

Agenda & Women in Prison
Joint Briefing for Report Stage and Third Reading of the
Police, Crime, Sentencing and Courts Bill
- July 2021 -

Women in Prison (WIP) is a national charity providing support to women facing multiple disadvantage, including women affected by the criminal justice system. We work in prisons, the community and ‘through the gate’, supporting women leaving prison.

Agenda is an alliance of over 100 organisations working in England and Wales to build a society where women and girls are able to live their lives free from inequality, poverty and violence. We campaign for women and girls facing abuse, poverty, poor mental health, addiction, contact with the criminal justice system and homelessness to get the support and protection they need.

Women and girls in contact with the criminal justice system face considerable disadvantage, with their experiences often underpinned by histories of violence, abuse and exploitation, harmful substance use, poor mental health and having no safe place to call home. They tend to be victims of violent crimes like sexual violence and domestic abuse, and the majority of prison receptions for women are for sentences of six months or shorter. **More than half (57%) of women in prison report surviving domestic abuse,¹ and 53% report having experienced emotional, physical or sexual abuse during childhood.²** Both of these figures are likely to be significant underestimates.

Prison is extremely damaging to women, girls and their families. Women and girls are much more likely to **self-harm** in custody than men and boys.³ As women make up a majority of primary care-givers, their imprisonment also **affects thousands of children every year** - with 19 out of 20 children forced to leave their home when their mother goes to prison.⁴

Black and minoritised women and girls,⁵ and care-experienced women and girls, are overrepresented in the criminal justice system and face particular challenges.

The status of the Bill

The Police, Crime, Sentencing and Courts (PCSC) Bill was introduced on 9 March 2021, with its [Second Reading](#) on 15 March, and [Committee Stage](#) concluded on 24 June 2021. Report Stage is taking place on **Monday 5th July**.

Introduction

It is our view that the impact of the PCSC Bill will fundamentally undermine the Government’s ambitions of reducing reoffending and creating safer communities, outlined in the National Concordat on Women at Risk of or in Contact with the Criminal Justice System (2021)⁶ and the Government’s strategy on women in contact with the criminal justice system (2018).⁷

As it currently stands, the Bill runs counter to achieving the Government’s commitment to radically reduce the number of women and girls in prison, as well as prevent families being torn apart by prison.¹ This briefing highlights a number of areas of the Bill that:

- will disproportionately impact negatively on women and girls, particularly women and girls who are primary care-givers and their dependents; Black and minoritised women and girls; and disadvantaged girls and young women;
- can be strengthened to improve outcomes for women and girls and key gaps in the legislation.

This is not an exhaustive list of clauses that will have a disproportionate impact on women and girls, and we refer you to the **‘Other briefings’** section at the end for more resources from our partners on the Bill’s impact.

¹ The Farmer Review found that strong family ties were linked to reduced reoffending, and we know three in five women in prison have children under the age of 18. (Appendix 1, [HM Chief Inspector of Prisons \(2020\) Annual report 2019-20](#))

1. What needs to be removed from the Bill?

Clause	Content	What impact will this have on women and girls?	What needs to happen?
2	Increase in penalty for assault on emergency worker from 12 months to 2 years.	<ul style="list-style-type: none"> Increasing sentence length for this offence will further criminalise women and girls who have already experienced significant trauma and disadvantage. Girls and young women may be more likely to be charged with such offences in response to negative interactions with professionals which trigger past trauma. Black and minoritised women and girls may also be more likely to be charged with this offence due to responses borne out of frustration from facing discrimination over time. This includes the use of restraint which is used disproportionately against women and girls in mental health settings and can be particularly distressing for survivors of physical and/or sexual violence, particularly when carried out by male staff.⁸ This is also the case in youth custody where girls are disproportionately subject to punitive and restrictive interventions (226 incidents per 100 girls in custody compared to 79.2 for boys).⁹ Women and girls feel that staff do not always try to de-escalate a situation prior to using restraint, and report restraint being used in response to girls' exhibiting emotional distress, including the use of self-harm.¹⁰ 	<ul style="list-style-type: none"> This proposed change to the Assaults on Emergency Workers Act 2018 to be scrapped. Police and Crime Commissioners should commission gender-sensitive services to support the distinct needs of women and girls, including specialist services led by and for Black and minoritised groups, fully involving the women and girls' voluntary sector at key stages of the commissioning cycle.
106 & 107	Increase in requisite custodial period	<ul style="list-style-type: none"> This is likely to disproportionately impact Black, Asian and minority ethnic women who are already more likely to be unjustly penalised by judges and juries and subject to longer sentences.¹¹ Statistics from the Ministry of Justice also show that Black women were 25% more likely to receive a custodial sentence than white women for the same offence.¹² Any period of imprisonment has far reaching practical and emotional consequences for families and children. The imprisonment of a household member is one of ten adverse childhood experiences (ACEs) known to have a significant negative impact on children's long-term health and wellbeing, their school attainment, and later life experiences.¹³ The knock-on impact of more people being sent to prison for longer must also be considered within this wider context. 	<ul style="list-style-type: none"> Longer prison sentences do not increase public safety. This was acknowledged by Justice Minister, Chris Philp MP: 'harsher sentencing tends to be associated with limited or no general deterrent effect.'¹⁴ Given average prison sentence lengths have increased in the last three decades, especially for serious offences, the Government must admit that seeking to increase public confidence in the criminal justice system through harsher punishment has not achieved its objective and instead divert resources into specialist services proven to reduce re-offending such as Women's Centres.

