



International Centre for Criminal Law Reform
and Criminal Justice Policy

Bringing Information to Prosecutors and Courts on the Impact of Sentencing Decisions on Offenders' Families and Children



Prepared by

Jessica Jahn

International Centre for
Criminal Law Reform &
Criminal Justice Policy

August 2023

Our Partners





International Centre for Criminal Law Reform and Criminal Justice Policy

© 2023 International Centre for Criminal Law Reform and Criminal Justice Policy.

All rights reserved.

We encourage sharing this publication for educational purposes. Credit must be given to the International Centre for Criminal Law Reform and Criminal Justice Policy.

Cover: Designed by Visme.

Photo by Chayene Rafaela on Unsplash.

Please direct inquiries to:

International Centre for Criminal Law Reform and Criminal Justice Policy

1822 East Mall, Vancouver, BC V6T 1Z1 Canada

www.icclr.org

Bringing Information to Prosecutors and Courts on the Impact of Sentencing Decisions on Offenders' Families and Children

Jessica Jahn¹

Bringing Child Impact Information to the Court

This resource explains how information can be shared to make criminal justice authorities aware of an offender's family situation to help ensure the best interests of their child(ren) are considered in sentencing decisions. It also addresses some of the challenges that may be encountered in institutionalizing that kind of process, including suggestions of methods to overcome those foreseeable challenges.

Unlike in family court, where the best interests of the child are routinely considered in parental separation decisions, Canadian criminal sentencing courts inconsistently consider the rights of children separated from their primary or sole caregiver because of detention or imprisonment.² In Canada as elsewhere, judges may consider the harms to an offender's child(ren) in crafting a criminal sentence if details on the offender's parental duties and their children's independent rights are shared with the court.³ In so doing, the intention is not necessarily to seek a mitigated or lenient sentence, but ensure that judges have access to information about the offender's parental responsibilities to reduce the likelihood that their punishment interferes with their ability to support, guide, and raise their child(ren). In other words, the goal is to hold the offender accountable for their parental responsibilities and ensure that they can discharge those duties during their punishment as much as possible, thus promoting the best interests of the child. In fact, experience from other jurisdictions demonstrates that parental status does not in and of itself predict the likelihood of receiving a non-custodial sentence relative to the many other considerations in any given case.

¹ The author wishes to sincerely thank Mr. Cody McIntee for his assistance and gratefully acknowledge Prof. Yvon Dandurand, Ms. Sarah Beresford, Mr. Jonathan Rudin, and Ms. Allison Hollihan for sharing helpful information for the preparation of this resource.

² Hayli Millar and Yvon Dandurand, "The best interests of the child and sentencing of offenders with parental responsibilities," *Criminal Law Forum* 29 (2018): 227-77. Tamar Lerer, "Sentencing the family: Recognizing the needs of dependent children in the administration of the criminal justice system," *Northwestern Journal of Law & Social Policy* 9 no. 1 (2013): 24-57. Shona Minson, "Who cares? Analysing the place of children in maternal sentencing decisions in England and Wales." Oxford: University of Oxford Press. 2017. Kristiina Reed, "Children of prisoners: Orphans of justice?," *Family Law* 44 (2014): 69-74.

³ Section 726.1 of the *Criminal Code* states that "[i]n determining the sentence, a court shall consider any relevant information placed before it, including any representations or submissions made by or on behalf of the prosecutor or the offender."

As discussed below, there are several legal mechanisms by which such information can be introduced to the courts, including in reports (e.g., bail, presentence, and *Gladue* reports), statements (e.g., family or child impact statements), and assessments (e.g., impact of race and culture assessments), among others. Although the impact of an offender’s parental responsibilities in Canadian remand and sentencing decisions is difficult to empirically assess due to a lack of robust data, studies from other countries show that describing an offender’s mother status in a presentence report (PSR) significantly affects whether her caregiving obligations are reflected in the conditions of her sentencing.⁴ Indeed, remand and sentencing decisions informed by such information may similarly help to inform other potential determinations, such as a possible prison assignment that enables convenient parent-child visits.

Importantly, the impacts on children in families with incarcerated caregivers extend beyond the immediate disruptions to their lives.⁵ Longitudinal studies have shown that the accumulation of adverse childhood experiences, such as the imprisonment of a household member and emotional neglect, alters a child’s brain development and is significantly associated with various forms of criminal justice contact in adulthood, including arrest and incarceration.⁶ Parental imprisonment is itself an adverse experience for many children, one that exposes them to other possible collateral traumatic experiences, such as separation anxiety and emotional distress, depending on the child’s age and maturity.⁷ Accordingly, evidence suggests that family-focused remand and sentence conditions, especially for non-violent, non-serious, and first-time offenders with caregiving duties, can help to interrupt the “intergenerational incarceration cycle,”⁸ prevent future crime, and rehabilitate the offender.⁹

However, studies have shown that there is considerable variation in whether and how an offender’s parental role is considered in sentencing decisions. For instance, a cursory review

⁴ Shona Minson, “Mitigating motherhood: A study on the impact of motherhood on sentencing decisions in England and Wales.” London: The Howard League for Penal Reform. 2014.

⁵ There is variability in how children are affected by their parent’s criminal justice involvement. For instance, not all parent-child separations because of parental incarceration are entirely negative for the child. In some cases, parental separation might improve a child’s development, particularly if the parent is violent, abusive, or otherwise mistreating the child.

⁶ Alexander Testa, Dylan Jackson, Kyle Ganson and Jason Ngata, “Adverse childhood experiences and criminal justice contact in adulthood,” *Academic Pediatrics* 22, no. 2 (2022). Mary Boullier and Mitch Blair, “Adverse childhood experiences,” *Paediatrics and Child Health* 28, no. 3 (2018): 132-37.

⁷ Amanda McCormick, Hayli Millar and Glen Paddock, “In the best interests of the child: strategies for recognizing and supporting Canada’s at-risk population of children with incarcerated parents.” Abbotsford: Centre for Safe Schools and Communities. 2014.

⁸ Chyla Aguiar and Susie Leavell, “A statewide parenting alternative sentencing program: Description and preliminary outcomes,” *Smith College Studies in Social Work* 87 no. 1 (2017): 78-93.

⁹ Caitlin Curry, Veronica Horowitz, Julie Matonich and Kristin Stock, “Mass Parental Incarceration and Sentencing Reform in Minnesota,” *Mitchell Hamline Law Review* 45 no. 4 (2019): 1341-71. Lauren Feig, “Breaking the cycle: A family-focused approach to criminal sentencing in Illinois,” *Advocates’ Forum* 14 no. 1 (2015): 13-26.

of the Canadian jurisprudential evidence demonstrates that where a court has received information on the offender's parental status, only some of the short-term effects on the children have been specifically mentioned in the reasons for sentence, and in some instances, were deemed by the judge as insufficient to warrant special conditions that might limit the impact on the child(ren).¹⁰ Likewise, the Canadian Friends Service Committee observed that parental duties had little effect on sentencing, although Canadian judges were more likely to consider the offender's child(ren) in sentencing decisions if their parental role was seen to enhance rehabilitation efforts.¹¹ Even in situations where strong evidence on the hardships to children is before a court, there could be restrictions on the extent to which judges can take such information into account, partly because an offender's parental status is situated within several broader considerations. In crafting remand or sentence conditions, judges must weigh many applicable factors, notably the objectives of denunciation, deterrence, public protection, and rehabilitation. Courts must also abide by legislative sentencing obligations, such as mandatory minimum sentences, thereby limiting the sentencing options.

