

Motherhood in the Justice System: Overview Briefing

Introduction

Our vision at One Small Thing is a justice system that can recognise, understand, and respond to trauma. Our core focus is on women and their children because of the additional discrimination and disadvantage they face.

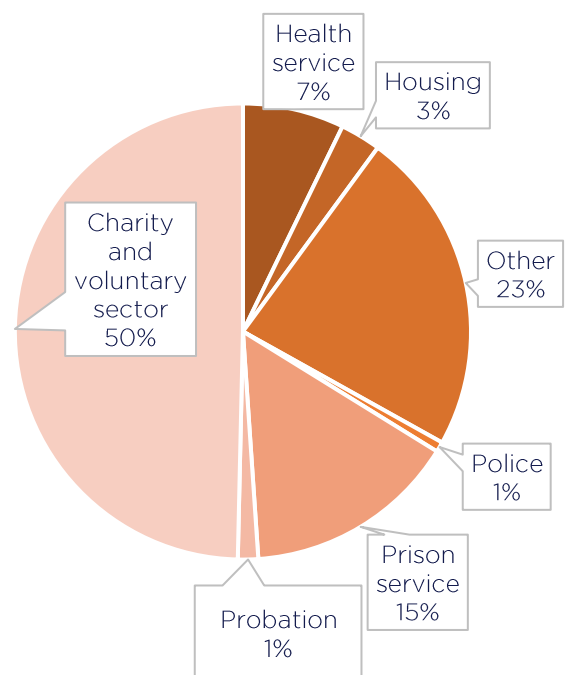
Reducing the harms of maternal imprisonment and preventing intergenerational trauma are key aims for both our operational and policy work. In the last two years we have [supported research on this area](#), interviewed experts for our [Justice Podcast](#), polled practitioners, responded to [policy consultations](#) and opened our residential community [Hope Street](#) as a blueprint for change for mothers and their children.

In this briefing, we bring together this learning, and newly published data from recent polling we have undertaken with practitioners and those in our network. Through our polling we sought to learn more about whether respondents feel motherhood plays a role in the sentencing of women, why they think community sentences aren't being utilised effectively with women, and their thoughts around the imprisonment of pregnant women.

Summary of research

This briefing draws on various sources including in-depth interviews with a range of experts on motherhood in the justice system for our Justice Podcast, our policy responses in this area, and snapshot polling with practitioners through our events and online networks at various points over 2023/24 with response rates of up to 160 people. The questions were co-produced with One Small Thing's Women's Involvement Advisor, who ensures the voices of women affected by the criminal justice system are included across our work.

The largest group of respondents were from the charity sector, followed by justice related statutory roles.



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Key findings

Nearly two thirds of respondents think courts judge women who have committed crimes more harshly if they have children.



Nearly half of respondents think women are given short prison sentences instead of community orders because there are not enough services in the community.



Only 11% of those responding to our survey thought women were given short prison sentences out of necessity for the protection of the public.



Our public polling with Level Up found that 53% of the general public believed a mother with a baby should not be sent to prison with her infant if a community-based alternative was available.



In contrast a much higher 88% of respondents from our network of practitioners do not think it is safe for pregnant women to be in prison.



The main concern raised with regards to imprisoning pregnant women was the risks to the health of the women and their pregnancy/baby.

[Pregnant women] do not get access to maternity care easily. The stress of being in prison and away from support increased maternal cortisol levels and these children are born already thinking the world is a scary place. 1001 days research indicates the importance of the pregnancy.

Respondent to our survey

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Motherhood in Sentencing

An estimated two thirds of women in prison are mothers to children under the age of 18¹. Through our work we hear anecdotally that motherhood plays a role in sentencing, with sentiments along the lines of, 'as a mother you should have known better', being used to apply harsher sentences.



I think women have sometimes been scared that if they do talk about their children, they will be condemned even further, because mothers shouldn't do these things. In research terms we talk about double deviance - that you're bad because you've committed a criminal offence, you're even worse because you're a mother and you've committed a criminal offence.... And some judges have held that view so have been extra punitive to mothers.

Shona Minson, Barrister and Criminologist, on our JUSTICE Podcast¹

The Sentencing Council has explored this and found, 'the data also did not support the co-production partners' claim that women who are carers might receive longer sentences (as sentencers might think "she should have known better")². We asked practitioners whether they think courts judge women who have committed crimes more harshly if they have children. The results show that the perception that motherhood plays a role in sentencing remains.

Do you think courts judge women who have committed crimes more harshly if they have children?