<p>124 & 126</p>	<p>Giving individual probation officers the power to restrict a person’s liberty in ways that go beyond what the court has sanctioned, by compelling attendance at additional appointments and increasing curfew periods.</p>	<ul style="list-style-type: none"> • This could have a disproportionate impact on people with disabilities and people with caring responsibilities, who might find it especially difficult to comply with additional appointments or reporting requirements. • Failure to comply with additional requirements could result in breach proceedings and even imprisonment. • These measures could also risk bringing voluntary organisations into the fold of administering punishment. Following the introduction of Transforming Rehabilitation in 2014, post-sentence supervision became enshrined in some specialist services, with the role of some charity staff risking overlapping with the roles of a Responsible Officer. 	<ul style="list-style-type: none"> • Parliament must scrutinise these proposals to better understand how such decisions for additional restrictions are made and can be appealed, and ensure these provisions do not unfairly disadvantage people whose circumstances prevent compliance. • Any action taken to strengthen the powers of Responsible Officers must clearly set out the distinction between those with state powers and independent charities.
<p>139</p>	<p>Creation of Serious Violence Reduction Orders (SVROs)</p> <p>- Introduces a new civil order which can be imposed on a lower standard of proof, but allows for a period of imprisonment of up to two years following a breach of an order’s terms.</p>	<ul style="list-style-type: none"> • SVROs are not set to be applied to children/girls but it is concerning that this remains ‘under review’ and we are concerned that this will widen the net of criminal exploitation for girls (U18). • SVROs will directly impact young women at risk of criminal exploitation, leaving them facing up to 2 years imprisonment for breaking an order not only for possession, but for the possibility they “ought to have known” someone in their company was in possession of a weapon.² • This may particularly impact Black young women. Black girls are significantly more likely to be arrested than white girls,¹⁵ and data from 2016 shows that Black adult women and women of mixed ethnicity were also more than twice as likely to be arrested than white women.¹⁶ Between 2015-19, the number of Black women prosecuted for possession of an article with a blade increased by 71%, compared to a 14% increase for white women.¹⁷ • This clause is in the vein of Joint Enterprise laws which are known to have brought women into the criminal justice system that had no involvement in the alleged offence. Research has found that in 90% of joint enterprise cases against women, they had 	<ul style="list-style-type: none"> • Plans for SVROs should not move forward until data relating to women and girls’ offence types broken down by ethnicity is analysed and reported on. • Remove ‘ought to have known’ provision. • Need for routine enquiry by trained professionals to establish context in which SVRO is being applied, and requirements for police to refer to specialist voluntary women and girls’ services. • Police and Crime Commissioners to pay due regard to women and girls in developing their Police and Crime plans and commission services to meet need based on locally-determined priorities. This should include services to support the distinct needs of girls and young women at risk of VAWG (including criminal exploitation), including specialist services led by and

² Amended 10/2021 to remove “drugs”. SVROs only apply to a bladed article or offensive weapon.