Nevertheless, parental duties often form a critical part of a defendant's personal circumstances, and judges can often exercise significant discretion in considering a broad range of factors that affect the offender and their offence, including in some cases to deviate from the prescribed minimum penalty where relevant.¹² In Canada, judges are also legislatively required, pursuant to section 718.2(d) of the *Criminal Code*, to not deprive the offender of liberty "if less restrictive sanctions may be appropriate in the circumstances."¹³ Additionally, consideration of the best interests of the offender's child(ren) may align with the therapeutic goals of problem solving courts, where greater discretion may be afforded to judges to tailor the sentencing conditions to the offender's specific circumstances.¹⁴ Some community-based alternatives to imprisonment exist in Canada and abroad that judges and others can consider.

¹⁰ In the limited cases reviewed, the most commonly cited short-term effects on children with imprisoned parents were residential disruption or the temporary placement of the child in foster care, deprivation of parental guidance and care, and the absence of broad support that a parent would otherwise afford their child.

¹¹ Canadian Friends Service Committee, "Considering the best interests of the child when sentencing parents in Canada: Sample case law review." Toronto: Quakers. 2018.

¹² Tamara Walsh and Heather Douglas, "Sentencing parents: The consideration of dependent children," *Adelaide Law Review* 37 (2016): 135-61.

¹³ *Criminal Code of Canada*, RSC, 1985, c. C-46.

¹⁴ Hayli Millar and Yvon Dandurand, 21.

Canadian Jurisprudential Variations in Sentencing Decisions of Offenders with Parental Responsibilities

Within the overall balance of factors in sentencing decisions, there appears to be variation in whether and how the offender's parental status is weighed, including in cases where it has been taken as a basis for mitigation. Whereas conditional sentences have been granted in some cases to allow the offender to financially support their child(ren) and maintain rehabilitation efforts, the judges in other cases have expressly stated that parental obligations, in and of themselves, are insufficient to grant a non-custodial sentence. Other courts still have refused to recognize defendants' parental duties in mitigation and extend leniency for the third-party hardships to which their children will be subjected.¹⁵ The following selected and similar cases illustrate such variations.

In *R. v. Browne*, the Supreme Court of Ontario imposed a conditional sentence on the defendant with a prior record for possessing cocaine for the purposes of trafficking, observing "I believe that sending you to prison may interfere with the efforts you have already made to rehabilitate yourself, including the significant parental responsibilities that you have been performing with your two sons."¹⁶

In contrast and more recently, in its sentencing for *R. v. Mackay*, the Supreme Court of British Columbia (BCSC) acknowledged that the offender's "support of her child does stand as a proven mitigating factor" of her first-time offence of cocaine trafficking, although the BCSC found that "(...) unfortunately for Ms. Mackay's child, the fact that a person convicted of a crime has some support obligations, moral, legal or otherwise, for others is not a reason, in and of itself, to decline to grant jail time."¹⁷ In arriving at that conclusion, the BCSC drew from precedent, including *R. v. Sandher*, *R. v. Newson*, and *R. v. Tran*.¹⁸

Interestingly, in *R. v. Newson*, the defense counsel attempted to appeal and adduce fresh evidence on the "plight" of the offender's adolescent daughter since he was sentenced to six years in prison for conspiracy to traffic in cocaine.¹⁹ The offender's daughter, who was placed with her mother who suffers from a substance addiction, was apparently receiving insufficient care. However, the judge found the test for admissibility was not met as the fresh evidence would "not make a difference in the sentence imposed." The court further explained "[i]t is often the case that a parent's criminal offending creates hardships for members of the family. That children are deprived of parental guidance and care when a parent is incarcerated is inevitable in cases of serious offending by a parent."

Unlike the judiciaries in the United Kingdom and the United States, the Canadian judiciary is not bound by federal sentencing guidelines that instruct whether judges should inquire if a defendant is the caregiver to children and stipulate whether and to what extent a defendant's

¹⁵ See, for instance, *R. v. Estrella*, 2011 OSCJ 6616 at para 16.

¹⁶ *R. v. Browne*, 2013 ONSC 7208 (CanLII), <https://canlii.ca/t/g20sd> at para 34.

¹⁷ *R. v. Mackay*, 2019 BCSC 1112 (CanLII), <https://canlii.ca/t/j1ct0> at para 65.

¹⁸ *R. v. Sandher*, 2008 BCSC 263 (CanLII), <https://canlii.ca/t/1vxgf>; *R. v. Newson*, 2008, BCCA 28 (CanLII), <https://canlii.ca/t/1vh4g>; *R. v. Tran*, 2007 BCCA 405 (CanLII) <https://canlii.ca/t/1scmc>. In *R. v. Sandher*, the justice remarked "[t]he greatest loss with respect to Mr. Sandher's offences is the effect of these offences on his children. However, that in and of itself is not a sufficient basis upon which to grant a conditional sentence order" (para. 57).

¹⁹ *R. v. Newson*, 2008 BCCA 28 at para 18.

parental obligations ought to be considered in sentencing.²⁰ Likewise, the *Gladue* factors do not appear to specifically note parental or guardianship responsibilities in sentencing Indigenous offenders.²¹ In the absence of such guidelines, the courts continue to determine whether and how the children of offenders should weigh within the balance of factors in judicial decisions, resulting in disparate approaches with seemingly little recognition and application of the best interests of the child principle across the country.²² Canada has an international legal obligation to consider the best interests of the child, including in remanding or sentencing their parent, as a party to the United Nations *Convention on the Rights of the Child* (UNCRC).²³

The Rights of the Child in their Parent’s Sentencing²⁴

Of the various Articles in the UNCRC, the following are relevant for the remanding or sentencing of offenders with caregiving responsibilities for an individual under the age of 18:

Article 2: The State has a duty to protect a child against all forms of discrimination or punishment to which they are subjected because of the status or activities of their parents.

Article 3: In all actions concerning children, their best interest must be a primary consideration, including in relation to the courts.

Article 9: The State shall respect the maintenance of personal relations and direct contact between both parents and child in situations where the child is separated from one or both parents. Where separation results from actions by the State, such as detention or imprisonment of the parent, the child shall be provided with essential information concerning the whereabouts of the absent family member.

