



WHY ARE **PREGNANT
WOMEN IN PRISON?**





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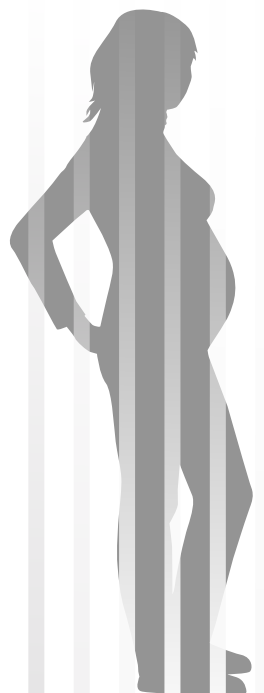
We are grateful to Birth Companions and Women in Prison who helped us to set up this project.

We thank the women who filled out our survey, whom we have called: Angie, Bella, Cathy, Delia, Elise, Franny, Greta, Hollie, Iris, Jodie, Lillia, Mandie, Nesta, Olwen, Poppy, Rosie, Sally, Tess and Ursula. Their willingness to participate in this research, sometimes revealing painful material, has enabled this research to take place. We are grateful to them and wish them well for their future.

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EXECUTIVE SUMMARY

1. In September 2019 a woman held in HMP Bronzefield on remand gave birth alone in her cell; the baby died. Following this tragic incident, eleven investigations were set up. Responding to this event, we explore the reasons that the courts in England and Wales send pregnant women to prison. We analysed 22 such cases; and looked at practices in other jurisdictions

2. Our case analysis was based on an online questionnaire, created with *Birth Companions*. It covered (1) the offence (or alleged offence), (2) the court or probation processes, (3) health and circumstances before entering prison and during imprisonment, (4) pregnancy and birth issues, and (5) the prison experience. We found that the most common reason (6 women) for a pregnant woman being in an English prison was recall on licence during supervision by the probation service. The most common offence (five cases) was shoplifting. Four women were in prison for drugs offences. Other offences were fraud, perjury, robbery and affray. All but two of the offences were non-violent. Five of the women were sent to prison at a very late stage of pregnancy: three at 36 weeks, one at 35 weeks, and one at 30 weeks.

3. These women were extremely vulnerable. Six suffered from depression, sometimes very long-standing. Six suffered from anxiety, and two had bipolar disorder. There were other serious illnesses: pulmonary embolism, hepatitis C, and osteoarthritis. Six reported drug addiction; three had been homeless for long periods. Four were the victims of domestic abuse and coercion.

4. Imprisonment for pregnant women is not necessary. It is a choice made by the legal system of each country. Eleven countries (with a total population of about 646 million) do not permit the imprisonment of pregnant women, or severely curtail the use of custody. They use options such as house arrest, electronic monitoring or the use of probation. Italy has enacted laws to protect pregnant women from entering prison, both on remand (pre-trial detention) and on sentence.



5. There needs to be a complete rethink. The starting position must be that **no pregnant woman should be in custody**. Non-punitive residential options, on the lines of the therapeutic communities found in Plymouth and in Sheffield, need to be created and sustained.

Their life-saving work is accepting, non-judgmental and trauma-informed. Provision like this should be extended to other major towns and cities as an alternative to imprisonment. In this all-female setting women find protection from domestic violence. They care for themselves, for each other, for their unborn child and the baby once born. They receive highly skilled peer mentoring and group counselling which is proven to be effective in treating addiction.

6. If, for reasons of public protection, custody is considered unavoidable, the reasons must be stated and justified in open court. To respect and protect the unborn child is of paramount importance in the criminal justice system of any civilised society.

7. Instead of imposing custody on pregnant women, the courts should use the other options available to them. Community orders should be the preferred choice. Deferred sentences should be widely used (the period of deferral must be increased from 6 months to 18 months in the case of pregnant women). Where custody is deemed inevitable because the offence is serious and all other options have been considered, suspended sentences should be used, with good probation support to prevent breach. Suspended sentences are already available for all prison sentences between two weeks and 24 months.

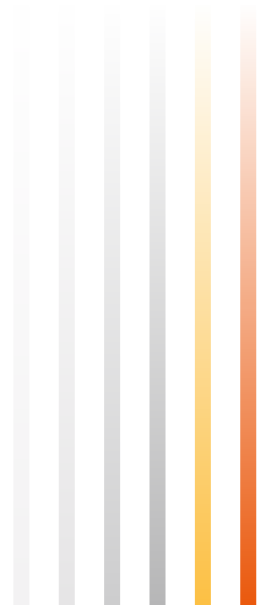
8. We cite a press reference to a magistrate telling a pregnant defendant who had not fully complied with probation conditions: *I would lose no sleep sending a pregnant woman to prison*. Our report argues for a change in both social attitudes and the law.

9. The plan to build 500 new prison places should be scrapped. Some of the £150 million set aside to build them should instead be used to increase funding for Women's Centres and the probation service and to establish a network of non-punitive, supportive, caring residential facilities.

10. No court decision should endanger the life of an unborn baby.

ABBREVIATIONS

BIO	Bail Information Officer
CJI	Centre for Justice Innovation
GRT	Gypsy, Roma, Traveller
HMI	Her Majesty's Inspectorate
HMIP	Her Majesty's Inspector of Prisons
HMP	Her Majesty's Prison
MBRRACE	Mothers and Babies Reducing Risk Audit and Confidential Enquiries
ORA	Offender Rehabilitation Act
OoCD	Out of Court Disposal
PRS	Pre-Sentence Report
PRT	Prison Reform Trust





1. Why we did this research

In September 2019 Ms A, a woman on remand in HMP Bronzefield, gave birth alone in her cell; the baby died. Following this incident eleven investigations were set up. The Prisons and Probation Ombudsman (PPO) carried out an overarching independent review into the circumstances of the baby's death, which was published on 22 September 2021.¹ The tragic death of this baby, in harrowing circumstances, was the starting point of our research.

About 600 pregnant women enter a UK prison each year and about 50 are in prison at any one time.² We believed it was important to examine why pregnant women are incarcerated and why there is not greater focus on other options in their management. On remand, on sentence, on recall – why are pregnant women in prison?

A further investigation followed the loss of a baby at HMP Styal in June 2020.³ The woman had complained for days of pain and was not apparently referred to a doctor or offered any medical care. She gave a harrowing account of her experiences on the BBC 2 Programme Newsnight on 20 September 2021.

It is well established that women rarely commit violent crimes or pose any danger to society.⁴ It is also evident that the prison environment may pose particular risks for pregnant women and unborn children, so why is custody imposed? We noted that in the case of the baby who died in Bronzefield the expectant mother was in prison on remand; accordingly, an enquiry should include remand decisions.

2. Our research aims

We wished to explore the reasons that pregnant women spend time in English prisons. This could be due to remand in custody (pre-trial detention), a custodial sentence, or recall during probation supervision (either because of a breach of conditions or a new offence). We hoped to find out from the women themselves what had led up to their remand, sentence or recall. Above all, our aim was to hear the voices of these women.

With this evidence, we aimed to look at the options facing the police and the courts when women come into conflict with the law and to argue for change. Specifically, we

hoped for changes in attitude, procedures and approaches which would ultimately ensure that pregnant women are no longer confined in our prisons.

Changing attitudes is of course a complex process. How far we need to move is illustrated by a recent press report.⁵ Ms C came before the magistrates having breached probation conditions imposed after a theft from a shop. She was pregnant and could not perform manual work due to pregnancy related symptoms. 'Because of health issues she cannot do the unpaid work' her solicitor told the court. At the end of the hearing the Chairman of the Bench told Ms C:

I assure you that if you breach this order again and walk in and see me I won't lose any sleep sending a pregnant woman to prison.

Our aim was to gather evidence from women who had been pregnant in prison about the realities of their experience and, with this evidence, to ask whether pregnant women should ever be sent to prison or whether alternatives should always be sought.

3. Methodology

Working with *Birth Companions*⁶ we created an online questionnaire. This covered (1) the offence, (2) the court or probation processes, (3) health and circumstances before entering prison and during imprisonment, (4) pregnancy and birth issues, and (5) a report of women's experiences of prison. Coventry University Ethics Committee granted us ethical approval to do the study.

A link to the survey was shared widely over 18 months. A message with a link to the questionnaire was sent to *Women in Prison*, who circulated it to the Women's Centres with which they work. Our call for respondents was also shared via a range of social media platforms, including Twitter, Facebook, Instagram, and LinkedIn and through community networks. We employed two assistants who distributed our flyer (duplicated on page 7) in some of the least affluent neighbourhoods of two major cities. A volunteer distributed it in women's hostels in London.⁷ We published several online articles with the aim of reaching people and organisations working with women in the criminal justice system. Here are links to some of these articles:



<https://filia.org.uk/news/2020/6/30/why-are-pregnant-women-in-prison>

<https://www.centreforwomensjustice.org.uk/new-blog-1/2020/7/9/mothers-in-prison>

<https://www.crimeandjustice.org.uk/resources/why-are-pregnant-women-in-prison>

We wrote an article for Inside Time, a journal which is widely read in prisons.⁸ An article we wrote appeared in Ready, Steady, Go!, the magazine published by Women in Prison, sent to all women's prisons. We contacted Jasmine Mother's Recovery in Plymouth and arranged a study visit of two days to see the Centre, meet the staff and residents (and the babies) and attend counselling sessions.

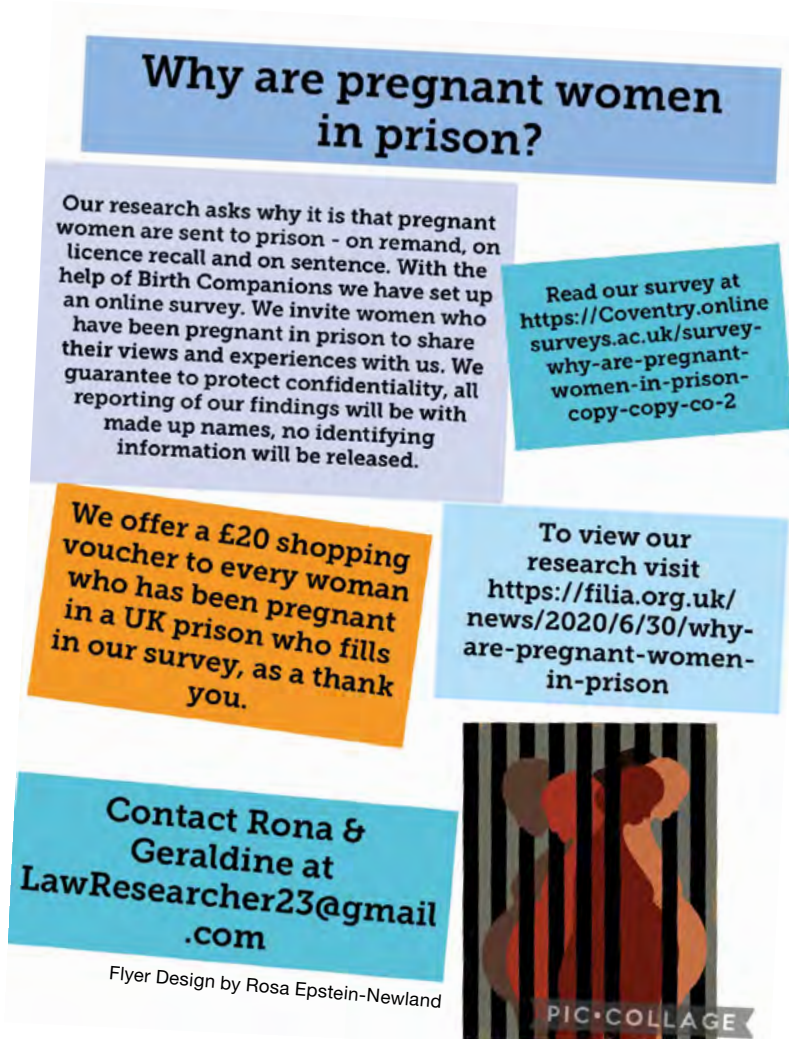
We wrote an article in All4Maternity asking midwives with experience of women in the criminal justice system who were interested in the issues we raise to contact us.⁹

Our flyer promised a £20 shopping token as a thank you for taking part in our survey. This required us to make a further contact by phone or email to arrange the gift, to those who gave contact details on the questionnaire. When making this email contact we asked a question about ethnicity.

