

Written evidence submitted by De Montfort University's Prison and Probation Research Hub

About us:

The Prisons and Probation Research Hub is a lively and active research community dedicated to penal research. We undertake excellent research in the field of prisons and probation and have a robust track record of world leading research and scholarship. Our research is impactful and directly addresses the needs of stakeholders in prison and probation settings.

Our aim is to develop new ways of thinking about the complexity of containment and punishment through the integration of a range of disciplines, approaches and methods. Our shared vision is:

An applied and policy-focused research hub, which aims to inform public debate to reduce criminalisation and society's dependence on imprisonment and punishment.

Our active research team has extensive experience researching prison and probation settings. Our expertise is diverse and rich. Membership of the Hub is multidisciplinary and includes both scholars and practitioners from outside of De Montfort University. We have established bodies of work in:

- Prison education and learning led by [Ross Little](#)
- Digitization of prisons led by [Dr Victoria Knight](#)
- Women and families affected by imprisonment led by [Lucy Baldwin](#)
- Sexual and domestic violence
- Risk and public protection
- Punishment

We work closely with the end users of our research and believe that the meaningful policy and practice initiatives are based on quality research with robust theoretical foundations. The Hub has links with a number of other academic research groups and correctional affiliations, both nationally and internationally. For further information, or if you wish to be put on our mailing list so that you can be advised of future events, please contact the Hub's director [Dr Victoria Knight](#) at vknight@dmu.ac.uk

Summary of our evidence

1. We welcome this opportunity to respond to your call for evidence. We wish to express that our collective view is that members **do not support prison expansion** and the wholesale reliance on imprisonment as a solution to managing crime.
2. Our collective work centres decency, humanity, fairness, care and investment in rehabilitation, meaningful resettlement and equality. Our response will cover 4 themes; *sentencing, the digital prison, mothers in prison* and *education in prison*.
3. In summary we recommend the following:
4. **Sentencing and the disproportionate use of imprisonment**
 - i. Compliance with sentencing guidelines
 - ii. React and respond in sentencing guidelines to the needs of specific groups such as mothers and children
 - iii. Reinvest in community interventions where necessary i.e. for mothers and children
 - iv. Defer sentencing to prison to help individuals prepare for imprisonment
5. **The Digital Prison: Transformative digital maturity**
 - i. Develop digital strategies based on user needs
 - ii. Implement digital strategies to drive desistance rather than to punish
 - iii. Develop strategies based on ethical frameworks
 - iv. Procure products responsibly that lead users towards desistance
6. **Mothers in prison**
 - i. Respond directly to the needs of women and their children in sentencing and whilst in prison
 - ii. Design mother specific pathways and favour community based interventions rather than imprisonment
 - iii. Divert funding to community based initiatives instead of building new female prisons
 - iv. Invest in healthcare provisions for mothers and their children
7. **Education in prison**
 - i. Capture the views of children in delivering and designing learning pathways
 - ii. Tailor learning and education to suit individual needs
 - iii. Overcome barriers to learning whilst in prison
 - iv. Create informal learning opportunities

Our response and corresponding evidence

8. We welcome this opportunity to respond to your call for evidence. We wish to express that our collective view is that members do not support prison expansion and the wholesale reliance on imprisonment as a solution to managing crime.

Your call states:

The NAO's report 'Improving the prison estate' examines the condition and capacity of the prison estate, its approach to maintaining prisons, and progress it has made in transforming the estate.

9. We believe that the focus of this report is too narrow- it fails to address the ultimate purpose of meaningful imprisonment or even alternatives to imprisonment and there is no reference to investment in improving outcomes and preparedness for resettlement. Our response takes the term 'improving' beyond physical architecture and expansion.

