

## Written evidence from Rona Epstein, Honorary Research Fellow, Coventry Law School

Our current [research](#) asks: **Why are pregnant women in prison?** We will look at decisions on remand, licence recall and sentencing of pregnant women to understand why such high numbers of pregnant women spend time in prison in England and Wales. This research is done in collaboration with Dr Geraldine Brown, Coventry University. She wishes to be associated with this evidence and co-signs it.

**This statement has 5 sections**

- 1. Children's rights and welfare**
- 2. Pregnant women in conflict with the law**
- 3. Reducing the number of women in custody**
- 4. The Female Offender Strategy: commitments not met**
- 5. No new prison places should be built for women: investment in women's centres instead**

### **1. Children's rights and welfare**

In 2012 I did the [first research on the rights of the child](#) when mothers are sentenced in the UK criminal courts. In this research I pointed out that under the Human Rights Act the rights of the child to a private life, which must include the right to the care of her/his parent, were engaged when a parent with care [is sentenced](#). I called for consideration of these rights during the sentencing process to become statutory law.

Dr Shona Minson, University of Oxford, has produced [training materials](#) to inform all sentencers and the legal professions on the processes which should be carried out before a mother is sentenced. However, careful consideration of the rights and welfare of affected children is not yet established practice in our courts, neither in remand nor in sentencing hearings.

Too many women who have dependent children are imprisoned for non-violent and minor offences. In 2017, we, [Lucy Baldwin and Rona Epstein](#) published our study on mothers sent to prison for short periods. We reported the devastating and long-lasting effects on children of the short prison sentences imposed on their mothers. There is considerable [evidence](#) of the danger imprisonment poses to pregnant women and the unborn child. These are the reasons that I strongly support the amendments to the Police, Crime, Sentencing and Courts Bill proposed by the Parliamentary Committee on Human Rights, as outlined below, in Section 3.

There should be a legal presumption against the imprisonment of primary carers and pregnant women in order to uphold the rights of the child and to maintain and protect family ties, which are important for all in society.

### **2. Pregnant women in conflict with the law**

Imprisonment of pregnant women takes place on a large scale: about 600 pregnant women enter our prisons each year, at great risk to the health of both mother and unborn child. Some have not been found guilty of committing any offence at all. The woman whose baby died in HMP Bronzefield after an unattended birth while alone in her cell, was in prison **on remand**.

In our [small scale study](#) we have found cases such as Kathleen Shiel. When she was 30 weeks pregnant Swindon Magistrates Court sent her to prison for 11 weeks for having breached [her licence conditions](#), she had stolen a kettle. Wendy A. was sent to prison by Norwich magistrates for 4 weeks when 36 weeks pregnant, also

for breaching licence conditions. A [Kirklees magistrate](#) made this remark to a pregnant woman brought before the court for not attending her community punishment sessions: “I assure you that if you breach this order and walk back into this courtroom and see me *I won't lose any sleep sending a pregnant woman to prison*”.

In my view such an attitude has no place in a civilised society.

The Ministry of Justice should immediately start to collect information from all women's prisons on every pregnant women entering prison, at the same time recording whether she is on remand, or on sentence, the offence, the court, and the sentence imposed. This information should then be publicly available so that sentencing policies and practice can be scrutinised: transparency is all-important.

The new sentencing guidelines which came into force on 1 October 2019 include an expanded explanation for the [mitigating element](#) 'sole or primary carer'. A key element of this is that when the defendant is a pregnant woman the relevant consideration should include the effect of a sentence on the woman's health and on the unborn child. Monitoring of the compliance of the courts with the new sentencing guidelines will be important.

The rights of the unborn child should also considered when a pregnant women is before a court. The tragic loss of life of a baby born in a cell in HMP Bronzefield in September 2019 happened to a woman on remand.

