

No Births Behind Bars and Level Up  
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Rt Hon Brandon Lewis MP  
Lord Chancellor and Secretary of State for Justice  
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Rt. Hon Lord Burnett of Maldon  
The Sentencing Council for England and Wales  
The Royal Courts of Justice  
East Block, Room EB16  
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23rd September 2022

Dear Justice Secretary and Chair of the Sentencing Council,

Following the release of more data detailing the horrific picture of pregnancy in women's prisons, and on the third anniversary of the tragic death of a baby inside HMP Bronzefield in 2019, we are writing to demand an urgent review into the sentencing of pregnant women and new mothers.

On the 22nd September 2019, an 18-year-old woman remanded in HMP Bronzefield gave birth in her cell alone. Despite requesting help she did not receive any medical assistance. After giving birth alone, she bit through the umbilical cord to free her baby. She was found in her cell the following morning; paramedics called to the scene were unable to resuscitate the child [1,2]. Her devastating case alone should have been enough to prevent any pregnant woman being held in prison again – yet, in June 2020, a pregnant woman in HMP Styal, Louise Powell, also gave birth without medical assistance, to a baby named Brooke that died.

These two preventable baby deaths should have been the catalyst for real change in the sentencing and remand of pregnant women, yet the latest data from the Ministry of Justice shows that little has changed. In the past year alone, and in the wake of the deaths of Baby A and Baby Brooke, 50 births took place in prisons, on the average week 29 pregnant women were held in prison, and 40 babies have been held in prison with their mothers. The data also shows that birth outcomes are worse than previously reported [3].

**Facts on pregnancy in UK prisons:**

- Pregnant women in prison are five times more likely to suffer a stillbirth than women in the community [4].
- Pregnant women in prison are almost twice as likely to give birth prematurely as women in the general population, which puts both the mothers and their babies at risk [5].
- One in ten pregnant women in prison give birth in-cell or on the way to hospital [6].
- At least two babies have died in women's prisons in the past three years.

Even if their baby does not die, research into the experiences of pregnant women in English prisons found that pregnant women faced severe stress, were unable to access basic comfort, adequate nutrition or fresh air and that the fear of potential separation from their baby or shame of being made an incarcerated mother was debilitating [7]. A substantial body of evidence shows that consequently, mothers and infants held in custody during pregnancy and infancy face serious health risks, and developmental trauma. 50% of mothers and babies are separated from each other, and even if held in a Mother and Baby Unit (MBU) both mother and baby are cut off from essential family and community support at a critical time in the baby's life.

Pregnancy and the first months of a baby's life are of critical importance; they are their developmental building blocks for life. Psychological research has long established that secure parent-infant relationships underpin good physical and mental health and wellbeing across a child's lifespan. Babies are highly dependent on parent-infant interactions to shape their rapidly developing nervous system, emotional and behavioural self-regulation [8], with the first postnatal year being most important. Prison will never be the best start in a child's life. The consequences and impact of a prison sentence for a mother and her child, even from a short sentence, are often disproportionate to the offence.

Prison is not and cannot ever be a safe place for pregnant women, new mothers and their infants will not ever receive equivalence of care to those in the community. In 2021, the Prison Ombudsman described all pregnancies in prison as 'high risk' [9]. Deciding that a child should be born in prison, with all the known risks of that situation for the child in both the short and long term, is to discriminate against that child in breach of Article 2 of the United Nations Convention on the Rights of the Child, which has been ratified by the UK. Imprisoning pregnant women and new mothers also flies in the face of the UN Bangkok Rules on women offenders and prisoners [10]. Prison is not and cannot ever be a safe place for pregnant women, new mothers and their infants, regardless of the small prison policy changes that have been promised in MoJ guidance. The best way to keep both mothers and babies safe is to keep them out of prison entirely.

### **Sentencing and bail decisions**

We are a broad coalition of groups and individuals including lawyers, midwives, medical professionals, psychologists, academics and parents who know firsthand how important pregnancy and the first months of a baby's life are in their development. The criminal courts are failing to properly consider the needs of pregnant women, new mothers and their infants in sentencing and bail decisions. The rights of the child are at stake when a parent is sentenced or remanded in custody, but courts often fail to weigh the child's right to parental care and non-discrimination, and the consequences of remand or a custodial sentence for that child, against the alleged or proven offence [11]. The criminal courts, despite attempts to train judges to act differently, continue to make decisions that cause unnecessary and serious harm to children both before and after their births [12].

The government and Sentencing Council can and must change sentencing and bail practices. There is no statutory duty for judges to take pregnancy or parenthood into consideration when sentencing or making a decision on bail, and there are no specific medical or psychologically-informed sentencing guidelines to assist sentencers when for sentencing pregnant women and new mothers, despite the vast amount of research and evidence available to inform such guidelines.

Women form just 4% of the prison population in England and Wales and a minority of that 4% are pregnant at the point of their sentencing. Three in five women enter prison for six months or less. According to a study published earlier this year, the most common offence among pregnant women in prison was shoplifting [13]. Eleven countries (including Russia, Brazil, Mexico, Italy and Portugal) have laws against the imprisonment of pregnant women, with alternatives in place [13]. We would suggest there is a strong argument for all women to be kept in the community, not in prison, and the case for using only non-custodial sentences for pregnant women and new mothers is evidence-based and inarguable.

### **The alternative**

All evidence suggests that, instead of custodial sentences, women swept up in the criminal justice system should receive support in the community at properly resourced women's centres that can help tackle the proven driving causes of crime: domestic abuse, poverty, addiction and homelessness. Given these drivers, rehabilitation should be the focus of sentencing. Women's centres are community-based services that tailor support around women's specific needs to address the root causes of complex problems that women with multiple disadvantages face. The Prison Reform Trust found that 57% of women in prison reported being a victim of domestic violence [14]. A report from Her Majesty's Inspectorate of Probation has found that community women's centres, which help women to build the capacity to address their issues, rather than just addressing offending behaviour, are a far more cost-effective response than custody and are proven to reduce reoffending [15].

You have the opportunity to stop the senseless and needless harm, including loss of life, being caused by imprisoning pregnant women and new mothers. Please act without further delay:

1. Enter dialogue with us to work towards a sentencing guideline that specifically informs judges on the risks and factors to be taken into account when considering sentence for a pregnant woman or mother of an infant;
2. Address ministers and MPs on the need for a statutory duty, in light of the research above, to consider the pregnancy or new motherhood of a woman when making decisions on bail and/or sentence.

Yours sincerely,

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Elsbeth Windsor, DPhil Candidate and Research Assistant, Faculty of Law, University of Oxford

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