10. Our collective work centres decency, humanity, fairness, care and investment in rehabilitation, meaningful resettlement and equality. Our response will cover 4 themes; *sentencing, the digital prison, mothers in prison and education in prison.*

Sentencing and the disproportionate use of imprisonment

Sentencing guidelines in light of COVID-19

11. One thing that concerns us is that (well-intentioned) commentators are saying that it is very important that prison is used as a last resort due to the current pressures on the system and the objectively harsher regime brought about by COVID-19. **The point though is that the law already states that a discretionary custodial sentence should be imposed as a last resort (Criminal Justice Act 2003, s.152) - we should not in other words be asking for a change in the law but asking for it to be complied with.** Indeed, if the law was followed, it would be impossible to raise the bar any higher. The Sentencing Council have also stressed before that prison is a sentence of last resort and should be reserved for 'the most serious offences'.

12. We acknowledge and welcome the reminder of this principle by the Lord Chief Justice in *R v Manning [2020] EWCA Crim 592* who also asked sentencers to bear in mind that the changes to regime had made custody a more onerous punishment. The Court of Appeal reduced a prison term on this basis in *R v Jones [2020] EWCA Crim 764*. As a discretionary custodial sentence can only be imposed if the court 'is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence' (s.152(2) Criminal Justice Act 2003). This does not provide scope to raise the threshold for imposing custody. We would make three recommendations:
 - (1) In keeping with the Lord Chief Justice's remarks, the current restricted regime should be taken into account when determining sentence length and should result in a reduction in the term that would otherwise be imposed.

(2) That the Sentencing Council are asked to reconsider their generic guidance on imposing a community or custodial sentence so as to provide clearer guidance for sentencers who are deciding whether a case is so serious that neither a fine alone nor a community sentence can be justified for the offence.

(3) That the Ministry of Justice reconsider introducing a presumption against short custodial terms. We made the case for a presumption against short custodial sentences in a blog post .

Bespoke sentencing guidelines:

Mothers in prison

13. Our work on mothers in prison (Baldwin, 2015, 2017, 2018, 2019, 2020, Baldwin and Epstein 2017), recommends that the best interests of mothers and their children are met by not bigger or more prisons or better equipped more modern prisons for women; but far fewer women in prison in the first instance. Similarly, the recent Joint Human Rights Inquiry into Maternal Imprisonment (to which one of our members gave oral and written evidence), advocated for immediate changes to the sentencing framework to reduce the number of mothers and their children affected by imprisonment.
14. The Bangkok Rules are such that Sentencers are *supposed* to reserve custody for women in only the most extreme of circumstances. However, currently, Sentencers can exercise their own discretion but they are currently implemented inconsistently. Given that approximately 66% of the female prison population are mothers to children under 18, their consistent application would significantly reduce the female prison population, with immediate effect. Furthermore, post Transforming Rehabilitation (2013) which mandated post-prison release supervision of 12 months for anyone who had been sentenced to more than a day in custody, there has been a significant increase recall to prison for women.
15. We suggest based on our research that:
 - i. Gender specific training should be provided to the judiciary with the implementation of women's courts.
 - ii. The development of gender-specific sentencing to ensure that women are sentenced appropriately and in consideration of their and their children's best interest. Developing and implementing gender specific guidelines would have a faster impact than the complete overhaul of the sentencing framework.
 - iii. Alternatively, an overhaul of the sentencing framework, with a mandated requirement to ONLY sentence mothers and pregnant or nursing mothers to custody, if her offences were so severe and her risk of harm so high, that only a custodial sentence is warranted (and only then after a period of deferral to allow arrangements for children to be made).

- iv. Greater accountability of the judiciary – i.e. If a custodial sentence is imposed on a mother as described above Sentences must be formally asked to justify their decision.

- 16. Implementing these simple measures would have an immediate impact on the numbers of women entering custody and would, therefore, significantly reduce the female prison population. Thereby potentially permitting the closure of women's prisons, which would facilitate the diversion of funds to the more appropriate and comprehensive community-based alternatives to imprisonment.

Children in prison

- 17. Around a third of all children in custody are now on remand – two thirds of whom will not go on to get a custodial sentence. It is also the case that the high proportion of children from minority ethnic communities in custody is in partly down to the very high number of children from those backgrounds remanded to custody (Howard League for Penal Reform, 2020).

