

# Position Statement

Perinatal women in the  
criminal justice system



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# Position Statement

## Perinatal women in the criminal justice system

# RCM Position

### A First 1001 days approach to maternity care in the criminal justice system

- A specific Prison Service Instruction should be developed for perinatal women<sup>1</sup> to cover every women's prison in the UK, taking a First 1001 days<sup>2</sup> approach. It should ensure that maternal and newborn health is not compromised by imprisonment. It should include those women who have experienced miscarriage, stillbirth, or who have been separated from their babies.
- Every aspect of the criminal justice system should be aligned towards ensuring mothers and babies are kept together wherever possible and in the best interests of the child. The criminal justice system should be cognisant of the linkages between infant and maternal health and the long-term health and social consequences of separation, including on future offending.
- All national justice and health organisations across the UK must take a collaborative and partnership approach to caring for perinatal women, being mindful of the journey across criminal justice system services and jurisdictions that perinatal women make at this vulnerable time in their lives. They must adhere to the principle of equivalence of care, where all women in the criminal justice system should have the same access to healthcare as anyone else.
- In order to help shape services and improve accountability, data on the number of perinatal women experiencing contact with the criminal justice system must be recorded and published, along with data on the outcomes for pregnant women in prisons, including the number of miscarriages, stillbirths and serious incidents while in custody. The National Probation Service's data recording on pregnancy and maternity as protected characteristics should be standardised in order to improve transparency and accountability.

### Sentencing

- All judges and magistrates should receive training on infant-maternal health and the importance of the First 1001 days of child development to enable them to fully understand the impact of any proposed sentence and to enable them to ensure any sentence is proportionate taking into account the caregiver and the child's Article 8 rights to family life. The courts must minimise the use of imprisonment for primary carers, recognising that this usually severely disrupts a child's life. Diversion to specialist services or community sentencing should be prioritised for perinatal women wherever possible.
- Women should be asked sensitively and in private about any caring responsibilities they have or if they are pregnant, at any contact with the criminal justice system including by the police, Liaison and Diversion, and in court.
- If a woman has made it known that she is pregnant and/or she has caring responsibilities, this must be taken into account in any judgement made in any court. A 'pre-sentence report' should be used to communicate information about caring responsibilities, including the likely impact of a custodial sentence, to the judge or magistrate. A sentence should not be handed down unless a pre-sentencing report, which contains sufficient information, is available at the sentence hearing.
- If no information is provided to magistrates or judges, they should demand it be provided to them before any judgment is handed down.
- If a custodial sentence is decided upon, there should be a presumption of eligibility for a Mother and Baby Unit (MBU) place for all mothers with infants under two years, with the onus on the assessment panel ruling otherwise. Social workers responsible for handling MBU applications should ensure they complete their assessments promptly in order for judges to be sure of the consequences of a custodial sentence during the first 1001 days period.
- The Welsh government should commission an independent review of the implications of incarcerating mothers where no local women's prison is available, taking into account the devastating effect separation has on infants and mothers. The Review must assess the current use and potential opportunity of community sentences in Wales to reduce reoffending and keep family units together.

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### Probation and suspended sentences

- All reasonable efforts must be made to respond to the needs of perinatal women while on probation and serving community or suspended sentences. This should include scheduling of visits with probation officers, provision of childcare and child-friendly visit locations (for example co-locating services in women's centres) and commissioning specialist support services from the voluntary sector where appropriate. The onus should be on probation services to keep mothers and babies together and allow children to keep their routines.
- We support the Baroness Corston's recommendation that women's centres should also be used as court and police diversions, as part of a package of measures for community sentences and for delivery of probation and other programmes.
- Women who have been released but are on home detention curfew (or "tag") or are on a curfew as part of a community sentence should be able to have their tag removed or repositioned while in labour or earlier in pregnancy should this become uncomfortable or provide a barrier to receiving care. Probation services need to respond flexibly and take account of the specific needs of perinatal women.
- There are geographical challenges posed in ensuring continuity of care in the transitions from community to prison, and prison to community, given the distances women travel in order to serve a custodial sentence. RCM supports multi-disciplinary teams working across community and custody to streamline pathways.