		engaged in no violence at all, and in half of the cases they were not even present at the scene. ¹⁸	for Black and minoritised groups, fully involving the women and girls' voluntary sector at key stages of the commissioning cycle.
Schedule 13 Part 1 Clause 12 and 13	Additional powers to commit a person to custody following breach of community order or suspended sentence order.	<ul style="list-style-type: none"> The introduction of short custodial penalties for breaches of community orders directly contradicts the wealth of evidence that shows the ineffectiveness of short sentences in reducing crime. Statistics show that 48% of women are reconvicted within one year of leaving prison, rising to 73% for sentences less than 12 months.¹⁹ Introducing short custodial penalties for breaches of community orders will increase the already high rates of women being recalled to prison. Since the introduction of Transforming Rehabilitation³ in 2014, there has been a 68% increase in women being recalled to custody following their release. When a primary carer is sentenced to prison, it is not just them who are punished by the state. Children frequently have to leave their family home and their education is disrupted when their primary carer goes into custody, indicating the tremendous and tragic upheaval to the whole family of imprisonment. 	<ul style="list-style-type: none"> These provisions will need close consideration to ensure they do not increase the likelihood of people, particularly those with learning disabilities and primary carers, being unnecessarily breached and recalled to custody.

2. What can be strengthened in the Bill?

Clause	Content	What impact will this have on women and girls	What needs to happen?
7 (4) (5)	<p>Duties to collaborate and plan to prevent and reduce serious violence</p> <p>- Plans to introduce new legal duties on public services to work together to prevent and tackle</p>	<ul style="list-style-type: none"> Expands surveillance and policing of girls and young women, requiring schools, colleges, healthcare services and YOTs to answer to the police around this issue, facilitate access to girls' and young women's private information and communications, and giving the police decision-making powers about funding of interventions to address this issue. With an emphasis on the involvement of criminal justice agencies and education partners, rather than agencies with a focus on 	<ul style="list-style-type: none"> Duties to include children's and adult social care, with these agencies acting as lead partners and data controllers. Local authorities to lead on ensure local systems and services work for girls and young women impacted by serious violence, including:

³ The Offender Rehabilitation Act 2014 introduced post-custody supervision for people serving sentences of less than 12 months which led to the number of women recalled to prison rising dramatically.

	<p>serious violence as part of a ‘public health approach’ announced in July 2019.</p>	<p>safeguarding, this response will mean an increased emphasis on punitive responses, rather than a focus on girls’ and young women’s safety and wellbeing.</p> <ul style="list-style-type: none"> • This will disproportionately impact Black and minoritised and/or working class girls and young women living in more socio-economically deprived communities already more likely to be over-policed and highlights education as a key site of over-policing (and sexualisation)²⁰ of girls via school-based police officers. 	<ul style="list-style-type: none"> a) undertaking local needs assessments to identify where girls and young women ‘fall through the gaps’²¹; b) commissioning of gender-specific services; c) involving the women and girls’ voluntary sector in all stages of the process; and d) providing a platform for development of age-responsive, gender-sensitive and trauma-informed practice.
<p>Schedule 13</p>	<p>Enables the piloting of rehabilitative alternatives to custody, namely problem-solving courts.</p>	<ul style="list-style-type: none"> • We welcome these as they enable many women and young girls to be successfully diverted away from the criminal justice system and into the support they need. However, these will need strengthening in light of their equalities impact. • In order to be considered for a problem-solving court approach, a person must first enter an admission of guilt for the alleged offence. The Lammy Review found that Black, Asian and minority ethnic people are more likely to plead not guilty to alleged offences.²² We know that experiences of racism and lack of trust in the criminal justice system prevents people from feeling that they will be treated fairly if they plead guilty. 	<ul style="list-style-type: none"> • The pilots must work with people who enter not guilty pleas and take measures which can increase confidence in the process to avoid exacerbating the disproportionately harsh treatment that already exists for Black, Asian and minority ethnic people in the criminal justice system. • The problem-solving courts in Greater Manchester have generally been a success as part of the region’s Whole Systems Approach to women at risk of or in contact with the criminal justice system. To ensure the continued success of such initiatives this needs to be backed up by sustainable funding for Women’s Centres which play a key role in delivering the support recommended by problem-solving courts.
<p>131</p>	<p>Use of remand for</p>	<ul style="list-style-type: none"> • It is positive to see that for a remand to custody 	<p>These reforms are</p>