Article 12: In all matters affecting the child, the child has a right for their views to be heard and for such views to be given due weight in accordance with the age and maturity of the child, including in any judicial proceedings affecting the child, either directly or through a representative.

Article 20: A child has a right to special protection and assistance by the State if temporarily or permanently separated from their parent, including alternative care that aligns with the continuity of the child’s upbringing and with the child’s cultural background.

²⁰ Shona Minson, Rebecca Nadin and Jenny Earle, “Sentencing of mothers: Improving the sentencing process and outcomes for women with dependent children.” London: Prison Reform Trust. 2015. Retrieved from <https://bit.ly/3u0rauR>. Caitlin Curry, Veronica Horowitz, Julie Matonich, and Kristin Stock, 1366.

²¹ *R. v. Gladue*, 1999 SCR 688.

²² Tamara Walsh and Heather Douglas, 160.

²³ *United Nations Convention on the Rights of the Child*. Retrieved from <https://bit.ly/3w6kTAr>.

²⁴ Shona Minson, *Maternal Sentencing and the Rights of the Child*. Cham: Palgrave Macmillan. 2020.

Children of Incarcerated Parents Bill of Rights

In the United States (US), California and Hawaii have endorsed the San Francisco Children of Incarcerated Parents Partnership's *Children of Incarcerated Parents Bill of Rights*, reaffirming the child's right to be considered when decisions are made about their parent, including during remanding or sentencing.²⁵

To read a version of the *Bill of Rights*, [click here](#).

Methods of Sharing Information on the Defendant's Family Situation

Since Canadian judges are not required to ask about defendants' children in remanding or sentencing, the onus is often on the defendants themselves to voluntarily share information on their caregiving obligations with the defense counsel, the probation officer, or others involved in the case. In some instances, however, the accused may be reluctant to disclose their parental duties, owing in part to a fear of being stigmatized and a fear that the child(ren) may be apprehended and placed into formal care or that their parental rights might be involuntarily terminated.²⁶ This might be especially but not exclusively true in remand cases, where caregivers may have limited time to make alternative care arrangements for their children.²⁷ As a first step, the benefits of submitting information to the court about their parental and family situation should be explained to defendants as early as possible and in a way that will help them trust that the information will be respected and not misused. Defense counsel perform a crucial function in promoting information sharing, partly because they are often the first to know about the defendant's parental obligations.²⁸ Defense counsel and probation officers can also act as a referral point to a non-governmental organization, a family member, or another trusted individual to help assess the impacts of sentencing options on the defendant's family and child(ren).²⁹ With the defendant's permission, information about their children should be shared in a professional and responsible manner with those in a position to offer support. In so doing, lawyers and criminal justice practitioners can help eliminate the

²⁵ California Legislative Information, "SCR-20 children of incarcerated parents bill of rights." Sacramento: California State Legislature. 2009. Retrieved from <https://bit.ly/3JrZvtg>.

²⁶ Hayli Millar and Yvon Dandurand, 22. See also: Joint Committee on Human Rights, "The right to family life: Children whose mothers are in prison." London: UK Parliament. 2019. Retrieved from <https://bit.ly/3tciodG>.

²⁷ See Yvon Dandurand and Vivienne Chin, "A framework for action: Enhancing the protective environment for children of parents in conflict with the law of incarcerated." Vancouver: Elizabeth Fry Society, International Centre for Criminal Law Reform, and University of the Fraser Valley. 2018.

²⁸ Vivian Geiran, "Child impact statements and the Irish Probation Service," *European Journal of Parental Imprisonment*, (2015): 8-10.

²⁹ Fiona Donson and Aisling Parkes, "Weighing in the balance: Reflections on the sentencing process from a children's rights perspective," *Probation Journal* 63 no. 3 (2016): 331-46.

practice of so-called “child blind justice,” whereby the rights of children are seemingly forgotten by the justice system.³⁰

List of Basic Information to Share with the Court³¹

Irrespective of how details are shared with the courts, the following questions could help to guide the collection of information to enable judges to properly consider the foreseeable hardships to which the defendant’s child(ren) and family might be subjected:

Details about the defendant and their caregiving responsibilities

- Is the defendant a parent or caregiver to one or more children? If so, how many children are under the defendant’s care?
- How and to what extent are the children dependent on the defendant (e.g., economically, emotionally, or otherwise wholly dependent)? Is the defendant the primary or sole caregiver?
- Is there any evidence to suggest that the defendant is mistreating the children or anyone else in the household in any way? If so, how and for how long?
- Is the defendant themselves the child of parental criminal justice involvement? If so, how did the experience of having one or more of their caregivers arrested or detained shape their own contact with criminal law?

Details about the child(ren)

- What are the affected children’s names?
- How old are they?
- What is their general maturity level?
- Do they have any specific needs?
- Would any additional children be at risk because of the defendant’s sentencing?

Legal basis for a court to consider the defendant’s child(ren)

- What is the basis on which the judge can consider the defendant’s child(ren) in making remanding or sentencing decisions, such as legislative obligations, case law, and/or the UNCRC?

Sentencing options and the foreseeable impacts of incarceration

- Where a custodial sentence is contemplated, does the detention of the defendant align with their child(ren)’s best interests? Why or why not?
- Are there alternatives to imprisonment for which the defendant may be eligible, such as a community-based sanction? If so, what are they?

³⁰ Adele Jones, “Child blind justice,” *Paper Presented at the INCCIP Conference*. 2017.

³¹ This list was adapted from Shona Minson, “Who cares? Analysing the place of children in maternal sentencing decisions in England and Wales.” Oxford: University of Oxford. 2017. Retrieved from <https://bit.ly/33Zf5Nr>.

- If a term of imprisonment is warranted, are mother-child prison programs available to ensure the child remains with their maternal caregiver? If so, where?
- What adverse experiences could the child(ren) face if their parent is detained, including the possible intermediate- and long-term outcomes for children with accumulating adverse experiences?
- Would siblings be separated because of their parent's detention?
- How would the parent-child relationship contribute to the offender's rehabilitation and potential social reintegration?

Alternative care arrangements if the parent is detained or imprisoned

- If the defendant is remanded or incarcerated, what alternative care arrangements could be made for their child(ren)?
- How and to what extent will the daily lives of the child(ren) be disrupted because of their parent's potential detention?
- Who would be the prospective guardian(s) of the children during the period of detention?
- What does the primary guardian think about the potential care arrangement?
- What do the offender's relatives or friends think about the arrangement?
- What is the relationship between the guardian(s) and the child(ren)?
- How and to what extent can the guardian(s) meet the needs of the child(ren)?
- How financially, medically, and psychologically stable is the guardian(s)?
- Where does the guardian(s) live relative to the child(ren)'s school and the possible prison at which their caregiver will be incarcerated?
- Is anyone else dependent on the guardian(s)?
- What would be the financial impact of the child(ren)'s alternative care arrangement, especially for the guardian(s)?