### Maternity care in prison

- All UK women's prisons should implement the Birth Companions' *Birth Charter*<sup>3</sup> in full and without delay. Prison Inspectorates in all four parts of the UK should audit women's prisons against the standards outlined in the Charter.
- NHS Trusts and Boards local to women's prisons should work in partnership to facilitate a specialist midwife to care for the pregnant women. The RCM endorses the model implemented at Low Newton and guidance in the HM Probation Service's *Working with Women in Custody and the Community*.<sup>4</sup>
- All women in prison must have equivalent maternity care to those women on the outside. Any delay or reduced access to any treatment including terminations constitutes a gross violation of women's rights.
- Midwives can play an important role in ensuring that women's care is not compromised, for example, by requesting that officers remove restraints that are being applied inappropriately and that officers are not present for examinations while women are giving birth or while confidential medical information is being discussed. A woman's feeding choices and decision to have skin to skin contact with her baby should also not be compromised by officers being present.
- Continuity of midwifery care should be a default care pathway for women in prison because of its ability to improve maternal and neonatal outcomes for vulnerable women.
- Women attending hospital appointments and giving birth while in custody should not be handcuffed and their dignity and privacy should be respected.
- Pregnancy tests in prison must not be mandatory and refusals to participate in testing must not carry any penalty.
- If a baby is born during a mother's sentence, the mother and child should be discharged from hospital directly to a MBU. Where a baby is born soon before a mother's sentence begins, a place in a MBU should be secured before the sentence begins.
- All prisons should support pregnant women and mothers leaving prison with their babies with enhanced pre-release planning and 'Through the Gate' support, tailored to women's individual needs to facilitate a safe transition into the community. This should include routine housing support and links with community and voluntary organisations. Prisons must adhere to the Duty to Refer obligations laid out in the Homelessness Reduction Act 2017 to reduce the risk of homelessness.<sup>5</sup>

## MBUs in prisons

- Separation of mothers from their babies should be considered a serious incident and avoided unless absolutely necessary to guarantee safety of mother or baby. All women who are separated from their babies because of being in the criminal justice system should have access to counselling and a referral to mental health support if appropriate.
- Prisons must provide information to support women in their MBU applications. Social workers should be expected to attend MBU Boards in order to be able to answer questions and fully explain the positions they have taken in their assessments.
- There must be more transparency and consideration of harm in the decision-making around MBU access. We would like to see data collected on applications, appeals, reasons for acceptance/refusal against established criteria and the times taken for each stage.
- The RCM does not support maximum or minimum ages for babies being housed in MBUs. Each case should be assessed on an individual basis, with input from a multi-disciplinary team and in line with evidence relating to the critical nature of the first 1001 days.

## Workforce

- All women's prison staff, Liaison and Diversion workers and probation staff who work with women should receive dedicated training on the needs and experiences of perinatal women and their babies in the criminal justice system, especially on the effects of separation.
- Black, Asian and Minority Ethnic (BAME) women are overrepresented in the criminal justice system and we support culturally-informed training for staff in offender management and rehabilitation. This will increase staff awareness of the impacts of culture, faith and sustaining family relationships for BAME women in the criminal justice system.
- Health inspectorate teams going into the women's estate should include a midwife to assess the healthcare needs of perinatal women.

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# Background and Context

### Women offenders

The number of women in all parts of criminal justice system every year in the UK is dwarfed by the number of men. Consequently, criminal justice policy and practice has tended to ignore the specific healthcare needs of women, including those who are pregnant or new mothers. Women make up fewer than 20 per cent of those arrested, around 28 per cent of prosecuted or convicted people, 15 per cent of offenders in the community and only 5 per cent of the prison population in England and Wales.<sup>6</sup> On average female offenders commit less serious offences than male offenders and pose a lower risk to public safety but are imprisoned at a higher rate.<sup>7</sup>

There are around 4,000 women prisoners at any one time in England and Wales.<sup>8</sup> Female offenders can be amongst the most vulnerable of all offenders due to the complexity of their needs. Many experience chaotic lifestyles involving substance misuse, mental health problems and homelessness. Offending behaviour is often the product of a life of abuse and trauma.<sup>9</sup> Women offenders have greater underlying health issues than women in the general population.<sup>10</sup>

In 2009 it was estimated that almost 12,000 0-2 year olds had a parent in prison<sup>11</sup> and around 100 babies are born to women in prison every year.<sup>12</sup> A snapshot of English and Welsh prisons found 97 pregnant women in custody on 31 December 2017.<sup>13</sup> However, there are still no routinely collected statistics on the number of women who give birth whilst in custody, who are pregnant or new mothers when sentenced, or who are given custodial sentences when pregnant or caring for their babies.

