



House of Commons

House of Lords

Joint Committee on Human
Rights

**Children of mothers in
prison and the right to
family life: The Police,
Crime, Sentencing and
Courts Bill: Government
Response to the
Committee's First Report**

**Third Special Report of Session
2021–22**

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publication

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The current staff of the Committee are Laura Ayres (Committee Operations Office), Miguel Boo Fraga (Committee Operations Manager), Chloe Cockett (Senior Specialist), Busayo Esan (Inquiry Manager), Liam Evans (Committee Specialist), Alexander Gask (Deputy Counsel), Eleanor Hourigan (Counsel), Lucinda Maer (Commons Clerk), George Perry (Media Officer), Nicholas Taylor (Second Commons Clerk), and George Webber (Lords Clerk).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 2467; the Committee's email address is jchr@parliament.uk.

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Third Special Report

The Joint Committee on Human Rights published its First Report of Session 2021–22, *Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill* (HC 90/HL Paper 5) on 14 May 2021. The Government response was received on 13 July 2021 and is appended below.

Appendix: Government Response

Letter from Alex Chalk MP, Parliamentary Under-Secretary of State, Ministry of Justice, 13 July 2021

I would like to thank the Committee for its legislative scrutiny report on The Police, Crime, Sentencing and Courts (PCSC) Bill and the right to family life for children whose mothers are in prison.

I have provided the Government's response to the report's recommendations and the proposed amendments to the PCSC Bill in a Memorandum attached to this letter.

The Government is fully aware of the importance of upholding the Article 8 rights of prisoners and their families and we continue to recognise the value of prisoners' family and significant other relationships in improving prisoners' health and wellbeing. Maintaining access to family contact has been a crucial part of our response to the COVID-19 pandemic, and we are continuing to make progress with implementation of the recommendations from the Farmer Review for Women.

We also recognise that understanding the personal circumstances of individuals in the criminal justice system, including their responsibilities for dependent children, is essential if we are to provide the support and care that both they and their children need. That is why we are making improvements to how we centrally monitor the number of primary carers entering prison.

I would like to highlight that there are several measures included in the PCSC Bill that will impact positively on outcomes for women in the criminal justice system, including the piloting of Problem-Solving Courts for women. Further, the Pre-Sentencing Report (PSR) pilot launched in March is piloting the targeting of fuller PSRs for women amongst other specific cohorts.

Lastly, you have requested further information on the expansion of the Women's Estate. I would like to assure you that we remain committed to the vision set out in the Female Offender Strategy, including having fewer women in custody. Our plans for the multi-site expansion of the Women's Estate create an opportunity for significant investment and will deliver improved, gender-specific accommodation for the women in our care. Further detail on this is included in the Memorandum attached.

Government Response

1. *The Government should adopt our new clauses to the Police, Crime, Sentencing and Courts Bill to ensure data about primary carers in prison, and their dependents, is adequately captured and reported.*

Currently, information on a prisoner's caring responsibilities and their children living in the community is monitored locally by prison Governors/Directors, to ensure that appropriate support can be provided to offenders and their families.

We are working to capture more robust data on parental responsibilities through making changes to the Basic Custody Screening Tool (BCST), which will also allow us to collect this data at a national level. The BCST is completed in the first couple of weeks following entry to prison.

Whilst information is already collected concerning parental responsibilities, the current questions do not identify dependent children of primary carers in a format that can be collected centrally. We plan to make changes to the questions to enable us to identify prisoners with primary carer responsibilities on entry into prison and to access the information centrally. We will also consider what data can be published, while taking full account of confidentiality.

2. *We are not clear why an increase in police numbers will automatically increase the female prison population, and as such recommend that the Government writes to us, setting out its modelling and assumptions on which it has based its decision to expand the capacity of the prison estate due to the increase in police officers.*

The information published on GOV.UK: [Prison Population Projections 2020–2026, England and Wales](#),¹ sets out the basis of our modelling of the future prison population.

The additional 10,000 places programme that was developed as a result of population projections modelling considered all of the protected characteristics as part of its decision making, including the need for improved custodial experiences for women. The opportunity to provide new, improved accommodation that could bring women closer to home and help maintain family ties has fundamentally informed the decision to provide 500 additional places in the women's estate (alongside demand modelling) and continues to influence decisions in the project now.

In line with the female offender strategy, better conditions for those women who do require custody will be delivered. New accommodation that is decent, safe and secure and supports the modernisation of the prison estate will be developed alongside parallel investment in community provision and services. The expansions will be delivered through building a mix of open and closed provision at existing women's prisons. If the projected increase in the women's population does not materialise then we have committed to using these places to close down existing older, less suitable accommodation in the women's estate.

¹ [Prison Population Projections 2020 to 2026, England and Wales \(publishing.service.gov.uk\)](#)

Our designs are conscious of and directly informed by the experiences of women in custody, who may have experienced physical and emotional violence and sexual abuse or exploitation. The new smaller communities of accommodation are specifically designed to be trauma informed with visible aspects such as windows without bars, smaller units, better layouts and bigger association spaces.

