

**On the Best Interests of the Child in Sentencing for Parents or
Primary Caregivers: The Implications and Influences of
Taiwan Constitutional Court Judgment 111-Hsien-Pan-8
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Abstract

Sentencing and other criminal justice decisions often have adverse, even traumatic effects on the offender's dependent children. From the international human rights norms and the practical experience of certain nations, it can also be seen that the criminal judicial discipline has gradually realized that the best interests of children shall be considered in the sentencing of their parents or primary caregivers. From the Convention on the Rights of Child, the norms of regional human rights treaties, and the precedent of the South African Constitutional Court in the *S v M* case, it is manifested that the court shall consider alternative measures to imprisonment, and consider the impact of respective sentences on children in its judicial proceedings, to ensure the rights to best interest and the rights to expression of children. While Taiwan lacks legal provision on such notions and the implementation of the Convention on the Rights of the Child had inspired some practical applications of this norm; from the precedents of the Supreme Court, it can be found that it had failed to implement this norm and consider the best interests of the child in the sentencing of parents or primary caregivers.

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On the other hand, while Taiwan Constitutional Court (TCC) Judgment 111-Hsien-Pan-8 (2022) promulgated a positive declaration on the protection of children's rights, this article holds that the intent of the judgement, namely the constitutional due process protection of rights to personality, dignity, and expression of children, shall also be implemented to the sentencing of parents or primary caregivers, which nevertheless affects children's rights. At the same time, relevant authorities shall also amend laws to guarantee the independent relevance and process of children's rights was implemented in the sentencing process, and to ensure the substantial and procedural protection of children's rights was executed.

Keywords: parents and primary caregivers, sentencing, Convention on the Rights of the Child (CRC), best interests of the child, rights of the child to be heard, rights not to be separated from parents of children, S v M Judgment (2007) of Constitutional Court of South Africa, Taiwan Constitutional Court Judgment 111-Hsien-Pan-8 (2022), human dignity, due process of law