



ACP-UK's RESPONSE TO THE IMPOSITION OF COMMUNITY AND CUSTODIAL SENTENCES GUIDELINE CONSULTATION FEBRUARY 2024

Introduction

We welcome the Sentencing Council's proposals to introduce pregnancy as a mitigating factor, and the inclusion of pregnancy in the Imposition guideline. These are important improvements to sentencing that have the potential to reduce the harm and risk that pregnant women, mothers and their babies are currently subjected to in prison. We acknowledge that the preferred term may be birthing person rather than mother for those who have transitioned or are gender fluid. ACP-UK is responding to the current consultation regarding the Sentencing Council's proposed changes to sentencing guidance and are focusing solely on responding to question 13: *Do you have any comments on the new section on female offenders?*

There is currently nothing in existing guidance for judges to explain the harm that infant separation could cause to mothers and their children, or the stress that imprisonment may cause to a pregnant mother and her baby. As the situation stands now, pregnant women and mothers are at the mercy of judges and magistrates who require well-evidenced guidance to understand their or their babies' needs. Given the devastating harm that separation can – and does – cause, it is essential that all courts are able to make fully informed decisions based on the most up-to-date psychological literature on child development and maternal attachment.

We support the Level Up Campaign's submission regarding their suggested wording of the Imposition.

We support the expert view of the Royal College of Midwives that 'prison is no place for pregnant women' and the Royal College of Obstetricians and Gynaecologists¹ which has emphasised the need for non-custodial alternatives for pregnant women.

¹ Independent (2022) Calls for urgent review over number of pregnant women being sent to prison

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

This statement covers four areas:

1. The risks to mothers
2. The risk to the unborn child
3. The risk to the mother-child dyad
4. Ongoing risks to children

1. The risks to mothers

One hundred and ninety-one pregnant women were held in prison at some point during 2022–23, with an average of 44 at any one time. Forty-four imprisoned women gave birth in 2022–23².

Mothers are already vulnerable and we know that the majority of women in prison (82%) report that they have mental health problems. Women account for a disproportionate number of self-harm incidents in prison despite making up only 4% of the total prison population, and 46% of women in prison have attempted suicide at some point. Inspectors have continued to raise concerns about people in mental health crisis, and women in particular, being held for too long in conditions detrimental to their health and wellbeing. We know that pregnancy, and particularly high-risk pregnancy, must be carefully managed in order to not have a detrimental impact on the woman's body and wellbeing.

Criminal justice proceedings and imprisonment are highly distressing environments for pregnant women.³⁴ Being taken into prison is noted as 'traumatic, deeply distressing and bewildering' for many women, with those who are pregnant and/or separated from their children being most at risk. It is therefore not surprising that pregnant women in prison are at greater risk of perinatal mental health difficulties⁵

Sentencing a pregnant woman to custody means sentencing her to a high-risk pregnancy which in turn leads to an increasing risk of a preterm birth and stillbirth. Pregnant women in prison are seven times more likely to suffer a stillbirth than women in the community⁶. Additionally pregnant women in prison are almost twice as likely to give birth prematurely as women in the general population, which puts both mothers and their babies at risk⁷. More than one in five pregnant women in

² Prison Reform Trust (2024) Bromley Briefings Prison Factfile. <https://prisonreformtrust.org.uk/wp-content/uploads/2024/02/Winter-2024-factfile.pdf>

³ Abbott, L et al (2020) Pregnancy and childbirth in English prisons: institutional ignominy and the pains of imprisonment, *Sociology of Health & Illness* Vol. 42 No. 3 2020 ISSN 0141-9889, pp. 660–675

⁴ Pitfield, C., Binley, J., Soni, S., Pontvert, C., & Callender, M. (2023). A rapid evidence review of clinical risk factors for poor perinatal mental health in women's prisons in England. *The Journal of Forensic Psychiatry & Psychology*, 1-21

⁵ NHS England (2023), [A review of health and social care in women's prisons](#)

⁶ Observer (2023), [Pregnant women in English jails are seven times more likely to suffer stillbirth](#)

⁷ Ibid

prison miss midwifery appointments, increasing the risk of premature birth, miscarriage and stillbirth⁸

The psychological impact of losing a baby through miscarriage and stillbirth is immense, with women suffering high levels of depression and anxiety which can be life-long⁹¹⁰. There is also a significant negative impact on mental health when a baby is born prematurely or sick and requiring neonatal care¹¹.

The evidence also tells us that one in ten pregnant women in prison give birth in-cell or on the way to hospital¹². This leaves women and their babies at higher risk of medical complications, but also results in a lack of privacy, probable lack of effective pain relief, challenges to dignity and appropriate care from experienced professionals. Mothers are psychologically vulnerable during delivery and immediately afterwards and the mode of delivery directly impacts on longer-term mental health outcomes and bonding with their baby, with unplanned deliveries being significantly higher risk in this regard¹³ ¹⁴.