Like in other jurisdictions, Canadian criminal courts accept supplementary information and mechanisms in which the collateral consequences of different sentencing options on the offender's child(ren) may be more fully articulated, such as in family or child impact statements, *Gladue* reports, and impact of race and culture assessments

**Additional Resources on
Family Impact Statements**

[*Toolkit for the Development of Family Impact Statements*](#) published by the Urban Institute.

[*Impact of Caregiver Arrest on Minor Children: Implications for Use of Family Impact Statements in US Courts*](#) by James Conway, Ashley Provencher, and Aileen Keays Yeager.

(IRCA).³² In Canada, victim and community impact statements are legislatively permitted and family or child impact statements could serve as an extension of those existing statements.³³

Family impact statements (also called family responsibility statements) are descriptions of the expected effects of sentencing options on the offender’s child(ren) and family, including their extended family members like the child’s grandparents who may be affected by the sentencing decision.³⁴ In other words, such statements help the judge and others to appreciate the needs and challenges that family members may experience because of the sentence. In so doing, family impact statements aim to help the courts ensure that offenders with children are responsible for not only their criminal activity but also for their parental and familial obligations.³⁵

Like family impact statements, **child impact statements** (also called child impact assessments) are written explanations of how the sentencing options will affect the offender’s child, including consideration of the child’s independent rights within their caregiver’s punishment. Such statements

give children and young people an opportunity to express their needs and views about sentencing decisions that will directly impact their care and support.

Additional Resource on Child Impact Statements

[*Guidance for Assessing Children’s and Young People’s Wishes and Feelings*](#) by the Children and Family Court Advisory and Support Service.

The main difference between family impact statements and child impact statements is the person(s) who are affected: Child impact statements mainly cover the needs, perceptions, and rights of the offender’s child, whereas family impact statements more broadly address the

³² Section 726.1 of the *Criminal Code* states that “[i]n determining the sentence, a court shall consider any relevant information placed before it, including any representations or submissions made by or on behalf of the prosecutor or the offender.” When PSRs are prepared, subsection 721.3(a) of Canada’s *Criminal Code* instructs that the report must contain at least the “offender’s age, maturity, character, behaviour, attitude and willingness to make amends.” Such details may be collected through interviews, including with the defendant and their family and friends.

³³ For victim impact statements, see subsection 722(1) of the *Criminal Code*, stating: “When determining the sentence to be imposed on an offender or determining whether the offender should be discharged... the court shall consider a statement of a victim prepared in accordance with this section and filed with the court describing... the impact of the offence on the victim.” Likewise, for community impact statements, see subsection 722.2(1) of the *Criminal Code*, instructing: “When determining the sentence to be imposed on an offender or determining whether the offender should be discharged... the court shall consider any statement made by an individual on a community’s behalf... describing the impact of the offence on the community.”

³⁴ James Conway, Ashley Provencher and Aileen Keays Yeager, “Impact of caregiver arrest on minor children: Implications for use of family impact statements in US courts,” *Justice Policy Journal* 13 no. 2 (2016): 1-17.

³⁵ The Osborne Association, “Family impact statements: considering the needs of children in criminal justice decision-making about their parent.” New York: The Osborne Association. 2012.

implications of sentencing options for the immediate and extended relatives, such as those who might temporarily care for the offender's dependent child(ren). Where a child impact statement is not prepared, family impact statements could indeed include information that might otherwise have been captured in the child impact statement.

Without legislatively or jurisprudentially prescribed guidance on who should write family or child impacts statements and the specific content that they should contain, there appears to be flexibility and variation on whether and how they can be prepared and submitted to Canadian courts. Intuitively, such statements will be useful before a court if they are informative and credible, which can be achieved if they are produced by qualified individuals who have a relationship of trust with the child and family. Family or child impact statements can form part of a bail report or PSR, although standalone statements or assessments might be particularly useful in some instances since bail reports and PSRs are not necessarily prepared for every case.³⁶ Even when bail reports and PSRs are prepared, some observers have argued that family or child impact statements might not lend themselves well to integration in existing reports, in part because PSRs focus on the offender, rather than an assessment of their children's rights and needs.³⁷ Even so, several jurisdictions, including in the US, incorporate such statements into the presentence investigation process.³⁸ Ideally, the details about the offender's children and family should inform all key decisions about the offender, such as their potential treatment plan and/or possible prison assignment.

Assessing the Impact of a Mother's Sentencing on Her Child

In the United Kingdom, the Prison Reform Trust conducted a consultation, led by Ms. Sarah Beresford, on the development of a child impact assessment framework to identify how children of mothers involved in the criminal justice system are feeling and how to best support them at all stages of the process.³⁹ For the remand and sentencing phase, the assessment contains a short set of child-friendly questions to understand the child's needs, as well as some accompanying notes on how to

³⁶ Jane Dickson and Kory Smith, "Exploring the Canadian judiciary's experiences with and perceptions of *Gladue*," *Canadian Journal of Criminology and Criminal Justice* 63 no. 3-4 (2021): 23-46. For a review of the use of presentence reports in the United Kingdom, see Stephen Whitehead, "The changing use of pre-sentence reports." London: Centre for Justice Innovation. 2018. Retrieved from <https://bit.ly/3tag9rB>.

³⁷ Etain Quigley, "Pre-sanction reports in the Irish Youth Justice System: Evidence of internalising risk focused practice?," *Irish Probation Journal* 11 (2014): 63-86.

³⁸ Caitlin Curry, Veronica Horowitz, Julie Matonich and Kristin Stock, 1363.

³⁹ Sarah Beresford, "Child Impact Assessment: Support for Children with a Mum who's been Arrested, has a Court Appearance, is Serving a Community Sentence, is in Prison, or is being Released from Prison", Prison Reform Trust (2022), <https://prisonreformtrust.org.uk/wp-content/uploads/2021/09/Child-Impact-Assessment-MUM-November-2022.pdf>.

prepare for and conduct the assessments.⁴⁰ During her consultation, Ms. Beresford heard from children that they want simple and open-ended questions, allowing them to express anything they would like to say. Indeed, the questions can be asked on an ongoing basis, allowing the child to revisit decisions and provide follow-up input if time allows.⁴¹

In preparation for the assessment, the child should be asked where and with whom they would like to speak, acknowledging the importance of trusted relationships. If more than one child is affected by their mother's sentencing, individual assessments should be undertaken with each sibling separately. Before asking any questions, the child should be informed about why the questions will be asked and with whom their answers will be shared. The child's expectations should be managed by explaining that their statement might not change the sentence, but that sharing their feelings and views is helpful to the decision-making process.

The questions in the child impact assessment include:

- How do you feel about your mum going to court?
- What questions do you have about what happens at court?
- How are you doing?
- Is there anything that you would like the people at court to know about you and your family?
- Is there anyone who could help you right now? What could they do?
- Is there anything you would like mum to know right now?
- If you're not living with mum, is there anything you would like the person looking after you to know?
- Is there anything else on your mind that you'd like to talk about (this does not have to be about mum)?

