



Deutsches Institut
für Menschenrechte

National CRC Monitoring Mechanism

Opportunities for contact between children and incarcerated parents

A survey on current practice within
the German penal system

Summary

Contents

1	Introduction	3
2	Findings from the 2023 survey	4
2.1	Right to contact	4
2.2	Right to information	5
3	Synopsis of key findings	5
4	Conclusion and recommendations	7

1 Introduction

A parent's incarceration has an enormous impact on the life of a child. Studies have shown that having direct contact with an incarcerated parent on a regular basis can help children to cope with this stressful situation.¹ We do not know how many children in Germany must deal with this difficult situation, as there are no official figures for this. However, experts have estimated that they number around 100,000.² The average total number of persons incarcerated in penal institutions in 2022, as reported by the German Federal Statistical Office, was 56,601.³

Maintaining contact with an incarcerated parent constitutes far more than a coping strategy for children: it is also a human right that the state is obligated to uphold, respect and ensure through legislation. The United Nations Convention on the Rights of the Child (UNCRC) enshrines the human rights of children, including their right to maintain direct contact with their parents unless this is contrary to their best interests (Article 9). A great many decisions that affect the children of incarcerated parents are taken without consideration of the child's or children's best interests. Children also have the right to participate in all matters and procedures which concern them (UNCRC Article 12). Although the wording of the UNCRC's Article 9(3) is limited to contact with parents, the content extends to all other persons having care of the child as well: primary legal guardians or usual caregivers, foster parents and persons with whom the child has a close personal relationship.

The UN Committee on the Rights of the Child carried out its most recent review of Germany's implementation of the Convention from 2019 to 2022. Among the recommendations issued by the Committee at the end of this review was one concerning contact between children and their incarcerated parents:

The Committee recommends that the State party:

- (a) Ensure the visitation rights of children of incarcerated parents, including by increasing the frequency and duration of visits and supplementing visits with remote contact on a regular basis, in line with the recommendation of the Council of Europe Committee of Ministers concerning children with imprisoned parents (2019);
- (b) Evaluate, with the participation of children of incarcerated parents and their families, existing policies regarding visitation rights of children, with a view to developing federal standards for ensuring that such children can maintain personal

¹ See Lanskey et al. (2016). The report from 2014 is based on a long-term study that followed 35 children during and after the imprisonment of their (step-)fathers. It was written as part of a collaborative project of the Ormiston Children and Families Trust and the Institute of Criminology of the University of Cambridge. Within the European area, the network COPE (formerly Eurochips) is doing important lobbying work on behalf of children with imprisoned parents. In Germany, a network called Netzwerk Kinder von Inhaftierten is working to further strengthen the pro-family orientation within and outside of the German penal system. This process was inspired by Treffpunkt e. V.

² See Bieganski / Starke / Urban (2013), p. 3.

³ Ninety-four percent of these were male. Author's note: the German penal system continues to be structured around a binary view of gender. Regrettably, it is beyond the scope of this analysis to address the problems associated with this. Additional information can be found, for instance, in die trans* Ratgeber-Gruppe (2018). In response to a request, the Federal Statistical Office issued a report from its publication series *Bestand der Gefangenen und Verwahrten* (Population of prisoners and detainees) for the full 2022 year. This report lists the numbers, type of custody and certain demographic characteristics of inmates of German penal institutions as of the last day of each month of 2022. The occupancy figure cited above, 56,601, represents the average of these twelve numbers. See BAG-S (27 Sept. 2023): *Entwicklungen im Strafvollzug im Jahr 2022*. <https://www.bag-s.de/aktuelles/aktuelles0/entwicklungen-im-strafvollzug-im-jahr-2022> (retrieved on 21 Nov. 2023).

relations with their parents and have access to adequate services and appropriate support.

The National CRC Monitoring Mechanism began its work on the rights of the children with incarcerated parents back in 2016. At that time, its focus was on legislative provisions governing children's visitation of prison inmates. Its findings were published in the Report on the Development of the Human Rights Situation in Germany July 2016 – 2017.⁴ In 2017, the CRC Monitoring Mechanism also carried out an online survey aimed at collecting comprehensive data on the practical implementation in prisons of the legal requirements regarding possibilities for visits and contact; those results were published in 2019.⁵

The National CRC Monitoring Mechanism's statutory mandate encompasses the periodic critical review, based on indicators, of the extent to which Germany is fulfilling its obligations as a state-party to the UNCRC and of progress on the implementation of the Convention. Hence, the CRC Monitoring Mechanism carried out another online survey in 2023. As the 2017 questionnaire was substantially modified for use in 2023, the results of the 2023 survey are not comparable with those published in 2019.

2 Findings from the 2023 survey

A total of 164 prisons (JVA: *Justizvollzugsanstalten*) were contacted for the 2023 online survey. In 14 of the 16 Länder (federal states), the comprehensive survey was addressed specifically to the governing officers of prisons (return rate: 63%). The survey results are presented in summary form below and in full in the long version of this analysis⁶.