3. *The Police, Crime, Sentencing and Courts Bill is an opportunity to ensure that the best interests of children are upheld when sentencing a primary carer. We recommend that the Government adopts our amendments to the Police, Crime, Sentencing and Courts Bill to ensure that the best interests and welfare of children are suitably prioritised, and their rights protected when a primary carer is sentenced to prison.*

Amendment 1: Requirement for a pre-sentence report when sentencing a primary carer

Section 30 of the Sentencing Code already provides that courts should obtain a pre-sentence report (PSR) in all cases unless they deem it unnecessary. This would already capture primary carers and other important cohorts of people going through the court system.

Guidance was introduced in 2019 for probation practitioners regarding PSRs, in addition to the legislation already in place. This sets out that for those who are primary carers with responsibilities for children or dependents, a request to court for an adjournment in order to prepare the PSR is considered mandatory. This is to ensure that the impact of a potential custodial sentence on dependents is considered and that care plans are developed and in place.

Furthermore, as we set out in the Sentencing White Paper last September, we are also currently running a pilot in 15 magistrates' courts over the next 12 months. This pilot includes targeting female offenders for fuller written PSRs, who amongst other cohorts, have been identified as having particular needs.

Future service design includes an uplift in volumes of PSRs with greater targeting of fuller reports for women, to enable a greater understanding of equality issues and diversity, the factors that influence offending as well as the strengths that individual women can draw on to move away from offending. This will provide the opportunity for a more personalised response to offending in order to support effective sentencing.

Amendment 2: Obligation on the sentencing judge to state how she has considered the consequences for the child in the sentencing remarks

As the report acknowledges, by virtue of section 52 of the Sentencing Code, courts are already under a statutory duty to state, in open court, reasons for deciding on a sentence – which could include the impact of the sentence on dependents. Furthermore, courts will consider principles established in relevant case law at various stages in the court process, as well as following sentencing guidelines which contain factors that are relevant to primary carers (discussed in further detail under amendment 3 below).

Amendment 3: Welfare of child to be a distinct consideration when sentencing a primary carer

The Government's view, as outlined in our response to the Committee's Twenty-Second Report of Session 2017–19, remains that it is not necessary for courts to be under a further explicit statutory obligation to consider the welfare of offenders' children when sentencing, in view of existing case law and sentencing guidelines.

When sentencing, courts should follow relevant case law, such as the case of *R v Petherick*, in which the Court of Appeal established various principles relating to the sentencing of primary carers. This includes the need to balance the aims of sentencing against the effect that a sentence can have on the family life of others. The Court of Appeal also made clear that for cases on the cusp of custody, interference with the family life of children can sometimes 'tip the scales', meaning that a custodial sentence that otherwise would have been proportionate may become disproportionate.

Courts are also required by law to follow any relevant sentencing guidelines, issued by the independent Sentencing Council, unless the court is satisfied that it would be contrary to the interests of justice to do so. Reflecting the principles established in *R v Petherick*, the Council's *Imposition of Community and Custodial Sentences* sentencing guideline is clear that where an offender is on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing.

Where the impact on dependants would not make a custodial sentence disproportionate, the *Imposition* guideline makes clear that the court should determine the shortest custodial sentence commensurate with the seriousness of the offence and also requires sentencers to consider whether a sentence can be suspended. The factors for sentencers to consider which might indicate circumstances in favour of suspending a custodial sentence include 'realistic prospect of rehabilitation', 'strong personal mitigation' and 'where immediate custody will result in significant harmful impact upon others'.

Sentencing guidelines also include "*sole or primary carer for dependent relatives*" as a mitigating factor. In 2019, the Council issued an expanded explanation for this factor which clarifies that where custody is unavoidable, consideration of the impact on dependants may be relevant to the length of the sentence imposed and whether the sentence can be suspended. It also makes clear that when a court is sentencing an offender who is pregnant, relevant considerations may include the effect of the sentence on the health of the offender and the unborn child.

Amendment 4: Welfare of child to be a distinct consideration when determining bail for a primary carer

The Bail Act 1976 sets out a general right to bail for all defendants involved in criminal proceedings and awaiting trial. This recognises that a person should not be deprived of their liberty unless that is necessary for the protection of the public or the delivery of justice. It also reflects the fundamental principle of the criminal justice system that a person is considered innocent until proven guilty.

A defendant who is accused of an offence can only be refused bail where there are specific reasons to do so, as specified in legislation. The main reasons the court may refuse bail are that it is satisfied that there are substantial grounds for believing that the defendant, if released on bail, would abscond, commit further offences while on bail or interfere with witnesses or otherwise obstruct the course of justice.

In deciding whether or not to grant bail, the court will consider a number of factors, including the nature and seriousness of the crime; the character of the defendant; his/her past criminal record; associations and ties with the community; the defendant's record in regard to his/her previous commitments to bail conditions; and the strength of evidence against the defendant. As with sentencing, the principles set out in *R v Petherick* will be applicable and the court will therefore need to consider the need to balance the aims of custody against the impact this can have on the family life of any dependents.

Following the recommendations made by Lord Farmer in his 2019 review '*The Importance of Strengthening Female Offenders' Family and other Relationships to Prevent Reoffending and Reduce Intergenerational Crime*', any information relating to caring responsibilities and/or whether someone is pregnant is now included in the Bail Information Report.