



House of Commons

House of Lords

Joint Committee on Human
Rights

Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill

First Report of Session 2021–22

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 12 May 2021*

*Ordered by the House of Lords
to be printed 12 May 2021*

HC 90
HL Paper 5

Published on 14 May 2021

by authority of the House of Commons and the House of Lords

Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publication

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Summary

Over two parliaments, the Joint Committee on Human Rights has been concerned with children's right to family life being breached when their mothers are sentenced to prison. When a mother is sentenced to prison, children themselves receive their own sentence to serve.

The Committee has consistently made the case for children to have greater visibility when their mother is sentenced to prison. Children are hidden from sight because there is no central or consistent way of collecting information on children whose mother is sentenced to prison. This has serious implications for the support available to the separated mother and her children, and impedes the design of services that are vital to support these children and go some way to ensuring that their right to family life is not breached. Their voices are too often ignored or not heard when their mother is sentenced, despite case law and guidelines that should ensure that their best interests and welfare are considered.

The Government has been taking only small steps in rectifying this, despite the attention brought to the issue by this Committee, and despite the Government's "ambitious programme of sentencing reform". In our report, we set out amendments to the Police, Crime, Sentencing and Courts Bill which would enable the Government to stride forward with steps that match its ambition and ensure that children's right to family life is protected when their mother is sentenced.

1 The rights of children whose mothers are in prison

Our previous work

1. In 2019, the Joint Committee on Human Rights held an inquiry and reported on the right to a family life of children whose mothers are in prison.¹ In 2020, we published our report into *Human Rights and the Government's response to COVID-19: children whose mothers are in prison*.²

2. During these evidence sessions, and the subsequent reports, we have highlighted the plight of children whose parents are in prison. We heard from grandparents who had stepped in to care for their grandchildren when their daughters were imprisoned and heard from the children themselves about the effect that having a parent, especially a mother who is usually the main care-giver, in prison has on their own lives, and their own human rights. For the purposes of this report, we have drawn on earlier inquiries and evidence, to inform our proposed amendments to the Police, Crime, Sentencing and Courts Bill.

3. This issue engages the right to family life, which is protected under Article 8 European Convention on Human Rights (ECHR). The UN Convention on the Rights of the Child (UNCRC) is also important: Articles 2 (non-discrimination), 3 (best interests of the child), 12 (respect for the views of the child) and 20 (children deprived of family environment) are engaged by this issue.

4. While the pandemic shone a spotlight on the impact of the separation of children from their mothers in prison, these problems were not new.³ The 2019 inquiry and report called for fundamental changes in four areas:

- Prioritising data collection on the number of children whose mothers are in prison, including making this data collection mandatory;
- Increasing the visibility of children in the sentencing process;
- Increasing the support available for children whose mothers are in prison, including greater support to help them visit their mothers; and
- Ensuring that mothers and their babies are, wherever possible, not separated and that places are found, where appropriate, in Mother and Baby Units.⁴

1 The Joint Committee on Human Rights, Twenty-Second Report of Session 2017–19, [The right to family life: children whose mothers are in prison](#), HC 1610 / HL Paper 411

2 The Joint Committee on Human Rights, Sixth Report of Session 2019–21, [Human Rights and the Government's response to COVID-19: children whose mothers are in prison](#), HC 518 / HL Paper 90

3 Throughout this report we refer to children whose mothers are in prison. However, sometimes the primary carer is the child's father or indeed another person, and we have drafted our amendments to ensure that they apply to all children and their primary carers.

4 The Joint Committee on Human Rights, Twenty-Second Report of Session 2017–19, [The right to family life: children whose mothers are in prison](#), HC 1610 / HL Paper 411

As our country seeks to recover from the pandemic, we must now address the injustices it has so starkly highlighted. The Police, Crime, Sentencing and Courts Bill is an opportunity for some of these areas to be addressed. We are in the process of undertaking legislative scrutiny of the Bill, and we will publish our views on the Bill in due course. In the following chapter we set out the problems relating to sentencing of mothers that should be addressed through amendments to the Bill, and our proposals to address these issues are contained in the annex to this report.

