

Policy Brief: Children with incarcerated parents should be considered victims within the *Canadian Victims Bill of Rights*

Kids With Incarcerated Parents (KIP) Canada

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EXECUTIVE SUMMARY

Children with incarcerated parents are often an overlooked population when discussing crime and victimhood. Children are both affected by the absence of their parents and their perceptions of the criminal justice system as a result of that absence. Parental incarceration is an Adverse Childhood Experience (ACE) which places substantial social, financial, and emotional impacts on the children left behind. We argue that the definition of “victim” in the *Canadian Victims Bill of Rights* needs to be expanded to include these children.

I. INTRODUCTION

The *Canadian Victims Bill of Rights* defines victim as “an individual who has suffered physical or emotional harm, property damage, or economic loss as the result of the commission or alleged commission of an offence.”¹ The commission of a crime affects more than the immediate parties—offender and the victim(s). Crime can have significant and long-standing effects on the immediate parties, their family members, loved ones, and larger community.

In 2011, the UN Committee on the Rights of the Child held a meeting to discuss article 9 of the *UN Convention on the rights of the child (Convention)*, which relates to the rights of children with incarcerated parents.²

- Article 9 declares, “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.”³
- Article 3 also declares, “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.”⁴

The Committee recognized the “need for legislative framework that would address issues of children at the outset of a situation related to or leading to a parent being incarcerated.”⁵ The Committee released a Recommendation (“Recommendation”) meant to provide States with more guidance on how to promote and protect the rights of children experiencing parental incarceration pursuant to article 9. In addition, “international comparisons of indicators for the well-being of children illustrate that Canada’s children would benefit from improvement in the implementation

¹ *Canadian Victims Bill of Rights*, SC 2015, c 13, s 2.

² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, online: <www.refworld.org/docid/3ae6b38f0.html>.

³ *Ibid*, art 9(3).

⁴ *Ibid*, art 3(1).

⁵ UN Committee on the Rights of the Child, “Report and Recommendations of the Day of General Discussion on ‘Children of Incarcerated Parents’”, 30 September 2011, United Nations, online(pdf): <www.ohchr.org/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf>.

of the convention rights across Canada.”⁶ Canada has yet to fully implement the *Convention* and these “Recommendations” and including these children within the definition of “victim” within the *Canadian Victims Bill of Rights* would be a step in the right direction.

Implications of the *Convention* and the “Recommendation” on children’s rights

The *Convention* recognizes children as “true subjects of the law”; It shifts the rights of children from that of “mere protection” to “true fundamental individual rights.”⁷ Children are full people who should not only be afforded full rights under the law, but they also “deserve special protection because of their particular vulnerability.”⁸

This vulnerability is exacerbated by parental incarceration. The absence of a parent in a child’s life can threaten their physical, emotional, and financial well-being. It is imperative that the rights and protections of children experiencing parental incarceration are upheld and affirmed through legislation.

Other situations where the best interests of the child are taken into consideration:

- Divorce proceedings
- Deportation and immigration hearings
- Services to children’s cases
- Sentencing hearings of parents*
- The *Youth Criminal Justice Act*

II. RESEARCH OVERVIEW

Parental incarceration is an Adverse Childhood Experience (ACE).⁹ ACEs are “a subset of childhood conditions that have been consistently associated with many long-term negative effects, both behavioural problems like substance abuse and depression and physical health problems such as heart disease.”¹⁰ There is also a strong correlation between ACEs and subsequent contact with the criminal justice system.¹¹ In addition, children with incarcerated parents are more likely to have other ACEs than kids who do not have an incarcerated parent.¹²

⁶ Kathy Vandergrift, “Children’s Charter rights and Convention Rights in Canada: An Advocacy Perspective” (2017) Can J Children’s rights 105 at 106.

⁷ Jean-François Noël, “The Convention on the Rights of the Child, online: Department of Justice Canada <www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/crc-crde/conv2a.html>.

⁸ *Ibid.*

⁹ Kristin Turney, “Adverse Childhood Experiences Among Children of Incarcerated Parents” (2018) 89 Children and Youth Services Review 218 at 219.

¹⁰ David Finkelhor, “Trends in Adverse Childhood Experiences (ACEs) in the United States”, 108 Childhood Abuse and Neglect 1 at 1.

¹¹ “Adverse childhood experiences are linked to justice system contact.” *NewsRx Health & Science*, (2021) 176 *Gale Academic OneFile*, online:<link.gale.com/apps/doc/A646726359/AONE?u=yorku_main&sid=bookmark-AONE&xid=2768486f>.

