a prisoner's transfer, assist prisoners (who wish to do so) to inform their children (and their caregivers) of their imprisonment and whereabouts or ensure that such information is communicated to them.
- Make information available about contact and visiting modalities, procedures and internal rules in a child-friendly manner and in different languages and formats as necessary.
- Give due regard in decisions regarding the transfer of the incarcerated parent to the best interests of the child when considering the rehabilitation purpose of the transfer.
- Enforce restrictions on contact of incarcerated parents in a manner that respects the children's right to maintain contact with their parent.¹³
- Consider significant events in a child's life, such as birthdays, first day of school, graduation, or hospitalization when granting prison leave to parents.
- Ensure that children are allowed to visit an imprisoned parent, when appropriate, as soon as possible following the parents' detention and, on a regular and frequent basis, from then on.
- Organize children's visits so as not to interfere with other elements of the child's life, such as school attendance.
- Allow arrangements for a qualified person to accompany the children during prison visits if the children's caregiver is not available to accompany the child.
- Ensure that the prison visit context is respectful to the child's dignity and right to privacy, including providing child-friendly spaces when possible, facilitating access and visits for children with special needs, and taking into account the children's developmental needs (physical contact, food, and play).
- Arrange the children's visits in a flexible manner, particularly when the children's parents are imprisoned far away from home.
- Use information and communication technology (e.g., video-conferencing, mobile and other telephone systems, internet, including webcam and chat functions), when a family is unable to visit regularly, to facilitate communications between parents and children.¹⁴

¹³ Restrictions on contacts between prisoners and their children shall be implemented only exceptionally, for the shortest period possible, in order to alleviate the negative impact the restriction might have on children and to protect their right to an emotional and continuing bond with their imprisoned parent.

¹⁴ These means of communication should be used to augment and not replace face-to-face contacts between children and their imprisoned parent unless physical visitation is not possible due to the distances and/or costs involved.

- Assist imprisoned parents with the costs of communicating with their children if their means do not allow it.
- Facilitate imprisoned parents' participation in the parenting of their children, including communicating with school, health and welfare services and taking decisions in this respect, except in cases where it is not in the child's best interests.
- Facilitate home leaves for the parents, in particular during the period before their release in order to provide opportunities for them to prepare for fully resuming their parental role and its responsibilities on release, when appropriate.
- Offer programs to incarcerated parents that support and develop a positive child-parent relationship.

Social reintegration of incarcerated parents

- Support the parents' reintegration after incarceration (reintegration planning, housing at point of release, access to financial assistance, etc.) and provide support for family issues.
- Involve children's families and caregivers in the planning of the parent's release and return to the community.
- Work collaboratively with families to ensure a smooth transition of the incarcerated parent from custody to the community.
- Expand family contacts and increase family involvement in preparation for the parents' release. Design and implement pre- and post-release reintegration programs that take into account the specific needs of individuals resuming their parental role in the community.
- Ensure that decisions regarding early release of incarcerated parents take into account their parental responsibilities, as well as their specific family reintegration needs and issues.

10. *Empowering community members through training on the use of the principle of natural justice and the safeguards of administrative fairness when interacting with government bodies*

Section 7 of the Canadian *Charter of Rights and Freedoms* asserts that "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." The principles of fundamental justice are such that the substance of a decision is more likely to be fair if the procedure by which the decision was made has been just. The procedures based on the principle of administrative fairness safeguard individuals in their interactions with the state. These principles stipulate that whenever a person's "rights, privileges or interests" are at stake, there is a duty to act in a procedurally fair manner.

11. *Providing training for professional staff working with offenders*

Agencies working directly or indirectly with offenders and their children/families should receive training to ensure that children affected by their parents' conflict with the law are treated sensitively and that assistance is provided to the children, the offenders, and their family to develop or maintain healthy relationships.

- Provide training on child-related policies, practices and procedures, for all correctional staff in contact with children and their parents serving a prison sentence and/or a community-based sentence.
- Provide training for organization staff who come into contact with children and their imprisoned parents in areas such as the children's needs and rights, the impact of imprisonment on the children, or how to support imprisoned parents, their children and their families.

12. Committing to a culturally sensitive approach, including respect for Indigenous values and traditions

- Support the development of systems, standards and practices that respect and reflect the pivotal place that culture, tradition, values, language and identity play in the lives of children.
- Help children build connection to community, culture, group, clan, and extended family when those relationships have been damaged.
- Engage community resources without a formal mandate to support the children and their families.¹⁵
- Help Indigenous children and heal families by helping children preserve their aboriginal identity.
- Keep Indigenous children connected to their land, languages and culture.
- Make use of Indigenous decision-making process.
- Work closely with Indigenous communities to identify ways to protect children of parents in conflict with the law without removing them from the family or the community, and find homes within the children's extended family or community.

13. Working with the media and with public opinion

- Provide the public, through the media and other means, with reliable and up-to-date data and good practice examples to increase their awareness regarding the children affected by parental imprisonment and their needs, and to prevent stereotyping and stigmatizing children with imprisoned parents.

14. Ensuring adequate funding

- Provide sufficient resources to agencies and organizations to support children with imprisoned parents and their families to enable them to deal effectively with their particular situation and specific needs.

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¹⁵ *The MCFD Aboriginal Policy and Practice Framework* (Ministry of Children and Family Development, 2015) proposes a "pathway towards restorative policy and practices" based on an "understanding of the shared history of collaboration and the attempted destruction of Aboriginal cultures" (p. 6). It includes a formal commitment to "hold esteem, recognition and regard for the knowledge, traditions, distinct cultures, languages and processes of Aboriginal children, youth, families and communities, and to be informed of Aboriginal histories and current experiences" (p. 10). The Framework also promises to promote the "development of systems, standards and practices that respect and reflect the pivotal place of culture, tradition, values, language and identity" (p. 15).

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