2 Ensuring children’s best interests are protected when their primary carer is given a custodial sentence

5. On 9 March 2021, the Government introduced the Police, Crime, Sentencing and Courts Bill and second reading was held on 15 and 16 March. The Bill is a wide-ranging piece of legislation that, amongst other topics, includes provisions in relation to the sentencing, detention, release, management, and rehabilitation of offenders as well as bail and remand.

Being able to accurately identify the children whose mothers are in prison

6. In 2019, the Joint Committee on Human Rights reported that there was no accurate, reliable and accessible data available on the number of mothers with dependent children who go to prison each year and the number of children who are affected by this separation. During the Committee’s inquiry, it submitted a Freedom of Information Act request to all the prisons holding women in the UK asking how many women each held, and how many of these women had children under 18. The inquiry highlighted that women entering the prison system were not always routinely asked if they had dependent children, and that the prison record system did not require that a prisoner’s children were recorded, despite the intention that this information should be recorded. The inquiry also identified other ways that children were being hidden from view; it found that over the time period of 2012–13 to 2016–17, the number of new Pre-Sentence Reports⁵ (PSRs) that had been prepared had fallen by 22%, while there had been an increase in sentences (both community and custodial sentences) that had not had a new PSR to inform sentencing during the same time period.⁶ The Committee’s report recommended that it should be mandatory to ask women on entering the prison estate whether they have dependent children, and to carry out an annual census of women in prison to collect data on dependent children.⁷

7. In the Government’s 2019 response to the report, it committed to collecting data on women who are pregnant (on an agreed date) and planned to collect data on imprisoned primary carers. It said, “In the interim, we have taken steps to improve our understanding of the number of pregnant women in custody”.⁸ The Government said that as part of this work:

5 Pre-sentence reports are prepared by a probation officer and include information about the guilty party, which are meant to help the judge when sentencing. They are defined in s. 31(1) Sentencing Act 2020 and section 30–33 of that Act contain provisions relating to pre-sentence reports.

6 The Joint Committee on Human Rights, Twenty-second Report of Session 2017–19, [The right to family life: children whose mothers are in prison](#), HC 1610 / HL Paper 411, paras 23 - 34

7 The Joint Committee on Human Rights, Twenty-second Report of Session 2017–19, [The right to family life: children whose mothers are in prison](#), HC 1610 / HL paper 411, para 34

8 Ministry of Justice, Government Response to the Joint Committee on Human Rights Twenty-Second Report of Session 2017–19: *The right to family life: children whose mothers are in prison*, [CP 197](#), November 2019, p 5

[...] we are working on establishing more accurate metrics to capture centrally the number of pregnant women and new mothers in custody. We intend to collate and publish these figures annually, provided it can be done in a way that protect the rights of vulnerable individuals.⁹

8. However, we are still waiting. When we asked the then-Minister of State for Justice on 8 June 2020 how many children had been separated from their mother due to her imprisonment, the Minister was unable to tell us:

I think your Committee has picked up before that that is a difficult question to answer. There are various statistics over a number of years. You will know that that question should be answered at the pre-sentence report stage. I do not have a figure for it, because it is collected locally rather than nationally, but it is something that we can look at and consider how we might be able to collate it.¹⁰

9. We continued to be concerned about the lack of centralised data about the number of children who are separated from their mother by her imprisonment. Therefore, in our subsequent report published in 2020, we repeated the recommendation of the 2019 report.¹¹ In its response, once again the Government told us that:

Information on a prisoner's caring responsibilities and children living in the community is monitored locally by prison Governors/Directors to ensure the appropriate support can be provided to women and their families. On reception into custody, all prisoners are asked if they have any children living at home and what their ages are.¹²

However, the Government again acknowledged that this data was not able to be centrally monitored and it was still "considering how to monitor and publish this information."¹³

10. The Government still does not know how many mothers of dependent children are in prison. It also does not know how many children are separated from their mother by her imprisonment. Despite this Committee's repeated recommendations that it should collect this data, the Government's insouciant approach continues to keep a group of children invisible to policy makers, the courts, the Prison Service and other support services. A lack of data inhibits the ability of the Government, prisons and local authorities to design and evaluate services for children whose mothers are in prison. It prevents children whose primary carer has been separated from them, through no fault of their own, from accessing the support that will help them during and after their mothers' sentence, and ultimately shows a blatant disregard for the rights of the child, as well as their parents' right to family life.

