

Care, equity and justice in pregnancy and early motherhood

# Sentencing Review call for evidence: the specific needs and issues associated with pregnancy and early motherhood

This paper focuses on the sentencing of pregnant women and mothers of infants to help inform the Sentencing Review. It has been prepared by the policy team at Birth Companions – a national charity supporting equity and justice for women and their babies during the 1001 days from conception to a child's second birthday. For more information on our work please visit our <a href="website">website</a> or contact Birth Companions' Head of Policy Kirsty Kitchen at <a href="kirsty@birthcompanions.org.uk">kirsty@birthcompanions.org.uk</a>

Note: while this submission focuses on needs specific to pregnancy and early motherhood, we support wider submissions on the sentencing of women as a whole, as set out by our partners in the National Women's Justice Coalition, Women in Prison, the Centre for Women's Justice and others. We support calls from others on the needs of racialised communities and those whose experience of gender-based violence lead to their criminalisation.

This evidence focuses on theme 2 (structures), theme 4 (community sentences), theme 5 (custodial sentences), and theme 7 (individual needs of victims and offenders).

#### **Submission**

Our key priority in responding to the call for evidence is to foreground the specific risks and concerns relating to women's contact with the CJS in the 1001 days from conception to their child's second birthday, in order to ensure these women are kept out of prison wherever possible. By supporting these women to stay in the community, we can ensure they have full and equitable access to healthcare and to support networks and services; that they can sustain their housing; and that their infants can remain safely together with their mothers at a point when attachment is shown to be fundamental to long-term outcomes. Relationships between mother and baby in this period are not only crucial in terms of giving babies the best possible start for life – a core mission for this government - they are fundamental in reducing women's offending and supporting rehabilitation.

# The importance of the first 1001 days

The government is committed to giving children the best start for life, and the first 1001 days is recognised as laying the foundations for long-term health, wellbeing and attainment<sup>1</sup>. Furthermore, attachment theory highlights the importance of the development of a child's

<sup>&</sup>lt;sup>1</sup> First 1001 Days Movement (2022) The First 1001 Days: An Age of Opportunity <a href="https://parentinfantfoundation.org.uk/1001-days/resources/evidence-briefs/">https://parentinfantfoundation.org.uk/1001-days/resources/evidence-briefs/</a>

emotional bond with their primary caregivers, particularly during pregnancy, the period just after birth, and the early years<sup>2</sup>. Maternal stress, anxiety, and mental health issues in this period can impact on a baby's intellectual, emotional, social and psychological development<sup>3</sup>. Even temporary separation from a mother during the first 1001 days can disrupt the attachment relationship and pose significant risk to the mental health of mother and infant. For these reasons, it is crucial that approaches to the sentencing of women take full account of the first 1001 days, in order to reduce the impact on mothers and infants in this critical period. This requires a multi-agency approach, working closely with those in children's social care and health, as well as specialist women's voluntary sector services<sup>4</sup>.

# The impact of prison in the 1001 days

Women in contact with the CJS are likely to have complex health needs, which may increase the risks associated with pregnancy and the period following birth for both the woman and the baby/ infant<sup>5</sup>.

Pregnancy and the postnatal period are a high-risk time in terms of severe mental ill-health in women, and there is significant risk of suicide or death as a result of substance use, as evidenced by the annual reports on maternal mortality<sup>6</sup>. The prison environment is poorly equipped to mitigate and respond to these risks. Mental health risks are exacerbated by the uncertainty faced by those entering prison as to whether they will be able to access a place within a Mother and Baby Unit or have to deal with the trauma of separation.

Many women who give birth during their time in prison, or who enter prison during the postnatal period, will be separated temporarily or permanently from their baby, interrupting breastfeeding and risking significant trauma in a time at which the mother-baby attachment is shown to be crucial. Concerns about the approach to MBU applications, in terms of social worker's knowledge, confidence and risk-averse attitudes, as well as a lack of legal representation for mothers in this process, were highlighted by a case review led by the Chief Social Worker in 2022<sup>7</sup>.