The situation is even more challenging and dangerous for women of colour who face further ethno-cultural barriers when trying to access appropriate perinatal mental health care whilst in prison¹⁵. Women of colour already face multiple health inequalities and poorer outcomes during pregnancy and birth ¹⁶. The needs of marginalised pregnant women should be at the forefront of sentencing decisions, given the shocking health inequalities and outcomes in maternity care that they experience. The national partnership agreement¹⁷ aims to address health inequalities and improve continuity of care both of which are particularly pertinent to pregnant women of colour and those from marginalised communities, who require thoughtful, culturally sensitive, appropriate and supportive care. This is difficult for women to receive in prison where they will have no choice in their

⁸ Nuffield Trust, [Ill-equipped prisons and lack of health care access leave pregnant prisoners and their children at significant risk](#) (2022)

⁹ Campbell-Jackson, L., & Horsch, A. (2014). The Psychological Impact of Stillbirth on Women: A Systematic Review. *Illness, Crisis & Loss*, 22(3), 237-256. <https://doi.org/10.2190/IL.22.3.d>

¹⁰ Nuzum, D., Meaney, S. and O'Donoghue, K., 2018. The impact of stillbirth on bereaved parents: A qualitative study. *PLoS One*, 13(1), p.e0191635.

¹¹ Wang LL, Ma JJ, Meng HH, Zhou J. Mothers' experiences of neonatal intensive care: A systematic review and implications for clinical practice. *World J Clin Cases*. 2021 Aug 26;9(24):7062-7072. doi: 10.12998/wjcc.v9.i24.7062. PMID: 34540961; PMCID: PMC8409189.

¹² Nuffield Trust (2022), [Pregnancy and childbirth in prison: what do we know?](#)

¹³ Dekel, S., Ein-Dor, T., Berman, Z., Barsoumian, I.S., Agarwal, S. and Pitman, R.K., 2019. Delivery mode is associated with maternal mental health following childbirth. *Archives of Women's Mental Health*, 22, pp.817-824.

¹⁴ Tonei, V. (2019) Mother's mental health after childbirth: does the delivery method matter?. *Journal of Health Economics*, 63, pp.182-196.

¹⁶ MBRRACE- UK study (2023) [Saving Lives, Improving Mothers' Care](https://www.npeu.ox.ac.uk/mbrance-uk/reports). <https://www.npeu.ox.ac.uk/mbrance-uk/reports>

¹⁷ National Partnership Agreement for Health and Social Care for England: Improving the quality of services for people in prison and those subject to statutory supervision by the probation service in the community 2022-2025

healthcare providers and limited and no access to specialist teams designed to reduce the high risks they are exposed to.

The early years of a child's life are a period of increased vulnerability for mothers' mental health¹⁸. This vulnerability is increased when mothers have experienced previous negative experiences such as violence¹⁹, and when they have low social support²⁰. These risks particularly apply to women in prison²¹. Therefore this group of women are at a very high risk for mental distress given the likely extensive experiences of trauma, including domestic violence and sexual violence²².

Further to all of this, women in prison are already significantly vulnerable. Given that 31% of women in prison experienced the care system as a child we can see how detrimental this experience can be. There is significant potential for trauma to be transmitted across generations, with children separated from their mothers during custody periods, resulting in some of those needing to be cared for outside the home or in homes that cannot meet their needs. We also know that 50% of women in prison experienced violence in the home as a child and 53% of women in prison experienced abuse as a child²³. The likelihood of this type of significant trauma must be considered when sentencing.

2. The risks to the unborn child and to the infant

It is not possible to separate the impacts on the mother and the child during pregnancy. But a great deal is now known about the impact of stress on babies and children. The first 1,001 days of a child's life (from conception to 2 years) form a critical period that sets the foundations for their lifelong emotional, psychological and physical development.²⁵

Multiple organisations now recognise the importance of these first 1,001 days of a child's life, which for some children includes being in prison. The government's own policy report – *The best start for life: a vision for the 1,001 critical days*²⁶ commissioned

¹⁸ Khalifeh, H., Brauer, R., Toulmin, H., & Howard, L. M. (2015). Perinatal mental health: What every neonatologist should know. *Early Human Development*, 91(11), 649-653.

¹⁹ Howard, L. M., & Bundock, L. (2013). Emotional and physical partner abuse are common in women reporting postnatal depressive symptoms. *Evidence-Based Medicine*, 18(1), e8.

²⁰ Khalifeh, H., Hunt, I. M., Appleby, L., & Howard, L. M. (2016). Suicide in perinatal and nonperinatal women in contact with psychiatric services: 15 year findings from a UK national inquiry. *The Lancet Psychiatry*, 3(3), 233-242.

