

Evidence to the Sentencing Council: Miscellaneous amendments to sentencing guidelines: consultation by Support Not Separation co-ordinated by Legal Action for Women, Disabled Mothers' Rights Campaign and Women Against Rape

Evidence submitted on behalf of the listed organisations with permission to quote from and/or publish

Adding new mitigating factor: Pregnancy and maternity

Background

The [Support Not Separation](#) (SNS) Coalition, co-ordinated by Legal Action for Women, includes organisations of single mothers, women of colour, women with disabilities, rape/domestic abuse survivors, breastfeeding advocates, psycho-therapists, men and social workers. We defend mothers and children against unwarranted separation and the devaluing of the mother-child relationship. We are in contact with hundreds of mothers and other primary carers, and children, family law professionals, organisations and concerned individuals. It includes Disabled Mothers' Rights Campaign and Women Against Rape listed below.

In January 2017 Legal Action for Women published our Dossier [Suffer the Little Children & their Mothers](#) which documented 56 cases of mothers fighting in the family courts to stop children being forcibly taken into care and/or adopted, and to prevent violent fathers having contact or residence of children. In July 2021 we updated this research based on the experiences of 219 mothers of 411 children.

[Disabled Mothers' Rights Campaign](#) brings disabled mothers together to defend our right to have and to keep our children. We campaign to stop the cruelty and discrimination we face from council social services and the family courts which use mothers' requests for support as an excuse to label us "unfit" and take our children from us. DMRC is part of the SNS coalition.

[Women Against Rape](#) (WAR) is a multiracial grassroots women's organisation set up in 1976. It provides practical support to victims of all types of sexual and domestic violence, and it campaigns for changes in the systems of criminal justice, asylum and compensation. In 2022 WAR submitted evidence to the Sentencing Council on its [Perverting the Course of Justice guidelines](#).

Sentencing women to prison is inherently sexist

We welcome the opportunity to comment on sentencing guidelines for pregnant and post-natal women. We also want to comment on sentencing policy more generally as it relates to women, mothers in particular. Sentencing policy is inherently sexist: it treats women as if we were men, ignoring the fact that we get pregnant and give birth and are the primary carers for children, and it ignores and undermines the unique and precious bond between mother and child. This MUST be taken into account during sentencing but it rarely is. Prison is NOT and will never be a safe place for pregnant women and new-borns.

In fact, it's worse, much worse. The criminal justice system not only ignores women's unique physiological and societal contributions as mothers and primary carers, it judges women more harshly than men. 26% of all women in prison have no previous convictions, compared to 12% of menⁱ. Yet women are also more likely than men to be remanded in custody. Less than half of women remanded by magistrates' courts and subsequently found guilty receive a prison sentence.

Women in prison have often experienced violence for which they have received no justiceⁱⁱ. This compounds the trauma of the original violence. As a result, many have complex mental health, addiction and other needs. 46% of women in prison report having suffered domestic violence and 53% report having experienced emotional, physical or sexual abuse during childhood. This is likely to be a significant underestimate.

Women Against Rape has worked with rape victims who were accused of lying by police and prosecuted. Some received very long sentence, often longer than those given to men for sexual violence crimes. One was pregnant at the time of sentencing, another the mother of a toddler. They suffered as mothers as well as victims of a miscarriage of justice.

49% of women in custody are reported to suffer from depression and anxiety compared to 19% of women in the general population; half of women prisoners in one study took medication for the central nervous system, compared to just a fifth of men. Of all the women sent to prison, 46% report they have attempted suicide at some point in their lives. Despite accounting for only 6% of the prison population, women account for half of all self-harm incidents in prison. Being separated from their children is a major source of trauma for mothers. Women are fearful of disclosing mental health issues for fear of losing custody of children upon release, or facing punitive action in prison such as segregation and strip searches.

A small [study](#) of 10 women in one prison found that sex workers face the same problems as other women in prison but with additional stigma and discrimination. The view that all prostitution is violence feeds into the policy of imposing "rehabilitation orders" on sex workers which are punitive, and when breached lead to criminalisation.

Sentencing punishes not only mothers but also children

Women are often the primary or sole carer for children, and custodial sentences are felt most acutely by mothers who worry about their children wellbeingⁱⁱⁱ. They have a very negative impact also on children^{iv}. Overall, it is estimated that more than 17,000 children are separated from their mothers by imprisonment.^v Only 9% of children whose mothers are in prison are cared for by their fathers in their mothers' absence and only 5% stay in their own home. The majority end up in state care or adopted, causing life-long trauma as they are permanently separated from their mothers. Thus, innocent children are punished when their mothers are sent to prison – their protection and welfare should be a paramount consideration but it is mostly ignored.

Racism compounds sexism in prison

18% of female prisoners are BAME^{vi}, compared to 14% of the general population⁴ Within this, some groups of women are particularly overrepresented, most notably Black or Black

British women who make up 8.8% of female prisoners, compared to 3.3% of the general population.

Ministry of Justice analysis shows that Black women are about 25% more likely than white women to be sentenced to custody at crown court. Discrimination is particularly noticeable for certain offences. For example, for every 100 white women sentenced to custody at crown courts for drug offences, 227 Black women received custodial sentences.

The family impact of custodial sentencing is particularly acute for Black mothers as more than half of black African and black Caribbean families in the UK are headed by a lone parent, compared with less than a quarter of white families and just over a tenth of Asian families.

Sentencing guidelines: Adding a new mitigating factor

We agree with the consultation response put forward by Level Up and echo all their proposed modifications to the draft mitigating factor as it relates to pregnant and postnatal women in order to “clarify it and strengthen its effect” (see point 2 Level Up).

We agree that there should be:

a new mitigating factor which specifies that pregnancy, maternity and the postnatal period are relevant to the sentencing of a female defendant convicted of any crime, and that an associated explanation should be included in the sentencing remarks.

We acknowledge the 2019 sentencing guideline which sets out how courts should consider the impact of parental imprisonment on dependent children, in line with case law. **However, there is no mandatory requirement to consider the best interests of children or the impacts of sentencing upon them. This requirement should be made mandatory along with consideration of pregnancy, maternity and the postnatal period.**

ⁱ Unless otherwise specified, statistics are taken from: Jane Cox and Katharine Sacks-Jones (2017). Double disadvantage: The experiences of Black, Asian and Minority Ethnic women in the criminal justice system. Agenda and Women in Prison.

<https://womeninprison.org.uk/media/downloads/double-disadvantage-1.pdf>

ⁱⁱ Williams, K. S., & Earle, J. (2017). “There’s a reason we’re in trouble”: Domestic abuse as a driver to women’s offending. Prison Reform Trust. <https://prisonreformtrust.org.uk/publication/theres-a-reason-were-in-trouble>

ⁱⁱⁱ Minson, S. (2019). Direct harms and social consequences: An analysis of the impact of maternal imprisonment on dependent children in England and Wales. Criminology & Criminal Justice, 19(5), 519-536. <https://doi.org/10.1177/1748895818794790>

^{iv} Beresford, S., Earle, J., Loucks, N. and Pinkman, A. (2020), “What About Me?’ The Impact on Children when Mothers Are Involved in the Criminal Justice System”, Lockwood, K. (Ed.) Mothering from the Inside, Emerald Publishing Limited, Leeds, pp. 67-83

^v Kincaid S., Roberts M., & Kane E. (2019). Children of Prisoners: Fixing a broken system. Crest

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