

IAWJ 13th Biennial Conference
May 26-30, 2016
Washington, DC, USA

The National Association of Women Judges USA is proud to host the
2016 IAWJ Biennial Conference

Women Judges and the Rule of Law:
Assessing the Past, Anticipating the Future



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Justice poised between law and force by Cesare Maccari

A.D.M.I.

**WOMEN AND GIRLS
IN DETENTION**

Carla Marina LENDARO

President A.D.M.I. - Italian Association of Women Judges

***with the collaboration of Ines CASCIARO and Cinzia VERGINE,
Members of the A.D.M.I. Ruling Council***

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OL12 1
PE1 TENC. ANM

Logo of the Indonesian National Police (POLRI) and a sign with text in Indonesian.

 TELERAMA



**PRISON IS AN ENTIRELY MALE INSTITUTION,
WITH RIGID, PRE-SET RULES
DESIGNED TO CONTAIN AGGRESSION AND VIOLENCE**

March 31st 2016

Mothers incarcerated together with their children in Italian prisons by nationality

Detention region	Detention Institute	Italian women		Foreign women		TOTAL	
		present	children in tow	present	Children in tow	present	Children in tow
CAMPANIA	AVELLINO "Antimo Graziano" Bellizzi CC	2	2	1	1	3	3
LAZIO	ROMA "Germana Stefanini" Rebibbia Femminile CCF	4	4	6	6	10	10
LOMBARDIA	COMO CC	1	1	1	1	2	2
LOMBARDIA	MILANO "Francesco di Cataldo" San Vittore CCF	1	1	9	10	10	11
PIEMONTE	TORINO G.Lorusso/L.Cotugno" Le Vallette CC	4	5	1	1	5	6
SARDEGNA	SASSARI "Giovanni Bacchiddu" CC	1	1	1	1	2	2
TOSCANA	FIRENZE "Sollicciano" CC	1	1	/	/	1	1
VENETO	VENEZIA "Giudecca" CRF	2	3	3	3	5	6
Total		16	18	22	23	38	41

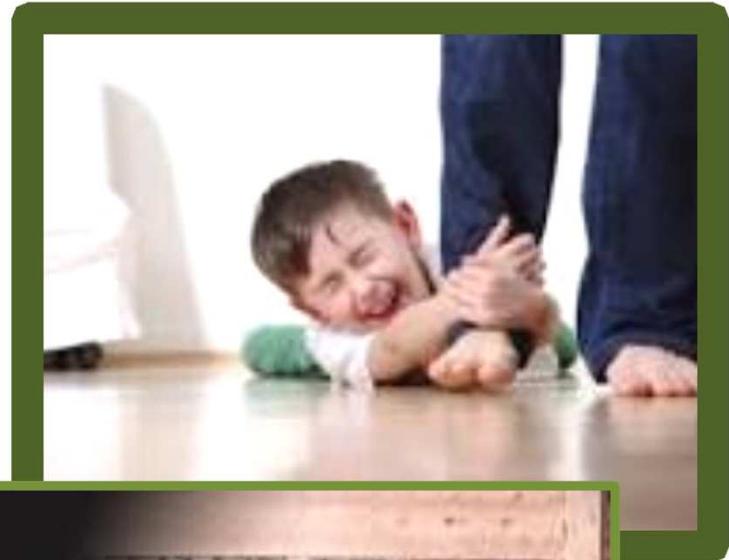
**IN ITALY
AS OF MARCH 31ST 2016 WOMEN ACCOUNT FOR JUST OVER 4% OF THE
TOTAL PRISON POPULATION.
OF A TOTAL OF 53,495 DETAINEES
2,198 ARE WOMEN**



**THEY ARE OFTEN
THE ONLY ONES
RESPONSIBLE FOR
MINORS IN THEIR
CARE**

**FOLLOWING ARREST
AND DURING
DETENTION THEY
ARE FORCIBLY
SEPARATED FROM
THEM**

DETENTION HAS A NEGATIVE EFFECT ON THE WELL-BEING OF MINORS WHO ARE SEPARATED FROM THEIR MOTHERS, INTERRUPTING THE RELATIONSHIP AND CUTTING CHILDREN OFF FROM THE FAMILY NETWORK AND ENVIRONMENT, FOR WHICH THE MOTHER IS AN ESSENTIAL INTERLOCUTOR.