¹² Turney, *supra* note 9 at 220.

Incarceration numbers:

Canada signed onto the *UN Convention of the rights of the child* in 1990 and ratified it in 1991. Since then, the prison population of Canada has risen.

- Every year in Canada, over 150,000 adults are remanded into custody which results in approximately 350,000 innocent children who suffer from the traumatic effects of being separated from a parent in prison.¹³
- Women are among the fastest growing prison population in Canada, and about two-thirds of them are parents or primary caregivers of children.¹⁴ Pregnant people in custody are often separated from their infants at birth and prevented from bonding with or nursing their newborns.¹⁵
- Indigenous people are incarcerated at 6–7 times the national average, and rates of incarceration still continue to rise.
- Black Canadians account for more than ten percent of the incarcerated population while being only 3 per cent of the Canadian population.

A. Parental incarceration exacerbates childhood poverty

Children and single-parent families are at the greatest risk of poverty.¹⁶ Parental incarceration results in significant economic loss for the family during the duration of the incarceration, as well as the years following incarceration. Incarceration affects parents' abilities to be employed, participate in the labour market and financially support their children.¹⁷

Children of incarcerated parents are also less likely to live in a two-parent household and more likely to live-in large families. In single-parent households, the loss of the sole breadwinner to imprisonment leaves children and their subsequent caregivers in precarious situations.

- Studies show that family income lowered by 22 per cent during the period of incarceration, and lowered by 15 per cent after the parent's re-entry into the labor force;
- The incarceration of a mother was found to be associated with greater economic detriment to the household, especially when it was already a single-parent household prior to incarceration;¹⁸

¹³ Kids and Families Team of SURJ Toronto, "Family Separation in Canada: A Resource and a Call to Action" (2019) online:

<<https://static1.squarespace.com/static/59c5671151a584d45fa797b8/t/5c6c8e8bb208fc98c87a99fa/1550618251152/Family+Separation+Resource+Sheet.pdf>>.

¹⁴ Canadian Association of Elizabeth Fry Societies (2013).

¹⁵ SURJ Toronto, *supra* note 13.

¹⁶ John Howard Society of Ontario, "The Counter Point: Poverty and Crime, is there a connection?" online: <johnhoward.on.ca/wp-content/uploads/2014/09/counter-point-1-poverty-and-crime-is-there-a-connection.pdf>.

¹⁷ Amanda Geller et al, "Parental Incarceration and Child Well-Being: Implications for Urban Families" (2009) 90:5 Soc Sci Q 1186 at 1196.

¹⁸ Eric Martin, "Hidden Consequences: The Impact of Incarceration on Dependent Children" (2017), online: National Institute of Justice <nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children>.

- Children of incarcerated parents are also less likely to have stable housing;
- Costs associated with arrest and incarceration such as legal fees, visitation, phone calls, or in-prison needs place greater strain on children and families of incarcerated people;
- The cost of prison communication “divides families, deters rehabilitation, and limits access to the justice system by hitting a vulnerable population with exorbitant bills.”¹⁹
 - Phone calls: Louise Leonardi of the Canadian Families and Corrections network recognizes phone calls as “absolutely critical,” and “better for the family on the outside and any children.”²⁰
 - It is “common for families to spend hundreds of dollars a month, plus the cost of a landline.”

It is important to note that reported reduction in income does not describe how limited the earning potential of the family was before parental incarceration. Nuance allows for the understanding that the vicious cycle of poverty increases the risk of interaction with the criminal justice system, and such interaction with the system limits the ability to exit poverty.²¹ In Canada, the poverty-to-prison pipeline is very active; for example, research shows that “80 per cent of women in Canadian institutions are there for poverty related crimes,” and “74 per cent of them were even unable to meet their basic needs at the time of arrest.”²² There is a revolving door between poverty, homelessness, and incarceration, and the children of the incarcerated remain the most vulnerable.

- Indigenous children are more than twice as likely to live in poverty than non-Indigenous children; there is a generational cycle of poverty made worse by the over-incarceration of Indigenous people;²³
- Black children are 3.5 times more likely to experience poverty and food insecurity.²⁴

B. Children experience trauma as a result of parental arrest and incarceration

The implications of the arrest and incarceration of a parent can have long-lasting and life altering effects on the children left behind. In fact, 1 in 5 children witness their parent’s arrest. Not surprisingly, children view the sudden loss of a parent (no matter the duration) as a traumatic event. Subsequently, parental absence is regarded as an important life event.²⁵

¹⁹ Patrick White, “A Mom’s \$6,000 phone bill in three months: The push to rein in Ontario’s costly prison phone system,” *The Globe and Mail* (January 2020), online: <www.theglobeandmail.com/canada/article-activists-see-injustice-in-high-cost-of-phone-calls-from-ottawa-area/>.