#### **\* What support is available for mothers to maintain contact with dependent children?**

There have always been huge barriers for mothers in prison trying to maintain contact with their children: the distance most women are from their children; the fact that visiting is during school hours; the need for someone to accompany a child a long distance; the fact that prison can be intimidating for a child making mothers reluctant to arrange visits. Our [research](#) (L.Baldwin, R.Epstein) on women in prison on short sentences revealed examples of children being terrified by the presence of sniffer dogs and the fear was long-lasting.

### **3. Reducing the number of women in custody**

Too many vulnerable women are remanded in custody, and too many are recalled to prison when their original offence was neither serious nor violent, and the breach in licence conditions did not concern re-offending. Almost half of first receptions in the female prison estate are for unconvicted women; 15% of the women in prison are on remand. Many women remanded into custody do not ultimately receive a custodial sentence. In [2018](#), 63% of women remanded into prison by the magistrates' courts and 38 % remanded by the crown courts did not go on to receive an immediate custodial sentence. They were, however, in jail long enough to further disrupt lives often already marred by chaos and distress. In the year ending [September 2019](#), 44% all prison receptions were remand receptions. This can be particularly damaging to the health and well-being of [pregnant women and their unborn child](#).

The amendments to the Police, Crime, Sentencing and Courts Bill proposed by the Parliamentary Committee on Human Rights would result in significantly fewer women going to prison.

1) Amend section 30 of the Sentencing Act 2020 to make clear the requirement for a sentencing judge to have a copy of a pre-sentence report, considering the impact of a custodial sentence on the dependent child, when sentencing a primary carer of a child (Amendment 1);

2) Amend section 52 Sentencing Act 2020 to require a sentencing judge to state how the best interests of a child were considered when sentencing a primary carer of a dependent child (Amendment 2);

3) Reflect the requirement for a sentencing judge, when sentencing a primary carer of a dependent child, to consider the impact of a custodial sentence on a child (Amendment 3);

4) Reflect the requirement for judges and magistrates to consider the impact of not granting bail on a child when determining, in criminal proceedings, whether to grant bail to a primary carer of a dependent child (Amendment 4).

The Human Rights Committee state:

'These new clauses merely reflect what ought to, but sadly often does not, happen to consider and respect the rights of the child when a primary carer is sentenced. Their inclusion in statute is important to ensure that the rights of these children are not ignored in the future.

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

**\* What has been done to reduce the number of women serving short prison sentences?**

Some local areas have set up effective initiatives to reduce the use of short prison sentences for women. [Diversion and liaison schemes](#) have been successful in reducing the number of women sent to prison for short periods, and should be supported, extended and invested in. However, the main need is for thorough sentencing reform. There should be a presumption against imposing short custodial sentences. Pre-sentence reports should be mandatory not optional and sentencers should be compelled by statute to consider them when passing sentence.

**\* Does the female prison estate take a Whole System Approach (that considers all of the offenders needs)to those in their care?**

Greater Manchester, for example, has seen a 60% reduction in the use of immediate prison sentences of under 6 months for women since using a Whole Systems Approach<sup>1</sup>. However, across the country piecemeal funding streams have led to inadequate and patchy funding of services. This undermines the ability of either the prison system, the police or the Women's Centres in the community to adopt a WSA.

**\* What does this look like in practice?**

In practice this sees women leaving prison with no settled home. Other needs are also inadequately addressed. There are very strong links between suffering domestic abuse and entering the criminal justice system. Women's Refuges are desperate for funding and have to turn away women fleeing domestic violence. This is the reality. It

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<sup>1</sup> Kinsella,R et al: Whole System Approach for women offenders  
[https://e-space.mmu.ac.uk/621414/1/WSA%20FINAL%20REPORT%2018\\_05\\_30.pdf](https://e-space.mmu.ac.uk/621414/1/WSA%20FINAL%20REPORT%2018_05_30.pdf)

is as far from a WSA as can be imagined. It comes back to funding. We should invest adequately in Women's Centres and Women's Refuges. There should be a greater use of WSA: this will require investment.