There are also major risks to the physical health of mother and baby in the prison environment, including premature and unassisted labour, pre-eclampsia, haemorrhage, and sepsis<sup>8</sup>. Research shows there can be significant difficulties accessing equivalent and appropriate healthcare, including urgent medical assistance or specialist maternity services in custody<sup>9,10</sup>, and appropriate mental health provision<sup>11</sup>.

<sup>&</sup>lt;sup>2</sup> NSPCC Learning. (2021). Attachment and child development.

<sup>&</sup>lt;sup>3</sup> Hogg, S. (2013). Prevention in mind: All Babies Count: spotlight on perinatal mental health, NSPCC.

<sup>&</sup>lt;sup>4</sup> Birth Companions (2024) Spotlight: Dual contact: understanding the needs and experiences of women in contact with the criminal justice and children's social care systems during pregnancy and early motherhood. <a href="https://hubble-live-assets.s3.eu-west-1.amazonaws.com/birth-companions/file">https://hubble-live-assets.s3.eu-west-1.amazonaws.com/birth-companions/file</a> asset/file/973/Birth Companions Spotlight on Dual Contact FINAL.pdf

<sup>&</sup>lt;sup>5</sup> NHS England (2022) National service specification for the care of women who are pregnant or post-natal in detained settings (prisons, immigration removal centres, children and young people settings) <a href="https://www.england.nhs.uk/wp-content/uploads/2022/06/B1708-National-service-specification-for-the-care-of-women-who-are-pregnant-or-post-natal-in-detained-settings.pdf">https://www.england.nhs.uk/wp-content/uploads/2022/06/B1708-National-service-specification-for-the-care-of-women-who-are-pregnant-or-post-natal-in-detained-settings.pdf</a>

detained-settings.pdf

MBRRACE-UK (2024) Saving Lives, Improving Mothers' Care <a href="https://www.npeu.ox.ac.uk/mbrrace-uk/reports/maternal-

<sup>&</sup>lt;sup>7</sup> Department for Education (2022) Applications to mother and baby units in prison: how decisions are made and the role of social work

<sup>&</sup>lt;sup>8</sup> MBRRACE-UK (2023) Saving Lives, Improving Mothers' Care https://www.npeu.ox.ac.uk/mbrrace-uk/reports

Abbott, L., Scott, T. and Thomas, H. (2023) Experiences of midwifery care in English prisons. *Birth*, 50(1), pp.244-251.
 Davies, M et al (2022) Inequality on the inside: Using hospital data to understand the key health care issues for women in prison https://www.nuffieldtrust.org.uk/research/inequality-on-the-inside-using-hospital-data-to-understand-the-key-health-care-

issues-for-women-in-prison

11 Pitfield, C. et al. (2023) A rapid evidence review of clinical risk factors for poor perinatal mental health in women's prisons in England, The Journal of Forensic Psychiatry & Psychology, DOI: 10.1080/14789949.2023.2212657

NHS England states that "it is because of the complexities for women in detained settings that all pregnancies must be classed as high risk." <sup>12</sup> The Royal College of Midwives and the Royal College of Obstetricians and Gynaecologists both emphasise the need for alternatives to prison to be used in sentencing pregnant women wherever possible <sup>13,14</sup>.

The significance of these risks and complexities was recognised by the Sentencing Council and led to the creation of a specific mitigating factor which came into operation on 1 April 2024.

The impact of custody on an offender who is pregnant or post-natal can be harmful for both the offender and the child, including by separation, especially in the first two years of life. – Sentencing Council guidance<sup>15</sup>

# The community context

While there has been some increase in the level of focus on pregnancy and early motherhood in custody in recent years, this has not yet extended to detailed consideration of the needs and circumstances of women who have contact with the CJS in the community, including while serving a community sentence, or under probation supervision after release from prison. Indeed, there is very little data on pregnant women and new mothers who are in contact with the CJS outside of prison, despite the fact that many women serving community orders or suspended sentence orders with requirements are aged 18-39. Research with magistrates looking at community sentencing options such as Mental Health Treatment Requirements (MHTRs), Drug Rehabilitation Requirements (DRRs) and Alcohol Treatment Requirements (ATRs) asked if magistrates were aware of whether childcare provision was available to women who were given such sentence requirements. The vast majority – around four-fifths – said they didn't know, with one magistrate adding "Good question – I have always assumed defendants undertaking these sentencing options can access childcare if there was no alternative, via friends and family – but that is only an assumption on my part."16 Clearly childcare is crucial for women expected to meet such requirements while caring for an infant.

