

Building an Effective Criminal Justice System
Labour National Policy Forum Justice and Home Affairs Policy
Commission

Joint response: women in the criminal justice system

June 2019



Response to the Labour National Policy Forum Justice and Home Affairs Policy Commission: How can we rebuild the criminal justice system to prevent reoffending and provide real opportunities for rehabilitation?

Introduction

As a group of voluntary sector organisations from the women's and criminal justice sectors, we welcome the opportunity to respond to this consultation.

Women in the criminal justice system face considerable disadvantage with backgrounds of mental ill health, addiction and experiences of domestic and sexual abuse. They tend to be the victims of violent crimes like sexual and domestic abuse and commit non-violent crimes like handling stolen goods and shoplifting.

Because they commit less serious offences, most women in prison are on remand or serving short sentences. This provides little opportunity to address the underlying causes of their crimes or prevent their reoffending, with great impact on their lives and that of their families.

The solutions to reducing women's offending lie outside the criminal justice system, yet community provision is under resourced and faces ongoing cuts, and specialist services like women's centres are under increasing strain.

We would like to see a clear call from Labour's National Policy Forum for diversion of women from the criminal justice system.

To achieve this, we need to see substantial and long-term investment in specialist women's services in the community, accompanied by cross-departmental leadership, stronger co-operation between central and local government and ring-fenced funding. We need to see an end to the use of short sentences, a gendered approach to sentencing, and greater gender-responsiveness in the probation system, to ensure that women's needs and roles as carers are taken into account.

Experiences of women in the criminal justice system

The majority of women in the criminal justice system are highly vulnerable, with extensive experiences of abuse and violence, often combined with serious mental ill-health, substance misuse, poverty, and experiences of homelessness.

- More than half (57%) of women in prison report having suffered domestic violence,ⁱ and 53% report having experienced emotional, physical or sexual abuse during childhood.ⁱⁱ Both of these figures are likely to be significant underestimates – 80% of women attending Brighton Women's Centre's Inspire programme report experiences of abuse, for example.
- Women account for 16% of self-harm incidents in prison despite making up only 5% of the prison population.ⁱⁱⁱ
- A third of female offenders were in care as children – their complex needs go back to childhood.^{iv}

Black, Asian and minority ethnic women (BAME) are overrepresented within the criminal justice system and face particular challenges.

- 18% of female prisoners are BAME, compared to 14% of the general population.^v Within this, 8.8% of female prisoners are Black or Black British,^{vi} compared to 3.3% of the general population.^{vii}

- Foreign national women are more likely than British women^{viii} to be victims of human trafficking and modern slavery and to have been coerced into offending as part of that experience.

Prison is extremely damaging to women and their families.

- Up to 60% women prisoners do not have homes to go to on release.^{ix} Many sleep on the streets the night they leave prison, with reports in 2016 of women leaving HMP Bronzefield with tents and sleeping bags.^x
- Prison environments are often risky and retraumatising, and do not provide adequate support for women with complex needs. Ninety seven women have died in prison since 2007, and 2016 was the deadliest year on record with 22 deaths in women's prisons.^{xi}
- 95% of children who are separated from their mother by imprisonment have to leave the family home to go into care or live with relatives.^{xii} Because there are so few women's prisons, women are often held far away from home, making family ties and support difficult to maintain.

Courts

It is not in the interest of society or the individual for persistent low-level offenders to serve very short sentences in prison, further exacerbating problems of overcrowding, and reducing their chances of rehabilitation. How can sentencing be rationalised to address these issues?

Short sentences

Prison is not effective for most women. Most women entering prison under sentence (83%) have committed a non-violent offence, meaning the majority (62%)^{xiii} serve short sentences of less than six months, leaving little opportunity for meaningful rehabilitative work. Forty eight per cent of women are reconvicted within one year of leaving prison, a figure which rises to 61% for sentences of less than 12 months.^{xiv}

We want to see a presumption against sentences of less than six months, as recommended by Revolving Doors Agency's 'Short Sighted' campaign.^{xv} Investment should be diverted to women's community services in order to support this transition.

Sentencing

The primary focus on risk and reducing reoffending rates fails to take account of the wider outcomes that are meaningful to women.^{xvi} Many women present very low levels of risk to the public but do experience significant vulnerabilities, high levels of need and are often at high levels of risk themselves.

Sentencing guidelines should be gender sensitive and recognise the particular needs and experiences of women including the high levels of vulnerability they can face. Full consideration should be given to women's circumstances in sentencing decisions. Women's stories should be taken into account and pre-sentence reports (PSRs) should be more widely used. Women's support workers are needed in court to ensure gender specific PSRs are produced which accurately reflect women's experiences, including of abusive relationships, mental health problems and caring responsibilities. Sufficient time is needed to produce effective PSRs, and women should always be provided with a copy of any PSR produced, and these should be translated for women who speak English as a second language.