**\* Do community sentences currently offer a credible alternative to custody? (If no, why not?)**

Community sentences offer a credible alternative to custody.

**\* What more could be done?**

Community sentences do offer a credible alternative to custody, but we need a proper level of investment in effective community interventions. There must be more and better education and training of the judiciary to inform them of what community sentences are available, and to help them make better decisions, sending fewer women to prison.

**\* What progress has been made on the development of Residential Women's Centres, RWCs? Do these offer a suitable alternative to custody?**

RWCs involve uprooting women from their communities, with the risk of losing jobs and social support networks. Piloting RWCs diverts resources from the network of community based Women's Centres which have been shown to be effective in reducing re-offending and in preventing women at risk from entering the criminal justice system.

**\* What factors contribute to the high levels of self-harm in the female estate?**

Women in prison are particularly vulnerable. Over half (53%) have survived emotional, physical or sexual abuse during childhood and almost two thirds (63%) are survivors of domestic abuse; have been in care; have attempted suicide; report addiction issues. The serious underfunding of mental health services has led to the criminal justice system being used to respond to women in crisis. The government should repeal the provisions under the Bail Act 1976 which permit the use of custody for women's own protection' and allows women to be remanded to custody for their 'own safety'. The health needs of women in contact with the criminal justice system require investment in community health support and other social provisions focused on needs of particularly vulnerable girls and women.

**4. The Female Offender Strategy: commitments not met**

[An analysis](#) of the Strategy by the Prison Reform Trust found that the government has fully implemented only 31 of the 65 commitments. There must be concerted action without delay to meet all the commitments made. The strategy envisioned a prison environment that enables rehabilitation. However Women's Centres report that in fact there are lengthy waiting lists for rehabilitative programmes in prison. As most women serve short sentences, by the time they have a place release is imminent. Investment in such programmes in the community would provide women with more effective rehabilitation. The strategy also sought to improve transition to the community by helping women with accommodation. Yet nearly half of women, 49%, leave prison without settled accommodation. Once again we see that investment in the community is what is required. The hugely costly processes of imposing custody on women lead straight back to prison, without a stable home there is little change of a successful change in life direction.

**\* What progress has been made on commitments to reduce the number of women in custody since the publication of the Female Offender Strategy?**

Since the publication of the strategy there has been a small, but much welcomed, drop in the number of women in custody. However, the latest projections show a predicted rise from 3,217 in September 2020 to 4,500 by September 2025. This must be challenged. The numbers in custody should not increase, they should continue to decrease. Imprisoning women in large numbers does no good in our society.

**\* What more can be done?**

The Public Accounts Committee has stated: Community alternatives to prison have shown to be effective for women, but to date have been starved of investment. This investment should be made without delay. The £150 million pledged for new prison places for women should instead be invested in community services.

**5. No new prison places should be built for women: investment in women's centres instead**

There should be no new prison spaces for women, the numbers in custody must be reduced not increased. This is achievable, with goodwill, common sense and the proper investment in community support as an alternative to imprisonment. There are urgent calls for expenditure on the needs of women at risk of entry into the criminal justice system, and the funds that could go to prison building should go to this. The women's refuges who shelter women fleeing domestic violence are having to refuse places to desperate women. The women's centres which support vulnerable women and keep them from entering the criminal justice system are severely constrained by lack of adequate, secure funding. To build prison places now would be to turn our backs on the very services that keep women out of prison and would inflict damage on our social fabric. Yes, there may be more police active in the future: they can play a constructive role in protecting women experiencing domestic abuse, and could also be used to divert women from prosecution and direct them to the services that would support them, particularly mental health services and substance abuse services. That is if these services exist. That means investment on a large scale. Prison building is moving in the opposite direction. It would be a brutal, and thoroughly anti-social policy. I do not believe there is any public demand for this.