



Safeguarding Children when Sentencing Parents

Information for primary carers facing sentencing in a criminal court

This briefing paper is designed to help parents who are awaiting a sentencing hearing in a criminal court.

It will help you, if you are a parent, to make sure that the judge or magistrate thinks about the effects on your children of any sentence that the court considers.

If you are a primary carer preparing for a sentencing hearing you may want to show this to your legal representative.

(The briefing paper uses the word mother to mean any parent who is the primary carer of a child. The primary carer is the main person who looks after a child day to day; in most cases it is the child's mother or father. 'Mother' is used in this paper because more often the mother is the main carer for the children, and so if a mother goes to prison it causes even greater changes for a child. It is not suggesting that children don't also suffer negatively when their father goes to prison but the focus of this briefing is on primary carers.)

The film that accompanies this leaflet is available on **Oxford Law Faculty YouTube** and at: <https://www.law.ox.ac.uk/research-and-subject-groups/addressing-impact-maternal-imprisonment-developing-collaborative>

There are 5 sections in this paper

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Section 1: The Law

Sentencers, judges and magistrates, consider Sentencing Guidelines and case law when they are working out the appropriate sentence for someone.

Guidelines

Sentencers have regard to Sentencing Guidelines and in those guidelines it says the following thing about dependent children:

‘For offenders 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.’

Factors indicating that it may be appropriate to suspend a custodial sentence include that, ‘Immediate custody will result in significant harmful impact upon others’

(The above statements are found in the Imposition of Community and Custodial Sentences: Definitive Guideline, published by The Sentencing Council)

In all of the published Sentencing Guidelines it says that being the ‘Sole or primary carer for dependent relatives’ is included in the ‘non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender’, which may ‘result in an upward or downward adjustment from the sentence arrived at so far.’

These guidelines mean that the fact that you have children who are dependent on you, may in some circumstances mean that you are given a different sentence from the one you might be given if you didn’t have dependent children.

Principles established by case law on the sentencing of parents

- The criminal sentencing of a parent engages the Article 8 right to respect for family life of both the parent and the child. Any interference by the state with this right must be in response to a pressing social need, in pursuit of a legitimate aim, and in proportion to that aim. The more serious the intervention the more compelling the justification must be - the act of separating a mother from a very young child is very serious.
R(on the application of P and Q) v Secretary of State for the Home Department [2001] EWCA Civ 1151 paragraphs 78 and 87
- The welfare of the child should be at the forefront of the judge’s mind.
ZH (Tanzania) (FC) Appellant v Secretary of State for the Home Department [2011] UKSC4 paragraphs 25 and 26
- There is no standard or normative adjustment for dependent children but their best interests are a ‘distinct consideration to which full weight must be given’.
R v Petherick [2012] EWCA Crim 2214 paragraph 19

- In a case which is on the threshold between a custodial and non-custodial or suspended sentence a child can tip the scales and a proportionate sentence can become disproportionate.
R v Petherick [2012] EWCA Crim 2214 paragraph 22
- It may be appropriate to suspend a custodial sentence when the person being sentenced is the parent of dependent children
R v Modhwadia [2017] EWCA Crim 501
- It is the court's duty to make sure that it has all relevant information about dependent children before deciding on an appropriate sentence.
R v Bishop [2011] WL 84407 Court of Appeal

Section 2: The rights of children whose parents are before the court for sentence

Your children have rights. They are set out in the Human Rights Act 1998 and the United Nations Convention on the Rights of the Child 1989

They are:

- The right to private and family life (Article 8: Human Rights Act, 1998)
- The right not to be discriminated against or punished because of anything their parent has done (Article 2: United Nations Convention on the Rights of the Child, 1989)
- The right for their best interests to be a primary consideration of any court taking an action concerning them (Article 3: United Nations Convention on the Rights of the Child, 1989)
- The rights for their views to be considered (Article 12: United Nations Convention on the Rights of the Child, 1989)
- The right to be provided special protection and assistance by the state if temporarily deprived of his or her family environment (Article 20: United Nations Convention on the Rights of the Child, 1989)

There are also some international rules on the treatment of women prisoners to which the UK is a signatory

- Non-custodial sentences are preferable for women with dependent children, (unless the offence is serious or violent or the woman represents a continuing danger). Even then, a custodial sentence should only be given after considering the best interests of the child, and ensuring that appropriate provision has been made for the child (*United Nations, 'the Bangkok Rules', 2010*)

Section 3: Research evidence on the experiences of children whose mother is imprisoned

- In England and Wales approximately 200,000 children are separated from their parent by imprisonment each year (Williams et al., 2012). This equates to 24 in every 1000 children.
- 17,000 children are separated from their mother by imprisonment each year (Wilkes-Wiffen, 2011).
- When a mother is sent to prison 95 per cent of children have to move home (Caddle and Crisp, 1997) and only 9 per cent are cared for by their fathers (Corston, 2007: 20). This contrasts with the situation when fathers are imprisoned when most children remain with their mothers in their home (Boswell and Wedge, 2002).

