



Birth Companions

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Moves to limit prison custody for pregnant and postnatal women are welcome—and long overdue

New guidance from the Sentencing Council is a positive step towards limiting the harm of prison custody on pregnant and postnatal women and their babies

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Pregnancy, birth, and the postnatal period can be difficult, complex, and anxious times for any woman and her family, but imagine navigating that critical period while in custody. Prisons are not, and will never be, safe or appropriate places for pregnant or postnatal women. Many countries around the world limit or actively prohibit the use of prison for pregnant women and mothers of infants, but here in England there are no such restrictions. New guidance from the Sentencing Council for England and Wales is a welcome, and long overdue, step towards limiting the use of prison custody for women during this critical period.¹

Last year, government figures showed that at least 194 women spent time in prison while pregnant, and 44 gave birth while being held in custody.² We know that 40 women successfully applied to keep their baby in their care on a prison mother and baby unit,² but data on how many women are separated from babies because they're in custody are not available.

The health risks for mothers and babies in custody are substantial. Pregnant women in prison miss over a fifth of their midwifery appointments and nearly two thirds of their obstetric appointments.³ Rates of premature birth are twice as high for women serving prison sentences than for women in the community³; and around 1 in 10 births happen during transfer to hospital or within prisons themselves.³ Clearly, custody carries real and immediate threats to the lives of women and babies.

We and many others, including the Royal College of Midwives⁴ and the Royal College of Obstetricians and Gynaecologists,⁵ have been campaigning to end the use of custody for pregnant women for decades. The tragic deaths of two babies in the prison estate in 2019 and 2020 catalysed efforts to improve the care given to women held in the 12 women's prisons across the country.⁶ The deaths led the NHS to categorise all pregnancies in prison as "high risk" owing to the unsafe nature of the custodial environment.⁷ Yet change in sentencing practice, to reduce the number of women entering prisons in the first place, has been glacially slow.

Thankfully, in March this year, we saw a breakthrough. The Sentencing Council for England and Wales—the body responsible for the guidelines informing sentencing decisions—announced that pregnancy, birth, and the postnatal period will be included as a specific mitigating factor to be considered by magistrates and Crown Court judges.⁸ This is a huge step forward and a clear acknowledgment of the substantial risks that the

prison system poses to pregnant women, new mothers, and babies.

This decision followed research, commissioned by the Sentencing Council and led by the University of Hertfordshire, looking at equality and diversity in sentencing.⁹ Birth Companions contributed to that research and was the first to argue for the need for a specific mitigating factor to ensure that sentencers consider women's pregnancies, births, and postnatal care in their decisions.

The new mitigating factor, which took effect on 1 April 2024, states that sentencers should tackle several factors when considering a custodial or community sentence for a woman who is pregnant or has given birth in the previous 12 months. This includes the effect of the sentence on the woman's physical or mental health and any detriment to the baby. The guidance directs courts to address these issues when giving reasons for the sentence decided upon.

Following Birth Companions' recommendations, the mitigating factor also references the harmful effects of separating mothers and infants in the first two years of life. We had strongly urged the council to extend their definition of the postnatal period to cover two years after birth. This would have brought it in line with HM Prison and Probation Services' policy framework¹⁰ and with the period recognised by the government¹¹ and many others^{12 13} as the "critical 1001 days" from conception to a child's second birthday. Although it is disappointing that the council limited the mitigating factor to 12 months postnatally, we hope that further training and support on fulfilling the needs of pregnant and postnatal women will ensure that sentencers take full account of the many risks and complexities associated with this period.

The Sentencing Council has sent a powerful signal with this decision, and we hope that magistrates and judges will take heed. But we also know that guidance alone will not be enough to keep women and babies safe. We and others will continue to campaign to end the imprisonment of pregnant women and mothers of babies in all but the most exceptional circumstances.

Most women in prison serve short sentences and frequently lose their homes, jobs, and custody of their children. Community based alternatives can prevent this from happening and have been shown to be far more effective than custody in tackling the drivers of women's offending^{14–16}—primarily unmet mental health needs, experience of trauma and abuse, or poverty. The government repeatedly asserts its own

commitment to reducing the female prison population, yet the number of women in prison continues to rise and is projected to rise substantially in coming years.¹⁷ Many women are held on remand, for long periods of time, and then released without a custodial sentence.¹⁸

The prison system is on its knees and can't possibly respond to the multiple, complex health needs of pregnant and postnatal women and their babies. Ending the use of prison for these women, be that sentences, remand, or recall, is the only way forward. This new mitigating factor sets us in the right direction—but more than guidance, we need concrete policy and sentencing reform.

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