(3) (4)	children	<p>to be deemed necessary, the court must consider that “the risks posed by the child cannot be managed safely in the community”.</p> <ul style="list-style-type: none"> • Too often women and girls are inappropriately remanded into custody. Almost 2/3 of women remanded to prison by magistrates are either found not guilty or are given a community outcome.²³ • Many women and girls are remanded to prison for their “own protection” and/or “welfare”.²⁴ 	<p>welcome but could go further, including:</p> <ul style="list-style-type: none"> • Strengthening wording to more explicitly link support in the community with specialist provision delivered by women and girls’ community-based services. • Offence Conditions to be strengthened so that remand to custody is only possible if a child is alleged to have committed a serious offence and may present a danger to the public. • Introduction of centralised monitoring of this decision-making process, including a recording of gender, ethnicity, age, and offence, alongside the court’s justification.
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3. What is not considered?

Content	What impact will this have on women and girls	What needs to happen?
Ensuring the best interests and welfare of children are considered when sentencing primary carers.	<ul style="list-style-type: none"> • As many as 95% of children are forced to leave their home when their mother goes to prison,²⁵ who is more likely their primary carer.⁴ • The imprisonment of a household member is one of ten adverse childhood experiences known to have a significant negative impact on children’s long-term health and wellbeing, their school attainment, and later life experiences, including life expectancy and the likelihood of being imprisoned themselves.²⁶ Significantly, experiencing parental imprisonment increases a child’s own risk of involvement with the criminal justice system.²⁷ • The Bill’s impact assessment recognises that the changes <i>‘could have a negative impact on</i> 	<ul style="list-style-type: none"> • Currently, sentencers are expected to consider the impact on child dependents. In practice, existing case law and guidelines are not being applied consistently and do not go far enough to uphold the best interests of children in sentencing decisions. • The Bill must require judges and magistrates to give due regard to the impact of a sentence on any dependent children and their welfare when sentencing a primary carer by:

⁴ ‘Primary carer’ is defined here as someone who has substantial care of a person under the age of 18. Where care is equally shared, all carers of that child are a ‘primary carer’.

	<p><i>families as they will be apart for longer’.</i>²⁸</p>	<p>1) Ensuring judges have a copy of the Pre-Sentence Report, considering the impact of a custodial sentence on the dependent child;</p> <p>2) Requiring sentencing judges to state how the best interests of a child were considered;</p> <p>3) Requiring sentencing judges to consider the impact of a custodial sentence on a child when sentencing their primary carer.</p>
<p>Data on primary carers in prison and their children.</p>	<ul style="list-style-type: none"> • There is currently no accurate, reliable or publicly available data on the number of parents in prison and the number of children affected. • Data on this is central for policymakers to understand the nature and scale of parental imprisonment and monitor the number of dependent children affected by the provisions in the Bill. • This is also crucial for enabling social care and children’s services to adequately meet their needs. 	<ul style="list-style-type: none"> • The Bill must be amended to introduce mandatory data collection on the number of people with parental responsibility, whether they are primary carers, their custodial sentence and the number of children they have responsibility for - and for this information to be regularly published. • The information would be gathered at the point of sentencing and strictly only with the person’s consent, ensuring Government takes reasonable steps to enable the central collation of data when it is made available.
<p>Addressing the high and unnecessary use of remand.</p>	<ul style="list-style-type: none"> • Figures show that many women remanded into custody do not go on to receive a custodial sentence—in 2019, two thirds (66%) of women remanded by the magistrates’ court and two-fifths (39%) by the Crown Court did not receive a custodial sentence.²⁹ • The use of remand is also racially disproportionate, with Black women being 29% more likely than white women to be remanded in custody for the same offence when before the Crown Court.³⁰ 	<ul style="list-style-type: none"> • The Bill must repeal the power of the criminal courts to remand people into custody for their own protection (or in the case of a child, for their own welfare) pending trial or sentence. • The Bill must require judges to consider the impact on a child of the decision of not granting bail when determining, in criminal proceedings, whether to grant bail to a primary carer of that dependent child.