In conducting the assessment, the focus should remain on the child and their feelings, recognizing that their views may change over time. The person assessing the child's needs should also be acutely aware of the trauma the child has likely endured because of their parent's involvement in the criminal justice system, including if they witnessed their parent's arrest. To prevent re-traumatization, the trusted adult should adopt a sensitive and validating approach, reassuring the child that they are not at fault and that they are not alone. In asking the questions, a neutral or gentle tone of voice and posture should be used. The children may wish to respond on a scale of 1 to 10, especially if they struggle to articulate their emotions. If such struggles are observed, the adult may explain to the child that there is no right or wrong way to feel and that others experience the same feelings. In some instances, alternatives to language, such as drawing or creative play, may be useful.

⁴⁰ Sarah Beresford, "Support for children with a primary carer in the criminal justice system: Child impact assessment accompanying notes." London: Prison Reform Trust. 2022.

⁴¹ Sarah Beresford, "This is Me: A Child Impact Assessment Toolkit," Prison Reform Trust (2022), <https://prisonreformtrust.org.uk/child-impact-assessment-toolkit/>.

In finishing the conversation, the child could be invited to choose possible agreed next steps or actions and write them in their own words. For instance, they might want to ask questions about the court process or ask to visit a court room before their mother's court appearance if appropriate. The child might also decide that they want to let someone at school know that their mother is involved in a court case so that alternative arrangements, such as parent-teacher conversations, can be made. It is important that the child has agency in expressing their needs and that they are included in decision-making about further support they may need.

In Canada as elsewhere, probation officers are not typically trained on how to meaningfully assess the impact of remand or sentencing options on the defendant's child(ren) or family. In some places, Canadian Indigenous or other racialized communities could be reluctant to engage with social workers or others in preparing family or child impact statements, fearing state intervention and apprehension of their child(ren) or owing to a general distrust of provincial government agencies. As a matter of best practice, children should be asked who they would like to prepare the impact statement or assessment and the child's voice should be reflected throughout the submission, depending on their age and their maturity level. To properly capture the child's views, relationships of trust are key. In some cases, the child may request to speak with a teacher, a family member, or a representative of a non-profit organization, who could in turn assist in preparing the statement or assessment. The Elizabeth Fry Society of Greater Vancouver, for instance, is experimenting with a program whereby defendants themselves can produce their own impact statement and submit it to the court directly or through their defense counsel. If representatives from non-profit organizations assist in preparing the statement, they must abide by their organization's confidentiality and privacy policies, recognizing that parental criminal justice involvement is not itself a child protection matter. Communication between the person who conducts the assessment and the relevant probation officers and lawyers is crucial to avoid competing information and ensure the successful submission of the statement.

In other jurisdictions like the US, family impact statements are comparatively more established in the presentence investigation process. In 2009, the National Conference of State Legislatures encouraged the integration of family impact statements as part of the presentence investigation, noting that several states had already started doing so.⁴² In New York, for instance, the Office of Probation and Correctional Alternatives recognizes the use of family responsibility statements as a best practice,⁴³ having embedded training on the

⁴² Steve Christian, "Children of incarcerated parents." Denver: National Conference of State Legislatures. 2009. Retrieved from <https://bit.ly/3KVcT9n>. Caitlin Curry, Veronica Horowitz, Julie Matonich and Kristin Stock, 1363.

⁴³ New York State Office of Children and Family Services, "Annual progress and services report." New York: OCFS. 2021. Retrieved from <https://on.ny.gov/3ijtyqU>. The use of the term "best practice" by the Office of Probation and Correctional Alternatives might imply that family impact statements are not standard practice yet.

preparation of such statements in the fundamentals training for new probation officers.⁴⁴ In some cases, defense attorneys in New York City have submitted video testimony of family members if they think the judge may be receptive. In other cases, defense attorneys have been hesitant to include information on the offender’s child, fearing it might result in the addition of a child endangerment charge.⁴⁵ In San Francisco, family impact statements are similarly prepared by probation officers, who are guided by a series of questions, such as whether the offender is the primary caregiver to the child(ren), whether the offence in question involved family violence, and if any other children are at risk because of the circumstances of the offence.⁴⁶

In Illinois, the General Assembly enacted the *Children’s Best Interest Act* in 2019, instructing that “the defendant shall have the right to present a family impact statement at sentencing,” which can include testimony from family and community members, written statements, video, and documentation.⁴⁷ Notably, the *Act* sets a series of broad circumstances that courts must consider in sentencing a parent.⁴⁸ Other states legislatively oblige judicial consideration on the harms to children where their parent is being sentenced (Connecticut)⁴⁹ and allow parental status to be considered at the sentencing stage (Massachusetts, North Dakota, and Oklahoma).⁵⁰

However, where family or child impact statements have been adopted, experience shows that the implementation process can be met with some challenges.

Overcoming Possible Challenges in the Development of Family or Child Impact Statements⁵¹

⁴⁴ Lindsey Cramer, Bryce Peterson, Emma Kurs and Jocelyn Fontaine, “Toolkit for developing family impact statements: Children of incarcerated parents project.” Washington: The Urban Institute. 2015.

⁴⁵ Correspondence with a New York-based non-profit organization.

⁴⁶ Margaret diZerega and Jules Verdone, “Setting an agenda for family-focused justice reform.” New York: The Vera Institute of Justice. 2011.

⁴⁷ *Children’s Best Interest Act*, 2019. Retrieved from <https://bit.ly/3N8YB77>.

⁴⁸ In particular, such circumstances include: (a) that the parent is breastfeeding the child; (b) the age of the child, with strong consideration given to avoid disruption of the caregiving of an infant, pre-school, or school-age child by a parent; (c) the role of the parent in the day-to-day educational and medical needs of the child; (d) the relationship of the parent and the child; (e) any special medical, education, or psychological needs of the child; and, (f) the role of the parent in the financial support of the child. The *Act* further states: “[u]nless the court finds that the parent poses a significant risk to the community that outweighs the risk of harm from the parent’s removal from the family, the court shall impose a sentence... that allows that parent to continue to care for the child or children.”

⁴⁹ *An Act Concerning Family Impact Statements*, 2014. Retrieved from <https://bit.ly/3wqavUg>.

⁵⁰ Caitlin Curry, Veronica Horowitz, Julie Matonich, and Kristin Stock, 1363.

⁵¹ This content was adapted and elaborated from Lindsey Cramer, Bryce Peterson, Emma Kurs and Jocelyn Fontaine, 10-11.

What follows are some potential challenges and proposed solutions for the development of family or child impact statements in the sentencing phase of a criminal case:

The preparation of family or child impact statements might be perceived as possibly adding further delays to an already backlogged and complex court system. If resources are provided to whomever will write the statement, the amount of preparation time can be minimal and the impacts on the child(ren) and family can be significant. In many instances, child impact statements can either be integrated into existing PSRs or prepared as a separate submission by the offender themselves or a third-party, such as a family member or teacher with the possible support of a non-profit organization. In fact, a trusted adult or a family member is often the best placed to understand the child's perspective and integrate their voice into the statement, especially when support exists.