■ Yes ■ No ■ Unsure

¹ Mothers in prison: The sentencing of mothers and the rights of the child – Rona Epstein, Coventry University – Howard League What is Justice? Working Papers 3/2014

² Equality and diversity in the work of the Sentencing Council, Sentencing Council and University of Hertfordshire, 2023

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Why do you think women are given short prison sentences for non-violent crimes³ instead of community orders?

In 2022, over half of women in prison were serving a sentence of six months and less. Nearly 70% of women were in prison for non-violent offences, with a quarter of women being there for theft. Protection of the public is a key consideration in sentencing, and many have therefore highlighted that because of the low risk many women in prison pose to the public, they could be safely managed and supported in the community.

It is estimated that around 60% of women in prison are mothers to children under 18, with women being eight times more likely to take the primary role in caring for children⁴. When a mother goes to prison, their children's lives are significantly affected - 95% of children do not stay in their family home when their mother goes to prison, meaning they may be placed with multiple carers, be separated from siblings, and have to move school⁵.

Community based options include community sentences which come with a variety of requirements such as attending a drug rehabilitation programme, doing unpaid work, having a curfew, or wearing an electronic monitoring tag⁶. Community sentences for women have declined by two thirds in a decade⁷, despite being associated with lower rates of reoffending.⁸ Other community-based options could be a deferred sentence or a suspended sentence, the latter of which accounts for just 3% of all sentences.

As well as the impact community sentences have on the likelihood of reoffending, community-based sentences can mean women aren't separated from their children, and can maintain their support networks in the community.

In our survey to practitioners, we asked why they think women are given short prison sentences instead of community orders. We asked them to pick their top reason from a set of options, the most frequently selected one being 'because there are not enough services in the community', chosen by 46% of respondents.

Services within the community play a vital role in supporting those involved in, or at risk of involvement in the justice system with a wide range of issues that can support them to live free from the effects of crime. According to the Women's Budget Group, *'Many Women's Centres have exhausted the funding options that have kept them afloat in recent years.. and can no longer maintain the 'hand to mouth' existence of managing multiple small grants'* - ultimately leaving them

³ We recognise the categorisation of 'non-violent' crimes is problematic and often misused, for instance for acts of self-defense. Community-based responses should be considered for all women and their children.

⁴ EQUAL LIVES Parenthood and caring in the workplace, Business in the Community, 2018

⁵ 'What about me? The impact on children when mothers are involved in the criminal justice system', Sarah Beresford, 2018, Page 6

⁶ See full list of Community Order requirements on Sentencing Council website [here](#)

⁷ Bromley Briefings Prison Factfile, February 2024

⁸ Hedderman, C. and Jolliffe, D. (2015). The impact of prison for women on the edge: Paying the price for wrong decisions, victims and offenders. International Journal of Evidence-based Research, Policy, and Practice. 10, 152-178.

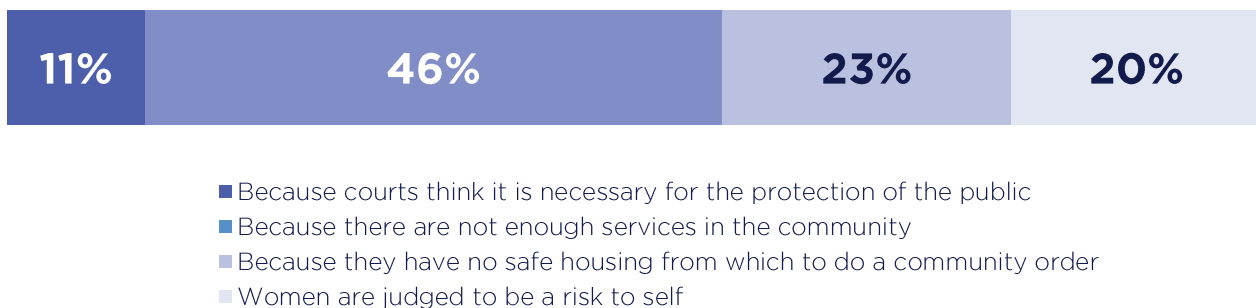
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unable to plan for the future⁹. Vital services, including for those experiencing violence and abuse, are facing devastating cuts.

“As local authorities are cutting to the bone, there is basically nothing left to cut, so everything that is non-statutory is going.”¹⁰

Only 11% of those responding to our survey thought women were given short prison sentences out of necessity for the protection of the public.

Why do you think women are given short prison sentences for non-violent crimes instead of community orders?