DETENTION OFTEN COMPLETELY ANNULS THE RIGHT TO CO-PARENTING AND AFFECTION

PARENTS' RIGHTS

CHILDREN'S RIGHTS



**VERY FEW INCARCERATED MOTHERS CHOOSE TO EXERCISE
THEIR RIGHT TO KEEP THEIR CHILDREN WITH THEM UNTIL
THE AGE OF THREE**

**AS OF MARCH 2016 THERE WERE ONLY 38 WOMEN IN ITALIAN
PRISONS TOGETHER WITH THEIR CHILDREN (41)**

**THE EXTENDED FAMILY
TAKES RESPONSIBILITY**



**ALMOST ALWAYS
THE
GRANDPARENTS**





**THE PROBLEM AFFECTS
ABOVE ALL FOREIGN
FEMALE DETAINEES
AND THEIR CHILDREN,
AS THEY ARE OFTEN NOT
LEGALLY RESIDENT
WITH FAMILY NETWORKS
THAT ARE ABSENT OR
DYSFUNCTIONAL**



**ITALIAN LEGISLATION IS
HIGHLY SPECIFIC AND PROGRESSIVE IN THIS REGARD**

CONCERNING MINORS

Law 54 of February 8th 2006, n. 54 regulates “parental separation and joint custody of children”

**CONCERNING THE CRIMINAL JUSTICE SYSTEM AND SPECIFICALLY
PRISONS, THERE IS**

Law 62 of April 21st 2011

“Modifications to the criminal procedural code and to law 354 of July 26th 1975, and other regulations to safeguard the relationship between incarcerated mothers and their children when the latter are minors”

**WHILE INVESTIGATIONS
ARE IN PROGRESS**

**PRE-TRIAL
CUSTODY
Article 285
c.p.p.**

NO
**IF THE WOMAN IS
PREGNANT OR HAS
CHILDREN UNDER THE
AGE OF SIX LIVING WITH
HER**
Article 275 co 4 c.p.p.
as replaced by Law. 62/11

YES
**ONLY IF THERE ARE
EXCEPTIONAL
CIRCUMSTANCES THAT
REQUIRE DETENTION**
Art. 275 co 4 c.p.p
as replaced by Law. 62/11

**IN THIS CASE THE JUDGE CAN HOWEVER ORDER DETENTION IN
AN ICAM,
a “mitigated custody” institution for imprisoned mothers
(article 285 bis c.p.p.) as replaced by Law. 62/11**

ICAMs

ARE USUALLY SITUATED OUTSIDE THE WALLS OF A CONVENTIONAL PRISON

THE SECURITY APPARATUS – SUCH AS BARS ON THE WINDOWS – IS OF THE TYPE SEEN IN CIVIL DWELLINGS

THE PRISON OFFICERS DO NOT WEAR UNIFORMS AND ARE ASSISTED BY A SERIES OF OTHER OPERATORS INCLUDING TEACHERS, CHILD-MINDERS AND HEALTH PERSONNEL

**THEY HAVE COMMUNAL KITCHENS,
LAUNDRIES AND DEDICATED SPACES –
BOTH INDOORS AND OUTDOORS – FOR THE
CHILDREN’S RECREATION**



**WHILE
INVESTIGATIONS
ARE IN PROGRESS**

**HOUSE
ARREST
article 284 c.p.p.**



**HOME ADDRESS
OR OTHER
PRIVATE
ADDRESS**



**PUBLIC PLACE
OF CARE OR
TREATMENT**



**FAMILY
SHELTER**

ONCE THE APPEALS PROCESS HAS RUN ITS COURSE AND THE SENTENCE HAS BECOME DEFINITIVE

SERVING THE SENTENCE

**PRISON REGIME
DIFFERENTIATED ON THE BASIS
OF
age of any children living with the
mother**

health of children

SERVING THE SENTENCE

1

• PREGNANT WOMAN • CHILDREN UP TO 1 YEAR OF AGE

2

• CHILDREN UP TO 3 YEARS OF AGE

3

• CHILDREN UP TO 10 YEARS OF AGE

4

• CHILDREN SICK OR HANDICAPPED

1

- PREGNANT WOMAN
- CHILDREN UP TO 1 YEAR OF AGE



SENTENCE
POSTPONED
article 146 c.p.