²⁰ *Ibid.*

²¹ Mohany-Dean Tabbara, “Dismantling vicious cycle of poverty and systemic racism should guide criminal justice reform” (2020) online: Policy Options <policyoptions.irpp.org/magazines/july-2020/dismantling-vicious-cycle-of-poverty-and-systemic-racism-should-guide-criminal-justice-reform/>.

²² Edmonton Social planning Council, “Poverty and Women’s Incarceration in Alberta” (2020) online: <edmontonsocialplanning.ca/2020/09/08/blog-poverty-and-womens-incarceration-in-alberta/>.

²³ “Exceptionally high child poverty rates in Black, Indigenous communities is indicator of systemic violence in Canada” (2020) online: CISION <www.newswire.ca/news-releases/exceptionally-high-child-poverty-rates-in-black-indigenous-communities-indicator-of-systemic-violence-in-canada-845089842.html>.

²⁴ *Ibid.*

²⁵ Jeremy Travis & Michelle Waul, “The Children and Family of Prisoners” in Jeremy Travis & Michelle Waul, eds, *Prisoners Once Removed: The Impact of Incarceration and Re-entry on Children, Families and Communities*

- A recent study directly linked witnessing a parent's arrest to increased stress hormone levels in children with incarcerated parents:
 - "When children are exposed to the parent's arrest, and witness the parent being handcuffed and removed, they often feel frightened, distressed, or at fault, and some think that they will also be arrested."
 - The trauma of the sudden arrest and removal of their parents and/or caregivers from their home, as well as the possible rehoming of the child has been linked to elevated stress hormones, lower memory function, and PTSD.²⁶
 - Such trauma and elevated stress levels exacerbates the "immediate and long-term emotional, social, and health consequences, including sleep disruptions, irritability, worry and anxiety, and behavior impairments."²⁷

Incarceration as an ACE serves as a "pathway for social, emotional, and cognitive neurodevelopmental impairments."²⁸ Incarceration may also strip parents of their right to reunite with children when their time in prison has concluded.²⁹ Not only are children separated from their parents, but often they are separated from their siblings during the incarceration period.³⁰

Adverse effects of trauma from incarceration³¹

- Children are diverted from development tasks when they experience trauma: instead of spending their emotional energy developing age-appropriate skills such as forming attachments, developing trust, developing autonomy and building identity, they are forced to focus on their separation from a parent. The prolonged disruption to parent-child relationships due to incarceration creates periods of uncertainty and instability. Questions about where they will live, who they will live with, who will care for them, and when they will see their parents and other family members again arise.
- Incarceration as an ACE leads to antisocial behavior, aggressive or isolated behavioural disorders, as well as mood and conduct disorders. Children of incarcerated parents have an increased likelihood of engaging in gang activity, substance abuse, and sexual misconduct.
- Children of incarcerated parents are more likely to be suspended and expelled from school, and have lower educational achievement.

(Washington: The Urban Institute press, 2003) 1 at 13,17-18; Luke Muentner et al, "Getting under the skin: Physiological stress and witnessing paternal arrest in young children with incarcerated fathers" (2021) 29:1 *Developmental Psychobiology* 1 at 2.

²⁶ *Ibid* at 3.

²⁷ *Ibid* at 2-3.

²⁸ Susan D Phillips & Trevor Gates, "A Conceptual Framework for Understanding the Stigmatization of Children of Incarcerated Parents" (2011) 20 *J Child Fam Stud* 286.

²⁹ Travis, *supra* note 25 at 25.

³⁰ *Ibid* at 18.

³¹ Lois E Wright & Cynthia B Seymour, "Effects of Parental Incarceration on Children and Families", Michigan Family Impact Seminars, at 10-12 online: <www.purdue.edu/hhs/hdfs/fii/wp-content/uploads/2015/07/s_mifis05c03.pdf>.