²¹ Prison Reform Trust. (2015). Bromley Briefing, Autumn 2014. Retrieved from: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Factfile%20Autumn%202015.pdf>

²² McNeish, D. & Scott, S. (2014) Women and girls at risk. Evidence across the life course. North Dalton: DMSS Research.

²³ Prison Reform Trust. (2015). Bromley Briefing, Autumn 2014. Retrieved from: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Factfile%20Autumn%202015.pdf>

²⁵ Department of Health and Social Care (2021), '[The best start for life: a vision for the 1,001 critical days](#)'

²⁶ DoH (2021) *The best start for life: a vision for the 1,001 critical days*. <https://www.gov.uk/government/publications/the-best-start-for-life-a-vision-for-the-1001-critical-days>

by the then prime minister states that, 'We know that these 1,001 critical days (from conception to age 2) are a unique period for a baby that sets the foundations for lifelong emotional and physical wellbeing.'

Exposure to high levels of stress during pregnancy is associated with multiple adverse outcomes for the child and the mother, including emotional problems, symptoms of attention deficit hyperactivity disorder, or impaired cognitive development.¹ High levels of depression and anxiety can have negative impacts on the mother and her unborn child and evidence suggests those who might benefit most from Mother and Baby Unit (MBU) placement are least likely to be admitted²⁷

The Royal College of Psychiatrists recently published a report²⁸ that documents growing evidence that intervening very early on can prevent mental health conditions arising in childhood. It suggests the way forward to protecting the mental health of babies and children is to provide support to the mother in pregnancy, and to work with parents to promote the attachment to their child.

Separation of an infant from their mother, even briefly, can be hazardous and problematic²⁹³⁰ It is established in the psychological literature from animal models that separation and insecurity in the infant attachment relationship has serious physiological effects on nearly every organ in the body. Antenatal stress is proven to increase levels of the hormone cortisol in the mother's body, which, when it crosses the placenta, can affect the health of the baby, brain development, emotional attachment and early parenting interactions.³¹

Both separation from an infant and high levels of stress are likely consequences when incarcerating a pregnant woman and should be avoided at all costs.

3. The mother-baby dyad

Many women who give birth during their time in prison, or who enter prison during the postnatal period, will be separated temporarily or permanently from their baby, interrupting breastfeeding and risking significant trauma at a time in which the mother-baby attachment is shown to be crucial in supporting long-term development.³² Secure attachments support the infant with developing emotional

²⁷ Glover, V. (2014) Maternal depression, anxiety and stress during pregnancy and child outcome; what needs to be done. *Best Practice & Research Clinical Obstetrics & Gynaecology*, 28(1), 25-35.

²⁸ RCoP (2023) 'Infant and early childhood mental health - the case for early action' [https://www.rcpsych.ac.uk/improving-care/campaigning-for-better-mental-health-policy/college-reports/2023-college-reports/infant-and-early-childhood-mental-health--the-case-for-action-\(cr238\)](https://www.rcpsych.ac.uk/improving-care/campaigning-for-better-mental-health-policy/college-reports/2023-college-reports/infant-and-early-childhood-mental-health--the-case-for-action-(cr238))

²⁹ Powell, C., Ciclitira, K., & Marzano, L. (2017). Mother–infant separations in prison. A systematic attachment-focused review of the academic and grey literature. *The Journal of Forensic Psychiatry & Psychology*, 28(6), 790-810.

³⁰ Marrone, M. (2014). *Attachment and Interaction: From Bowlby to Current Clinical Theory and Practice Second Edition*. Jessica Kingsley Publishers.

³¹ Gerhardt, S. (2003) *Why Love Matters: how affection shapes a baby's brain*. Hove, East Sussex: Brunner-Routledge.

³² Abbott, L., Scott, T. and Thomas, H., 2023. Compulsory separation of women prisoners from their babies following childbirth: Uncertainty, loss and disenfranchised grief. *Sociology of Health & Illness*, 45(5), pp.971-988.

regulation skills, developing a model for safe and positive relationships and is a source of support, encouragement and comfort which allows growing children to explore the world and face challenges. Secure attachment is therefore crucial for the developing baby. It is also protective of maternal mental health.

A strong bond with one's baby is key to both the mother's and infant's mental health and wellbeing. Evidence suggests there is little parenting or breastfeeding support for mothers. In addition it has been hypothesised that women who anticipate separation from their baby or fear it are more likely to withdraw, impacting on maternal sensitivity and reflective functioning³⁴

Where there was stronger maternal-foetal attachment the later outcomes for attachment security in infants were improved³⁵. However, it is difficult for expectant mothers to develop a relationship with their foetus with little to no support, whilst being confined and observed. In prison there is no certainty about where they might have their baby and no guarantee of an MBU place. These circumstances drastically reduce psychological safety and inhibit bonding in prison, resulting in a higher likelihood of negative outcomes for the mother and child after birth.