9 Ministry of Justice, Government Response to the Joint Committee on Human Rights Twenty-Second Report of Session 2017–19: *The right to family life: children whose mothers are in prison*, CP 197, November 2019, p 6

10 Oral evidence taken on 8 June 2020, HC (2019 - 2021) 265, Q45 [Lucy Frazer]

11 The Joint Committee on Human Rights, Sixth Report of Session 2019–21, *Human Rights and the Government's response to COVID-19: children whose mothers are in prison*, HC 518 / HL Paper 90

12 Letter (and Government Response) from Lucy Frazer MP, Minister of State for Justice, [regarding the Committee's Report on Human Rights and the Government's response to COVID-19: children whose mothers are in prison](#), dated 2 September 2020

13 Letter (and Government Response) from Lucy Frazer MP, Minister of State for Justice, [regarding the Committee's Report on Human Rights and the Government's response to COVID-19: children whose mothers are in prison](#), dated 2 September 2020

11. **We therefore propose inserting an amendment to the Police, Crime, Sentencing and Courts Bill. This amendment imposes a requirement on the Secretary of State to collect and publish data on the number of prisoners who are the primary carers of a child and the number of children who have a primary carer in custody. This amendment is set out as amendment 5 in the annex to this Report.**

12. *The Government should adopt our new clauses to the Police, Crime, Sentencing and Courts Bill to ensure data about primary carers in prison, and their dependents, is adequately captured and reported.*

Ensuring the welfare and best interests of children are protected when their primary carer is given a custodial sentence

13. In 2019, the Joint Committee on Human Rights supported the Government's objective of reducing the number of women in custody, especially those on short-term sentences, and increasing the number of women who are successfully managed in the community. However, we note that despite this, the Government is expanding the capacity of the female estate. In a letter to the Chair of the Justice Select Committee, the then-Minister of State for Justice, Lucy Frazer QC explained:

The number of women in custody has fallen by 10% since 2010 and Government investment in community services should see this trend continue in the long-term. However, the recruitment of an extra 20,000 police officers is expected to cause a temporary increase in the female prison population.

Therefore, we are also announcing that up to 500 new places will be built in existing prisons to increase availability of single cells and improve conditions.¹⁴

We are not clear why an increase in police numbers will automatically increase the female prison population, and as such recommend that the Government writes to us, setting out its modelling and assumptions on which it has based its decision to expand the capacity of the prison estate due to the increase in police officers.

14. While we welcome the intention to create greater availability of single cells and improve the condition of the estate, we are not convinced that expanded places in the female estate is necessary considering how many women are undertaking short sentences. In the year ending March 2020, 62% of female offenders sentenced to custody were sentenced to a prison term of six months or less. A further 10% were sentenced to custody for more than six months, but less than a year.¹⁵¹⁶

14 Letter to Sir Bob Neill, Chair of the Justice Select Committee from Lucy Frazer, the Minister of State for Justice, on [women in or at risk of contact with the criminal justice system](#), dated 22 January 2021

15 Ministry of Justice, *Offender management statistics quarterly, January to March 2020, Prison Population: 30 June 2020*, (30 July 2020)

16 We have used the statistics for year ending March 2020, as the covid-19 pandemic may have affected sentencing patterns.

15. Sentencing a person to prison affects their life and that of their family. However, when a mother is sentenced to prison, regardless of the length of the sentence, the ramifications are felt by her dependents. Georgia, a young woman who was 15 when her mother was sentenced to prison, told us:

This is the thing I always think about, and I think back to it quite a lot. I know my mum did wrong and deserved a punishment, but if you were to stand my mum up in that box with me and my brother, and someone turned around and said, “Do you sentence these three?”, would the judge look at it differently?¹⁷