Children as victims of crimes and parental-incarceration:

- Other studies have shown that children who witness the arrest of a parent are also significantly more likely to have been a) a victim and/or b) a witness to a broader range of violent and non-violent crimes within their homes.³² Thus, arrest and incarceration adds to the trauma of witnessing an offence.
- For children in this precarious situation, their sense of safety, security, and even loyalty to a parent is tested. Family disputes often follow parental interaction with the criminal justice system.³³

C. Parental incarceration leaves children socially isolated

As mentioned in Part B above, incarceration weakens family bonds: **visitations**

- Some parents may not want their kids to visit them in prison due to shame or wanting to protect the child. Some parents do, but those visitations heavily depend on the child having an adult in their life willing to bring the child for a visit.
- Prisons are not readily accessible by public transportation, and visits are hard without access to a car or money for lengthy bus trips. One of the programs that KIP CANADA undertakes is driving children and families of incarcerated people to prisons and detention centres in Ontario.
- Poor visitation conditions which include no-contact visits, a lack of privacy, long waits, and crowded, noisy, and dirty facilities do not help to strengthen the bond between children and their parents.³⁴

Social stigma and isolation:

There is a strong negative stigma associated with being the child and family member of an incarcerated person. In fact, involuntary child-parent separation due to incarceration does not garner a lot of sympathy from outsiders.³⁵

- Children can bear the same stigma as their parents due to beliefs that they share similar characteristics with their parents: “the apple does not fall too far from the tree.”³⁶
- Children of incarcerated parents have limited peer networks;
- Children of incarcerated parents have fewer friends, reduced social outreach, and are increasingly likely to be associated with other antisocial peers.³⁷

³² Yvonne Humenay Roberts et al, “Children Exposed to the Arrest of a Family Member: Associations with Mental Health” (2013) *J Child Fam Stud* 1 at 2.

³³ Wright & Seymour, *supra* note 31 at 12.

³⁴ Joyce Arditti, “Child Trauma Within the Context of Parental Incarceration: A Family Process Perspective” (2012) 4(3) *Journal of Family Theory & Review*.

³⁵ Travis A Fitch & John D Buckhead, “Behavioural Reactions of Children to Parental Absence due to Imprisonment” (1981) 30 *Family relations* at 84.

³⁶ Phillips & Gates, *supra* note 28 at 287.

³⁷ Sonja E Siennick & Daniel P Mears, “Social Exclusion and Parental Incarceration Impacts on Adolescent’s Networks and School Engagement” (2018) 80: 2 *J Marriage Fam* 478 at 487.

D. Parental incarceration increases intergenerational crime

The incarceration of parents perpetuates the intergenerational cycle of criminal behaviour, poverty, and lower health outcomes. These children are likely to face the same socioeconomic disadvantages later in adulthood (less educational attainment, less job prospects) that lead to increased contact with the criminal justice system.

- Children of incarcerated parents are six times more likely to become incarcerated.
- Children of incarcerated mothers had much higher rates of incarceration, and earlier and more frequent arrests.³⁸
- Male adolescents who experienced parental incarceration have an increased risk of adult arrest before the age of 25.³⁹

III. Our Recommendations

We agree with the Canadian Coalition for the Rights of Children that “[g]ood governance for children means establishing permanent mechanisms that focus attention on the obligation to give priority consideration to children in all decisions that affect them.”⁴⁰

Children of incarcerated parents are an incredibly vulnerable group who experience severe trauma, broken familial bonds, social stigmatization, and financial loss. These longstanding experiences affect their outcomes in adulthood. Parental incarceration is an Adverse Child Effect that leads to permanent effects of social exclusion, contact with the criminal justice system, incarceration, and poverty. These far-reaching repercussions on children throughout all aspects of their lives demonstrate that these children become victims themselves when crime is committed.

- The “Recommendation” Committee states that the rights of children of incarcerated parents to information concerning their parents should be taken into full account. Children of incarcerated parents, as victims, both benefit from and have a right to be informed about their parent’s situation, in an age-appropriate manner.
- The Committee also recommends that states ensure that the rights of children with incarcerated parents are taken into account from the moment of arrest through all stages of criminal justice contact.

A way to implement these recommendations as well as affirm the rights of children as full human beings according to the *Convention* is to classify them as victims under the *Canadian Victims Bill of Rights*. These children are not in conflict with the law and should not be treated as such. They

³⁸ Martin, *supra* note 18.

³⁹ Jessica G Finkeldey et al, “An Exploratory Investigation of Parental Incarceration, Emotional Independence, and Adult Children’s Criminal Activity” (2021) *Journal of Developmental and Life-Course Criminology* 1 at 2.

⁴⁰ Canadian Coalition for the Rights of Children, “Implementing All Children’s Rights in Canada,” online: <rightsofchildren.ca/wp-content/uploads/2016/03/Implementing-All-Childrens-Rights-in-Canada.pdf>.

also lose when crime is committed as the incarceration of their parents becomes a shared sentence. It would be in the best interests of these children for them to be given status within the *Canadian Victims Bill of Rights*.