The use of family or child impact statements might be viewed as a “get out of jail free card” for offenders who happen to be parents.⁵² Experience from other jurisdictions demonstrates that caregiving status does not in and of itself predict the likelihood of receiving a non-custodial sentence relative to the many other considerations in any given case. In crafting a punishment, judges must weigh many factors, such as denunciation, deterrence, and proportionality. Within that overall balance, judges should be equipped with information on how the possible sentencing options might affect the defendant's child(ren), not to mitigate the responsibility of the defendant, but to ensure their responsibilities to their child(ren) can be met during the punishment. The general objective of a child impact statement is to help ensure the independent needs and rights of children, including the right for the courts to consider their best interests, are respected.

Probation officers may be resistant to the practice. In most instances, the preparation of a family or child impact statement might be better prepared by someone outside of the criminal justice system, such as a teacher or family member. However, if probation officers are tasked with assessing the impact of sentencing decisions on the defendant's child and family, further training should be delivered and existing report templates may need to be revised to capture further details on the best interests of the defendant's child(ren). Probation officers should also receive information on the effects of parental incarceration on children, encouraging them to see the ‘bigger picture’ of how they can further contribute to offenders' rehabilitation efforts and prevent future crime by preparing child or family impact statements. In an interview with Children of Prisoners Europe, the former Director of the Irish Probation Service, Vivian Geiran, suggested that the establishment of a working group to update policies on the preparation of pre-sanction reports could be a promising step towards the inclusion of child impact statements.⁵³ To be successful, updated policies will likely need to be supported by an institutional culture change for which specialized training for new probation officers will be key. Indeed, the need for a mindset change was noted by Justice Sachs in the seminal *S v M* case in South Africa, which outlined guidelines for courts to follow in relation to a defendant's primary carer status, including to inquire about a defendant's caregiving obligations and ensure that

⁵² Fiona Donson and Aisling Parkes, 3.

⁵³ Vivian Geiran, 9.

alternative arrangements are made where a custodial sentence is contemplated.⁵⁴ Culture change invariably requires time and patience.

Defendants may be resistant to the possible involvement of the government agency responsible for children and families. As noted above, opportunities could be provided to the defendant, their family, or a trusted non-profit agency to prepare the statement if preferred.

Staff members may confuse family and victim impact statements or fear that family impact statements will be prioritized over victim impact statements. To address that challenge, the Office of Probation and Correctional Alternatives in New York renamed “family impact statements” to “family responsibility statements,” implying that defendants have a responsibility to their families that should be considered in being held responsible for their criminal activity.

Data collection and evaluation efforts are lacking. To assure staff of the effects of using family impact statements and further improve the practice, performance monitoring and evaluations should be conducted and the results should be published. Where relevant, adjustments to operating procedures or practices should be made if implementation is not generating the desired results.

To date, few if any empirical studies or independent evaluations of the preparation, use, and effects of family or child impact statements have been published. What limited research exists shows that judges are more likely to acknowledge and consider mothering responsibilities if information on such responsibilities is provided, regardless of whether the judge agreed with the recommendations.⁵⁵ Yet, much remains unknown on whether different modalities for information sharing are more effective, how judges perceive family or child impact statements, and whether the use of statements translates into the greater realization of children’s independent rights. Likewise, knowledge gaps exist on how a defendant’s involvement in concurrent legal proceedings, whether related to civil law, family law, criminal law, or otherwise, affect information sharing of their dependent child(ren).⁵⁶ Even so, the available evidence suggests that family-focused remand and sentence conditions, especially for non-violent, non-serious, and first-time offenders with caregiving duties, could help to prevent future crime and rehabilitate the offender.⁵⁷

Of note is that the type of legal mechanisms prepared and presented for each case will vary, depending on the severity of the offence and the background of the offender. In any case,

⁵⁴ *S v M* (2008 3 SA 232 CC). See Fiona Donson and Aisling Parkes, 12.

⁵⁵ Shona Minson, “Mitigating motherhood: A study on the impact of motherhood on sentencing decisions in England and Wales.” London: The Howard League for Penal Reform. 2014.

⁵⁶ Hayli Millar and Yvon Dandurand, 21.

⁵⁷ Caitlin Curry, Veronica Horowitz, Julie Matonich and Kristin Stock, “Mass Parental Incarceration and Sentencing Reform in Minnesota,” *Mitchell Hamline Law Review* 45 no. 4 (2019): 1341-71. Lauren Feig, “Breaking the cycle: A family-focused approach to criminal sentencing in Illinois,” *Advocates’ Forum* 14 no. 1 (2015): 13-26. Rona Epstein, “Mothers in prison: The sentencing of mothers and the rights of the child.” London: The Howard League for Penal Reform. 2014. Retrieved from <https://bit.ly/3qoHWmd>.

however, there might be one or more mechanisms by which information on an offender's child(ren) can be shared. *Gladue* reports and IRCAs are therefore briefly described below as alternative methods in which the rights of children could be captured if family or child impact statements are not prepared.⁵⁸ Unlike family or child impact statements, *Gladue* reports and IRCAs are designed to respond to the over-representation of Indigenous, Black, and other racialized communities in Canada's correctional system.

Gladue reports are specialized PSRs used in Canada to help judges consider the individual circumstances and social context of Indigenous offenders and assist in shaping culturally appropriate healing and sentencing options.⁵⁹ As noted above, the children of Indigenous accused are not specifically referenced in the *Gladue* factors, but information on an offender's family situation and their children's independent rights can indeed be explained in reports. In 2019, a Canadian study found that details on the offender's child(ren) are not routinely included in *Gladue* reports, although they should inform the imposed punishment and healing plan.⁶⁰ In general, there are three main modalities through which *Gladue* information is submitted at sentencing, including *Gladue* reports, PSRs with *Gladue* content, and oral submissions, sometimes by defence counsel or court workers.⁶¹ At bail hearings or for cases where the Crown's position for sentencing is less than 90 days of imprisonment, *Gladue* letters can be written by Aboriginal Legal Services.⁶² In some cases, full *Gladue* reports are ordered by judges after certain criteria have been met, such as the seriousness of the offence and the length of the potential imprisonment term. However, such reports are not always submitted due to funding limitations and offenders waiving the *Gladue* requirement.⁶³ Research shows that *Gladue* reports are deemed superior by Canadian judges and may better meet the overall remedial aims as compared to PSRs with *Gladue* components and oral submissions. In part, this is because *Gladue* reports are often more detailed and prepared by trained Indigenous *Gladue* report writers who routinely conduct interviews with offenders and their so-called "collaterals."⁶⁴ However, oral submissions by the Indigenous offender's

⁵⁸ *R. v. Gladue*, 1999 SCR 688.