Imprisonment of pregnant women

Our public polling with Level Up, covered in the Observer¹¹, found that 53% of respondents believed a mother with a baby should not be sent to prison with her infant if a community-based alternative was available. Only 28% disagreed, with the rest answering “don’t know” (based on 2,026 respondents). A similar majority (53%) believed the long-term effects on a child should be a key consideration when sentencing a mother.

When asked about if pregnant women should go to prison if a community-based alternative is available, the largest group of respondents did not agree at 43%, only 36% agreed and there was a higher proportion of ‘don’t knows’ at 22%.

This is different from the snapshot polling we did within our network of practitioners, many of whom work in and around the justice system and have a closer understanding of the implications of imprisoning pregnant women. From a

⁹ The Case for Sustainable Funding for Women’s Centres, UK Women’s Budget Group, 2020)

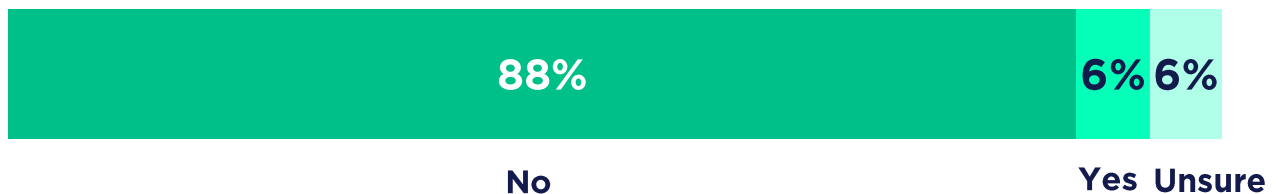
¹⁰ Women’s Budget Group quoted in The Guardian February 2024.

¹¹ https://www.theguardian.com/society/2024/feb/24/pregnant-women-and-new-mothers-shouldnt-be-sent-to-jail-uk-public-says?CMP=Share_iOSApp_Other

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much smaller snapshot sample of 160 respondents in our networks, 88% answered 'no' that they did not think it was safe for pregnant women to be in prison. 6% responded that yes it was safe, and 6% were unsure.

Do you think it is safe for pregnant women to be in prison?



We asked those that answered 'no', why they think we should prevent pregnant women from going to prison. The main concern mentioned was the risks to the health of the women and their pregnancy/baby (10 respondents), 9 focused on the health and wellbeing of the woman specifically, and 3 mentioned only the health of the pregnancy/unborn baby.

Stress and trauma for women and baby

They do not get access to maternity care easily. The stress of being in prison and away from support increased maternal cortisol levels and these children are born already thinking the world is a scary place. 1001 days research indicates the importance of the pregnancy.

Prison is traumatic enough without being pregnant. The effects of trauma and stress on the body, such as increased production of cortisol and reduced effectiveness of the immune system, add an additional layer of risk, without even considering the risk from others - both prisoners and staff within the prison.

Pregnancy is one of the most vulnerable times in a woman's life. She needs to feel calm, supported, emotionally and physically safe, and have the resources to maximise her health. Stress in pregnancy is so damaging to babies.

Healthcare requirements, nutritional requirements, environmental stressors, exacerbated mental health concerns, higher chances of relapse, no social circle of support, etc.

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These quotes reflect what Suzy (not her real name) told us in the Motherhood Series of our Justice Podcast based on her personal experience of being pregnant in prison:

“And it was so frustrating because you feel so helpless. Because you're not in control. Like this is supposed to be my decision my body but as a prisoner, it's almost like you have somebody else making decisions for your needs.”

Suzy, on our JUSTICE Podcast

Within the series we also spoke to Dr Miranda Davies who highlighted the high number of women who end up giving birth in their cells or on route to hospital.

“We were able to show in our work that in 2017/18, one in 10 births were taking place outside of a hospital setting. So this is women either giving birth in a prison cell or on route to hospital. And, you know, we don't want this to happen. And when I discuss this with people who don't know about prisons, they're always horrified that it does happen.”

Dr Miranda Davies on our JUSTICE Podcast

We also spoke to Monica Thomas and Dr Sinem Bozkurt about their research on the experiences of Black and minoritised mothers in the justice system. Monica highlighted that importance of recognising the intersection of racism with experiences of trauma for pregnant women and mothers.

“We already know about the trauma of separation from children, the pressures of being, I suppose, watched and surveilled on the mother and baby unit. But the way in which racism intersects with those experiences, so the weight of being racialized as black and the stereotypes that surround black femininity...”

Monica Thomas our JUSTICE Podcast

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Our polling questions both for the population sample with Level Up, and with our networks, did not specify the level or seriousness of the crime in relation to whether pregnant women should receive custodial sentences. This was intentional to test support for the principle to be applied to all pregnant women, as is the case in a significant number of other Countries¹².