2.1 Right to contact

Under the UNCRC, every child has a right to maintain regular personal relations and direct contact with their parents unless this is contrary to the child's best interests. This is the case even when the parent is in prison. The 2023 analysis revealed significant variation with respect to opportunities for children to visit or have another form of contact with an incarcerated parent.

The practical implementation of opportunities for children to visit an inmate is generally left up to the individual institution and thus varies from one prison to the next. Many of the prisons surveyed had availed themselves of the option to establish their own visitation policy extending beyond the minimum visitation entitlement prescribed by law. Some prisons even allow long-duration visits or permit contacts outside of the facility. The situation is similar with regard to other forms of contact, such as telephone calls or video conversations. Generally, it remains rare for prisons to offer or to consistently provide opportunities for contact by telephone or forms of digital communication. There are cases where such contact is counted towards the time limit for in-person visits, which is not permissible.

In summary, one can say that it is left largely up to the prisons in Germany to determine what kind of opportunities they offer families for contact with an

⁴ See German Institute for Human Rights (2017).

⁵ See Feige (2019).

⁶ Feige (2024).

incarcerated family member and how much contact they allow. There are no uniform federal minimum standards addressing children's rights to visit and have contact with incarcerated parents.

2.2 Right to information

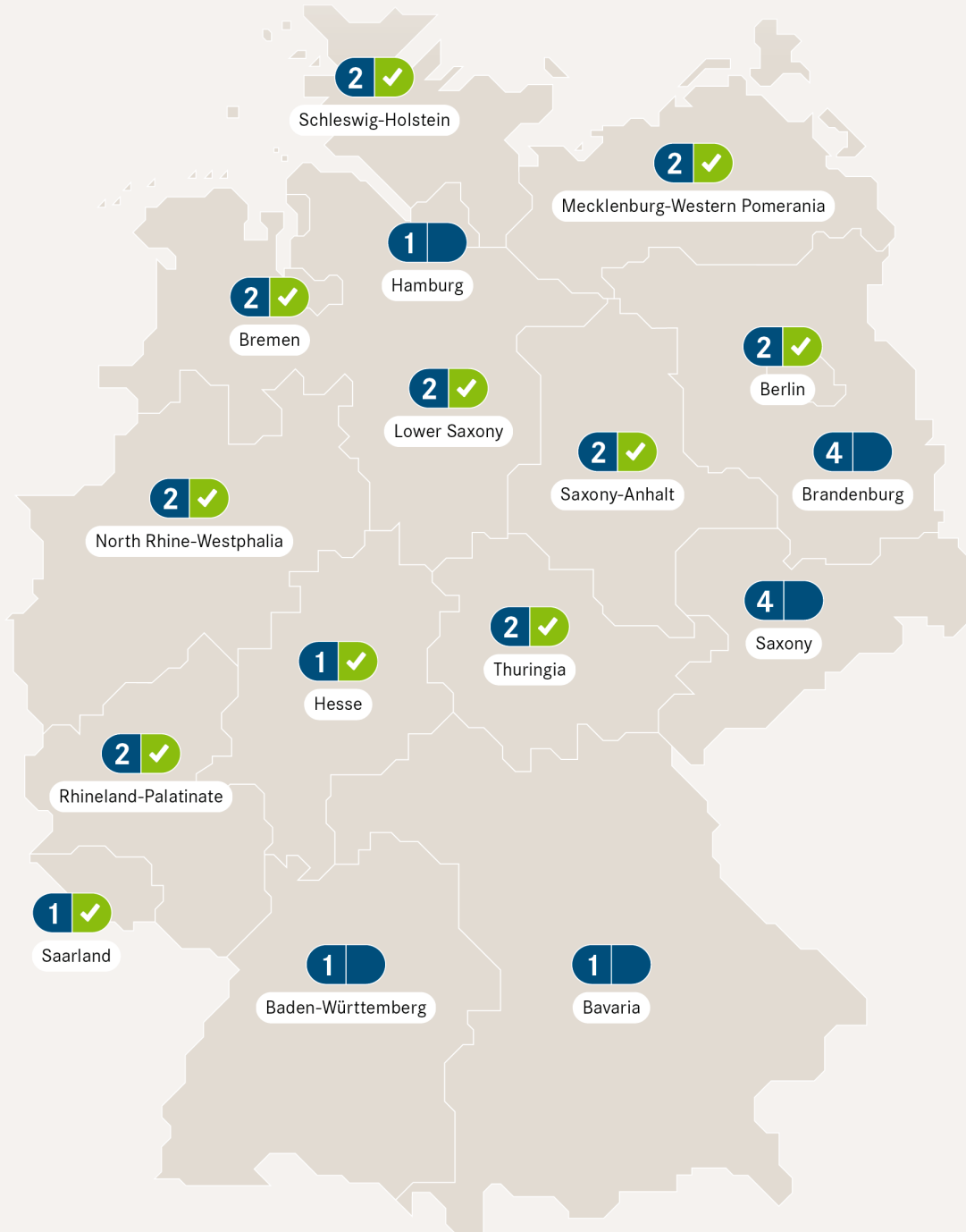
Along with their right to maintain contact with their incarcerated parents, children also have a right to information: public authorities have a duty to provide children with information concerning the incarceration of a parent and about incarceration in general, and they must do so in a manner appropriate to the children's age and maturity (UNCRC Articles 9(4), 13 and 17).