We collected nineteen completed questionnaires. We included three further cases.

- Kathleen's case was reported in the press and we obtained court reports;
- Assia B is a Court of Appeal reported case;
- Ms A is the name given to the mother whose baby died in Bronzefield in September 2019.

The Ombudsman's report published on 22 September 2021 is the source of our information about Ms A.¹













4. Results

Information on our respondents

Table 1 Respondents: Ethnicity

 <p>1. Assia B North African/ Algerian</p>	 <p>2. Angie Black British</p>	 <p>3. Bella Black African</p>	 <p>4. Cathy White British</p>
 <p>5. Delia Not known</p>	 <p>6. Elise Mixed White/ Afro-Caribbean</p>	 <p>7. Franny White British</p>	 <p>8. Greta Not known</p>
 <p>9. Hollie Not known</p>	 <p>10. Iris Mixed/White/ Black Caribbean</p>	 <p>11. Jodie White British</p>	 <p>12. Kathleen Not Known</p>
 <p>13. Lillia Not Known</p>	 <p>14. Mandie Not known</p>	 <p>15. Nesta Not known</p>	 <p>16. Olwen Not known</p>
 <p>17. Poppy White British</p>	 <p>18. Rosie Not known</p>	 <p>19. Sally Not known</p>	 <p>20. Tess White British</p>
 <p>21. Ursula White British</p>	 <p>22. Ms A Not known</p>		

The question ‘How do you describe your ethnicity?’ was not asked in the questionnaire. The limited information about ethnicity set out in Table 1 was derived from a follow-up email from us to thank those respondents who had put contact details on their questionnaire.

Table 2 Respondents: Offences

Table 2 shows that the women received custodial sentences for a range of non-violent offences. Five women were in prison for shoplifting offences and six were recalled to prison for breaching probation conditions. These breaches included failing to attend a meeting and failing to report a change of address. Two women were in prison on remand.

1.	Assia B	Immigration offence/ use of false document
2.	Angie	On remand
3.	Bella	Perjury
4.	Cathy	Importing cannabis
5.	Delia	Licence recall: shoplifting
6.	Elise	Shoplifting, suspended sentence activated
7.	Franny	Importing drugs
8.	Greta	Perverting course of justice
9.	Hollie	Possession Class A drugs, burglary
10.	Iris	Street robbery
11.	Jodie	Possession of drugs
12.	Kathleen	Licence recall: shoplifting
13.	Lillia	Fraud
14.	Mandie	Recall: missed appointment
15.	Nesta	Robbery
16.	Olwen	Recall: shoplifting, missed appointment
17.	Poppy	Recall
18.	Rosie	Recall, breached conditions, changed address: original offence affray
19.	Sally	Shoplifting
20.	Tess	Shoplifting
21.	Ursula	Drugs offence: possession with intent to supply
22.	Ms A	Remand: alleged robbery

Summary

Licence recall:	6	Delia, Kathleen, Mandie, Olwen, Poppy, Rosie.
Shoplifting:	5	Delia, Elise, Olwen, Sally, Tess.
Drugs offences:	4	Cathy, Franny, Hollie, Jodie.
On remand:	2	Angie, Ms A.



Table 3: How many weeks pregnant; how long in prison

The majority of women reported that they were at least 12 weeks pregnant when they received their custodial sentence. Seven women were more than 20 weeks pregnant when they entered prison. Six were 28 weeks or more: Franny, 28 weeks, Kathleen, 30 weeks, Mandie. 35 weeks, Assia B, 36 weeks, Elise, 36 weeks and Ms A, 36 weeks.

	Name	How many weeks pregnant	How long in prison
1.	Assia B	36 weeks	2 weeks
2.	Angie	5 weeks	6 months
3.	Bella	20 weeks	18 months
4.	Cathy	Found out on entry	21 months
5.	Delia	3 months	Not known – recall
6.	Elise	36 weeks	2 weeks
7.	Franny	28 weeks	6 years
8.	Greta	21 weeks	2 years 5 months
9.	Hollie	14 weeks	18 months
10.	Iris	11 weeks	3 years 7 months
11.	Jodie	Found out on entry	4 years
12.	Kathleen	30 weeks	4 weeks
13.	Lillia	12 weeks	15 months
14.	Mandie	35 weeks	Not known
15.	Nesta	Found out on entry	3 years
16.	Olwen	19 weeks	Not known – recall
17.	Poppy	12 weeks	Not known – recall
18.	Rosie	3 months	4 weeks
19.	Sally	9 weeks	3 months
20.	Tess	Found out on entry	4 months
21.	Ursula	16 weeks	6 months
22.	Ms A	36 weeks	7 weeks

Vulnerabilities

Summary

The Ministry of Justice Female Offender Strategy (2018) states:

Many [women offenders] experience chaotic lifestyles involving substance abuse, mental health problems, homelessness, and offending behaviour - these are often the product of a life of abuse and trauma.

We see this reflected in our study. The majority of women reported experiencing a health or social issue at or prior to receiving a custodial sentence.

Homeless	3	Tess, Kathleen, Delia.
Depression	6	Elise, Franny, Lillia, Olwen, Poppy, Sally.
Anxiety	6	Elise, Franny, Iris, Lillia, Rosie, Sally.
Bi-polar disease	2	Elise, Greta.
Serious physical illness	3	Assia B, pulmonary embolism; Franny, diabetes; Tess, osteoarthritis
Addiction	6	Cathy, Delia, Iris, Lillia, Olwen, Tess.
Use of drugs and alcohol	1	Ms A.
Victim domestic abuse/coercion	6	Hollie, Lillia, Ursula, Tess, Delia, Jodie.



Table 4: Reported Vulnerabilities

1.	Assia B	Had been raped while a student living in London. Feared return to Algeria due to stigma of being a rape victim. During pregnancy suffered a pulmonary embolism. Asthma. Serious health problems.
2.	Angie	None disclosed
3.	Bella	None disclosed
4.	Cathy	Addiction to heroin, in debt after partner died of drug overdose.
5.	Delia	Hepatitis C; drug addiction, homeless for over two years.
6.	Elise	Severe depression, anxiety and bipolar disorder
7.	Franny	Depression and anxiety - undiagnosed. Emotional abuse in marriage. Unhealthy marriage. Isolated, no support system. Debt.
8.	Greta	Bipolar disorder
9.	Hollie	Violence in previous relationships, placed children in care as she couldn't protect them.
10.	Iris	Drug dependency; anxiety; bereavement
11.	Jodie	Held drugs under duress
12.	Kathleen	Homeless; living in a car park at time of sentence recall
13.	Lillia	Anxiety and depression; victim of domestic violence; drug addiction, no support, no family or friends nearby.
14.	Mandie	None disclosed
15.	Nesta	None disclosed
16.	Olwen	Long-standing depression, since age 15; anxiety, addiction.
17.	Poppy	Depression
18.	Rosie	Anxiety
19.	Sally	Anxiety, depression, panic attacks
20.	Tess	Homeless, had been a heroin addict for many years
21.	Ursula	Heroin addict, domestic abuse, coercion
22.	Ms A	Very young (18 years old), chaotic lifestyle with alcohol and substance abuse, troubled background (in care), very distressed





Details of the vulnerabilities reported

Abuse, social isolation and duress

Tess was the victim of horrific domestic violence, which has left her with some facial numbness many years later. At the time of her offence (shoplifting) she was unemployed, destitute, homeless and living on the streets. She had no family, no friends. *I had no money, I only took what I needed.*

Lillia: *I was a victim of domestic violence from my ex-partner and developed a drug addiction after fleeing the relationship because I was in a really bad place at the time. I had no family no friends close by, so had no support or guidance.*

Delia: *Due to abuse mentally and physically, I self-harmed. I used Class A drugs, which led me to losing custody of five children, which caused me to spiral down. I self-harmed and lived on the streets with my addiction to Class A drugs.*

Iris: *I was going through bereavement at the time and drug addiction.*

Hollie: *Due to violence in previous relationships I had to place my older children into care, my choice voluntary, I could no longer protect my children.*

Franny: *I was involved in a marriage in which I was cheated upon and experienced emotional domestic abuse. I isolated myself from my family and friends to hide my reality therefore cut my own support system off.*

Duress

Jodie: *I was a young adult, and had not been in trouble before. This was my first offence. I was of good character, working part-time and studying A-levels. I was holding drugs under duress.*

Ursula: *I was in addiction and my partner had been sent to prison. I was pressured into taking drugs into him in return for getting my drugs.*

Homelessness

Delia: *I was homeless for over two years, also on heroin.*

Tess: *I was living on the streets. I was homeless and without any income. I took things I needed, clothes and stuff.*

Kathleen was homeless, living in a car park, at the time of committing her offence (shoplifting).

Drug addiction

Olwen was pregnant when she entered prison on recall. She missed a probation appointment because of her *drug addiction, it was very hard to get to appointments on time, and it [the place where probation appointments were held] was not in a place I was safe in.*

Ill health

Tess: *I have suffered from osteoarthritis since I was a child of 13. I had my first operation at 15. Ms A entered prison, on remand, she was eight months pregnant and was suffering from a chest infection, asthma and acid reflux.*

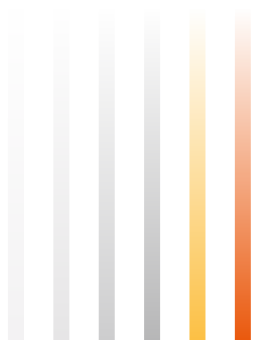
Franny reported that she was diabetic. Six of our group reported serious depression and anxiety.

Poverty and debt

Franny: *I was in a very unhealthy marriage. I was working two jobs to maintain the payment of rent with no support from my husband. I had rent arrears and hassle from the landlord. I was without anyone to speak to as I had cut my own support system off. When I heard of this method of making fast cash it presented as an 'opportunity' and a shining light to get out of my fast increasing debt problem. I had never taken drugs myself and was not involved in the organisation of this crime. My crime was my lack of ability to assess the situation with a sound mind due to my mental state at the time.*

Cathy: *I had debts after my partner died.*

Tess: *I had no work, no money at all.*







5. Experiences of pregnancy and childbirth in prison

Our study follows the ground-breaking research of Dr Laura Abbott of the University of Hertfordshire and Dr Miranda Davies of the Nuffield Trust. In 2018 Abbott published her study on the experiences of women in British prisons. She found that women experienced frustration and stress which impacted on their emotional wellbeing. Pregnant women reported being unable to access basic comfort and adequate nutrition and fresh air. The fear of potential separation from their baby was an underlying stress – 50% of women were separated from their baby born in prison soon after the birth. The ‘not knowing’ whether a mother would keep her baby or be separated from her newborn was especially difficult as women struggled to choose whether to bond or let go of their unborn. Where physical pain existed, little comfort was offered as women were left ‘begging’ for a softer mattress or ‘crying’ for pain relief to ease the normal discomforts of pregnancy.¹⁰

In 2020 Davies investigated the use prisoners make of health services, identifying that, in 2017-18, 83 women in prison were admitted to hospital either during pregnancy or to give birth. For those women admitted to hospital, a significant proportion had co-occurring health concerns, including 34 with concerns related to opioid use and 23 experiencing depressive episodes. Fifty-six women gave birth during their time in prison. Fifty gave birth in hospital. However, 6 (representing one in ten) delivered before they reached the hospital, meaning the birth took place either in a prison cell or en route to a hospital. This raises serious concerns about access to care for pregnant women in prison.¹¹

As in these previous studies we found a disturbing and indeed distressing picture of lack of care for pregnant women in our prison system.

We begin with the account of the experiences of **Ms A**. The Ombudsman’s report begins:

Ms A gave birth alone in her cell overnight without medical assistance. This should never have happened. Overall, the healthcare offered to Ms A in Bronzefield was not equivalent to that she could have expected in the community.