In order for a judge or magistrate to really understand what life might be like for a child if their primary carer is imprisoned it is helpful to share research findings with them.

Do children suffer harm when their mother (primary carer) is sent to prison?

The impacts are wide reaching and affect every area of children's lives:

- Change of carer, change of home, change of school
- Potential separation from brothers or sisters
- Disrupted education – there may not be school places available where they move to. They might find it hard to study.
- Relational changes affecting future stability
- Increased poverty
- Social isolation: stigma and shame
- Behavioural problems – ‘confounding grief’ (Minson, 2017)
- Diminished future outcomes – increased likelihood of criminal offending, mental health problems, drug/ alcohol addiction (Hirschi, 1969; Fox and Benson, 2000; Green and Scholes, 2004; Murray and Farrington, 2008)

For more information look online and read ‘The impact of maternal imprisonment upon a child's wellbeing and their relationship with their mother’

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3067653

Caregivers are also affected as taking on the care of the child of an imprisoned mother impacts on caregivers' health, finances, relationships, spouse and dependents, ability to remain in paid employment, and has high personal cost.

The result of this disruption and lack of resourcing is stress and strain which increases the risk of poorer outcomes for children.

Section 4: The information the court should have about dependent children

- Make sure that you or your legal representative reminds the sentencer of their duty to consider the impact of the sentence on your children. Even if you are likely to be sentenced to imprisonment you will need time to make arrangements for your children, and it may be that your sentence is for a shorter period of time because of the effect your imprisonment will have on your dependents, or it may be suspended. Refer the sentencers to the cases listed in this briefing and to the Sentencing Guidelines.
- Ask if the Court Probation Officer can prepare a Pre-Sentence Report. This report can contain information about the children and the likely effect of their parent's imprisonment on them.

Here is a checklist of information to give to your legal representative/ the probation officer/ the judge or magistrate:

- Who will take care of your child if you are imprisoned?
- Has this person been asked about taking on the care of your child?
- Do they have space in their home?
- If you have more than one child, will they take all the children or will they be separated?
- Do they have the means to support your child?
- Are they in good health?
- Will they have to give up their job if they take on your child's care?
- Do the rest of their family – partner, children also agree to taking in the child?
- Will your child continue at their current school or nursery, or will they have to change school?
- Are there school places in the area they are moving to?
- Is your child at a crucial stage taking exams such as GCSEs?
- Does your child have particular health or emotional needs?
- Will the alternative carer be able to cope with those needs?
- Will your child be able to visit you in prison, bearing in mind it may be far from where they are living?

Section 5: Practical Information

1) Try to find a solicitor to represent you in court.

The best way is to look in the phone book, or go to somewhere like Citizen's Advice Bureau in your area and ask them if they can find you the name of a criminal solicitor.

2) Watch the film that goes with these notes. You'll find more helpful information on how to prepare for a sentencing hearing.

3) If you need to represent yourself then ask the judge or magistrate to pay attention to the cases below. R v Petherick [2012] is the most important and R v Modhwadia is the most recent. If you are represented by a lawyer then give them this briefing paper.

Relevant Case law

R (On the applications of P and Q) v Secretary of State for the Home Department [2001] EWCA Civ 1151

R v Mills [2002] 2 Cr App R(S) 52

R v Bishop [2011] WL 84407 Court of Appeal

R (on the application of Amanda Aldous) v Dartford Magistrates' Court [2011] EWHC

ZH (Tanzania)(FC) Appellant v Secretary of State for the Home Department [2011]UKSC 4

R v Petherick [2012] EWCA Crim 2214

R v Arnold [2016] EWCA Crim 1267

R v Modhwadia [2017] EWCA Crim 501

References to all the research mentioned in this paper.

United Nations Convention on the Rights of the Child 1989

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules') 2010

Unless otherwise referenced all data and discussion referred to in this briefing paper is taken from: **'Who Cares: Analysing the place of children in maternal sentencing decisions in England and Wales'** (2017) Minson, S., University of Oxford funded by the Economic and Social Research Council grant ES/J500112/1

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