An evaluation of the NHS Liaison and Diversion (L&D) service from April 2018 to March 2019 found that 4% of adult women identified by the service across all regions were pregnant or had given birth in the last 26 weeks. In two regions this was as high as 8%. It was also noted that women who were pregnant or had recently given birth had a higher rate of engagement with the L&D service (76% compared to 70% of women who were not pregnant/ had not recently given birth)<sup>17</sup>.

<sup>&</sup>lt;sup>12</sup> NHS England (2022) National service specification for the care of women who are pregnant or post-natal in detained settings (prisons, immigration removal centres, children and young people settings) <a href="https://www.england.nhs.uk/wp-content/uploads/2022/06/B1708-National-service-specification-for-the-care-of-women-who-are-pregnant-or-post-natal-in-detained-settings.pdf">https://www.england.nhs.uk/wp-content/uploads/2022/06/B1708-National-service-specification-for-the-care-of-women-who-are-pregnant-or-post-natal-in-detained-settings.pdf</a>

detained-settings.pdf

13 RCM (2018) Position Statement: Perinatal women in the criminal justice system www.rcm.org.uk/media/3640/perinatal-women-in-the-criminal-justice-system 7.pdf

14 RCOG (2021) RCOG Position Statement: Maternity care for women in prison in England and Wales

https://www.rcog.org.uk/media/wwhogsk5/rcog-maternity-care-and-the-prison-system-position-statement-sept-2021.pdf

15 Sentencing Council (2024) Sentencing pregnant women and new mothers
https://www.sentencingcouncil.org.uk/news/item/sentencing-pregnant-women-and-new-mothers/

<sup>&</sup>lt;sup>16</sup> The Independent Advisory Panel on Deaths in Custody and Magistrates Association. (2019). Effective community sentences and the role treatment requirements can play in preventing deaths in custody.

<sup>&</sup>lt;sup>17</sup> NHS. (2019). Pregnant/ Birth Adult Data: Women in L&D Summary Report 2018/19 April to March (Q1-Q4).

Birth Companions' own research, conducted with the charity Clinks in 2021 <sup>18</sup>, identified significant issues with a lack of recognition of, and responsiveness to, pregnancy and motherhood in policing, community sentence requirements and probation supervision. Less than half of the voluntary sector organisations that took part in our Window of Opportunity research said they felt that probation services in the community take sufficient account of the needs and circumstances of pregnant women and new mothers. This means information about these needs is not informing sentencing decisions (e.g. through pre-sentence reports) or the setting of compliance expectations, for example. The majority of the midwives who took part in the research said they felt that involvement in the CJS had a significant impact on women's antenatal and postnatal care needs, partly due to the extra concerns and stresses they experienced as a result.

Women's transition back into the community after prison also poses a particular risk to the continuity of their healthcare and other crucial forms of support. For example, pregnant women have to build relationships with new midwifery teams in the community, often at a late stage in their pregnancy, and women experiencing or at risk of perinatal mental health issues may not be appropriately referred to community provision when released <sup>19</sup>.

#### Remand and recall

As will be emphasised by the submissions from many stakeholders focused on women's sentencing, there is a need to address the issues with high rates of remand and recall. A third of pregnant women in prison are there on remand<sup>20</sup>, which presents huge issues for planning and support.