Ms A entered prison, on remand, on 26 August 2019. She was eight months pregnant and was ill, suffering from a chest infection, asthma and acid reflux. She was in a distressed state, fearing that her baby would be removed from her by child protection services as she had been abusing alcohol and drugs during her pregnancy. She was hostile to the prison staff, and refused to engage with the midwives working in the prison. **Ms A** appeared to have been regarded as difficult and having a ‘bad attitude’ rather than as a vulnerable 18 year-old, frightened that her baby would be taken away.

When labour started she was alone in her cell. She rang the bell but no one answered the call. She gave birth alone and was found the next morning in bed holding a baby who was not breathing. The report stated that no one responsible for **Ms A** had a full history of her pregnancy, none of the record systems were connected to each other, the maternity services in the prison were out-dated and inadequate, midwives’ approach to her care was inflexible, unimaginative and insufficiently trauma-informed, the response to **Ms A**’s request for a nurse was completely inadequate, an ambulance was not called promptly, there was no paediatric or neo-natal emergency equipment in the prison and no staff were trained in neo-natal resuscitation.

Ms A returned to prison after a short stay in hospital and received no bereavement counselling.¹²

The respondents to our online questionnaire said that pregnancy in prison was lonely and difficult. Their reports describe great privations and difficulties, but also appreciation of the midwives who work in prisons and the support given by *Birth Companions*.

Angie reported: *Not being able to get to the hospital in a timely manner. I was bleeding in my first trimester and the guards just wanted to rush home. Being very negative and unsupportive, not giving me space, invading my privacy. Of the midwife, however, she writes: the midwife was always very supportive when she was on shift but they don’t work 24/7 like in a hospital.* **Bella** wrote: *It was very difficult being pregnant with my first child in prison.*



As a new mother you have many uncertainties and need support. And at times in prison I had to share the cell with another female that was not pregnant and I was scared as I did not know why she was there, all things were going through my heart, then I just burst into tears because I was scared she was going to do something to me.

Bella

Bella reported: *The food wasn't the best. I was often very hungry and we could buy snacks and other things weekly but there was a limit to spend which is bad since when you're pregnant you eat more but our spend limit was the same as any other prisoner. There was never a variety of fresh fruit available. We were fortunate to get fruit to share with the group of pregnant women when the Birth Companion ladies would bring it for us in their weekly visits. But even that was hardly five a day. I saw the midwife very regularly, I believe even more often than I would have if I was not in prison. The midwife was always very helpful, reassuring and made me feel safe.*

Elise too remarked on the inadequate diet: *Not enough food. She also reported: they wouldn't listen about my waters leaking. However, she writes, fine birth, no difficulty.*

Cathy who was pregnant in Holloway said: *Baby was fine and healthy, staff were brilliant as were nursing staff in Holloway. (Holloway prison closed in 2016).* **Delia** wrote: *The prison was such a harsh environment for a pregnant woman. All around me women were taking drugs, fighting, self-harming and I had to keep myself safe. The mother and baby unit which we were on for 3 weeks was better, the cell doors were not locked and it was closed off from the general population, but this was the biggest test of my life. I am so grateful to the people that helped me through this crucial time in my life.* **Franny** reported: *I was alone ... it was scary at times. On the day I was sent down I feared for my unborn baby's life. I had fluid retention.* **Hollie** wrote: *Birth Companions were there every step of the way, gave me so much love and support.*

I was scared, lonely, unsure if I had any future of being a mum. **Hollie**

Jodie wrote: *I was ignored and not believed that I was in labour. I was not responded to when I rang my cell bell, and when eventually answered I was spoken to through the hatch.*

I was asked to prove my labour by showing the nurse at the hatch a sanitary pad with the mucus membrane. It was at that moment I felt a loss of dignity. I was left from Saturday night (early signs) to Monday morning in labour alone in my cell. Once staff arrived on Monday morning I was taken to the hospital. The whole experience was traumatising. It is barbaric that this society would send and keep pregnant women in prison.

On the day I was sent down I feared for my unborn baby's life. I had fluid retention in my hands and feet to the point where I couldn't raise my hands for more than 30 seconds without them going numb. **Franny**

Rosie too reported a lack of care: *I felt really poorly but was dismissed.* **Olwen** said she suffered from many problems due to her addiction, *the baby was small, my anxiety got worse each day.*

Without the wonderful caring Birth Companions I honestly don't know if I could go through with it. My daughter was resuscitated at birth. **Hollie**

Lillia said that her baby was early because she is diabetic but the baby was healthy. She later got postnatal depression:

Women should not be in prison pregnant, it is not anywhere safe or comfortable for a pregnant woman. I am still living the nightmare although I got released in 2019 almost two years later I'm still being punished and so are my children, they are innocent but when u sent the mother to prison they suffer greatly. **Lillia**

Ursula reported:

I constantly worried about my safety and if I would be released before the birth. Petrified he would be taken from me. No one to speak to if I had concerns. Not listened to when I felt something was wrong. **Ursula**



Scared and unprepared for the birth. I had no support in prison. Wasn't allowed any scan pictures. Couldn't bond with my baby as I was constantly being told by staff there were no beds in the mother and baby unit so my baby would be taken. Wasn't supported in preparing for the birth.

Ursula

Olwen, who suffered from depression, anxiety and addiction, wrote: *I needed support/help not locking inside a tiny room. What led to this offence (theft from a shop) was drug addiction and no support. In prison I felt alone and judged by others. I cannot have any more children and I was sterilised my own choice, too scared to go through that ever again, it was very sad. I had nobody so from the start I was set to fail. Pregnant women should be in a safe environment with support/help. Putting us in prison does not make things better. This needs to stop, I hope things get better, and nobody else suffers ever again.*



6. Discussion: issues arising

A. Maternal health needs: pregnancy and care

This section offers an insight from the perspective of Maria Garcia de Frutos, Midwife and Lecturer at City, University of London. It addresses the vulnerabilities reported by women in our study, risk factors and maternity care needs.

A scoping review by Colciago et al puts forward a conceptualisation of 'vulnerability' and pregnant women that is useful in understanding its multifaceted nature. Vulnerability is defined as 'the lack of health' in terms of at least one of four specific determinants: poor health outcome or status; exposure to risk; complex social needs; and lack of resources. Their work illuminates a concept that is dynamic and complex in which pregnant women face differential exposures and issues, which may often be poorly recognised, overlooked and divorced from complex systems in which women live.¹³

Women in our study reported a range of physical, psychological and social issues in keeping with those raised in the independent investigation into the death of Baby A at HMP Bronzefield on 27 September 2019 by the Prison and Probation Ombudsman. Ms A met several vulnerabilities' categories as a pregnant woman with several psychosocial complexities. The fact that Ms A verbally expressed feelings about "killing herself or someone else" should have triggered an immediate referral to specialist perinatal mental health services for assessment and follow-up. No such referral was made. Giving birth unattended, isolated and locked in a cell without visibility, could have led to further, life-threatening complications (for example, severe bleeding, cardiovascular shock, etc.) with no immediate help at hand. There were clear risks to the life of both mother and baby. This lack of support during labour and birth, as well as the failure to refer her to a specialist midwifery bereavement service after the death of the baby sheds light on the failings of institutional systems and draws much-needed attention to health inequalities experienced by women with complex needs.

For example, in the case of **Assia B**, The Court of Appeal law report states:

On the Registrar's direction, we have received updated medical reports, which indicate that the appellant's



health difficulties continue, although they are being managed by the prison. She is expected to give birth within two weeks. We have also received the Registrar's direction on a pre-appeal report, stating the stress of imprisonment has a negative effect on this vulnerable young woman.

A history of pulmonary embolism leads to a risk of further blood clotting complications.¹⁴ This would require treatment and close monitoring in late pregnancy. She would require regular follow-ups by the obstetric team rather than the midwifery team – and these would normally take place in hospital settings.

Comments on the 19 women who completed our questionnaire follow a similar vein.

1. Angie reported no vulnerabilities before going to prison. However, she identified as Black British. Research highlights a range of disparities faced by Black women within the criminal justice arena and their interaction with maternity services¹⁵ (detailed later). This means for Angie (and Bella) racial identity shapes their experiences and health outcomes. Angie's mental health appears to have been negatively impacted by her treatment in prison and its implications (for example, concerns around early pregnancy bleeding, delay in accessing services). Antenatal care should have been available when needed in prison.¹⁶ Angie stated that she felt unwell but this was dismissed, and when in the hospital her dignity seemed not to be respected. She wrote: *Trips to the hospital need reviewing, especially in terms of emergency*¹⁷

2. Bella did not report any vulnerabilities but shared her positive experience of the support received from *Birth Companions*. Despite the support received, there is some suggestion that at birth the baby experienced some foetal distress. There was a potential risk during her pregnancy of stress-related pregnancy/birth complications.

3. Cathy reported mental ill-health and substance misuse issues. Although she reported having no concerns about the care she received, her care could have been improved with access to specialist midwifery services to support her complex needs and background of substance misuse and mental health issues. Early engagement from a multi-agency care approach could have facilitated the best start in life for her child.¹⁸

4. Delia was unemployed before entering prison and had five children in care. She reports having had Hepatitis C, being addicted to heroin, and having self-harmed. Her vulnerabilities are many: victim of domestic violence; unsupported mother; drug user; known to the criminal justice system; homeless. She would have benefitted from being cared for by a specialist midwife¹⁹ (substance misuse) and perinatal mental health support should have started early in her pregnancy, in order to potentially avoid further self-harm or even suicide²⁰. She was housed in a hostel, and was not supported while in an environment where drugs were prevalent. This was a missed opportunity for care and rehabilitation.

A multi-agency approach and early support for Delia would have given her child the chance of a best start in life. This also includes early involvement from a health visiting team during pregnancy, to improve bonding, attachment and wellbeing for both parent and child (targeted care rather than universal care)²¹.

5. Elise had one child in care and reported mental health issues for which she could not access support. She should have had access to specialist midwifery services. The right support at the right time might have prevented her going to prison (that is, referral to specialist organisations/ children's centre to help her obtain baby supplies rather than by resorting to shoplifting). We question whether adequate antenatal care was available to her in prison: she reports that she felt her waters leaking but this concern was dismissed.²²

6. Franny suffered from depression and anxiety. She reported *emotional domestic abuse resulting in the loss of her social network and support*. Given her mental health issues, Franny should have been followed up by specialist perinatal mental health midwifery services. The right support at the right time may have prevented her entering prison. Again, this raises questions about the quality of the antenatal care given to Franny in prison as she states that she was experiencing oedema (a potential sign of pre-eclampsia), and this was disregarded. Franny stated: *I had to make a 'handing my baby over plan' prior to before him being born* – this reinforces the need for support from specialist midwifery services.

7. Greta would have required specialist mental health support given her diagnosis of bipolar disorder.²³ We are not aware of any evidence that this is available in our women's prisons.



8. Hollie reported mental ill-health and substance misuse; she had had previous contact with the criminal justice system.

Hollie would have needed specialist support for substance misuse and mental health issues that could have potentially led to self-harm and poor bonding. She wrote that she appreciated the positive experience and support she received from Birth Companions, particularly as her baby was resuscitated at birth.

Birth Companions were there every step of the way, took photos, gave myself so much love and support.

She also appreciated the post-prison care in the Maya mother and baby rehabilitation facility.

9. Lillia suffered from mental ill-health and reported substance misuse issues. She had no support and was a victim of domestic violence. Her care required a multi-agency approach: specialist perinatal mental health and substance misuse, in addition to trauma-informed care given her experience of domestic violence, and early engagement with social care agencies for support with housing.²⁴

10. Mandie was in prison during the last trimester of pregnancy. She would have required a multi-agency approach, including specialist midwifery care for women with complex needs. Adequate services could perhaps have prevented the separation of mother and baby, which has a detrimental impact on the wellbeing of both. This could potentially led to poor bonding and attachment and unhealthy future relationships.²⁵ Mandie's newborn baby was placed in foster care and she described her painful experience:

I just don't understand why they have done this to me.... I feel I was punished for being pregnant... now they have taken my son, which I only get to see twice a week on a video call. It's not good enough!