4. Ongoing risks to children

More than 17,500 children were estimated to be separated from their mother by imprisonment in 2020. This statement focuses on the first 1,001 days, but it is important to note that the sentencing of mothers has a significant impact on children whatever age they are.

- *As many as 19 out of 20 children are forced to leave their home when their mother goes to prison.*³⁶
- *The imprisonment of a household member is one of ten adverse childhood experiences (ACEs) known to risk significant negative impact on children's long-term health and wellbeing, their school attainment, and later life experiences.*³⁷
- *Separation for both parent and child is traumatic and can have long-term effects.*³⁸

Children with multiple placement changes have been found to be at particularly high risk for adverse developmental effects, including markedly higher rates of

³⁴ Pitfield, C., Binley, J., Soni, S., Pontvert, C., & Callender, M. (2023). A rapid evidence review of clinical risk factors for poor perinatal mental health in women's prisons in England. *The Journal of Forensic Psychiatry & Psychology*, 1-21.

³⁵ Alhusen, J.L., Hayat, M.J. & Gross, D. (2013). A longitudinal study of maternal attachment and infant developmental outcomes. *Arch Womens Ment Health* 16, 521–529. <https://doi.org/10.1007/s00737-013-0357-8>

³⁶ Home Office (2007) [The Corston Report: A review of women with vulnerabilities in the criminal justice system](#)

³⁷ Felitti, V., Anda, R., Nordenberg, D., Williamson, D., Spitz, A., Edwards, V., Koss, M. and Marks, J. (1998) Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study. *American Journal of Preventive Medicine* 14(4) 245-258

³⁸ Minson, S. (2020) *Maternal Sentencing and the Rights of the Child*. Wiley

externalising and internalising behaviour problems (Newton et al., 2000; Toussaint et al., 2018), and poorer executive functioning (Lewis et al., 2007).^{39 40 41 42}

Sentencers need guidance to prioritise community and suspended sentences to rehabilitate mothers so that they and their children are not additionally impacted. For their children this may be an avoidable state-imposed Adverse Childhood Experience (ACE)⁴³

In conclusion

Mothers and their babies are extremely psychologically vulnerable in the perinatal period, and it is this period that is critical for building strong societies. Prison by its very nature is stressful physically and mentally on the imprisoned, therefore sentencing pregnant women will risk harm on the unborn child. The first 1,001 days of a child's life are a critical period that sets the foundations for their lifelong emotional and physical development⁴⁴. But the risks do not end there, and separating children from their mother at any age due to incarceration can have a significantly negative impact, which can affect every area of the child's life, including their ability to form relationships and to access education and support.

At a societal level it is important for criminal justice policy to be informed by the research literature related to the crucial first 1,001 days of an infant's life. Imprisoning pregnant women runs counter to this given the body of scientific evidence about the factors that negatively impact on child development and the health and wellbeing of mother and child.

³⁹ Forslund, T et al. (2022) Attachment goes to court: child protection and custody issues. *Attachment & Human Development*, 24:1, 1-52, DOI: 10.1080/14616734.2020.1840762

⁴⁰ Lewis, E. E., Dozier, M., Ackerman, J., & Sepulveda-Kozakowski, S. (2007). The effect of placement instability on adopted children's inhibitory control abilities and oppositional behavior. *Developmental Psychology*, 43(6), 1415–1427. <https://doi.org/10.1037/0012-1649.43.6.1415>

⁴¹ Newton, R. R., Litrownik, A. J., & Landsverk, J. A. (2000). Children and youth in foster care: Disentangling the relationship between problem behaviors and number of placements. *Child Abuse & Neglect*, 24(10), 1363–1374. [https://doi.org/10.1016/S0145-2134\(00\)00189-7](https://doi.org/10.1016/S0145-2134(00)00189-7)

⁴² Toussaint, E., Florin, A., Schneider, B., & Bacro, F. (2018). Les problèmes de comportement, les représentations d'attachement et le parcours de placement d'enfants relevant de la protection de l'Enfance et de l'Adolescence. *Neuropsychiatrie de l'Enfance et de l'Adolescence*, 66(6), 335–343. <https://doi.org/10.1016/j.neurenf.2018.07.011>

⁴³ Felitti, V., Anda, R., Nordenberg, D., Williamson, D., Spitz, A., Edwards, V., Koss, M. and Marks, J. (1998) Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study, *American Journal of Preventive Medicine*, 14(4) 245-258

⁴⁴ Department of Health and Social Care (2021), '[The best start for life: a vision for the 1,001 critical days](#)'