



Level Up is a campaigning organisation working towards an end to the imprisonment of pregnant women and mothers. In response to the deaths of two babies inside women's prisons, in 2021 we launched our ['No Births Behind Bars' campaign](#) with [Women In Prison](#) and [Birth Companions](#). The NHS and Prison Ombudsman has since declared all pregnancies in prison are "high-risk". This means any court sentencing a pregnant woman to prison is sentencing her to a high-risk pregnancy, which is why we are urgently concerned about the detrimental impact the Sentencing Guidelines (Pre-Sentence Reports) Bill will have on pregnant women facing custody, as well as mothers of young children, who are innocent third parties whose rights have historically been marginalised in the sentencing process.

### **Concerns with the Sentencing Guidelines (Pre-sentence Reports) Bill?**

This Bill provides that sentencing guidelines about pre-sentence reports may not include provision framed by reference to an offender's 'personal characteristics'. It therefore **removes any direction within any Sentencing Council guidelines for sentencers to obtain a PSR before sentencing a pregnant woman or mother of an infant**. This means that an existing protection included in the current [mitigating factor for pregnancy and the postnatal period](#), which directs sentencers to obtain a PSR before sentencing and adjourn sentencing until one is available, will become unlawful.

While the government has stated that the Bill will not prohibit a Court from directing PSRs for pregnant women – and does not seek to undermine established case law such as [R v Thompson \[2024\] EWCA Crim 1038](#), which states that PSRs are desirable in the sentencing of pregnant women and mothers – that is exactly what it will do. **In the absence of clear directions for courts to obtain a PSR for pregnant women and mothers who face a potential prison term (and whose children will be impacted by their incarceration), there is no guarantee that magistrates and judges will order PSRs for these women**, given their wide discretion not to under section 30 of the Sentencing Code. It is because of that lack of direction that the Court of Appeal has had to intervene on so many occasions, as set out below, and the mitigating factor for pregnancy and the postnatal period was introduced in the first place.

**The government has put in jeopardy the widely-acknowledged need to reconsider the incarceration of pregnant women and mothers of dependent children.**

On 7 May 2025, in the Second Reading of the Bill in the House of Lords, Lord Timpson said: "*singling out one group over another undermines the idea that we all stand equal before the law...*" This is a misunderstanding of how the law has operated to date, to the detriment of women, amongst others. As is well-established, women are frequently victims as well as offenders, the impact of custodial sentences on them is often quite different, and in law, true equal treatment may not mean treating everyone the same. In the words of one of the most eminent jurists of our time:

*"It is now well recognised that a misplaced conception of equality has resulted in some very unequal treatment for the women and girls who appear before the criminal justice system. Simply put, a male-ordered world has applied to them its perceptions of the appropriate treatment for male offenders... The criminal justice system could... ask itself whether it is indeed unjust to women."* ([Baroness Hale DBE, 2005 Longford Trust Lecture](#))

## **What risks do pregnant women and mothers face in prison?**

Pregnant women in prison are:

- [Seven times more likely to suffer a stillbirth](#);
- [Twice as likely to give birth prematurely](#);
- [Twice as likely to give birth to a baby that needs specialist neonatal care](#);
- [Five times more likely to miss vital midwifery appointments due to staffing issues](#).
- Not guaranteed a place in a prison Mother and Baby Unit, which means a pregnant woman's entry into prison often ends up in separation from her infant. [The first 1,001 days of a child's life](#) are a "critical period of brain development that sets the foundations for their lifelong emotional, psychological and physical health". As found by the [Lost Mothers Project](#), separation creates significant trauma for both mother and child, disrupts an infant's established breastfeeding as well as the mother-baby attachment, causing long-term developmental harm.

Risks to mothers and their dependent children:

- [19 in 20 children are forced to leave their home](#) when their mother goes to prison;
- The Sentencing Council, in its now-paused [revised Imposition guideline](#), recognises: "There is an emotional impact for those children resulting in shame, stigma, anger, grief and behavioural changes. Those dependent children consequently have an increased likelihood of committing criminal offences, mental health problems, substance misuse and other social issues";
- Children are deeply affected by the incarceration of their mothers, as is set out above, and it is their right to family life, as protected under Article 8 of the ECHR which is engaged too, when their mother is taken from them. This is why, in 2019, the Parliamentary Joint Committee on Human Rights' inquiry '[The Right to Family Life: Children Whose Mothers Are in Prison](#)' recommended that judges must not sentence mothers or primary carers without a pre-sentence report.

## **Courts are dangerously unaware of these risks**

This is evidenced by three indicators:

1. 215 pregnant women were held in custody between 2023-4;
2. Six successful sentence appeals in 2024 where the [Court of Appeal quashed custodial sentences issued by the lower courts to pregnant women and mothers of dependent children](#);
3. In focus groups conducted by the Sentencing Council in 2023 as part of their consultation on the new mitigating factor, [sentencers expressed predominantly neutral or negative views as to whether pregnancy and the postnatal period should be a mitigating factor](#). Worryingly, sentencers also questioned the above statistics, which are drawn from NHS birth data, on the impact of prison on pregnant women.

It is critical that courts are directed to obtain a PSR before sentencing a pregnant woman or mother of a dependent child. [Only 14% of women are prosecuted for indictable offences](#), which means the vast majority of pregnant women and mothers of infants are sentenced by magistrates – volunteers who undergo less than four days of training – and represented by underpaid, overworked criminal defence practitioners. Without formal guidance on PSRs, the fate of pregnant women and mothers is perilously left in the hands of people who may sentence them to prison without recognising the damage this causes.

**Solution:**

**In the immediate**, it is critical that the government reinforces the need for PSRs for pregnant women and mothers of dependent children. **The Bill must be amended in order to preserve existing protections for pregnant women and mothers of dependent children included in the *mitigating factor for pregnancy and the postnatal period*, which will be removed once this Bill passes into law.**

The proposed amendment is as follows:

***Clause 1, page 1, line 14, at end insert-***

***“(13) For the purposes of this section, “personal characteristics” do not include pregnancy or maternity”***

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