11. Nesta's account of pregnancy problems while in prison leads us to question whether she experienced placental abruption at 30 weeks (this would indicate a serious risk of premature birth and a high risk of mortality for both mother and baby). It is very concerning that she reports having missed some midwifery appointments due to staff

shortages in the prison.²⁶ She had a premature birth at 30 weeks and her baby spent nine weeks in hospital in the Neo-natal Intensive Care Unit.

12. Rosie reported mental health issues, mainly anxiety. She stated that she felt *unwell, but this was dismissed*. It is not clear if this led to the pre-term birth, which could have been prevented with adequate antenatal care. The fact that she suffered from anxiety and was in prison would indicate that she should have been followed up by specialist midwifery services.²⁷ We are not able to find out whether this did happen.

13. Tess was unemployed, homeless, suffering from osteoarthritis and alcohol and substance misuse when she entered prison on a shoplifting charge. She had a miscarriage in prison before she could access or engage with maternity services. Tess reports that the treatment she received during her attendance to hospital lacked dignity and respect. This, apart from being unacceptable health care, could affect her mental wellbeing and future experiences of being pregnant.²⁸

14. Poppy reported being unemployed, a history of depression and no access to support. Although there is not enough information to draw conclusions on aspects of her care, specialist midwifery services supporting women with complex needs would have been appropriate.²⁹

15. Iris had a history of drug misuse and anxiety. Iris felt that she couldn't enjoy her pregnancy. She delivered her baby on the way to the hospital. Iris reported seeing a midwife during pregnancy. However, she would have required specialist midwifery care³⁰ which provides the necessary support to pregnant women to have a healthy transition into parenthood, and to build a healthy relationship with their babies.³¹

16. Jodie was in early pregnancy when she entered prison. She reported no ill health prior to that. It seems that she engaged well with midwifery care while in prison and she had a good experience with the midwives. However, her accounts of childbirth and lack of support and respect, once again, shed light to the failings of the system for pregnant women³². She wrote of *problems ranging from sexist language (no breastfeeding in communal areas/ where male officers are. Negative comments about my pregnant belly), no access to nutritious food, no additional food, no alternatives for someone with bad morning sickness, isolation, poor weight gain, not having the ability to bath daily, little emotional support from the prison, lack of exercise and unsafe*.



17. Olwen reported a long history of mental health issues, mainly depression and anxiety from an early age. She also disclosed a history of substance misuse. Her baby was born *small* and Olwen's mental wellbeing deteriorated during the time in prison.³³ Early engagement with services and a multi-agency approach could have potentially avoided some of the adverse events which Olwen experienced during her pregnancy and after the birth. This led to her child being adopted and her being sterilised. She wrote:

I had nobody, so from the start I was set to 'fail'... Pregnant women should be in a safe environment with support/help. Putting us in prison does not make things better... I hope things get better and nobody else suffers ever again.

18. Sally reported a history of anxiety, depression and panic attacks. She saw a nurse/midwife during her pregnancy and had no problems while in prison. We do not know whether she had access to perinatal mental health or specialist services or not.

19. Ursula reported a history of substance misuse. She recalled that inadequate maternity services and not having her needs met, left her feeling '*constantly worried about my safety and if I would be released before the birth. Petrified he would be taken from me*'. A multi-agency approach and specialist midwifery services would have improved her experience, and facilitated her baby enjoying the best start in life.³⁴ This lack of support led to poor bonding with her child with a potential of unhealthy future relationships and the baby being taken into care.

She added:

*Couldn't bond with my baby as I was constantly told by staff there were no beds in the mother and baby unit so my baby would be taken. Wasn't supported in preparing for the birth.*³⁵

A Midwife Practitioner's reflection

The survey responses and reports examined illuminate a range of vulnerabilities experienced by pregnant women prior to imprisonment, with mental ill-health being the most commonly reported. From a public health perspective, early intervention and adequate referral mechanisms enable the prevention of complications in pregnancy and childbirth and promote wellbeing for both mother and baby. This was not always the case for these pregnant women in prison, leading potentially to poor maternal and child health outcomes, and depriving babies of having the best possible start in life. This could have a long lasting effect that negatively affects a child's transition to adulthood.

The latest *Mothers and Babies: Reducing Risk through Audits and Confidential Enquiries* (MBRRACE)³⁶ report states that the current care system fails to identify and address the biases due to pregnancy, health and other issues, which prevent women with complex needs from receiving the care they need. This sheds light on the increasing health inequalities vulnerable women and families encounter. The recommendations from the recent report on the death of Baby A propose measures to improve services and the care of women in prison. However, the vulnerabilities reported by women in our study are an indication of many layers of socio-political complexities and call for continuity of care by adequately trained professionals. Consequently, the health and wellbeing of pregnant women and their babies should be led by and remain within maternity services and there is a need for alternative ways of dealing with women who come to the attention of the criminal justice system.



B. Legal issues

i. Remand (pre-trial detention)

The question of remand is central to this research: Ms A whose baby died after an unattended birth in prison – the starting point of our research – was on remand. She was, of course, innocent until proven guilty.

On the first day of a court hearing, if the case is not concluded that day, the court must make a decision whether to grant bail or remand in custody. Before making a sentencing decision in either a magistrates' court or the Crown Court, the court may, and indeed in the case of pregnant women and parents of dependent children, must ask for a Pre-Sentence Report (PSR). This report may inform the court of the special vulnerabilities, health issues, family circumstances and caring responsibilities of the defendant. There is no provision for a PSR in remand decisions. However, the court may request a Bail Information Report.

Despite the fact that, as stipulated in the Bail Act 1976, there is a *prima facie* right to bail, a bail application must be made. In their report Ed Cape and Tom Smith observe:

Courts devote little time to pre-trial detention hearings, caused in part by high case-loads and lack of resources, with bail hearing taking five minutes or less in 86% of cases, and bail being granted in less than one in three contested cases.³⁷

The Legal Aid Sentencing and Punishment of Offenders Act 2012 was intended to remedy the misuse of custodial remand by establishing a test of a reasonable probability that the alleged offence is imprisonable as a criterion of whether the court can deny bail. The 'no real prospect' test means that defendants should not be remanded to custody if the offence is such that the defendant is unlikely to receive a custodial sentence. The test does not restrict custodial remand to serious crimes, nor where there is a risk that the person will, if released on bail, commit domestic violence.

Prison Service statistics for the female estate reported for April to June 2018 show a worryingly high number of women denied bail (571), 41% of all first prison receptions being women on remand, resulting in a population where 14% are not convicted.

Once in custody, the Bail Information Officer (BIO) should then seek to identify and advise those who may have a case for bail, but Cape and Smith say that the service is patchy. In research on imprisonment for debt we have found that those unlawfully in prison for council tax default, due to mistakes made by the magistrates, had never seen a BIO and were not advised to make a bail application.³⁸ An informant working with prisons wrote to us: '*I have never come across one*'. It appears that with cuts in prison staffing BIOs have become if not extinct then exceeding scarce.

Dr Liz Hales points out that:

From the initial remand in custody to trial and/or sentencing women may spend many months in custody. During this time, the stigma of being a prisoner applies equally to those charged with an offence and those found guilty and sentenced to imprisonment.³⁹

Hales is one of the few researchers who has observed how remand decisions are made. She reports:

From observations of case management in a busy London magistrates' court in 2019, it was apparent that bail decisions for women were routinely made with request for information in relation to dependent children or pregnancies. Even where evidence could have been or indeed was produced, there were court outcomes that appear not to have been influenced by such evidence. For example, in two cases observed, where children of the defendant were in the public court area outside of the courtroom, the duty solicitor did not raise this to contest the decision to refuse bail. In a third case where the Bench was advised that the woman was eight months pregnant, bail was finally granted with conditions of financial sureties. However, when they could not be met on that day, the traumatised woman was then remanded in custody. In previous research⁴⁰ carried out by the author, [L.Hales], there were several cases in which children, including breastfed babies, were separated from the mother, taken into care at the point of arrest; bail again was refused.



ii. Recall

In our study, six women were pregnant in prison on recall: Delia (original offence, shoplifting), Kathleen (shoplifting), Mandie, Olwen (original offence, shoplifting), Poppy, Rosie (original offence, affray). Kathleen⁴¹ admitted four shoplifting offences and breaching the terms of post-sentence supervision and a community order at Swindon Magistrates' Court on 7 September 2019. She had been homeless at the time of her offences and was 30 weeks pregnant when she came once again before the magistrates. The court was informed that she had a history of failing to keep appointments with the probation service, and the Bench said that despite the advice of probation officers there was little option except a short spell in prison. Her defence solicitor told the court that it was unsurprising that the defendant had struggled to keep appointments, as she was sleeping rough in car parks and there had been complications with her pregnancy. The court sentenced her to two weeks in prison for the breach of licence conditions, and to a further term for the theft of an appliance valued at £100: a total of eleven weeks imprisonment. The court records state: *'Offence so serious because of failure to respond to attempts to assist you from probation, because the offence was aggravated by the defendant's record of previous offending.'*

We would argue that failure to 'respond to probation' should not make an offence more serious. In some cases, like Kathleen's, there may be many factors, including being homeless, which would make it difficult for a pregnant woman to engage with probation staff. In our view, prior convictions should not turn a minor crime into a serious one. It is true that the relevant statute includes previous convictions as a consideration in seriousness. With the evidence of our research, we would put forward the view that the law should be amended and seriousness should relate only to the harm caused by the criminal offence.

The guidance the magistrates would have had to follow is that in case of breach of a community order by failing to comply with requirements, the court must take into account the extent to which the offender has complied with the requirements⁴². In assessing the level of compliance with the order the court should consider a number of factors, including the overall attitude and engagement with the order and evidence of circumstances or offender characteristics, such as disability, mental health issues or learning difficulties, which may have impeded an offender's compliance with the order. We would argue that in Kathleen's case the magistrates should have considered her pregnancy as a circumstance leading them to consult with probation on what further support could have been provided to her in the community and that imprisonment should not have been imposed.

The Offender Rehabilitation Act (2014) (ORA) required all offenders who spent time in prison, however short the sentence, and however minor the offence, to be subject to one year's supervision by probation, with the possible penalty of recall to prison in cases of non-compliance with the probation service. Many of those working in the field pointed out that recall of women on licence supervision, a system known as Transforming Rehabilitation, was likely to be a serious problem once the ORA came into force in June 2014. Lucy Baldwin and Leila Mezoughi called it 'a ticking time bomb'.⁴³ **This has indeed proved to be the case.**

Given the complex needs, in particular addictions and mental health issues, of many of the women in the criminal justice system, it was to be expected, and was soon apparent, that many women who had served short or very short sentences were being recalled again and again to serve further short periods in prison. As Hales pointed out:

Many of these women had complex and multiple needs and chaotic lifestyles in relation to issues such as mental health, substance abuse, debt and unstable housing, all exacerbated by their time in prison, without the resources to help with these issues'.⁴⁴

Women on recall now make up 8% of women in custody.⁴⁵ The dominant factor for recall is failure to keep appointments, rather than a direct risk of reoffending. In the Prison Reform Trust study of 24 women recalled to prison three were pregnant at the time of recall and one stated that her failure to attend an appointment had been due to a hospital visit for a pregnancy scan; this woman reported that she was recalled and separated from her daughter one day after she gave birth.⁴⁶

Hales states:

Since the implementation of the ORA, the number of women being recalled has tripled, with the latest published Ministry of Justice figures indicating a 29% licence recall rate, with 1,846 recalls of women to custody while on licence in the year ending September 2018. This has meant that at prisons such as Bronzefield, 555 receptions in 2018-19 were resultant on licence recall.⁴⁷

The system is both cruel and ineffective. Reform is urgently required.



iii Sentencing

The Criminal Justice Act 2003 (S.142) sets out the five goals of sentencing:

- punishment of the offender
- reduction of crime, including by deterrence
- reform and rehabilitation of the offender (eg by drug or alcohol programmes)
- to enable reparation by the offender
- protection of the public.