The results of our online survey show a strong tendency towards failure on the part of prisons to directly address children with information about opportunities to visit or opportunities for other forms of contact. There are only a few exceptions to this. Moreover, it is frequently the case that the professionals who deal with children (child and youth services professionals, penal system officials, teachers and other educators) are not sufficiently involved and/or not adequately informed to enable them to talk with the children concerned about their situation in a sensitive manner.

3 Synopsis of key findings

- The Länder vary considerably with respect to the minimum requirements regarding the duration/frequency of visits, which ranges from one hour per month (in Hesse and Saarland, for instance), to two hours per month (e.g. in Berlin and Mecklenburg-Western Pomerania), up to as many as 4 hours (in Brandenburg, and Saxony, for example).
- In some Länder, the law provides for additional visitation time for inmates when children are involved: for instance, in Mecklenburg-Vorpommern, there is an entitlement to two additional hours for visits by children under the age of 14.
- Nearly all Länder have legislation that provides for long-duration visits for family members under certain circumstances. However, the approval or denial of such visits is left to the discretion of the relevant authority.
- Apart from this, the prisons can set their own policies regarding visitation duration and frequency.

Minimum visiting time prescribed by law in the federal states



 Number of visitation hours (minimum visitation time per month), additional provisions for children available
 Number of visiting hours (minimum visiting hours per month), additional provisions for children not available

4 Conclusion and recommendations

In summary, it can be said that some Länder have taken the first steps and are working on the legislative framework for a family-friendly penal system. Prison practices, too, have started to change, with more and more prisons shifting towards family-friendly policies. For instance, increasing numbers of prisons are creating a range of opportunities for contact between children and incarcerated parents and taking steps to structure visits by children in a way that addresses their needs. This is evidenced, for example, in special arrangements put in place at security check points, the provision of children's books and materials for children to play with, or the outfitting of visiting areas/rooms to make them more child friendly. Some prisons even allow contact outside of the facility.

Further efforts are necessary, though, to fully implement children's right to maintain regular personal relations and direct contact with their parents – and a variety of entities have a role to play in this regard.

For instance, offerings within the penal system alone will not suffice to fulfil the requirements of children's rights. Children have needs of many different kinds, thus support should also encompass their daily life at school or in kindergarten and within their family and circle of friends. Child and youth services, for instance, have a role to play in this respect. Linking support systems together will make a key contribution to relieving the psychological burden on children with a parent in prison. Thus, it is essential to further expand and support the existing forms of cooperation between penal system authorities, prisons, child and youth services and other counselling services.

Under the UNCRC, states have an obligation enable children to maintain contact with their incarcerated parent and to respect them as holders of their own rights. In addition, children must be provided with information about opportunities for contact in an appropriate manner and form.

The National CRC Monitoring Mechanism recommends:

- the establishment of minimum standards governing the frequency, duration and structure of visits that will apply in all Länder and for all children.
- regular exchange on child rights-based concepts and measures relating to contact and relations between children and their incarcerated parents or persons with whom they have close personal relations (*enge Bezugspersonen*). Associations like Netzwerk Kinder von Inhaftierten could ensure such exchange, hence the federal and Länder governments should provide them with funding covering basic operations
- the creation of the post of child and family officer in every prison, in conjunction with awareness training for all prison staff
- the expansion and strengthening of cooperation among all entities concerned (e.g. child and youth services, prisons), in line with the relevant resolutions of the Justice Ministers' Conference and the Youth and Family Affairs Ministers' Conference.

Imprint

German Institute for Human Rights
Zimmerstrasse 26/27, 10969 Berlin, Germany
Phone: +49 30 25 93 59-0
Fax: +49 30 25 93 59-59
info@institut-fuer-menschenrechte.de
www.institut-fuer-menschenrechte.de

CONTACT: Judith Feige

LICENSE: Creative Commons (CC BY-NC-ND 4.0)
<https://creativecommons.org/licenses/by-nc-nd/4.0/deed.en>

June 2024

German Institute for Human Rights

The German Institute for Human Rights is the independent National Human Rights Institution of Germany (§ 1 GIHR law). It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organizations. It is supported by the German Bundestag. The Institute is mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child and established Monitoring Bodies for these purposes. It is also mandated as National Rapporteur Mechanism under the Council of Europe Conventions on Violence against Women and Domestic Violence (Istanbul Convention) and on Trafficking in Human Beings.