There are also significant issues of disproportionality to address. Statistics show, for example, that: Black women are about 25% more likely than white women to be sentenced to custody following a conviction. Please see below for more on the issue of disproportionality. ^{xvii}

Domestic abuse

Women in prison and the criminal justice system have frequently experienced high levels of domestic abuse and sexual violence. One study by The Disabilities Trust found that of 173 women screened at HMP Drake Hall, 64% reported a history indicative of brain injury and for most this was caused by domestic violence. ^{xviii} Coercive, controlling and unhealthy relationships can also have an impact on their offending, with 48% of women compared to only 22% of men, saying that they had committed offences to support someone else's drug use. ^{xix}

Despite these links, there is currently no effective defence in criminal law for those whose offending is driven by domestic abuse. Whilst anyone who offends and is a victim/survivor of domestic abuse is entitled to have their experience taken into account at each stage of the criminal justice process, as set out in Crown Prosecution Service (CPS) guidance, this frequently does not take place. ^{xx} We support calls from the Prison Reform Trust to introduce a statutory defence for women whose offending is driven by their experience of domestic abuse. ^{xxi}

Caring responsibilities

Women in prison are far more likely than men to be the primary or sole carer for children. ^{xxii} Every year an estimated 17,000 children experience their mother being sent to prison: only one in 20 children whose mother is sent to prison each year is able to stay in the family home. Women's custodial sentences can have a very negative impact on children. ^{xxiii} Many face significant financial hardship, separation from siblings, disruption through being forced to move or change schools, and can feel a range of range of emotions including grief, trauma, and shame as a result of their mothers imprisonment. ^{xxiv}

Case law, and the United Nations Bangkok rules, are clear that the impact of a sentence on an offender's children should be taken into account in sentencing if the offender is a primary or sole carer. ^{xxv} Wider familial caring responsibilities should also be considered.

Sentencers must ask if women have dependent children before making decisions, and have regard to these caring responsibilities when determining sentences. Sentencing practice should be standardised, to ensure that an otherwise proportionate sentence is not made disproportionate by its impact on any children or other relatives they care for. Data should be collected on women who have dependent children to raise awareness of the extent of this problem and provide greater levels of support.

Clare's* son went to live with her aunt while she served a custodial sentence. When she was in prison, Clare signed a form to allow her aunt to look after her son long-term - a decision she later regretted and felt she had not been supported to properly consider or understand.

"When I got out, I realised I couldn't have my son back and I just lost it. I also went through another pregnancy in custody and I was told the child was going to be removed at birth. That just made me worse."

Community sentences

For women who are carrying out community sentences and who are the sole or primary carer for a child or other relative, some requirements can be very difficult to meet. For example, a curfew which does not allow a woman to leave her home in time to drop her children at school or attend hospital appointments, or a requirement that she regularly sign in at a police station during school holidays may cause significant challenges, especially to women who are socially isolated or living in poverty.

Putting women in a position where they must choose between caring responsibilities and the requirements of their sentence increases the risk of breaches,^{xxvi} and sets women up to fail with a risk of ending up in custody even if they are otherwise willing to engage with their sentence. Any community sentencing requirements should recognise a woman's support needs and must not prevent them accessing other support services.

Some groups of people, for instance women offenders or people from a BAME background, are much more likely to receive a custodial sentences for a first offence. What can we do to tackle underlying biases within the criminal justice system so sentencing is applied fairly?

There are suggestions that some sentencers view prison as “places of safety” for women with vulnerabilities and opt for a custodial sentence because they believe women are at risk or will not be able to access support in the community. There needs to be a clear message that prison should not be used in this way and alternative support must be made available to ensure a community sentence is a viable option.

Women from ethnic minorities face particular disadvantages. Forty per cent of Asian women who received convictions in 2015 had no previous convictions, for example, compared with 12% of white women. Women within the Chinese and ‘other ethnic’ category are 89% more likely to be arrested than white women.^{xxvii} Women from minority ethnic groups report feeling less safe in custody and have less access to mental health support.^{xxviii}

Agenda and Women in Prisons’ research, Double Disadvantage, found that Black, Asian and Minority Ethnic women had experienced discrimination and inequality at all stages of the criminal justice system.^{xxix} They felt their voices had not been heard, that prejudice and subconscious ethnic or racial bias affected their treatment, and that there was a lack of cultural and religious sensitivity amongst those working in the system.

“Women are treated lesser than men and I think Black, Asian people are treated lesser than white people so if you are a black or Asian woman... You're already at a disadvantage, a double disadvantage.”
Woman with lived experience

Action must be taken to address discrimination and disproportionality throughout the system. This should include an examination of magistrates’ verdicts with a particular focus on those affecting BAME women, as recommended in the Lammy Review, evidence-based cultural and gender awareness training across the criminal justice system, greater attention to relevant cultural factors and pressures in PSRs, and further investment in specialist women’s community support and sentencing options to meet the emotional and practical needs of women from minority ethnic groups.