Many pregnant and postnatal women are entering prison on recall after breaches linked to insufficient release planning, inappropriate housing, and a lack of support for mental health or substance use issues. The disruption to healthcare and the impacts on childcaring arrangements, including contact with child in foster care or kinship care, of these decisions to remand or recall, is hugely significant and deeply traumatic for all concerned. For this reason, use of prison must be minimised, bail prioritised, and support before, during and after release maximised, across the 1001 days.

# A mandated approach to the sentencing of women in the 1001 days

In early 2024 the Sentencing Council confirmed the creation of a dedicated mitigating factor on pregnancy and early motherhood, in recognition of the fact that "[t]he impact of custody on an offender who is pregnant or post-natal can be harmful for both the offender and the child, including by separation, especially in the first two years of life." <sup>21</sup> The Council also consulted on proposed changes to the guideline on the imposition of community and custodial sentences. Changes to that guideline are on hold, but the Council stated at the time that "[t]he proposals included adding multiple new specific references to pregnancy and the unborn child, including within a new section on female offenders, where relevant to sentencing decisions about community or custodial sentences. We have yet to consider the

<sup>20</sup> Summers, H. (2023). Revealed: one in three jailed pregnant women in England and Wales still to face trial. The Observer <a href="https://www.theguardian.com/society/2023/oct/28/revealed-one-in-three-jailed-pregnant-women-in-england-and-wales-still-to-face-trial">https://www.theguardian.com/society/2023/oct/28/revealed-one-in-three-jailed-pregnant-women-in-england-and-wales-still-to-face-trial</a>

<sup>&</sup>lt;sup>18</sup> Birth Companions and Clinks. (2021). A Window of Opportunity: Understanding the needs and experiences of pregnant women and new mothers in contact with the criminal justice system in the community in England. https://www.birthcompanions.org.uk/resources/264-a-window-of-opportunity

<sup>19</sup> Ibid

face-trial
21 Sentencing Council (2024) Sentencing pregnant women and new mothers
https://www.sentencingcouncil.org.uk/news/item/sentencing-pregnant-women-and-new-mothers/

responses to this consultation, but the Council's intention is to take a consistent approach to pregnancy and maternity across guidelines."22

These developments in guidance are welcome, and have been closely informed by our teams at Birth Companions, but there is little scope to assess the degree to which this guidance is taken into account by sentencers, outside specific and sporadic research projects. Given the degree of risk faced by women and their babies as a result of imprisonment during the 1001 days, tragically demonstrated by the fact that the PPO has investigated the deaths of three babies during their mothers' custody in recent years, guidance is not enough.

We need a mandated approach to the sentencing of women in the 1001 days, to ensure consistent and high-level consideration of these risks and the lifelong impacts on infants. Such a mandated approach should prioritise diversion, community sentences, and use of deferred and suspended sentences. All requirements and conditions placed on women in the 1001 days as part of their sentencing (including deferral and suspension) must also be appropriate to the needs associated with pregnancy and early motherhood.

## 1001 days impact assessments

To support this approach, every sentencing exercise undertaken for a woman in the 1001 days should include a mandatory impact assessment, specifically accounting for the needs relating to pregnancy and early motherhood/ infancy. The Child Impact Assessment Framework<sup>23</sup> has proved to be a welcome and effective addition to sentencing processes. but this only applies to older children, able to take part in discussions about the impact of parental contact with the CJS.

The needs of non-verbal children, including unborn babies, require equal but tailored consideration. A 1001 days impact assessment would ensure sentencers are required to account for their consideration of this critical period in their decision-making. A tool to support the completion of such assessments, as part of mandatory written PSRs, should be coproduced with mothers who have experienced the CJS in the 1001 days, as well as specialist services, and be at the centre of a new package of training and resources for sentencers, probation, family support agencies and others.

#### International approaches

In a number of countries the law specifically permits courts to exempt pregnant women and mothers of children up to the age of 8 or even 12 from punishment. Many use deferral and non-custodial measures including home detention curfew, as well as prohibiting pre-trial detention in pregnancy and early motherhood. Some examples are outlined below. This is a course we must consider in England and Wales.