Imprisoning mothers disrupts not only her life but destabilises the lives of her children. In Scotland, only 17 per cent of children whose mothers are in prison live with their fathers,<sup>14</sup> and in England and Wales only 5 per cent of children whose mother is sent to prison each year are able to stay in the family home.<sup>15</sup> 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.<sup>16</sup>

BAME women make up 18 per cent of women in prison and are disproportionately represented. The impact of custodial sentencing on children 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.<sup>17</sup> Women from minority ethnic groups report experiencing discrimination from staff and other prisoners and feeling less safe than white British women in prison. In addition, some women may face language and cultural barriers.<sup>18</sup>

### Sentencing

Justice agencies in all four parts of the UK have committed to making better use of non-custodial sentencing to reduce the likelihood of reoffending, improve rehabilitation support and keep families together. Positive steps have included the imposition of a new guideline on community and custodial sentences and new training materials for the judiciary. However, there remains a gap in the understanding of the courts as to the consequences of imposing a custodial sentence on a pregnant woman or new mother.<sup>19</sup>

The number of women in prison has more than doubled since 1993 while the number of community sentences has halved in a decade.<sup>20</sup> In 2018 in England, 82 per cent of women sentenced to prison had committed a non-violent crime<sup>21</sup> and 62 per cent were serving a sentence of six months or less;<sup>22</sup> in Scotland, the latter figure was 75 per cent in 2012. The Ministry of Justice acknowledge that short custodial sentences offer limited public protection, are less effective in reducing reoffending than community orders and fail to offer time for meaningful rehabilitative activity. Yet they impose significant and wide-ranging damage on mothers and children causing crises in employment, housing and contact with dependents.

Evidence suggests that magistrates and judges have a poor understanding of the needs of perinatal women and infants and that probation services could do more to safeguard the health and wellbeing of mothers and their children. The Corston Report was clear in 2007 that 'there are many women for whom prison is both disproportionate and inappropriate.' It described sending women to prison 'for their own good, to teach them a lesson, for their own safety or to access services such as detoxification' as 'appalling'.<sup>23</sup>

Focus groups held in 2017 with BAME women in the criminal justice system found 'there had not been an opportunity for their stories and circumstances to be taken into account during their trial. Many of the women felt that important issues had

not been considered, such as their responsibilities to their families and children.<sup>24</sup> Complicating matters, many women find disclosing details about their circumstances to criminal justice system staff very difficult, especially when in fear of losing access to their children.<sup>25</sup>

## Perinatal women in prison

Successive research studies have found outcomes can be poor for pregnant women in prison.<sup>26</sup> They are more likely to book late for antenatal care or have their care disrupted, not receive adequate food and nutrition during pregnancy and postpartum, and have a premature or small-for-dates baby.<sup>27</sup> Ethnographic research of pregnant women and new mothers in three English prisons found some women were scared of violence, left to beg for essentials like nutrition, sanitary products and breast pads, and chose to attempt to hide their pregnancies. However, for others, prison was a refuge or 'safe haven', and a catalyst for change, especially when given the opportunity to live with their baby on a MBU (see below).