There is no statement of the relative weight of these different, and indeed, conflicting aims. The Act states that custodial sentences should only be imposed when the offence is so serious that neither a fine alone nor a community sentence can be justified for the offence. However, statistics show that the majority of women in custody have not committed serious crimes nor present a serious risk to the public. Statistics released in 2017 showed that one in four women sent to prison in 2016 were sentenced to 30 days or less, with almost 300 of them sent to prison for under two weeks. 55% of women prisoners were sentenced to less than three months.⁴⁸ The statistics for 2019 show that 62% of women in prison had sentences of 6 months or less.⁴⁹ In the previous section (page 22), we noted that the degree of ‘seriousness’ of an offence may be inflated for reasons other than the seriousness of the original offence. The reasons given for sentencing Kathleen, who was 30 weeks pregnant, to eleven weeks in custody were stated as: *‘Offence so serious because of failure to respond to attempts to assist you from probation, because the offence was aggravated by the defendant’s record of previous offending.’*

The New Sentencing Council’s Guidelines which came into force on 1 October 2019 note that when a sentencer has decided to consider ‘sole or primary carer for dependent relative’ as a factor to be considered, then they should, in the case of a pregnant woman, consider the potential effect on the defendant’s health and the health and wellbeing of her unborn child. It is not known if in reality this has led to fewer pregnant women sent to prison on remand or on sentence.

The court may request a Pre-Sentence Report (PSR) prior to making a sentencing decision. Information on the defendant’s circumstances and identification of appropriate support provision in the community-based option could help the court consider a community option rather than a custodial one. However, Hales reports that she has observed ‘a number of cases where the Bench has stated that a custodial sentence was inevitable and they could see no purpose in adjourning the sentence to gather additional information’.⁵⁰ However, we note that that this was prior to the implementation of the New Sentencing Guidelines (October 2019) and hopefully this no longer happens.

iv. The case of Assia B



Assia B, from Algeria, used a false passport to obtain employment. She was arrested, charged and remanded in custody for one month, then released on bail subject to an electronically monitored curfew. By the time of her trial in the Crown Court in September 2016, her circumstances had changed. She had married a naturalised British citizen and she was pregnant, due to give birth a month after the hearing date. The court was told of her health difficulties, including asthma and a pulmonary embolism. After she had spent two weeks in prison her case came before the Court of Appeal. Her health difficulties continued during her time in prison. A pre-appeal report revealed that the stress of imprisonment was having a negative effect on ‘this vulnerable young woman’ and recommended that there were exceptional circumstances that would justify a suspended sentence – this was an isolated offence and there was nothing in Assia B’s attitude, lifestyle or circumstances to indicate a risk of further offences. The Court of Appeal ruled that in view of the pregnancy and health difficulties, it was right to suspend the sentence of imprisonment and quashed the sentence of immediate imprisonment, substituting a suspended sentence of six months’ imprisonment suspended for two years.⁵¹

The Crown Court had an opportunity to suspend the sentence or pass a lighter sentence, given that the defendant was pregnant, vulnerable, suffering from ill health; however, they chose to do neither.

Unfortunately, we do not have information of the outcomes for Assia B. and her child or her experience of imprisonment at that very late stage of pregnancy.



C. Social issues

i. Homelessness

Three of our informants were homeless at the time of offending or sentencing: Tess, Kathleen and Delia, and one was homeless on release from prison, Lillia.

Kathleen, who was 30 weeks pregnant when sentenced to 11 weeks in prison, had re-offended, having shoplifted after a sentence that has previously been suspended; she was a persistent offender. Like so many women in the criminal justice system, at the time of her offending she was homeless. We can assume that she had been in prison before.

Lillia reported: *I was homeless when I got released from prison so I had no home and all my belongings had been taken as I lost my property while in jail so was living on friends' and family's sofas for around six months before I got housed.* Delia reported: *I was homeless for over two years. Also on heroin. I saw an open window and climbed in and stole a bag and laptop. I left my fingerprints on the windowsill.*

Recent reports state that nearly six out of ten women leaving prison have nowhere to go, they do not have settled or secure accommodation. Between 2019 and 2020, 65% of men and women released from prison without settled accommodation had reoffended, according to an HMI Probation report. Lack of secure housing is a significant barrier to successful rehabilitation. Homelessness makes securing employment, addressing mental health and addiction issues and preventing a return to harmful and anti-social behaviour practically unachievable.

The Safe Homes for Women Leaving Prison Initiative⁵² points out that:

Too many short sentences result in women losing their accommodation

Many women need to be rehoused with their children as they are often a primary carer

There is a need for many women to relocate due to domestic abuse

There is a chronic and serious lack of suitable social housing, including for women with complex needs

Many women are imprisoned far from their previous address so lose their 'local connection'.

The Initiative calls for:

A national cross-government strategy to address the housing needs of those in the criminal justice system, including specific measures for women

An agreed target time period for women to be in settled accommodation post release from prison

Designating responsibility for arranging a woman's accommodation on release from prison.

Secure accommodation is vital for women in the criminal justice system. The most pressing need is for a national strategy with adequate resources and joined-up working between central and local government to ensure the provision of safe homes for women leaving prison and women at risk of entering prison.

ii. Domestic violence and coercion

In our study, five women reported their experiences of domestic abuse and violence, and of coercion: Hollie, Lillia, Jodie, Ursula, Tess.

Respondents made clear the role that domestic violence and abuse, and coercion played in their pathway to prison. Ursula wrote: *I was in addiction and my partner had been sent to prison. I was pressured into taking drugs into him in prison in return for my drugs.* Tess was a victim of horrific domestic violence, she remains with partial loss of facial sensation as a result, many years later. Lillia wrote: *I was a victim of domestic violence from my ex-partner and developed a drug addiction after fleeing the relationship because I was in a really bad place at the time, I ended up getting caught up in things and acting out. I had no family, no friends close by, so had no support or guidance.* Hollie reported: *Due to violence in previous relationships I had to place my older children into care, my choice, voluntarily, I could no longer protect my children.*

In many cases, pregnancy increases the abuse risk to women.⁵³ It could be that for some women prison is a safer place for them than home. The *Howard League for Penal Reform* are campaigning to repeal the provision that a person can be remanded in to prison 'for their own protection'.⁵⁴ Prison should not, of course, be used as a solution to social problems; that is not its purpose. Donna Covey CBE, Director of *Against Violence and Abuse*, has said:

For far too many survivors of domestic abuse their journey ends in a prison cell rather than in a refuge bedroom. We need a new approach that recognises the link between experiencing gender based violence and women's offending.⁵⁵



The Prison Reform Trust (PRT) reports:

Many women in prison have been victims of much more serious offences than the ones they are accused of, with a growing body of research indicating that women's exposure to physical, emotional and sexual abuse, including coercive control, is for some a driver of their offending. A key difference between women and men in prison is that family relationships tend to be a protective factor for men whilst, for women, relationships are more often a risk factor. Baroness Corston's study of women in the criminal justice system a decade ago found that coercion by male partners and relatives is a distinct route into criminality and prison for some women.⁵⁶

According to the PRT report, there are strong links between women's experience of domestic and sexual abuse and coercive relationships, and their offending. Women can become trapped in a vicious cycle of victimisation and criminal activity. Some women affected by domestic abuse may be coerced into offending in distinct ways, including trafficked women, foreign nationals and those from minority ethnic and religious groups, as well as women with learning disabilities and difficulties.

The response of criminal justice agencies to women offenders affected by domestic abuse is key to breaking the cycle of victimisation and offending. Criminalisation and particularly imprisonment compound the problems of women affected by abuse. More specific guidance and training is required for all those involved in criminal justice delivery and administration.

Although government strategies to tackle violence against women and girls recognise the vulnerability of many women offenders, there are few specific measures in place to identify and support women whose offending is linked to abusive and coercive relationships.⁵⁷

There is evidence that where criminal justice agencies work with specialist women's support services to build their knowledge and skills and share information, their responses to women offenders improve.⁵⁸

As we will see in our section on diversion and Out of Court Disposals (OoCDs) (page 30), early intervention and joined-up working are key: problem solving, whole systems approaches in some parts of the country are diverting vulnerable women from the criminal justice system, reducing reoffending and improving outcomes. The co-location of domestic abuse specialists in police stations and diversion schemes are welcome initiatives where they exist.

Police and Crime Commissioners have a pivotal role in ensuring the police respond appropriately to women offenders affected by domestic abuse, including through the use of OoCDs. Current legal defences do not include the broader spectrum of sustained psychological, physical and financial abuse that lies behind some women's offending, including where women use reactive violence.

Sentencing Council guidelines recognise coercion as a mitigating factor for some offences, but judicial decisions are not always informed about abuse as a driver to women's offending. Pre-Sentence Reports and adequate legal representation, as well as judicial training and information are important for ensuring due consideration of this and other mitigating factors. More community sentencing options are needed for women affected by domestic abuse. The women's problem solving court in Manchester is a good practice model⁵⁹ and the SMART Sentencing App being developed by the Prisons and Probation services (HMPPS) will be helpful.⁶⁰

iii. Poverty, mental health and racial disparity

Women sentenced to custodial sentence often have complex needs and pregnancy can exacerbate existing vulnerabilities. Research by PRT shows women in prison tend to have below-average health status compared to the general population, and are subjected to specific health (physical and psychological) issues. The criminal justice system employs a male specific model, which often means it is ineffective in meeting women's biological, psychological, social and health needs. This is not to suggest that model employed meets the needs of men. However, women account for only about 5% of the prison population they represent over 25% of self-harm incidents, 'an indication of the traumatic impact of imprisonment on many.'

Women in prison are likely to be both a perpetrator and a 'victim' of crime.⁶¹ A significant number of women are victims of offences more serious than the offence they committed and, brought them to the attention of the criminal justice system. More than half (53%) of women in prison report having experienced emotional, physical or sexual abuse as a child compared to 27% of men. 57% of women in prison report having been victims of domestic violence. This is very probably an underestimate. For many mothers there is a fear of social services involvement and child removal (as domestic abuse is one of the leading factors in child protection proceedings) if she discloses that she is a victim of domestic abuse.⁶² The lives of women in the criminal justice system can be a vicious cycle of victimisation and criminal activity, a situation exacerbated by poverty, substance dependency or poor mental health.



Women (49%) are more likely than men (29%) to report needing help with drug misuse on entry to prison. Women prisoners are also more likely than men to associate drug use with their offending. Women are nearly twice as likely (as men in prison) to suffer from depression (65%) compared to (37%), and more than three times as likely as women in the general population (19%). Almost a third (30%) of women in custody had a psychiatric admission before entering prison. 46% of women prisoners report having attempted suicide at some point in their lives. This is twice the rate of male prisoners (21%) and more than seven times higher than the general population (6%). Alcohol is a significant factor in women's offending. 59% of women prisoners who drank alcohol to excess four weeks before custody felt they had a problem with alcohol, 52% thought their drinking was out of control.⁶³

Diversity between women: racial disparities

It is also important to note that, despite Black Asian and ethnic minority women facing similar challenges as white British women – exposure to domestic and/or sexual abuse, problematic substance use – they are more usually the sole primary carer of dependent children and a range of disparities characterises their experience of the criminal justice and maternity systems. Research shows Black, Asian and ethnic minority women's experiences of criminal justice and maternity systems are characterised by disparities:

- Black women are more likely than other women to be remanded or sentenced to custody.
- Black women are more likely to be sole parents so their imprisonment has particular implications for children.
- Women from minority ethnic groups are more likely to plead not guilty in the Crown Court, leaving them open to potentially harsher sentencing.
- Women from minority ethnic groups feel less safe in custody and have less access to mental health support, according to surveys by the HM Inspectorate of Prisons (HMIP).
- Women from minority ethnic groups experience racial and religious discrimination in prison from other prisoners and staff, according to surveys by HMIP.
- Some women from minority ethnic groups are also foreign nationals and face language and cultural barriers and may also be subject to immigration control and at risk of deportation.
- Asian and Muslim women may experience particularly acute stigma within their communities.