### Italy

- 1. Pre-trial detention (remand) Article 1 of Act No. 62 / April 2011 prohibits pre-trial detention for pregnant women and mothers with children up to the age of six, unless there are exceptional precautionary requirements.66
- 2. Sentencing Act No. 40 / March 2001 (Legge Finocchiaro) introduced 'special home detention' for mothers of children under the age of 10, even for sentences of more than 4

<sup>&</sup>lt;sup>23</sup> Prison Reform Trust: A Child Impact Assessment framework <a href="https://prisonreformtrust.org.uk/project/women-the-criminal-">https://prisonreformtrust.org.uk/project/women-the-criminal-</a> justice-system/child-impact-assessment-project/

years, provided that there is no possibility of committing further offences, they have served a third of their sentence and afterwards they have a home.

#### **Vietnam**

Under Criminal Code 2015, Articles 67 - 68, a woman's sentence can be postponed if she is pregnant or has a young child until her child reaches three years of age. If the woman is the sole income earner in the family and imprisonment will cause the family to face extreme hardship, the sentence may be deferred for up to one year unless committing an offence against national security or an extremely serious crime.

#### France

In France, some custodial sentences are not served immediately. Judges who believe custody is merited can instead provide a window for an individual who has committed a crime to turn their lives around before they invoke a prison sentence. People have an incentive to engage and receive credit where that opportunity is taken.

Epstein's key study, published in 2021, set out a number of international approaches to sentencing pregnant women<sup>24</sup>, summarised in the table below.

<sup>&</sup>lt;sup>24</sup> Epstein, R., Brown, G., Garcia De Frutos, M., (2021) Why are Pregnant Women in Prison, Coventry, Coventry University

Country	Population Million	Notes
	Willion	Article 82: Deferral of Serving a Punishment
Russian Federation	146	The court may postpone the serving of a custodial punishment in the case of a convicted pregnant woman. This applies also to a woman with a child who is under fourteen, a man with a child under fourteen who is the only parent, except for those convicted for offences against sexual integrity of minors under fourteen years old, to deprivation of freedom for a period of over five years for grave and especially grave crimes against the person: in these cases the court may postpone the serving of the punishment until the child reaches the age of fourteen.
Georgia	10.7	Pregnant women or women with children under 3 years of age, except women imprisoned for grave and particularly grave crimes for more than 5 years, can be exempted from punishment or the punishment can be postponed by the court for the period when the woman is exempted from work, due to pregnancy, childbirth and until the child reaches the age of 3. When the child has turned 3 years old or in the event of death of the latter, the court, taking into account the convict's behaviour, can exempt her from punishment, or replace the punishment with a softer punishment, or send the convict to prison to serve the unserved part of the punishment. In this case the court can deduct, completely or partially, the unserved part of the punishment from the total term
Ukraine	37	Criminal Code (2001), Article 79(1): 'where a restraint of liberty or imprisonment is imposed upon pregnant women or a woman with children under seven years of age, except for the persons sentenced to imprisonment for a term over five years for grave or particularly grave criminal offences, a court may discharge such persons from both primary and additional punishments on probation for a period of leave granted by law to women in view of pregnancy, or childbirth until the child attains seven years of age'.
Armenia	3	Same as Georgia.
Brazil	211	National Criminal Policy Plan (2015-2019)5555 provides for women (A) non-custodial measures, particularly for (A1) pregnancy, (A2) newborn babies, (A3) postpartum stage (A4) older women (B) house arrest for (1) mothers, including those with newborn children.  A 2016 law increased the number of instances where pre-trial detention substituted with house arrest and is applicable to (1) all pregnant women and (2) women with children under 12.
Costa Rica	5	Law 9.271/2014, 'house arrest electric monitoring' for is provided for (1) advanced stage of pregnancy (2) women household head, children under 12, (3) disability (3) carer for serious illness.
Colombia	50	Code of Criminal Procedure, Article 314 (3) and (5) as modified by Law 1.142/2007, preventive detention in prison can be substituted by the place of residence when the defendant or accused has two months or less before delivery. It can alternatively also be substituted during the six months following the date of birth, and when the defendant or accused is the head of a family of a minor child or of a child who suffers permanent disability, as long as under her care. In her absence the father performing such a role has the same benefit. This measure cannot be applied if the imputation regards crimes defined as serious by the same law.
Ecuador	17	Comprehensive Organic Criminal Code (2014), Article 522: House arrest or electronic tracking device may be decided during (1) pregnancy (2) First 90 days after childbirth  (3) Plus another 90 days if neonatal illness.  Following violation of a non-custodial arrangement, held, pending trial, in separate section of prison
Mexico	126	Federal Code of Criminal Procedure: Prioritise house arrest for (1) pregnant women, (2) nursing mothers, (3) older persons (4) people with a 'serious or terminal illness'.
Nicaragua	6.4	Code of Criminal Procedure (Law 406/2002), Article 176, preventive detention can be substituted with house arrest for women (1) during last 3 months pregnancy (2) breastfeeding up to 6 months
Peru	33	Legislative Decree 1.322/2017, Article 5(2), non-custodial measures for women are prioritised for (1) pregnancy and (2) mothers of children under three years, (4) family heads with spouses, minor children or children with disabilities.
Total	646.1	