The Digital Prison: Transformative digital maturity

- 18. We know that digital inequality is a real and significant indicator of poverty and poor life chances. Little is being done to close this gap in our prisons.

- 19. We know that digital transformation is inevitable for our prisons and there is some but limited investment and commitment to increase the digital maturity and capability of this sector. But this has been slow and patchy. We also note that COVID-19 and implications for social distancing has triggered an increase appetite in introducing technological services to our prisons.

- 20. Our research is actively interrogating this digital transformation. Our evidence suggests that investment is required that will benefit and improve the rehabilitative outcomes for prisoners, their families and the public. COVID-19 has shone a light on the ability of prison services to manage social interaction meaning prisoners are further deprived of basic human contact. Moreover the availability of 'softer' services like contact with family, education, work based training, peer support and therapy has meant that sentence progress has been stalled during lockdown. As documented elsewhere in both a [guest blog](#) and [public panel session on technology](#), even the basic telephone is a valuable and important tool to keep things moving within the criminal justice system. Our assumptions about the role technology has in our everyday lives is ever more pressing- being *online* now means we are *onlife*. Digital exclusion can further exacerbate wider social deprivation meaning that journeys of resettlement and desistance become hopeless and challenging. The digital competencies of re-entering citizens are in urgent need of attention for them to flourish and stay away from returning to prison.

21. We request that digital transformation is given meaningful investment with the existing prison estate and this is not for the 'future' or new prisons. Our recommendations require long-term investment. These are:

Digital transformation is user led

22. Meaningful digital transformation is useless unless end users are compelled and motivated to use it. There are a number of stakeholders who have joint interest in the digital enterprise and their input into the planning, design, development and implementation. We along with other experts have outlined helpful frameworks to assist prison services to develop this approach. Business planning requires need-based strategies whereby stakeholder consultation can bring about effective and meaningful investment. Moreover other approaches advance this principle whereby services are co-created with service users. Here end users like serving prisoners develop digital content and delivery. The effectiveness of this modeling brings about increased uptake and efficient use of design and development time, meaning that the solutions are fit-for-purpose once implemented. The digital landscape of prisons needs extensive consultation with a wide range of partners and experts.

Moral commitments to digital desistance

23. We are committed to digital transformation as a route to enabling serving prisoners the opportunity to lead their own journey of desistance as well as enhance and broaden (and not replace) rehabilitative services and support. Whilst agendas of efficiency and cost-savings are important there is an opportunity to ensure that this transformation does not further punish or exacerbate the harms of imprisonment. A moral commitment to drive harm avoidance and help trigger desistance can be embedded into strategy development. We are developing **an ethical framework** welcomed by Europris and ICPA (2019). Our recent advancement (forthcoming 2020) embeds issues of human rights, harms of deprivation, normality and restoration. In essence they regard the following as valid benchmarks for digital transformation:
- i. Flourishing agency- permitting choice and autonomy
 - ii. Fair and equal access to digital services
 - iii. Be supported by data protection to respect privacy and transparency
 - iv. Allow for normality- to mirror safely a digital experience of the outside world
 - v. Operate within laws of the land whilst being attentive to individual risk
24. We also have evidence about the public's acceptability of prisoners' access to digital technologies, outlining that the public wants digital interventions to lead to rehabilitation.

Digital maturity and change management

25. Our current global survey on the digital maturity of prison services is an evolving body of evidence to demonstrate how capable, prepared and willing services are to transform. This survey is a useful tool for services to assess their own business needs and reflect on their own digital strategies. Our prison-designed scale is intended to form part of a tool kit to assist user-led, morally driven, partnership

working with experts, very much in line what we have articulated here. Our approach and knowledge is very much welcomed by other jurisdictions (such as Sweden, Finland, Taiwan) and across public and private digital service providers. Already other jurisdictions are planning Smart prisons; something we have evaluated in terms of its possibility as a future model for existing prisons.

Mothers in prison

26. We know that mothers and their children are disproportionately affected by imprisonment as multiple reports, reviews and inquiries have evidenced this over several decades.