There are also concerns that prison staff may be making decisions for which they are unqualified, putting women, babies and themselves at risk. Lack of training means some staff are not aware of protocols and procedures around responding to calls for assistance and the basic needs of pregnant and postnatal women, and women in labour.<sup>28</sup>

Currently there are a number of specialist midwives caring for pregnant women in prison, and continuity of midwifery carer models could greatly improve the outcomes for women in prison.<sup>29</sup> There is also good evidence for peer-support programmes that provide perinatal women with a trusted advisor and advocate, helping to navigate confusing and sometimes hostile prison and probation processes and spaces.<sup>30</sup>

The RCM supports and endorses the *Birth Charter for Women in Prison in England and Wales*, a 2016 publication of the charity Birth Companions whose volunteers provide support to perinatal women in prison. The Charter<sup>31</sup> outlines specific standards of care that we believe every perinatal woman in prison should receive. Since the publication of the Charter, those responsible for the commissioning and delivery of prison healthcare have begun to pay more attention to women in the justice system, with various policy documents having been published by both health and justice bodies.<sup>32</sup>

One example is Lord Farmer's 2019 report on women in the criminal justice system, which focussed on women's family relationships to reduce reoffending. In addition, the incarceration of women has been the subject of parliamentary committee inquiries.<sup>33</sup> Despite this, there are still huge gaps in maternity care for women in prisons. Whilst guidance exists for the running of MBUs,<sup>34</sup> there is no specific healthcare directive for pregnant women or new mothers in the prison system in any of the four parts of the UK.<sup>35</sup> We believe that the care of perinatal women in prison is an area in which a national guideline is appropriate to ensure consistency of care and implementation of the highest possible standards. The *Birth Charter* should be the foundation of this.

## The impact of separating mothers from babies; and MBUs

The First 1001 days is a lens many organisations in maternity and public health are using to focus action on pregnant women, new mums and their babies to reduce inequalities at the start of life and enhance long-term health outcomes.<sup>36</sup> We believe this same lens should be applied to women in the criminal justice system, whereby pregnancy and new motherhood is seen as a continuous period of time where the mother-infant bond is established in utero and allowed to flourish. A growing body of literature highlights that separation of mothers from their babies is exceptionally distressing for women and can affect their mental health and wellbeing in prison, and have lasting effects on their children.<sup>37</sup>

Research into maternal death in the UK finds that separated women are especially at risk of self-harm and suicidal ideation, and resulting recommendations call for prison staff to 'receive additional training on the distinctive features of, and risks associated with, perinatal mental illness'.<sup>38</sup> In relation to the child, early separation negatively affects the infant's biological responses to stress, and those babies who encounter adversity and

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### The impact of separating mothers from babies; and MBUs continued...

stress are at significantly increased risk of depression, anxiety, behavioural disorders, substance misuse and cancer as they grow into adults. Children of prisoners have three times the risk of delinquent/antisocial behaviour compared to their peers.<sup>39</sup> In contrast, strengthening family relationships is described by Lord Farmer as 'utterly indispensable' to improving the lives of women in the criminal justice system, is associated with reduced rates of reoffending, with knock-on benefits to children.<sup>40</sup>

As the long-term health impacts of separating infants from their mothers are so severe, whilst there continues to be imprisonment of perinatal women, MBUs must be seen as essential to allow women to serve their sentences in a safe environment that supports the pivotal infant-mother bond. Currently, six prisons in England and one in Scotland have MBUs. However, there is no automatic placement of new mothers and their infants into MBUs to serve their sentences and only approximately 50 per cent of women will gain a place.<sup>41</sup> The Farmer Review concluded that MBUs are underutilised.<sup>42</sup>

In Wales the new blueprint for Female Offenders pledges to 'establishing services to improve and maintain links with children and families'<sup>43</sup> but currently, like Northern Ireland, Wales has no MBU for women prisoners. A snapshot in September 2017 found over 200 Welsh women were serving their custodial sentences in England, putting them far away from their families and dependent children.<sup>44</sup>


For pregnant women in custody, the process of applying for a place on a MBU is confusing and the subsequent panel decisions are opaque.<sup>45</sup> Delays to the decision cause great distress as pregnant women wait to know whether they will lose custody of their newborns.<sup>46</sup> For women who are caring for their babies at the time of going to court, the panel decision on access to an MBU usually only follows after a woman is sentenced and in custody, so separation has already taken place. The RCM believes the processes and decision-making to grant access to MBUs deserve greater scrutiny and transparency as the health impact of separating mothers from their babies is so grave. The RCM supports the principle of diversion directly to an MBU which would help ensure the MBU approval panel paperwork is approved prior to sentencing, rather than waiting until a woman is in custody.





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