⁵⁹ For more information on *Gladue* reports, see Alexandra Hebert, "Change in paradigm or change in paradox? *Gladue* report practices and access to justice," *Queen's Law Journal*, 43 no. 1 (2017): 149-74.

⁶⁰ Patricia Barkaskas, Vivienne Chin, Yvon Dandurand and Dallas Tooshkenig, "Production and delivery of *Gladue* pre-sentence reports: A review of selected Canadian programs." Vancouver: International Centre for Criminal Law Reform. 2019. Retrieved from <https://bit.ly/3t5wc9U>.

⁶¹ Patricia Barkaskas, Vivienne Chin, Yvon Dandurand and Dallas Tooshkenig,

⁶² Aboriginal Legal Services, "Gladue report and Gladue letters." Toronto: Aboriginal Legal Services. 2022. Retrieved from <https://bit.ly/3CI3qiR>.

⁶³ Jane Dickson and Kory Smith, 32.

⁶⁴ Jane Dickson and Kory Smith, 30 and 36. Patricia Barkaskas, Vivienne Chin, Yvon Dandurand and Dallas Tooshkenig, 12.

defense counsel are the most frequent method by which the courts receive *Gladue* information.

Similar to *Gladue* reports, impact of race and culture assessments (IRCAs) are PSRs that aim to help judges in sentencing offenders of African descent by describing their lived experiences, including the effects of systemic anti-Black racism and social exclusion on the offender and the circumstances that brought the offender before the court.⁶⁵ IRCAs also offer recommendations for culturally appropriate accountability measures.⁶⁶ Among the information contained in an IRCA, limited attention has been paid to the offender's parental caregiving duties and the rights of their child(ren).⁶⁷ In some cases, IRCAs have contained a section devoted to addressing parent-child relationships and adverse childhood experiences, although that section addressed the offender's relationship to their parents, rather than their own parental responsibilities.⁶⁸ Nevertheless, the section could conceivably expand to cover the offender's caregiving role and the rights of their child(ren), especially if the IRCA writers are provided training to meaningfully assess the best interests of the affected child(ren). At the time of writing, it appears that IRCAs are not used consistently across the country, with Nova Scotian judges most frequently relying on them, although this will likely change with new federal funding.⁶⁹

Research on the Use of Reports and Assessments in Sharing Information on a Defendant's Children with Canadian Courts

In analyzing 40 Canadian court cases in which IRCAs, enhanced presentence reports (EPSRs), PSRs, and/or *Gladue* reports were submitted, Castroparedes Herrera found that only 16 cases contained details on the defendant's parental status, many of which had information gaps related to the children's ages and whether the defendant was the primary caregiver or the primary economic provider.⁷⁰ Of the 16 cases, the researcher noted that only three explicitly treated the defendant's

⁶⁵ Danardo Jones, "Punishing Black bodies in Canada: Making Blackness visible in criminal sentencing." Toronto: York University Thesis. 2020.

⁶⁶ See Department of Justice Canada, "Supporting impact of race and culture assessments." Ottawa: Government of Canada. 2021. Retrieved from <https://bit.ly/3qkEER7>. In its 2020 Budget, Canada committed an initial injection of \$6.64 million in funding over five years, followed by \$1.6 million of annual ongoing funding to support the implementation of IRCAs across Canada.

⁶⁷ Daniela Castroparedes Herrera, "Considering the best interests of the child within the impact of race and culture assessments for African Canadian offenders," *Unpublished Honours Thesis*. Abbotsford: University of the Fraser Valley. 2021.

⁶⁸ Daniela Castroparedes Herrera, 63 & 66. See *R. v. Elliott*, 2021 NSSC 71.

⁶⁹ Maria Dugas, "Committing to justice: The case for impact of race and culture assessments in sentencing African Canadian offenders," *Dalhousie Law Journal* 43 no. 1 (2020): 103-158.

⁷⁰ Daniela Castroparedes Herrera, 1-77.

parental role as a mitigating factor and none of the cases recognized children's independent rights, including the right for the courts to consider their best interests in remanding or sentencing their parent. More broadly, Castroparedes Herrera observed inconsistencies in the information provided across IRCAs, EPSRs, PSRs, and *Gladue* reports, finding that PSRs were more likely to note the defendant's parental responsibilities as compared to IRCAs, which rarely contained details on the accused's family circumstances or their children's welfare.

Conclusion

Taken together, this resource contains scholarly evidence and practical guidance on why, how, and what information should be shared with remand or sentencing courts in relation to a defendant's parental or guardianship responsibilities to help realize the child's rights and mitigate the hardships to the dependent child because of their caregiver's punishment. In Canada as elsewhere, nothing precludes probation officers from incorporating information on the defendant's parental responsibilities, including details on the best interests of the accused's child, in bail reports and PSRs for the purpose of assisting the court with remand or sentencing decisions.⁷¹ While further empirical research and independent evaluations are required to understand the effectiveness of the various legal mechanisms, the available evidence suggests that the inclusion of information on the offender's child(ren) is a promising practice, regardless of the way it is conveyed. With the experience and lessons from other jurisdictions, Canadian lawyers, probation officers, and others are encouraged to carefully consider the defendant's family, including the avoidable harms of sentencing on their child(ren), in the remand or sentencing phase. In so doing, practitioners can further contribute to crime prevention, especially intergenerational criminal justice involvement, and ensure that children's rights are fully implemented in practice. Indeed, the best interests of the child should always be a paramount consideration in decisions affecting the child.

⁷¹ Section 726.1 of the *Criminal Code* states that “[i]n determining the sentence, a court shall consider any relevant information placed before it, including any representations or submissions made by or on behalf of the prosecutor or the offender.” When PSRs are prepared, subsection 721.3(a) of Canada's *Criminal Code* instructs that the report must contain at least the “offender's age, maturity, character, behaviour, attitude and willingness to make amends.” Such details may be collected through interviews, including with the defendant and their family and friends.