## Deferred sentencing across the 1001 days

Where it is not possible to apply a community sentence, the default for women in the 1001 days should be deferral of sentence unless a clear and overriding justification exists for immediate custody. This should be set out in the 1001 days impact assessment. To support this approach, in the case of women who are pregnant or have a child under the age of two, the deferral period available should be extended from the current six-month provision to cover the entirety of the remaining days up to that second birthday (as a minimum).

The power to defer sentence was conceived to respond to those individuals whose personal and professional circumstances are most likely to be in transition and evolving in ways that have consequences for the sentencing decision. This makes it entirely appropriate for use in addressing the specific risks and concerns in the first 1001 days.

The volume of deferred sentences has declined considerably from a high of almost 10,000 cases a year in the mid-1970s, although it is unclear why courts have moved away from exercising the power to defer sentence<sup>25</sup>.

The current Sentencing Council guidance advises that deferred sentences will be appropriate in only very limited circumstances, although the reasoning for this is unclear, and consideration was given around the consultation on the imposition guideline, early in 2024, to revising this restrictive view.

Deferral offers sentencers a valuable opportunity to allow pregnant women and new mothers the chance to give birth in the community, with full access to healthcare including easy access to emergency care if required, and to navigate the complexities of pregnancy and early motherhood within their existing support networks. It also reduces the likelihood of temporary or permanent separation from an infant in this critical period, allowing healthcare, voluntary sector, and social care services to be offered more easily and to be effectively coordinated across multiple agencies.

We know that pregnancy and early motherhood present a powerful 'window of opportunity' in working with women to address the issues that may have contributed to their offending, and therefore to reduce reoffending. Many of these issues are exacerbated, rather than addressed, by a custodial sentence. Where the custody threshold is met, therefore, deferral creates a chance for services to work with women throughout this journey, and to reduce the need to apply a custodial sentence at a later date (a suspended or community sentence may be more feasible by that stage). If custody is still unavoidable at the point of sentence, the sentence may be significantly reduced by the work done by the mother; the impact of separation in the first 1001 days will have been mitigated; mother-infant attachment established; and plans put in place to support contact and reunification following release. Informed decisions can be made by children's social care on this basis.

Where women do enter prison in the 1001 days, they must be prioritised for childcare-linked ROTL and HDC at the earliest opportunity, along the lines of the Spanish model for women.

<sup>&</sup>lt;sup>25</sup> Roberts J, et al (2022) The Use of Deferred Sentencing in England and Wales: A Review of Law, Guidance and Research, The Sentencing Academy <a href="https://www.sentencingacademy.org.uk/the-use-of-deferred-sentencing-in-england-and-wales-a-review-of-law-guidance-and-">https://www.sentencingacademy.org.uk/the-use-of-deferred-sentencing-in-england-and-wales-a-review-of-law-guidance-and-</a>

## A case study: deferral in action

One of the women we work with was given this opportunity by a judge a few years ago.