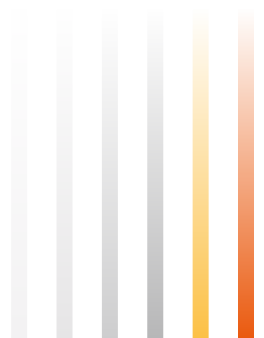
The Corston Review (2007) concluded that women from minority ethnic groups are 'further disadvantaged by racial discrimination, stigma, isolation, cultural differences, language barriers and lack of employment skills'.⁶⁴

We must also consider disparities in experience and outcomes in relation to maternal care and outcomes for Black, Asian and Minority ethnic women. Analysis of maternal deaths, stillbirths and neonatal deaths shows that mothers and babies from Black/Black British and Asian/Asian British ethnic groups and women living in the most deprived areas of the country have poorer outcomes. For example, women from Black Asian, mixed-race backgrounds have an elevated risk of maternal death in comparison to women from White backgrounds. Recent research shows that Black women are four times more likely to die in pregnancy and childbirth. Women of mixed heritage background are three times more likely to die in pregnancy and childbirth and Asian women are twice as likely to die in pregnancy and childbirth.

Women of Black African heritage are 83% more likely, and women of Black Caribbean heritage are 80% more likely, to suffer a near-miss in childbirth, than White British women.

The MBRRACE analysis found that Black babies have a 121% increased risk of stillbirth and a 50% increased risk of neonatal death. We would suggest that the disparities that characterise Black, Asian and Minority ethnic women's maternal experiences and outcomes provide an additional dimension to their experience of incarceration whilst pregnant.⁶⁵

The recent Ombudsman's report calls for all pregnant women in prison to be categorised as 'high risk'. The complex needs associated with women in prison, are an indication of the need for alternative approaches to incarceration. Classifying pregnant women as high risk and making recommendations which do little to challenge the status quo in responses to the death of Baby A is disappointing. Once again, measures put forward fail to go far enough to holistically address the needs of pregnant women in prison and minimise the risk that the prison environment poses to the health and well-being of pregnant women and their babies.







7. An international perspective: we can learn from other countries

It is not necessary to incarcerate pregnant women. Doing so is a choice made by a country's criminal justice system. When we look at other jurisdictions around the world we see that an alternative approach is possible.

In Portugal, judges take into account any special state of vulnerability and the possibility of giving birth in a prison facility when deciding on the appropriate sentence.

In recent years Italy has enacted laws to protect pregnant women and mothers of young children from incarceration both on remand and on sentence. Italy has enacted these laws.

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 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.

Penal Reform International report that there are eleven countries, covering a total population of about 646 million people, which have opted to prohibit, or severely curtail, the imprisonment of pregnant women.⁶⁷

Thus we see that Italy and Portugal have procedures in place to protect pregnant women and mothers of young children from imprisonment, and a number of jurisdictions, covering many millions of citizens, have policies that do not permit or severely limit the imprisonment of pregnant women.



Table 4: Eleven countries do not imprison pregnant women or severely limit custody for pregnant women

Country	Population Million	Notes
Russian Federation	146	Article 82: Deferral of Serving a Punishment 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	



8. Alternatives to prosecution: Diversion and Out of Court Disposals (OoCDs)

Cautioning has a long and distinguished record as a tool available to the police to deal with certain types of criminal behaviour committed in circumstances where it was not necessary or indeed proportionate, to take an offender to court.

The National Police Chiefs' Council report by Deputy Chief Constable Sara Glen *Charging and Out of Court Disposals: a national strategy* states:

Prison can be a place where there is exposure to more hardened and accomplished criminals, and therefore it can become a place for criminal education, serious and organised crime, and radicalisation, rather than rehabilitation. Conditional Out of Court Disposals (OoCDs) provide rehabilitative opportunities to offenders to turn their life around at the earliest opportunity and before they find themselves in the Criminal Justice System and court process.⁶⁸

Diversion refers to actions taken by the police in dealing with low-level crime that avoid prosecution. In 2017 *Transform Justice* issued its report *Less is More*, written by Rob Allen, highlighting the declining trend in the use of OoCDs to deal with low-level offending and recommending reversing that trend. A community resolution, simple or conditional caution, drug warning or penalty notice can be administered quickly, cheaply and locally, allowing the police to concentrate on more serious crime. Diversion can work better than prosecution at reducing reoffending and is generally acceptable to victims as long as they are kept properly informed.⁶⁹

OoCDs are seen by advocates as an efficient and effective response to criminal behaviour, in particular to low-level offending by first-time offenders. There is no definitive list of what constitutes a 'low-level offence'. But they are commonly taken to include: common assault, drunk and disorderly, low level shoplifting, minor road traffic offences such as speeding and driving without due care and attention.

Some police forces have been using a new two-tier approach to OoCDs. The Government issued a White Paper in September 2020, *A Smarter Approach to Sentencing*, which proposed rolling out the two-tier approach nationally. Fixed Penalty Notices will be retained, and the other available OoCDs are consolidated into two options:

- 1.** community resolution – for less serious offending with limited offending histories, and
- 2.** conditional cautions – for more serious offending/offenders with more significant offending histories.

1. Community resolution is a means of dealing with less serious crime and anti-social behaviour, particularly in the context of first-time offending. The offender must accept responsibility for the offence. Community resolutions normally include elements of restorative justice, such as a meeting between offender and victim or facilitating an apology to the victim. There can be elements of reparation, such as requiring the offender to repair or pay for any damage caused. The imposition of an OoCD is recorded on the Police National Computer, and thus may be disclosed in an enhanced Disclosure and Barring Service (DBS) check.

2. Conditional cautions allow authorised persons to attach conditions that have a number of aims: to rehabilitate the offender; to provide victim reparations; to punish the offender; or to remove foreign offenders with no legal right to remain. Conditional cautions may only be applied when the offender has admitted guilt for the offence and accepts the conditional caution. Conditional cautions form part of the criminal record of an offender and may be disclosed as part of a DBS check.

OoCDs can offer efficiency savings as it is normally quicker and cheaper to issue an OoCD than it is to prosecute through the courts and it can involve greater victim involvement. There is wide variation in the use of OoCDs between different police forces. In 2018 OoCDs accounted for 10% of offences brought to justice in Cleveland, but 53% in neighbouring Durham.⁷⁰



The *Centre for Justice Innovation* (CJI) in its briefing on alternatives to prosecution stated:

Pre-court diversion seeks to offer a swift and meaningful response to low-level offending.

A 2018 survey by the National Police Chiefs' Council revealed that a majority of police forces across England and Wales are engaged in using or developing pre-court diversion for adults as well as finding both a wide variety in practice and in the terms used to describe pre-court diversion.

There is evidence on what works to reduce reoffending that suggests that pre-court diversion may be particularly applicable for specific groups of individuals, most notably vulnerable women, young adults, and individuals with substance misuse and mental health issues, although there is little specific UK evidence that isolated the impact of pre-court diversion on these groups.⁷¹

The *Centre for Justice Innovation* (CJI) has highlighted the importance of diversion for women. Criminalising vulnerable women can make it harder for them to access help with issues driving their offending, creating barriers to them finding or maintaining employment and accommodation. That is why pre-court diversion, which seeks to offer a swift and meaningful response to offending, while reducing or avoiding harmful criminal justice involvement, is so important for women.⁷²

The CJI report points out that women's offending, which is most commonly for non-violent acquisitive crime, is typically suitable for diversion. Women committing low-level offences are less likely than men to re-offend. There is evidence that criminalisation is more damaging to women's rehabilitation than to that of men. Support with issues of mental health needs, substance abuse and trauma will then play an important role in reducing re-offending.

Diversion should include appropriate support for such issues, and should be integrated into support in the community. Diversion interventions for women should be gender-informed. Diversion for women demands an understanding that recovery is complex and takes time. Women should not be automatically limited to one chance of diversion, even where they have not fully complied.





9. Sentencing options

i. Deferred sentencing

Deferring a sentence under rehabilitative conditions is not widely practised in the courts of England and Wales. Section 3 (1) of the Sentencing Act 2020 provides that a court may defer passing sentence ‘to enable a court, in dealing with the offender, to have regard to an offender’s conduct after conviction (including, where appropriate, the offender’s making reparation for the offence) or any change in the offender’s circumstances.’

We would suggest two amendments to the law regarding deferred sentences:

1. There should be a third category: the court should have regard to any special circumstances of the offender. This would cover the circumstance of a defendant who is pregnant at the time of sentencing.

2. The period of deferral should be extended from 6 months to 18 months, which would give a pregnant defendant time to safely deliver her baby in the community and also undertake necessary changes to avoid further offending. (Services to provide safe housing would be an especially important part of such changes, and would of course depend on provision in the community, which we of course strongly advocate, see Section 6 C.1 page 24 on Homelessness).

A court must be satisfied that it is in the interests of justice to make the deferral order, ‘having regard to the nature of the offence and the character and circumstances of the offender’. The power to defer is broad, no category of offence or offender is excluded, and the court may decline to impose requirements on the offender or may impose tight restrictions on the offender during the period of deferment.⁷³

The Sentencing Council states that:

The court is empowered to defer passing sentence for up to six months ...The court may impose any conditions during deferment that it considers appropriate. These could be specific requirements as set out in the provisions for community sentences, restorative justice activities, or requirements that are drawn more widely.

As Professor Julian Roberts explains:

Deferring a sentence actively engages the offender; the deferment period of offers an opportunity to demonstrate progress towards desistance or reparation to the crime victim.

Deferral also provides the offender with an incentive to participate in restorative meetings with the victim. Deferred sentencing is thus a rare example of active offender participation in the sentencing exercise.⁷⁴

The Government White Paper *A Smarter Approach to Sentencing* states that where the court has the capacity, ‘we want to encourage them to use existing legislation on deferred sentences’. Courts should use existing services available to them such as Liaison and Diversion or community advice and support services to move the offender away from further involvement in the criminal justice system. This applies especially to vulnerable women who are likely to benefit from referral to a women’s centre. The greater use of deferred sentencing will also provide opportunities for restorative justice practices to be deployed.

Yet the power to defer sentence is seldom used. Deferred sentencing may be being discouraged because it lengthens the time within which a case is concluded, and thus impacts on the courts’ timeliness target.

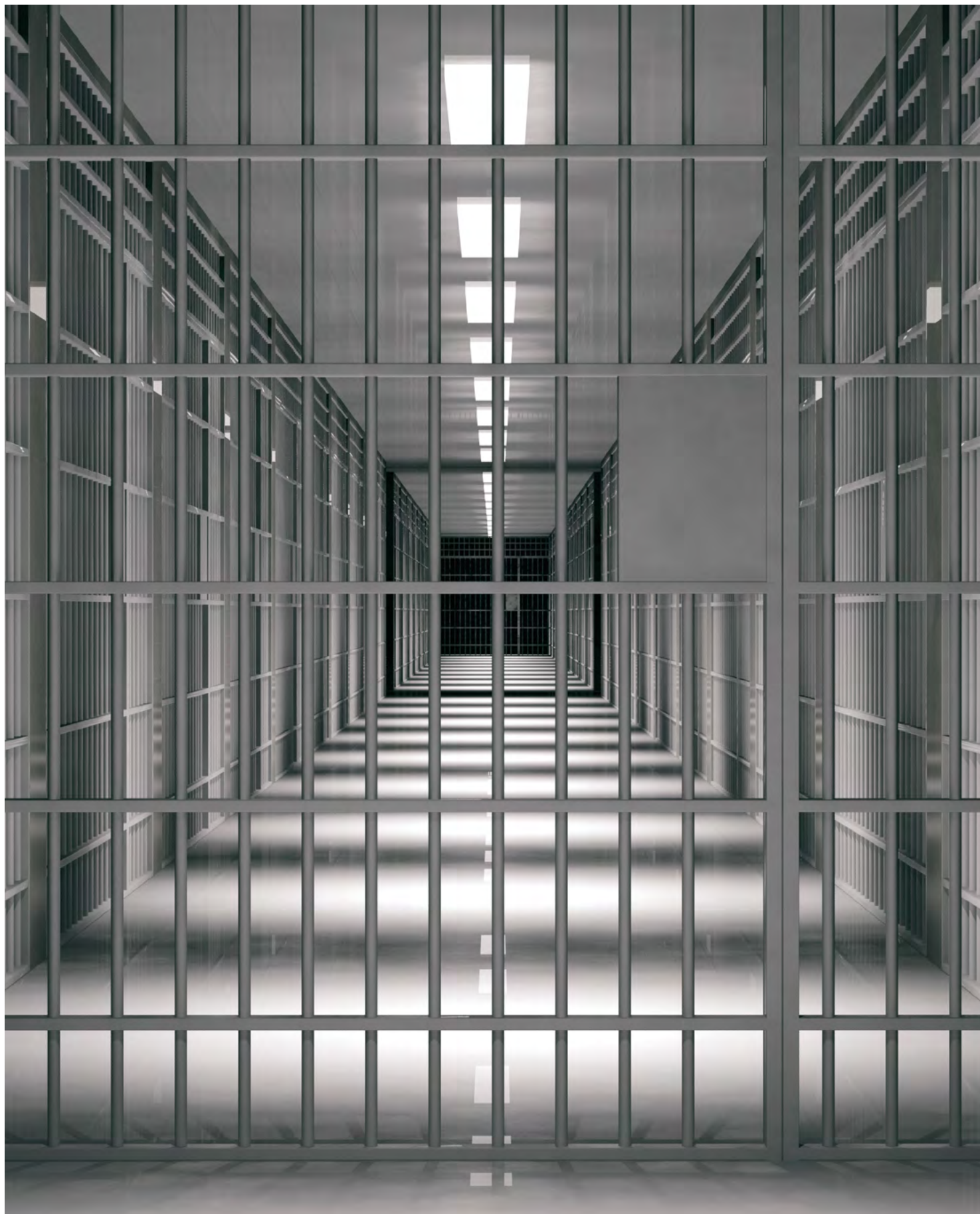
The CJI report *Delivering a Smarter Approach: Deferred Sentencing* concludes that:

There is no need for legislation but there is a need for clear policy. The legal framework exists for courts to deploy structured deferred sentences. However, what is needed is clear policy and guidance about when deferred sentences should be used.⁷⁵

Professor Julian Roberts, who has done extensive research on deferral, considers that:

Deferral is worth considering when circumstances suggest the offender’s lifestyle will improve sufficiently within a relatively short period to an extent which would change the court’s mind about the appropriate sanction. Deferring sentence is likely to be useful for offenders whose lives are about to change for the better. ... Offenders with substance abuse problems are a primary target of deferred sentence provisions in other jurisdictions.⁷⁶

This is particularly relevant to our research both because drug and/or alcohol misuse was reported by six of our 20 respondents, and because it is obviously protective of vulnerable women and their unborn children to defer sentence until after the birth of a child, and after a period of care and support in the community. The law regarding deferral would have to be changed to be useful for pregnant defendants since the current limit of a period of six months for deferral is clearly inappropriate in the case of a pregnant woman: a more realistic period would be 18 months.





ii. Suspended imprisonment

A sentence of imprisonment of between 14 days and 24 months may be suspended, the court imposing a Suspended Sentence Order (SSO.) In 2018 19% of custodial sentences were suspended; in 2019 it was 18%.⁷⁷

The SSO can be imposed unconditionally, or the magistrate or judge can impose any number of 15 requirements, either alone or in combination. The cost of the SSO is far less than a term of imprisonment.⁷⁸

The Sentencing Council's *Guidelines on Seriousness* state:

The approach to the imposition of a custodial sentence under the new framework should be as follows:

(a) has the custody threshold been passed?

(b) if so, is it unavoidable that a custodial sentence be imposed?

(c) if a custodial sentence is imposed, can that sentence be suspended?

(d) if not, can the sentence be served intermittently?

(e) if not, impose a sentence which takes immediate effect, its length must be commensurate with the seriousness of the offence.

The Sentencing Council's *Imposition of Community and Custodial Sentences Definitive Guideline* states that the court 'may suspend the sentence'. The Guideline sets out the factors which should be weighed in considering whether it is possible to suspend the sentence. Factors indicating that it would not be appropriate to suspend a custodial sentence are:

- Offender presents a danger to the public
- Appropriate punishment can only be achieved by immediate custody
- History of poor compliance with court orders

Factors which indicate that it may be appropriate to suspend a custodial sentence:

- Realistic prospect of rehabilitation
- Strong personal mitigation
- Immediate custody will result in significant harmful impact upon others.

In the case of a pregnant defendant, 'others' must, of course, include the unborn child: it's important that this is brought to the attention of the court.

The imposition of a custodial sentence is both punishment and a deterrent. To ensure that the overall terms of the suspended sentence are commensurate with offence seriousness, care must be taken to ensure that requirements imposed are not excessive. Community support will be essential in cases of suspended imprisonment. A suspended sentence without community support may quickly lead to a breach and imprisonment. The right support needs to be in place for suspended sentences to work as intended. A court not wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate





The case for suspending imprisonment

In November 2015 the Prison Reform Trust published its discussion paper *Sentencing of Mothers: Improving the sentencing process and outcomes for women with dependent children*.⁷⁹ The paper detailed the negative consequences for children and families of the over-use of custody for women who commit, on the whole, minor offences.

The barrister Paramjit Ahluwalia has written:

What sentencers do not realise is the impact of this factory churning through numbers of women in short ineffective ways, is the consequent long term impact on their lives.⁸⁰

The PRT discussion paper recommended that:

Judges, district judges and magistrates should be obliged to consider non-custodial sentences for offenders with primary care responsibilities, and in cases when imprisonment is an option should consider a community order, deferred or suspended sentence. If an immediate term of imprisonment is imposed, written reasons should be given for their decision.

Rob Allen in his report on the Sentencing Council wrote:

Courts need more guidance on the factors relating to a person's circumstances which make offences less serious, and make sentences capable of being suspended. In a number of countries, the law specifically permits courts to exempt from punishment pregnant women and mothers of children up to the age of 8 or even 12. This is a course we should consider in England and Wales.⁸¹

Most women commit non-violent offences, and are sentenced for minor crimes: in 2020 58% of women who entered prison had sentences equal to six months or less than six months.⁸² Suspending imprisonment could be more widely used, with consequently less damage to vulnerable families.

iii. Community Sentences

All community orders must incorporate a requirement for the purpose of punishment (Sentencing Act 2020, S.208 (10)). Effective community sentences are a vital part of a justice system in which crime is proportionately punished, the harms it has caused repaired and the underlying factors that lead to offending addressed. There is clear evidence that community sentences reduce re-offending more than short custodial sentences.⁸³

However, the *Centre for Justice Innovation* (CJI) reports that there has been a 46% decline in the use of community sentences over the past ten years in England and Wales; at the same time the quality of supervision delivered by probation services has deteriorated. The CJI recommends a reform of community sentences, involving giving probation practitioners 'the powers, the freedom and the flexibility' to both deliver punishment and to give offenders the chance to turn their lives around. They recommend:

- Improving the delivery of unpaid work by giving victims and communities a stronger voice in choosing what work is to be done
- Improving rehabilitation by increasing the overall level of funding available for drug and mental health treatment
- Improving collaboration between the courts and probation to divert vulnerable offenders away from court where necessary, to use judges to monitor repeat offenders and be more responsive to their behaviour and to change the enforcement system so that it responds more swiftly to failure and better rewards compliance
- Improving information to victims about community sentences so that victims are informed about what is being done in their case⁸⁴

Community orders play a vital role in our criminal justice system. Recent research by the Ministry of Justice and other agencies compared re-offending rates for immediate imprisonment, suspended sentence orders and community orders, having first controlled for other explanatory factors. Re-offending rates for offenders sentenced to short terms of immediate imprisonment were higher than rates for offenders sentenced to either a community order or a suspended sentence order.⁸⁵

However, in England and Wales, the quality of the supervision of community sentences had deteriorated over the past decade and there are fewer community sentences being given out by courts. Community sentences provide proportionate punishment for lower-level offending through restrictions on liberty like curfews and electronic monitoring. With a newly unified probation service returned to public control, there may now be better prospects for the success of community orders and their greater use.



10. Alternatives to imprisonment: non-punitive provisions

i. Women's Centres

In 2007, following a spate of suicides in women's prisons, Baroness Corston published her Review of Women with Particular Vulnerabilities in the Criminal Justice System. Her aim was that of systems change, 'a distinct radically different, visibly-led, strategic, proportionate, holistic, women-centred approach'. A key element was to be the expansion and sustained funding for Women's Centres in the community as 'one-stop-shops' to prevent women entering or returning to the criminal justice system.

Women's Centres provide information, advice, support and training or education in safe, women-only spaces. Their work covers a range of issues, such as health, dealing with violence and abuse, employment, education, rights, and criminal justice issues. For many isolated, traumatised women, experiencing domestic abuse at home and multiple disadvantages in employment and education, they provide a welcome, a place of acceptance, without being judged, with a range of facilities and opportunities, from peer support, to education and a range of activities and therapies with peers, volunteers, and professionals.

The services often include:

- one to one holistic support
- drug and alcohol support
- counselling and psychotherapy
- domestic abuse information and programmes
- courses and workshops
- drop-in sessions
- signposting to other services and sources of support.

In 2017 *Women in Prison* evaluated Corston's legacy in their report *The Corston Report 10 Years On*, noting that the network of community centres which exist across the country provide excellent services and have a proven impact on reoffending figures. However the number of Women's Centres across the country is inadequate and those that exist often have to compete for limited funding for services. Short-term and insecure funding makes long-term planning and consistent service provision difficult, and may result in poor staff retention.⁸⁶

ii. Residential facilities

We have information on two providers of residential support to pregnant women in the criminal justice system which offer a viable alternative to imprisonment. The first is *Jasmine Mother's Recovery*⁸⁷, in Plymouth; the second is *Phoenix Futures*, in Sheffield.





Jasmine Mother's Recovery (formerly known as Trevi House) is part of the services offered by Trevi, which began in 1993 in Plymouth, Devon, as a drug and alcohol residential rehabilitation centre working exclusively with mothers and their children. Their centre for pregnant women and women with babies, Jasmine Mother's Recovery, takes referrals from across the UK and can accommodate up to 10 women and their children. Each woman follows a strict therapeutic rehabilitation plan over an average 24 week stay.

At the centre a dedicated and expert team, many of whom are peer mentors who have experienced addiction, domestic violence and offending themselves, work intensively with pregnant women who suffer from addiction problems – many have been referred by social services.

The services:

- offer gender specific provision to address the needs of women in contact with the criminal justice system
- utilise trauma informed approached
- are rehabilitative and help to prevent future offending
- involve service users in shaping the work and in decisions affecting them
- have strong partnerships with other organisations and liaise with other services
- work collaboratively with the local community
- evaluate the effectiveness and outcomes of the programme.

Their results are remarkable – 98% of women who have completed a residential placement at Jasmine succeed in remaining drug-free, and almost 8 out of 10 children get to stay with their mother.



Phoenix Futures National Specialist Family Service, based in Sheffield, provides an environment in which women are safe from domestic abuse, are drug and alcohol tested regularly and are in a drug and alcohol-free environment.⁸⁸

Support is offered to women to meet their and their unborn's health needs through primary health care and specialist midwifery care.⁸⁹ Rehabilitative interventions for substance misuse are a compulsory part of the programme, this also includes participating in intensive groups looking at offending behaviour/ relationships/ managing feelings and emotions and anger management. Alongside this, women are enabled to develop and improve their parenting skills.

The key is that women have a safe place and support during pregnancy and after birth. With the right help and support pregnant women in the criminal justice system can make positive changes to prevent separation from their children and be given an opportunity to break the cycle of offending.

Both Jasmine Mother's Recovery and Phoenix Futures are alternatives to prison for vulnerable pregnant women in the criminal justice system. They are non-punitive and non-judgmental – and they work.





11. Government plans and strategy ⁹⁰

Over the last three years there has been evidence of an increased focus on the management of female offenders with the 2018 Female Offender Strategy,⁹¹ the resultant Women's Policy Framework,⁹² the Joint Committee on Human Rights report on The right to family life; children whose mothers are in prison ⁹³ and the Farmer Review for Women.⁹⁴ However none of these focus specifically on issues faced by pregnant women. As pointed out by Hales (2021),⁹⁵ to fully understand why pregnant women (and mothers of young children) are in custody it is important to look at the way these women are currently processed through the entire criminal justice process, from initial court appearances to completion of post release supervision. The current system failures result in an ongoing rise in the remand population and high levels of licence recall, as evidenced in cases in this research.