Data on gender and ethnicity must be uniformly collected across the system and analysed to monitor these inequalities, and strategies and policies at all stages of the system must take the needs of BAME women into account to tackle discrimination and reduce disproportionality.

Offender Management

How should the criminal justice system work with other public bodies to ensure people convicted of low-level offences are not dragged into a cycle of reoffending?

Early intervention and police diversion are crucial in order to prevent women being dragged into a cycle of reoffending. Early intervention with girls and young women can take many forms, including family support for children, healthy relationships advice and education, and gender-responsive mental health support services. These services need to be commissioned and funded outside of the criminal justice system as their target beneficiaries are girls and women at risk of offending, rather than women who have already entered the criminal justice system.

Police diversion schemes are another option for early intervention for women who have committed low-level offences, with a possibility of diverting away from court proceedings and of women avoiding a criminal record altogether. Women's centres and services are well placed to carry out police diversion schemes with women in partnership with the police.

Women's centres can also offer strong available options for community sentencing to magistrates at point of sentencing. Magistrates need to be aware of women's services in their area, and establish good working relationships in order to make best use of these community sentencing options. Not all local areas have women's centres or services, however, so in order for this become a reality, significant investment in a network of women's centres and services across the country is needed.

Which public services beyond the criminal justice system should be included in offender management?

Many of the solutions to reducing women's offending lie outside the criminal justice system. The system should be redesigned in response to this, with responsibility for reducing women's offending shared between relevant departments locally and nationally. There must be a sustained focus on preventing the disadvantages that underlie much of women's offending alongside efforts to divert women away from the criminal justice system into community alternatives.

A shift in focus is needed away from addressing the challenges women face through a justice lens towards a 'whole system' approach.^{xxx} This could then shape intervention points, pathways and types of support needed throughout the system, including substance misuse, mental health, housing, children's services and women's centres.

Improvements in mental health provision, treatment for addictions and social care in the community to help women address their needs earlier would reduce the number of women coming into contact with the criminal justice system in the first place. Greater provision of gender-responsive Mental Health Treatment and Drug Treatment Requirements as part of sentences and Liaison and Diversion schemes should be available for women.

Insecure housing and homelessness are significant drivers of women's offending and barriers to desistance. Homelessness can be both a cause and effect of imprisonment, with many women committing offences simply to get a roof over their heads and a majority of women leaving prison without a secure home on release. For offender management to be successful it is therefore crucial to include housing solutions in any criminal justice strategy.^{xxxi}

Community based services such as mental health, substance misuse and domestic abuse are under pressure and specialist services for women are few and far between. Around 75% of those in drug treatment services or homeless hostels are men which means they can be intimidating and sometimes unsafe place for women and women can be deterred from accessing them. Many services lack an understanding of the specific needs and experiences of women.

Mapping the Maze, a report by Agenda and AVA (Against Violence and Abuse) found patchy provision of services for women facing addiction, homelessness, contact with the criminal justice system, and mental ill health, with a woman's ability to access services being dependent on where she lives. ^{xxxii}

Wherever possible, support should be delivered holistically rather than through a range of separate services. Women's centres offer a range of different services. They can provide the joined-up support women need, reduce the number of times a woman has to retell her story, and can support women into further specialism where needed.

Cross-departmental leadership, stronger co-operation between central and local government and ring-fenced funding is essential to deliver this kind of effective community support for women. The introduction of a central government funding pot drawn from different budgets, including housing and health, for gender-specific and trauma-informed women's centres would be highly effective way of delivering this.

At a local level, commissioning should recognise the need for services which can respond to women's needs holistically, and commissioners must work together to ensure dedicated women-only services for women with complex needs are available.

If there is a presumption against short sentences, how can we ensure community-based alternatives, command the confidence of the public and the criminal justice system, as well as provide a chance for effective rehabilitation?

Specialist women's services have a proven track-record of providing effective therapeutic and practical help and interventions that support rehabilitation and help women turn their lives around. ^{xxxiii} Ministry of Justice's own analysis shows a statistically significant reduction in re-offending rates for those who receive support from women's centres. ^{xxxiv} The Greater Manchester's Women's Support Alliance, a model of nine centres across ten local authorities, for example, found a drop in the local reoffending rate to 15-17% compared to a national average of 22.9%. ^{xxxv}

Evidence suggests this type of model could also deliver significant cost savings to society in the short and long term. Analysis in 2014 found that for every £1 invested in support-focused alternatives to prison for women, £14's worth of social value is generated over ten years. ^{xxxvi}

Community provision for women, however, is under resourced and faces ongoing cuts. An ongoing climate of competitive tendering and short-term funding has significant resource implications for small to medium organisations. In recent years funding pressures have meant many services have struggled to maintain support. Some have closed completely.