27. We know that women have gendered pathways into crime and as such gendered pathways out of crime (Carlen and Worrall 2004). Research has consistently revealed that therapeutic holistic community-based interventions enjoy a greater success rate than prison. Prison simply does not work for women, in fact research suggests women often leave prison in a far worse position than their position when they entered prison. This is even more challenging for women who are mothers.

28. We note two significant reviews have been undertaken:
 - i. Corston (2007) advocated for a significant reduction in the female prison population, especially for mothers, calling for female prisons to be replaced with small residential community-based units. Her recommendations were accepted by Governments and yet over ten years later on one of her 43 recommendations have been implemented .
 - ii. The Female Focused Farmer review (2019), (to which one of our members gave oral and written evidence), revisited and re-stated the Corston recommendations, arguing they remain relevant and valid because of the significant harm caused to mothers and their children by prison.

29. Our joint research report with Rona Epstein (2017) added to the significant body of evidence highlighting the particular harms caused by very short prison sentences. Mothers in this research lost homes, employment, and their children – yet none were imprisoned for a violent offence, and many were imprisoned for a first offence. The harms felt by their children as a direct result of their mother's absence included, homelessness, loss of education, bullying, trauma, separation anxiety, bedwetting, and bullying. Three 17 years old children in the study had to leave their full-time education to care for younger siblings in their mother's absence, two stated they would not now return to education, having lifelong implications for their employment opportunities and outcomes. Women are being criminalised by poverty, one mother in the study who had no access to family support, stole nappies and baby milk after her benefits were 'sanctioned' meaning she was without *any* income for weeks. Another mother could not afford her electricity bill and so misdirected her electricity and was jailed, another forced into offending by a violent partner. Prison simply compounded the women in the study's issues and often rendered them homeless.

30. The tragic stillbirth of another baby in Styal prison on the 20th June 2020, not nine months after the last tragic stillbirth at Bronzefield, and before the findings of the 11 investigations are even made public; is a stark reminder of the inappropriateness of prison for pregnant women. Similarly, the death of Michelle Barnes who took her own life five days after being separated from her baby. Michelle hung herself in her cell unable to cope with her grief. The independent investigation found many flaws in her pregnancy and postnatal care. Research has shown that pregnant women in prison do not have equitable access to healthcare or maternity or post-natal support, in both Baldwin's and Abbot's research (2018) descriptions of miscarriages in prison were commonplace, and yet miscarriages in prison are not recorded.
31. We urge a return with vigour to current guidelines (The Bangkok Rules). Sentencers are supposed to reserve custody for women in only the most extreme of circumstances. However, given the mother of the baby who died in Bronzefield was on remand, and the mother of the most recent dead baby was serving only a sentence of only a few short months, together with the women's stories contained in Short but not Sweet, it is clear the guidelines are not being adhered to.
- i. What **must** occur, instead of guidelines permitting Sentencer discretion, is their replacement with a mandatory requirement to ONLY sentence a pregnant or nursing mother, if her offence was so severe and her risk of harm so high, that only a custodial sentence is warranted.
 - ii. In such an incidence, the rights of the mother (and in the case of a pregnant mother also the rights of the child) to a healthy, safe and supportive and compassionate environment must be paramount. Unless this change is implemented, mothers and babies will continue to die in prison.
 - iii. Similarly the same advice applies to mothers (and fathers) with dependent children, and again custody ought to be the last resort. Furthermore I would seek greater accountability of the judiciary if the guidance is not followed.
32. We agree with the recommendations of the *Women in Prison Corston+10* report, which argues that women 'not only do women need to be diverted away from custody, but also need diverting toward support in the community'. It is therefore vital that wise investment ensures that such **support** is indeed available. WE further suggest:
- i. abandoning any plans to build more women's prisons and divert funds to support community initiatives.
 - ii. appropriate, and permanent funding should be allocated to ensure that women's services remain available in the community, with the intention to divert women away from the CJS.
 - iii. to see a presumption against pregnant mothers being sentenced to custody, in all but the most extreme of circumstances. That's not to say we do not feel that MBU's play a valuable role in supporting vulnerable mothers and their babies, in contact with the CJS, (particularly mothers with addiction issues), we do, but we see no reason for such places to be located within a prison. Successful mother/child therapeutic

communities exist, see for example Trevi House, and Coolmine, Ireland, both work with mothers who have substance misuse issues and are therefore vulnerable to becoming entrenched in the CJS¹. Such models could be extended.