Despite responding to say they did not think prison was safe for pregnant women, one respondent did add to their response: *'Caveat - if they have committed a horrific crime that's a different story.'* This view seemed to be a minority in the responses however, with most supporting a general principle for all pregnant women and their babies.

Two respondents specifically spoke about the risk of intergenerational trauma:

To prevent babies being born into a "system", potentially impacting their own lives as well as the mother who then has to fight for access whilst surviving

It perpetuates a cycle of trauma

Healthcare in prison

One respondent gave an in-depth response about prison healthcare based on their experience working in prison. They did not suggest that pregnant women should be sent to prison, but highlighted that we should consider the lack of healthcare in the community and throughout someone's criminal justice journey, not just in prison:

"I work with pregnant women in prison. I have mixed views on this. Since the death of baby A and baby B, maternity care in prison is the best it's been - sometimes the care provided to women is better than in the community...women I've met in prison have been more engaged with maternity and wider health services in prison than they would be in the community - though their own admission. Women I've met have engaged in antenatal classes in prison, something they said they would never do in the community...

However, I don't believe that women who are pregnant (unless a risk to the public) should be imprisoned... I think there needs to be better services for women who are vulnerable - I just don't think we're there yet. I also think not all women disclose a pregnancy - especially on a short sentence - they go under the radar, slip through the net...Women need to

¹² <https://www.crimeandjustice.org.uk/resources/we-should-stop-sending-pregnant-women-prison#:~:text=Both%20Italy%20and%20Portugal%20have,%2C%20Brazil%2C%20Mexico%20and%20Colombia.>

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know it's safe to disclose or be tested for pregnancy at the start of their criminal justice journey.

They need to know their options at the start and be supported through them. Police teams, court staff, judges, prison staff need to be more informed how to enable and support women at every step; and MBU decisions need to be quicker...Safety in prison for a pregnant woman is a complex question. In some instances I don't believe it's the safest place they can be, but in others - some pregnant women feel safer and have better access to services.

In the motherhood series of our Justice Podcast, Dr Laura Abbott also highlighted the importance of healthcare and access to specialist midwives within prisons if there are still going to be pregnant women there:

“If we've got pregnant women in this country in our prisons, we have to have specialist midwives in our prisons, and I cannot for the life of me think why we don't have that in all of our prisons? I think that is a bit of a travesty, actually.

Dr Laura Abbott on our JUSTICE Podcast

Community alternatives tailored to mothers.

With the Government's announcement of their intentions to suspend sentences of less than 12 months, policy makers and sentencers are seeking solutions to what can be provided instead of a custodial sentence. Through our work and partnerships such as the National Women's Justice Coalition (NWJC)¹³, we are aware that alternatives exist across the country such as diversion schemes, problem-solving courts, support from women's centres and Hope Street our pilot residential community for women and their children.¹⁴ This sector, alongside probation services will need huge investment if it is to meet the needs of the hundreds of additional women who are hopefully no longer sent to custody.

Our polling showed the need not just for community alternatives, but services that are specifically tailored and specialised in meeting the needs of women, and mothers in particular. Excellent specialist services exist such as Birth Companions¹⁵, however in more general support services professionals feedback gaps in process and training around working with mothers.

¹³ <https://wearenwjc.org.uk/>

¹⁴ The NWJC has a map of community provision for women at <https://www.womensservicesmap.com/> More information on Hope Street can be found at <https://onesmallthing.org.uk/hopestreet>

¹⁵ <https://www.birthcompanions.org.uk/>

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As we highlighted in our previous trauma-informed and gender responsive snapshot survey briefing¹⁶ we asked respondents at what stage does their organisation usually find out if a woman they are supporting is a mother (including women whose children no longer in their care).

73% of those responding either know from referral or will ask in their initial assessment whether someone they are supporting is a mother (including for children no longer in their direct care). Considering 92% agreed that their organisation recognises that someone's gender impacts their experiences of trauma and is able to provide relevant support, you could expect this to be higher.

A significant 13% of those responding reported they don't know or don't collect data on whether those they are supporting are mothers. On top of this 8% took a less active approach to finding out this information, finding out during casework meetings in the first few months, and waiting for women to tell them if they decided to. By not asking at all, many women are not having this aspect of their lives recognised. Opportunities to discuss issues such as contact arrangements, or even providing support to grieve the loss of contact with children is missed.

Understanding of family law and care proceedings

As Birth Companions highlight in their *Spotlight: Dual Contact*¹⁷ report, many pregnant women and mothers in contact with the justice system also have contact with children's social care (dual contact), in custody or in the community, which may include experience of child protection and care proceedings.