References

- Aboriginal Legal Services, “Gladue reports and Gladue letters.” Toronto: Aboriginal Legal Services. 2022. Retrieved from <https://bit.ly/3CI3qiR>.
- Aguiar, Chyla and Susie Leavell, “A statewide parenting alternative sentencing program: Description and preliminary outcomes,” *Smith College Studies in Social Work* 87 no. 1 (2017): 78-93.
- Barkaskas, Patricia, Vivienne Chin, Yvon Dandurand and Dallas Tooshkenig, “Production and delivery of *Gladue* pre-sentence reports: A review of selected Canadian programs.” Vancouver: International Centre for Criminal Law Reform and Criminal Justice Policy. 2019. Retrieved from <https://bit.ly/3t5wc9U>.
- Beresford, Sarah, “Child impact assessment: Support for children with a mum who’s been arrested, has a court appearance, is serving a community sentence, is in prison, or is being released from custody.” London: Prison Reform Trust. 2022.
- Beresford, Sarah, “Support for children with a primary carer in the criminal justice system: Child impact assessment accompanying notes.” London: Prison Reform Trust. 2022.
- Boullier, Mary and Mitch Blair, “Adverse childhood experiences.” *Paediatrics and Child Health* 28, no. 3 (2018): 132-37.
- Canadian Friends Service Committee, “Considering the best interests of the child when sentencing parents in Canada: Sample case law review.” Toronto: Quakers. 2018.
- Castroparedes Herrera, Daniela, “Considering the best interests of the child within the impact of race and culture assessments for African Canadian offenders,” *Unpublished Honours Thesis*. Abbotsford: University of the Fraser Valley. 2021.
- Christian, Steve, “Children of incarcerated parents.” Denver: National Conference of State Legislatures. 2009. Retrieved from <https://bit.ly/3KVcT9n>.
- Condry, Rachel and Shona Minson, “Conceptualizing the effects of imprisonment on families: Collateral consequences, secondary punishment, or symbiotic harms?” *Theoretical Criminology* 25 no. 4 (2021): 540-558. Retrieved from <https://journals.sagepub.com/doi/10.1177/1362480619897078>.
- Conway, James, Ashley Provencher and Aileen Keays Yeager, “Impact of caregiver arrest on minor children: Implications for use of family impact statements in US courts,” *Justice Policy Journal* 13 no. 2 (2016): 1-17.

- Cramer, Lindsey, Bryce Peterson, Emma Kurs and Jocelyn Fontaine, “Toolkit for developing family impact statements: Children of incarcerated parents project.” Washington: The Urban Institute. 2015.
- Curry, Caitlin, Veronica Horowitz, Julie Matonich and Kristin Stock, “Mass Parental Incarceration and Sentencing Reform in Minnesota,” *Mitchell Hamline Law Review* 45 no. 4 (2019): 1341-71.
- Dandurand, Yvon, and Vivienne Chin, “A framework for action: Enhancing the protective environment for children of parents in conflict with the law of incarcerated.” Vancouver: Elizabeth Fry Society, International Centre for Criminal Law Reform, and the University of the Fraser Valley. 2018. Retrieved from <https://bit.ly/3MKfJjo>.
- Department of Justice Canada, “Supporting impact of race and culture assessments.” Ottawa: Government of Canada. 2021. Retrieved from <https://bit.ly/3qkEER7>.
- Dickson, Jane, and Kory Smith, “Exploring the Canadian judiciary’s experiences with and perceptions of *Gladue*,” *Canadian Journal of Criminology and Criminal Justice* 63 no. 3-4 (2021): 23-46.
- diZerega, Margaret, and Jules Verdone, “Setting an agenda for family-focused justice reform.” New York: The Vera Institute of Justice. 2011.
- Donson, Fiona, and Aisling Parkes, “Weighing in the balance: Reflections on the sentencing process from a children’s rights perspective,” *Probation Journal* 63 no. 3 (2016): 331-46.
- Dugas, Maria, “Committing to justice: The case for impact of race and culture assessments in sentencing African Canadian offenders,” *Dalhousie Law Journal* 43 no. 1 (2020): 103-158.
- Epstein, Rona, “Mothers in prison: The sentencing of mothers and the rights of the child.” London: The Howard League for Penal Reform. 2014. Retrieved from <https://bit.ly/3qoHWmd>.
- Feig, Lauren, “Breaking the cycle: A family-focused approach to criminal sentencing in Illinois,” *Advocates’ Forum* 14 no. 1 (2015): 13-26.
- Geiran, Vivian, “Child impact statements and the Irish Probation Service,” *European Journal of Parental Imprisonment* (2015): 8-10.
- Hebert, Alexandra, “Change in paradigm or change in paradox? *Gladue* report practices and access to justice,” *Queen’s Law Journal*, 43 no. 1 (2017): 149-74.

- Joint Committee on Human Rights, “The right to family life: Children whose mothers are in prison.” London: UK Parliament. 2019. Retrieved from <https://bit.ly/3tciodG>.
- Jones, Adele, “Child blind justice,” *Paper Presented at the INCCIP Conference*. 2017.
- Jones, Danardo, “Punishing Black bodies in Canada: Making Blackness visible in criminal sentencing.” Toronto: York University Thesis. 2020.
- Lerer, Tamar, “Sentencing the family: Recognizing the needs of dependent children in the administration of the criminal justice system,” *Northwestern Journal of Law & Social Policy* 9 no. 1 (2013): 24-57.
- McCormick, Amanda, Hayli Millar and Glen Paddock, “In the best interests of the child: strategies for recognizing and supporting Canada’s at-risk population of children with incarcerated parents.” Abbotsford: Centre for Safe Schools and Communities. 2014.
- Millar, Hayli and Yvon Dandurand, “The best interests of the child and sentencing of offenders with parental responsibilities,” *Criminal Law Forum* 29 (2018): 227-77.
- Minson, Shona, “Maternal sentencing and the rights of the child.” Cham: Palgrave Macmillan. 2020.
- Minson, Shona, “Mitigating motherhood: A study on the impact of motherhood on sentencing decisions in England and Wales.” London: The Howard League for Penal Reform. 2014.
- Minson, Shona, “Who cares? Analysing the place of children in maternal sentencing decisions in England and Wales.” Oxford: University of Oxford Press. 2017.
- Minson, Shona, Rebecca Nadin and Jenny Earle, “Sentencing of mothers: Improving the sentencing process and outcomes for women with dependent children.” London: Prison Reform Trust. 2015. Retrieved from <https://bit.ly/3u0rauR>.
- New York State Office of Children and Family Services, “Annual progress and services report.” New York: OCFS. 2021. Retrieved from <https://on.ny.gov/3ijtyqU>.
- Quigley, Etain, “Pre-sanction reports in the Irish Youth Justice System: Evidence of internalising risk focused practice?”, *Irish Probation Journal* 11 (2014): 63-86.
- Reed, Kristiina, “Children of prisoners: Orphans of justice?”, *Family Law* 44 (2014): 69-74.
- Stephen Whitehead, “The changing use of pre-sentence reports.” London: Centre for Justice Innovation. 2018.

Testa, Alexander, Dylan Jackson, Kyle Ganson and Jason Ngata, “Adverse childhood experiences and criminal justice contact in adulthood.” *Academic Pediatrics* 22, no. 2 (2022).

The Osborne Association, “Family impact statements: considering the needs of children in criminal justice decision-making about their parent.” New York: The Osborne Association. 2012.

Walsh, Tamara, and Heather Douglas, “Sentencing parents: The consideration of dependent children,” *Adelaide Law Review* 37 (2016): 135-61.

.....



**International Centre for Criminal Law
Reform and Criminal Justice Policy**
1822 East Mall, Vancouver, BC V6T 1Z1 Canada
www.icclr.org