Other briefings and information

- [Criminal Justice Alliance & EQUAL coalition briefing](#) concludes the PCSC Bill risks deepening racial inequality in the criminal justice system and sets out the clauses which are indirectly discriminatory and assesses the evidence and relevant information contained in the equality statement and/or equality impact assessment.
- [Alliance for Youth Justice briefing](#) highlights clauses that should be removed which will exacerbate inequalities and increase the criminalisation and incarceration of children and puts forward suggested provisions to ensure custody is a last resort and enshrine welfare and rights-based approaches in children’s sentencing legislation.
- [Prison Reform Trust briefing](#) examines Part 7 (sentencing and release), Part 8 (youth justice), Part 10 (management of offenders) and Part 11 (rehabilitation of offenders).
- [Friends, Families and Travellers briefing](#) outlines some context on Part 4 (‘unauthorised encampments’) of the PCSC Bill which will criminalise trespass and further compound inequalities experienced by Gypsies, Traveller and Roma communities.

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¹ Prison Reform Trust (2017) [There’s a reason we’re in trouble” Domestic abuse as a driver to women’s offending](#)

² Women in Prison, [Key Facts](#)

³ Ministry of Justice (2021) [Safety in custody quarterly: update to December 2020](#)

⁴ Home Office (2007) [The Corston Report - A review of women with vulnerabilities in the criminal justice system](#)

⁵ The term ‘Black, Asian and Minority Ethnic’ is commonly used in policy and commissioning contexts but can collapse together a broad range of differences between individuals, as well as reinforcing the idea that certain groups automatically occupy a minority position. Drawing on [critical analysis](#) of this term, we refer to ‘Black and minoritised’ girls and young women. Whilst groups can be ‘minoritised’ in a number of ways, we specifically use this term to highlight the way in which certain racialised or ethnic groups are constructed as ‘minorities’ through processes of marginalisation and exclusion.

⁶ Ministry of Justice (2021) [Concordat on women in or at risk of contact with the Criminal Justice System](#)

⁷ Ministry of Justice (2018) [Female Offender Strategy](#)

⁸ Agenda (2017) [Agenda briefing on the use of restraint against women and girls](#)

⁹ Youth Justice Board and Ministry of Justice (2020) [Youth Justice Statistics 2018/19 – England and Wales](#)

¹⁰ Agenda (2020) [Struggling Alone: Girls’ and young women’s mental health](#)

Agenda research published in: Plan International UK (2020) [The State of Girls’ Rights in the UK: 2019-2020](#)

¹¹ Women in Prison (2017) [Double Disadvantage](#)

¹² Table 5.3, Ministry of Justice (2016) [Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales](#)

¹³ 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

¹⁴ <https://questions-statements.parliament.uk/written-questions/detail/2021-02-19/155490>

¹⁵ Ministry of Justice (2017) [Women and the Criminal Justice System 2017](#)

¹⁶ All Party Parliamentary Group on Women in the Penal System (2019) [Arresting the entry of women into the criminal justice system](#), The Howard League

¹⁷ Ministry of Justice (2021) [Women in the CJ: Local Data Tool](#)

¹⁸ Clarke, B. and Chadwick, K. (2020) [The criminalisation of women convicted under joint enterprise laws](#)

¹⁹ Ministry of Justice (2016) [Women in the Criminal Justice System 2017](#)

²⁰ Kids of Colour (2020) [The Extreme Policing and Hyper-Sexualisation of School Girls’](#)

²¹ Agenda and Alliance for Youth Justice (2021) [FALLING THROUGH THE GAPS Young women transitioning to the adult justice system.](#)

²² Lammy, D. (2017) [An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system](#)

²³ Howard League for Penal Reform (2020) [Reset: Rethinking remand for women](#)

²⁴ Howard League for Penal Reform (2020) [Prison for their own protection: The case for repeal](#)

²⁵ Home Office (2007) [The Corston Report - A review of women with vulnerabilities in the criminal justice system](#)

²⁶ 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

²⁷ Farrington, D. P., Barnes, G. C., & Lambert, S. (1996). The concentration of offending in families. Legal and criminological psychology, 1(1), 47-63.

²⁸ Ministry of Justice (2020) [Police, Crime, Sentencing and Courts Bill: Changes to release policy for serious offenders](#)

²⁹ Ministry of Justice (2020) [Statistics on Women and the Criminal Justice System 2019](#)

³⁰ Table 5.3, Ministry of Justice (2016) [Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales](#)