The Transforming Rehabilitation (TR) reforms have put many women's services under great strain, with large degrees of risk having to be shouldered by what are primarily small or medium sized organisations. Some specialist services have not felt able to deliver support under TR due to the contractual complexities and constraints, and many have had to make up the funding gaps they faced from elsewhere.

Sustainability and continuity of existing Women's Centres is vital to maintain expertise, partnerships and relationships that are necessary for joined-up interventions. Sentencers will only have confidence in community alternatives to custody if they know these are sustainable and durable.

Specialist women's services must be core to the future delivery of probation, to ensure their knowledge and skills are properly utilised, with their voices and expertise properly listened to and taken account of as meaningful partners. Far greater transparency about the levels of funding and types of services being commissioned for women is needed.

We would like to see investment in a national network of women's centres accessible to women across the country. Funding must be long-term and sustainable to provide ongoing support to women and support the core running of these vital services. Projects currently have to operate over short term periods, and a focus on further innovation can make it hard to prove the success of existing interventions. For sentencers to have trust in women's community sentencing alternatives, long-term funding and investment in monitoring and evaluation is needed to build robust evidence about what works.

What changes need to be made to the management of women offenders in order to create a presumption against custodial sentences for non-violent offending?

A gender-informed probation service

The number of women recalled to custody following their release has increased by 127% since the extension of mandatory supervision, compared to a 14% rise for men.^{xxxvii} It is essential that all aspects of probation policy and practice are gender-informed. Much more must be done centrally to monitor and hold the probation service to account for meeting the needs of women.

Future probation arrangements must work to shift the focus towards providing greater specialist support for women, and to understanding women's lives and needs, in order to reverse this worrying trend. Many instances of women's recall are related to non-engagement and non-compliance, for example missed appointments, rather than committing further offences.

Access to community services, the quality of relationship between a woman and her offender manager, and the type of support and supervision they provide, are all critical factors. Probation services must also take account of women's role as carers, and community supervision needs to take into account that women may have conflicting responsibilities or appointments, such as taking children to and from school.

“Eventually, I got a top probation officer. I cannot deny it, she was amazing. No one worked extra like her. Even when she should've probably took me back to court, she knew I was involved in domestic violence so she didn't, as long as I kept in contact with her on the phone or something.”
Alison*

Probation staff should receive training about the realities of women's lives, including the likelihood of histories of abuse and violence, the impact of trauma, and the role that caring responsibilities and identities play in women's lives. More support is needed to ensure probation staff fully understand and are supportive of the need for woman-centred, trauma-informed and holistic approaches, including providing women only reporting sessions and women's single point of contact link workers.

Probation requirements frequently fail to respond to women's responsibilities as mothers. Women may not be able to bring their children with them to probation appointments, or childcare responsibilities may prevent them from being able to comply with certain requirements. Probation officers must be aware of these potential barriers and take steps to avoid them, including offering appointments in locations like women's centres where childcare can be provided. They must also be trained to understand the impact on children and families for breaching and recalling women who are mothers.

Conclusion and recommendations

There is now widespread recognition that a different approach is needed for women in the criminal justice system. To deliver appropriate and effective gender and trauma-informed solutions, sustained effort is needed to invest in support outside of the criminal justice system, alternative models to custody and to divert women wherever possible away from the criminal justice system at the earliest possible opportunity.

As a group of organisations working with and campaigning for women in the criminal justice system across the country, we are calling on Labour to make women a priority in their future justice policy, and commit to tackling this issue.

In particular, we recommend:

1. A national network of gender-specific and trauma-informed women's centres and services, open to all women who need it, must be adequately and sustainably funded and commissioned.
2. A central government ring-fenced funding pot drawn from different budgets for the core services of women's centres would be a highly effective way to increase the resilience of these organisations.
3. Cross-Government leadership and stronger cooperation between central and local government aimed at delivering effective community support for women, including across mental health provision, addiction treatment, housing, health and social care.
4. A presumption against sentences of less than six months, with investment diverted to women's community services to support this transition.
5. A gendered approach to sentencing that recognises women's particular needs and experiences, including of the impact that sentencing has on children.
6. The introduction of a statutory defence for women whose offending is driven by their experience of domestic abuse.
7. Action to address discrimination and disproportionality of outcomes amongst Black, Asian and minority ethnic women, including a review of sentencing decisions, cultural and gender awareness training, effective data collection and analysis, and further investment in specialist women's community support.
8. Greater use of police diversion schemes, delivered through women's centres, as an early intervention for women who have committed low-level offences.
9. Greater gender-responsiveness in the probation system, with a shift towards providing greater specialist support for women, and to understanding women's lives and needs.

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Endnotes

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