The Female Offender Strategy included positive proposals to optimise liaison and diversion services, reduce unnecessary recall and provide support to female offenders to complete the requirements imposed where childcare issues were previously a barrier. However, as with the recommendations of the Corston Report, three years after its publication, the majority of its proposals remain unachieved or only partially achieved.⁹⁶ We cannot be more optimistic about the cross-departmental *Concordat on women in or at risk of contact with the Criminal Justice System* published this year, which only commits to a one year review.⁹⁷

Peter Dawson, Director of the Prison Reform Trust said:

There is little point having a good plan if you don't deliver it. That requires a timetable, resources and measures of success. None of these are in place. Instead, the government seems to have abandoned the idea that its female offender strategy can deliver its explicit and most important outcome – a reduction in the imprisonment of women. It is prepared to find £150m for new prison places to meet the cost of policy failure, but only a pittance to secure its success.⁹⁸ (Our emphasis)

The other potential way forward was in relation to sentencing reform and the New Sentencing Guidelines that came into force in 2019, including a welcome expanded explanation for the mitigating factor 'sole or primary carer for dependent relatives'.

As outlined by Dr Shona Minson,⁹⁹ the key elements of these are that:

- the court should not impose a sentence of imprisonment where the impact on dependants would make a custodial sentence disproportionate to achieving the aims of sentencing;
- the court should consider the impact of the sentence length on dependants and whether the sentence can be suspended;
- the court should consider the effects on dependants when deciding on the requirements of community sentences;
- when the defendant is a pregnant woman: the relevant considerations should include the **effect of a sentence of imprisonment on the woman's health and any effect of the sentence on the unborn child;** (our emphasis)
- the court must ensure that it has all relevant information about dependent children before deciding on sentence (in accordance with the case of *R v Bishop* [2011]);
- the court should consider whether proper arrangements have been made for dependent children when imposing a custodial sentence, and consider adjourning sentence in such cases in order for proper plans to be in place for children;
- the court should ask the National Probation Service to address the defendant's caring responsibilities and the impact of any sentence on the care of their dependants in a Pre-Sentence Report.¹⁰⁰

There was also hope that there might be some progress in amendments to the Police, Crime, Sentencing and Courts Bill in response to recommendations made by the Joint Committee on Human Rights First Report on *Children of mothers in prison and rights to family life: the Police, Crime Sentencing and Courts Bill*.¹⁰¹

However, the government rejected all four of the key proposed amendments as unnecessary:

- There was no move in relation to the requirement for a Pre-Sentence Report when sentencing a primary carer, the government arguing that there is already sufficient guidance in relation to this. This is despite the fact that fewer Pre-Sentence Reports are being requested, according to probation service data.
- Nor was there acceptance of the obligation on the sentencing magistrate or judge to state how he/she considered the consequences for the child, (with an additional clause to include reference to the best interests of the baby where the woman is pregnant) in the sentencing remarks, on the basis that statutory duty by virtue of Section 52 of the Sentencing Code is sufficient.
- Equally unfortunate was the response that it was considered as 'not necessary' for courts to be under a further explicit statutory obligation to consider the welfare of offenders' children (with the inclusion of the unborn child) when sentencing, in view of existing case law and sentencing guidelines, despite the fact that it is still at the discretion of the sentencer as to whether they consider the dependent children to be a factor in mitigation.
- Finally, the amendment in terms of making the welfare of a child (with the inclusion of the unborn child) a distinct consideration in determining bail for a primary carer was again considered not necessary, arguing that the court already has to balance the aims of custody against the impact this can have on family life and any dependants.

Of equal concern is the fact, that, as stated by *Working Chance*, many measures in this Bill will have harmful long-term consequences for women ¹⁰² in terms of more and longer prison sentences. The Ministry of Justice justify the plan to increase prison places for women by their predictions that the number of women in custody may potentially rise by over 40% in the next five years due to *extra police and longer sentences*.

In our view, the plan to employ extra police, if realised, would be no reason to expect more women in prison. On the contrary, a larger, and better trained and informed police force could and should lead to lower numbers of women in prison, for two main reasons:



1. As we have seen throughout this report and as has been noted by researchers before us, domestic violence and coercion of which many women in the criminal justice system are victims, is an important driver of both addiction and criminal behaviour. Greater numbers of police should lead to more effective ways of dealing with domestic violence and abuse, and thus to **fewer women offenders**.

2. Many police forces throughout England and Wales are engaged in diversion and OoCDs, described in Section 8 pages 30 - 31. These promising initiatives require intensive work by well trained police officers working with many agencies. A larger number of such police officers could and should lead to more women actively and positively engaged in rehabilitation in the community, and **fewer women in prison**.

We may expect some improvement in the prospects for women in the criminal justice system following the return in June this year of a new unified Probation Service for England and Wales. This would undo the Transforming Rehabilitation Reform in 2014 which contracted out the management of 'low' and 'medium' risk offenders to 21 privately-owned Community Rehabilitation Companies. The 2014 reform was considered *irredeemably flawed* by Dame Glenys Stacey, the then Chief Inspector of HMI Probation and by many working in the field. However, until the rhetoric moves from being tough on crime to understanding the potential impact of imprisonment on pregnant women and their dependants and ensuring the implementation of and adequate funding for effective policies, the risks of future deaths in custody and the detrimental long term impact on the children of these women remain unacceptably high.



12. The way forward

As we have seen in **Section 7 An International Perspective** there are a number of countries which have passed legislation prohibiting the imprisonment of pregnant women, except in very rare cases of grave criminal offences. We can learn from these examples: no court decision should endanger the life of an unborn baby. To respect and protect the unborn child is an aim that should be an important element in a criminal justice system in any civilised society. It cannot be proportionate to punish someone if it puts their unborn child's life at risk.

On 5 October 2021 the Ministry of Justice published their Pregnancy, MBUs and maternal separation in women's prisons Policy Framework.¹⁰³ It stated:

The Female Offender Strategy makes clear that we want fewer women serving short sentences in custody and more being managed in the community.

This is a good starting point for our recommendations.

We propose a number of legislative changes. Whenever a pregnant defendant is before a court a Protocol must be activated. This would alert the court to issues concerning the need to protect pregnant women and unborn children. There must be absolutely no sentencing of a pregnant woman without a Pre-Sentence Report.

Full Bail Information Reports should be mandatory for women who appear before the courts before remand in custody is considered. There must be a statutory presumption against remanding a pregnant woman in custody; if pregnancy is identified whilst in custody the court should be immediately advised of this and a renewed bail application made.

Behind this statement lies a complex issue. What about the defendant's right to privacy, her right to keep her pregnancy a private matter if she so chooses? This is particularly important in view of the fact, noted on page 24 that being pregnant increases the risk of domestic abuse.¹⁰⁴

We suggest a Commission consisting of those with lived experience of pregnancy in prison and those who have been victims of domestic abuse, as well as organisations such as *Birth Companions* and *Women in Prison*, and legal, midwifery, social work and other experts to carefully consider this and the other points we make in this section.

As outlined in the section above there is a need for both legislative change, putting the protection of pregnant women and the unborn child as a crucial element of criminal justice policy, and changes in social and justice attitudes and policy.

Liaison and diversion services must be supported and extended. Suspended sentences for pregnant women are important in those cases where the offence is more serious and thus not appropriate for diversion and Out of Court Disposal. All courts should be aware that sentences up to two years in length may be suspended and this may be the right approach for pregnant women.

The little used option of deferred sentences should be considered by every court dealing with a pregnant woman. This will require a change to the current law which limits deferral to a period of six months. In the case of pregnancy 18 months or two years is more realistic, for the child to be born safely in the community, and rehabilitative work to be done in the Women's Centres that play such a positive role in turning around lives which have been chaotic, self-destructive and anti-social.

Community support and non-punitive alternatives to imprisonment are essential and require significant investment. We argue that this investment should be made in the interests of both a particularly vulnerable group of women and children, and also in the interests of all of us.

The newly reunified probation service must have adequate resources to do the vital work of supporting women in contact with the criminal justice system. As we have pointed out throughout this report, these women are known to have very complex needs, to be frequently the victims of violence and duress, they may be homeless or insecurely accommodated and to have issues of ill-health and addiction. They have often had traumatic and deprived childhoods and very adverse early experiences. All the initiatives to divert them from court processing and from prison which we have discussed will require greatly increased resources for the probation service. However, lower numbers of women in prison will bring important savings. The cost of a prison place is currently £44,640.¹⁰⁵

It is crucial that the Probation Service be trauma responsive in their work with women, including ensuring community sentences are responsive to the needs of pregnant women and new mothers. Otherwise, unnecessary breaches of orders are inevitable – the needs of pregnant women and mothers of young children must be addressed in the design of community orders. The 'one size fits all' approach must be avoided.

The government's announced plan to invest £150 million in 500 new prison places for women should be scrapped: the proposed expenditure should be diverted instead to the probation services, to Women's Centres and to other facilities and support in the community, which should include housing (see Section 6 C, page 24).



There needs to be a complete rethink, with the starting point that no pregnant woman should be in custody. If for reasons of public protection it is felt that imprisonment is unavoidable then the reasons must be stated and justified in open court.





We believe that, as a general rule, pregnant women should not be imprisoned. Sentences can be deferred, terms of imprisonment can be suspended, community orders can be imposed, community support can be provided. Remanding a pregnant woman in custody can be and should be avoided: this research began with the death of a baby born to a woman in prison on remand. When her case came before the magistrates again after the baby's death, she was remanded in the community.

We have to ask: why was remand in custody ordered in the first place?



13. The limitations of this research

There were several limitations to what we could achieve in this research project. Firstly, our resources were limited and it is extremely difficult to locate women who have been pregnant in prison. Many organisations told us that having left prison women wish to put the experience behind them and prefer to avoid groups of women who have had the same experience. There was also the fact that our online questionnaire required access and familiarity with computers as well as literacy skills and that was very probably a barrier for some women.

We tried particularly hard to make contact with women in the Gypsy, Roma and Traveller (GRT) community as they are frequently the victims of duress from male partners, commit minor crimes such as pickpocketing, and end up in prison.¹⁰⁶ We would have liked to hear their voices and learn of their experiences in the criminal justice system, but our efforts in contacting organisations working with women in the GRT community did not bring the respondents we hoped for.

Secondly, it was not possible for us to do any interviewing during the Covid-19 epidemic. Furthermore, it would have required resources we did not have. A more complex and fuller picture would have been produced had we been able to conduct face-to-face interviews. A larger scale project which could include interviews would yield fuller results and a more nuanced picture of both what led up to their offending and what it was like for women to be pregnant in prison.

A further limitation is that this is a non-representative sample; as it was an online survey we are not sure where our respondents saw our call for participation, but they are certainly not to be taken as representative of the whole population of pregnant women in prison. Furthermore, we have relied on self-report, and have not been able to confirm much of the information we were given (except in three cases where we were able to obtain court reports which state the reasons given by the court for imposing a custodial sentence).

14. Suggestions for further research

We hope that other researchers, following this study, will undertake a more extensive enquiry into the reasons pregnant women are in prison, including observation at both remand and sentencing hearings. With about 600 pregnant women entering prison in England each year, our sample of 22 cases, though illustrating many significant themes, is a very small study of a large social and legal problem. A more comprehensive study will reveal wider issues than we could cover and throw further light on a complex issue. A more extensive research project should also include a follow-up study focussing on the long term outcomes for women who have been pregnant in prison and their children.

The three aspects of the legal process: remand, recall and sentencing all require further and larger scale research. Interviews with magistrates about both remand and sentencing decisions could provide important information on why pregnant women are remanded in custody and are sentenced to imprisonment. Similarly, in a wider study interviews with magistrates and judges would elucidate their views and their reasons for choosing to imprison pregnant defendants. Further research is also required on what magistrates and judges know about the alternatives to imprisonment. Are they, for example, well informed on what the Women's Centres provide? Are they equipped with full and up to date information on drug and alcohol services in their communities? A study of the training provided on these topics to magistrates and their legal advisers and to judges could help in understanding, and perhaps improving, the way our courts use their sentencing powers.



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