2

• CHILDREN
UP TO
3 YEARS OF
AGE



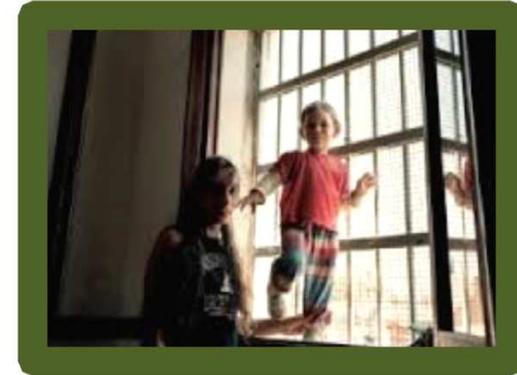
THE CHILD CAN
STAY IN PRISON
WITH THE
MOTHER
Article 11 co. 9 O.P.



CHILDREN UP TO 3 YEARS OF AGE



CHILDREN UP TO 3 YEARS OF AGE



**INCARCERATED WOMEN
ARE HOUSED IN SPECIAL
DETENTION FACILITIES**

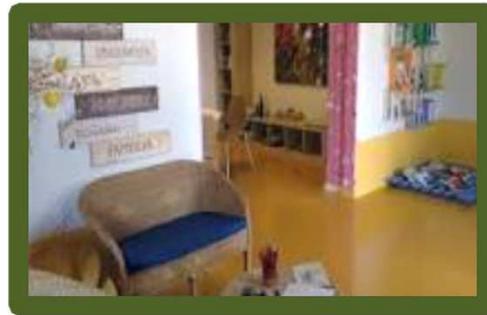
**ITALY HAS FIVE
EXCLUSIVELY FEMALE
INSTITUTIONS**

**SERVING THE
SENTENCE**

**FEMALE
WINGS IN
OTHER
PRISONS**



**Article 11 O.P.
co. 9 “FOR THE CARE OF SMALL CHILDREN
APPROPRIATE NURSERIES MUST BE ORGANISED”**



Art. 19 D.P.R. 230/00

co. 3 “CARE OF THE CHILDREN’S HEALTH IS ENTRUSTED TO PROFESSIONALS SPECIALISED IN PEDIATRICS”

co. 5 “OBSTETRIC WARDS AND NURSERIES MUST BE ORGANISED FOR THE CARE AND ASSISTANCE OF CHILDREN. THE ROOMS WHERE MOTHERS AND CHILDREN ARE HOUSED ARE NOT TO BE LOCKED, IN ORDER TO ENABLE THEM TO MOVE AROUND WITHIN THE WARD OR SECTION, WITH THE PROVISO THAT THEY DO NOT DISRUPT THEIR REGULAR FUNCTIONING”

co. 6 “AGE-APPROPRIATE RECREATIONAL AND EDUCATIONAL ACTIVITIES ARE TO BE PROVIDED. IN ADDITION, WITH THE CONSENT OF THE MOTHER, IN ORDER TO CARRY OUT THESE ACTIVITIES, THE CHILDREN CAN BE TAKEN BY SOCIAL SERVICES OR VOLUNTEERS TO EXTERNAL NURSERIES AND INFANTS’ SCHOOLS IN THE AREA”

**FAMILY MEETINGS PLAY A KEY ROLE IN
THE MANAGEMENT OF DETAINEES'
AFFECTIVE RELATIONS**

**HOWEVER THERE ARE MANY MOTHERS
WHO FOREGO THESE MEETINGS
BECAUSE**

- THE MINOR IS NOT ABLE TO MANAGE
THEIR FEELINGS OF ANGER AND ANXIETY
ARISING FROM THE IMPRISONMENT OF
THE PARENT**
- THE NEW SEPARATION AT THE END OF
THE VISIT IS TOO PAINFUL FOR THE CHILD**



Ministero della Giustizia



*Autorità Garante
per l'Infanzia e l'Adolescenza*

“ITALIAN CHARTER OF THE CHILDREN OF INCARCERATED PARENTS”

Memorandum of Understanding signed on March 21st 2014 by

Ministry of Justice

Watchdog Agency for Childhood and Adolescence

Bambinisenzasbarre ONLUS (NGO)

safeguarding the rights of the 100,000 children and adolescents entering Italian prisons.