Education in prison

33. Opportunities for learning are far more limited in prison than is necessary or appropriate. There are issues that need addressing in both the children's estate and the adult estate. Here, we draw attention to children in the youth justice system based on our expertise.
34. We note that the Taylor Review of Youth Justice (2016) recognized a wide range of inter-connected challenges in the custodial estate for children, despite the considerable decreases in the number of children entering the youth justice system and being imprisoned each year over the past twelve years. A key contemporary challenge for the youth custodial estate is its fragmentation into different forms of custody (Secure Children's Home [SCH], Secure Training Centre [STC] and Young Offenders Institution, [YOI]) and the associated lack of clarity regarding its purpose (Little, 2020), 2018, Bateman, 2017, 2016). The Taylor Review was clear that "education needs to be central to our response to youth offending" (Taylor, 2016: 3). This continued government interest in 'putting education at the heart of youth custody' in the response to the Transforming Youth Custody Green Paper (Ministry of Justice 2014). The government response (Ministry of Justice, 2016) to the Taylor Review committed to recommendations of Secure Schools. At the time of writing, the future of these proposals is unclear because the former Medway STC (the proposed site of the first Secure School) is being used folding adult prisoners during the Covid-19 pandemic.
35. For many children now in prison, a traditional criminal justice response has been shown to be inadequate (Taylor, 2016). High re-offending rates persist for young people leaving prison, although rates are not so high for those subject to community supervision (Bateman and Wigzell, 2019). One of the omissions from policy attempts to improve the situation, is the voice of children subject to the criminal justice system. There has been a lack of interest in listening to the voices of children with view to enhancing policy and practice in the youth justice system. To some extent this seems to derive from a lack of trust in young people, their views and experiences (Case, Haines, Little et al, forthcoming).
36. It is important to include children's voices to help understand how youth justice policy and practice can be enhanced. However, the voices of children² in conflict with the

¹ Trevi House, Plymouth. residential rehabilitation programme for women together with their children, with drug and alcohol dependency issues <http://www.treviproject.org/>. See also; Coolmine Ashleigh House: Women & children residential Ashleigh House is a residential Therapeutic Community for women, expectant women and mothers with young children. Ashleigh House is designed to help women in recovery develop the skills they need to live a drug-free, independent life. By providing a supportive setting our clients can build on their self-confidence, emotional management and the relapse prevention skills needed to remain addiction free. <http://www.coolmine.ie/services-new/residentials/>

² The United Nations Convention on the Rights of the Child defines a 'child' as any individual up to the age of 18 years (UNCRC 1989).

law have been neglected for as long as they have been subject to the criminal justice sanctions. As a consequence, youth justice policies and practices have been developed by adults, for adults. Little's research (2015, 2018) surveyed children in an English YOI. The majority of these children felt they had had the opportunity to participate in educational activities at the prison, but their views about the extent, nature and influence of this participation varied. In particular, three thematic issues were highlighted:

- i. the limited choice of education options,
- ii. significant barriers to learning inside prison
- iii. a lack of informal learning opportunities

37. One child participating in the research, suggested the idea of 'taster courses', to give people choice about what they might want to develop further in and ultimately help people "to find their own path". Therefore a negotiated learning pathway for children is necessary to bring about meaningful outcomes for them. Our findings highly recommend a child-centred approach to educational design and delivery and a more holistic approach to understanding the learning needs and interests of children. This rests on an appreciation that children in prison may need further support before they are ready to engage with education. Children detained in prison have usually experienced multiple forms of disadvantage prior to their detention, including exclusion from school. Poor access to education and learning continues once they are incarcerated.

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