When asked whether they felt they understood family law and care proceedings, respondents in our network, the majority of whom work in support professions in our sector, said they did not understand (44%), closely followed by 42% who said they did and 14% responded 'don't know'. The largest category of respondents who reported that they did understand family law and care proceedings were from voluntary sector organisations.

Birth Companions recommend: *Those working with women across the criminal justice, healthcare, and children's social care systems need to be better equipped to recognise and respond to the needs associated with dual contact in pregnancy and early motherhood. A joint health and social care pathway for women who are pregnant or have given birth in the last two years is needed...This should include specific reference to the needs of women who are also in contact with the CJS*¹⁸.

One of our survey respondents who works in prisons highlighted:

¹⁶<https://static1.squarespace.com/static/5b2920c1a9e028ee9c2eb7b5/t/659fddd2cbf88a2dac3f6670/1704975828093/Trauma+Informed+and+Gender+Responsive+Working+Snapshot+Survey+.pdf>

¹⁷ [Birth Companions Spotlight on Dual Contact FINAL.pdf](#)

¹⁸ Ibid.

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Other than a distinct lack of equitable support available for women whose pregnancies do not end in a live birth (termination, pregnancy loss or still birth), there are HUGE gaps in knowledge and support around legal proceedings relating to children. Not just in services but for women too - many women do not feel informed, though there are services trying to do good things.

As was highlighted by Dr Laura Abbott in our Justice Podcast, women in prison can be separated from their children without the woman or professionals understanding quite what happened:

“What we’re finding is that, you know, quite often women are separated, and we don’t quite know why. So we don’t know quite what what’s actually happened in that situation for her to be separated, because if she was in the community, she would be looking after her babies, or her children.

Dr Laura Abbott on our JUSTICE Podcast

In another Justice episode, Kate Lill, Women’s Prisoner’s Caseworker from Prison Advice Service shared:

“Anecdotally, I’ve had some cases where actually, we have women who have been told by their children’s social workers, that they no longer have parental responsibility or don’t have any rights now that they are in prison. So it’s actually something that even those who should know exactly how this system works don’t seem to know about. So how is a woman themselves expected to know that they have those rights and have a way of asserting them?

Women have much better access to legal and specialist advice and social workers in the community, the exception being services like the Prison Advice Service, Birth Companions, and pilots such as that run by Prisoners Advice and Care Trust

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(PACT) that saw two family social workers being placed in two prisons for women¹⁹.

Community alternatives allow the potential for women to stay with their children, and appropriate housing and support is needed to help facilitate this. Where there is social work involvement surrounding issues such as domestic abuse, substance use or mental health issues, having a stable and safe home, and access to support makes the outcome of a child's removal into the care system so much less likely.

Birth Companions *Spotlight: Dual Contact* report calls for a dedicated Single Point of Contact in HMPPS/the Ministry of Justice, and a detailed protocol for managing housing and support in ways that reflect the complexities of pregnancy and mothering, including where women are separated from their babies but working towards reunification or maintaining contact. They suggest protocols are needed not just for mothers leaving prison, but also all pregnant women and mothers of infants up to the age of two on bail, licence, community order or suspended sentence so they are prioritised for appropriate housing support with multi-agency input²⁰.

Our survey suggests that there is a need for investment in training and support for professionals in both community and justice sectors around finding out whether women they support are mothers, and providing support around family law and care proceedings if there is social care involvement. It would be unrealistic to expect all practitioners to have detailed legal knowledge, however, to understand the principles and where to refer for further support would make a big difference to women facing social care involvement and potential care proceedings.

Conclusion

Our snapshot polling has suggested that practitioners in our networks do not think community alternatives are effectively utilised as an option by courts, who they see as judging mothers more harshly and giving custodial sentences even though it is not necessary for the protection of the public. The largest group of respondents believed that custodial sentences are only given because there is not enough provision in the community.

A large majority in our networks do not think prison is safe for pregnant women, and it was good to see that although a more marginal result, the majority of the public also do not think pregnant women or mothers with babies should be imprisoned. The excellent network of Women's Centre's and community services across the country need investment to sustain and expand their work, including specific provision and support for mothers.

This snapshot has provided some useful brief insights for One Small Thing, that can be taken forward through our Influence and Educate work strands.

¹⁹ The two social workers from the PACT pilot are also interviewed on the Justice Podcast <https://shows.acast.com/justice/episodes/mothers-in-prison-a-social-work-perspective>

²⁰ [Birth Companions Spotlight on Dual Contact FINAL.pdf](#)

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March 2024