The Charter of the Children of Incarcerated Parents formally recognises the right of these minors to the continuity of their affective connection with the incarcerated parent and at the same time affirms the right to parenthood. The Charter sets up a permanent committee composed of representatives of the three signatories and provides for the periodic monitoring of the implementation of the points envisaged by the Charter, promoting cooperation between institutional and non-institutional partners and facilitating the exchange of best practices on a national and international level.

**THE NEED FOR
ALTERNATIVE
MEASURES TO
PRISON REMAINS**

3

**• CHILDREN
UP TO
10 YEARS
OF AGE**

**PRISON
SENTENCE (OR
REMAINDER OF
SENTENCE)
NOT ABOVE 4
YEARS**

**IF THE PERSON
DOES NOT
REPRESENT A
DANGER
TO SOCIETY**

**HOUSE ARREST
article 47 ter
O. P.**

at

HOME ADDRESS

**OTHER PRIVATE
ADDRESS**

**PUBLIC PLACE
OF CARE OR
TREATMENT**

**For some types of
crime
FAMILY SHELTER**

3

**• CHILDREN
UP TO 10
YEARS OF
AGE**

**PRISON SENTENCE (OR
REMAINDER OF
SENTENCE) NOT ABOVE 4
YEARS**

**AFTER SERVING 1/3
OF THE SENTENCE
or 15 YEARS IN THE
CASE OF A LIFE
SENTENCE**

**IF THE PERSON DOES
NOT REPRESENT A
DANGER TO SOCIETY**

**IF THE MOTHER CAN
GO BACK TO LIVING
WITH HER CHILDREN
AGAIN**

**“SPECIAL”
HOUSE
ARREST**

- home address
- other private address
- place of care or treatment
- family shelter where available

**article 47
quinquies O.P**

**SUBJECT TO THE APPROVAL OF THE SUPERVISING MAGISTRATE,
WHO MUST ASSESS THE PROGRESS MADE BY THE PRISONER IN
TERMS OF HER REHABILITATION AND WEIGH THE RISK OF HER
REOFFENDING**

4

- **CHILDREN
SICK**
- **CHILDREN
HANDICAPPED**



**RIGHT TO VISIT CHILDREN
OUTSIDE PRISON**

- **IN IMMINENT DANGER OF DEATH**
- **BECAUSE OF SERIOUS HEALTH
PROBLEMS**
- **Artt. 21 bis e 21 ter C.P.**

**WOMEN CONVICTED OF MORE
SERIOUS CRIMES LISTED UNDER
article 4 bis O.P.
ARE EXCLUDED**

**ITALIAN LEGISLATION
RESPECTS THE RIGHTS OF INCARCERATED
WOMEN,
AS STIPULATED ON AN INTERNATIONAL LEVEL
IN U.N. PROTOCOLS,
SPECIFICALLY THE BANGKOK RULES**





**AND THE PRINCIPLES ESTABLISHED TO
SAFEGUARD MINORS BY THE
CONVENTION ON THE RIGHTS OF THE CHILD
CONCERNING NON-DISCRIMINATION AND THE
RIGHT TO HARMONIOUS DEVELOPMENT.
ITALIAN LEGISLATION AFFIRMS THE
CRITERION BY WHICH ‘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’**

I diritti dell'infanzia e dell'adolescenza

**IN 2011 THE CONCLUDING
OBSERVATIONS OF THE UN COMMITTEE
FOR MONITORING THE APPLICATION OF
THE CRC PRAISED THE LATEST ITALIAN
LEGISLATIVE INITIATIVES IN THE**

FOLLOWING SECTORS

CIVIL LAW

CRIMINAL LAW

THE PRISON SYSTEM

**WHICH DIRECTLY AFFECT
WOMEN AND MINORS**

**Il Rapporto
Anno 2011
2010-2011**



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