Aware of the woman's pregnancy, the judge in her case deferred sentencing in order to ensure birth and recovery took place in the community. The woman was able to establish her bond with her baby at home, with the support of friends, family, and local healthcare professionals, including establishing breastfeeding. The deferral meant that when she appeared for sentencing, the sentence given was based on a clear expectation that she would enter a prison mother and baby unit with her child, and would leave with that child. Without this approach, mother and child would have experienced a deeply traumatic period of separation, even though there were no concerns about her parenting.

"As a first-time mum, I feel that separation would have made it very difficult for me to establish the crucial bond with my baby. Judges need to have more of an empathetic heart. Case studies like mine could be so powerful in helping judges see the positive impacts their sentencing decisions can have. Let them see the longer-term outcomes, what happens next.

"I had to do so much research and planning for myself [including requesting a deferred sentence]. It required so much determination and persistence. But there should be someone in the courts doing this work, supporting women to make sure all these things get done. The system should provide this care and support."

## **Mandatory minimum sentences**

1001 days impact assessments must lead the decision-making in terms of the sentencing of pregnant women and mothers of infants, and as such we believe mandatory minimum sentences should not be applied in these cases. All options must be on the table, with sentencers fully informed as to the circumstances for mother and child, the implications of different sentence options, and the risks at play. In this way, the rights of the child can be fully engaged and families kept safely together wherever possible.

#### Remand and recall

In line with the approach in other countries, pre-trial detention should be prohibited in 1001 days unless there are exceptional circumstances. Where these circumstances apply, they should be clearly set out in the 1001 days impact assessment.

Equally, it should not be possible to recall women to prison during the 1001 days unless there is a clear risk posed to others. Administrative recalls for missed appointments and low level breaches, for instance, are not enough to warrant the separation of mother and infant in this critical period, nor the risks posed by navigating pregnancy and birth in prison. We have seen many women recalled to prison very close to their estimated due date, and seen women's established breastfeeding and infant attachment disrupted, as well as the huge impacts on women's mental health of sudden separation from their small baby.

#### **Probation**

Improved understanding of, and responses to, the 1001 days across the probation system will be critical to supporting different and better outcomes for pregnant women and mothers of infants. There is no probation policy framework that takes account of pregnancy and early motherhood, despite pregnancy and maternity being a protected characteristic. A policy

framework to mirror that developed in the prison system<sup>26</sup> must be a priority, and incorporate a 1001 days impact assessment tool. In this way, probation can help ensure PSRs are comprehensive, and conditions and requirements are appropriate. Consideration of the use of electronic tagging in pregnancy and early motherhood should be a focus in this, with tags avoided wherever possible given the impact they may have on women's ability to meet their own needs and those of their infant. Delivering probation support for women in the 1001 days will require flexible, gender-informed and trauma-informed approaches across the service, including women-only provision where required.

# **Policing**

We recognise it is outside the scope of this review, but it is important to reference the central role that policing must play here. We strongly recommend work is done to prioritise use of deferred prosecution in the 1001 days. Some police forces, including Devon and Surrey, have seen significant success in applying deferred prosecution with women, and a specific 1001 days lens on this, with the impact assessment, could significantly curtail the number of pregnant women and mothers of infants coming into court.

#### **Further information**

We welcome the opportunity to feed into the Sentencing Review in this critical area. For more information on the issues covered in this submission please contact Kirsty Kitchen, Head of Policy at Birth Companions, at <a href="kirsty@birthcompanions.org.uk">kirsty@birthcompanions.org.uk</a>

<sup>&</sup>lt;sup>26</sup> HMPPS and MoJ (2021) Pregnancy, MBUs and maternal separation in women's prisons Policy Framework https://www.gov.uk/government/publications/pregnancy-mbus-and-maternal-separation-in-womens-prisons-policy-framework