Georgia wanted the judge to consider her and her brother when her mother was sentenced; the Committee also thought that the needs and rights of dependent children were not sufficiently taken into account. In its report, it set out the significant body of case law relating to the sentencing of primary carers which sentencing judges should follow.¹⁸ While there are references to primary caring responsibilities in the sentencing guidelines, there is a lack of consistency by judges when it comes to sentencing mothers in line with these guidelines and the case law. Moreover, there seemed to be a lack of awareness in the criminal courts about the impact on children of imprisoning their mother.¹⁹

16. The report also raised concerns about the quality and use of Pre-Sentence Reports (PSRs). The Committee was told that PSRs were vitally important in ensuring that courts have all the information necessary about dependent children before sentencing a primary carer but was told that PSRs were used “inconsistently and ineffectively in many cases”.²⁰

17. As was clearly set out in the Committee’s 2019 report, when the criminal court sentences a parent with a dependent child, the Article 8 ECHR rights of the parent and the child are engaged.²¹ In upholding these rights, judges should therefore comply with the case law (e.g. *R v Petherick*) when sentencing, as well as their duties under section 6 Human Rights Act 1998 (HRA) and Article 8 ECHR to ensure that the child’s right to a family life is only interfered with to the extent that it is both necessary and proportionate, having had regard, for example, to the sentencing principles.

18. At the end of the inquiry, the Committee made three recommendations related to the sentencing of mothers. It argued that judges can only “fulfil their obligation to weigh the Article 8 rights of a child when sentencing if they know that the child exists”²² and as such recommended that:

17 Oral evidence taken on 13 February 2019, HC (2017 - 2019) 1610, [Q6](#) [Georgia]

18 The Joint Committee on Human Rights, Twenty-Second Report of Session 2017–19, [The right to family life: children whose mothers are in prison](#), HC 1610 / HL Paper 411, para 36

19 The Joint Committee on Human Rights, Twenty-Second Report of Session 2017–19, [The right to family life: children whose mothers are in prison](#), HC 1610 / HL Paper 411, para 40

20 Dr Natalie Booth ([CMP0016](#))

21 Article 8 of the European Convention on Human Rights states: i) Everyone has the right to respect for his private and family life, his home and his correspondence. ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

22 The Joint Committee on Human Rights, Twenty-Second Report of Session 2017–19, [The right to family life: children whose mothers are in prison](#), HC 1610 / HL Paper 411, para 46

[...] when sentencing an offender the judge must make reasonable enquiries to establish whether the offender is the primary carer of a child. If the offender is a primary carer of a child, the judge must not sentence unless a pre-sentence report is available at the sentencing hearing, unless in exceptional circumstances. This report must contain sufficient information for the judge to make an assessment of the impact of sentencing on the child.²³

The report argued that children should be seen and heard to a greater extent when their mother is sentenced, recommending that judges must ensure that they have sufficient information about the likely consequences on a child of the separation from their primary carer and the judge should, in their sentencing remarks, explain how they have taken this information into account. The report also recommended that the duty to consider the impact of sentencing on children, which currently exists in case law, should be made statutory.²⁴ When a dependent child exists, but is invisible to the sentencing judge, complying with a judge's duties under the HRA and ECHR, and ensuring that children's rights are protected becomes incredibly difficult.

19. In its response to the report, the Government said that given the amount of guidance and case law that exists for the judiciary, as well as the other considerations that a judge must make when sentencing, a statutory duty to consider the welfare of children was not necessary. However, it noted that it was prepared to “ask the Criminal Procedure Rule Committee to consider making recommendations in light of the proposals made by the JCHR”.²⁵ The Government agreed with the conclusion that PSRs need to improve, and in its response, said that the new PSR checklist was about to be rolled out nationally.²⁶ It also said that “We are embarking upon an ambitious programme of sentencing reform, which will include measures focused on tackling the underlying drivers of offending. Effective pre-sentence reports will play an important part in our new approach.”²⁷ After the report was published, new guidance from the Sentencing Council was published on 1 October 2019. This offered an expanded explanation in relation to the mitigating factor, “sole or primary carer for dependent relatives”.²⁸

20. Whilst there have been some minor changes to guidance to try to give greater visibility to the obligation on the court to consider the best interests of children when a primary carer is sentenced to custody, there are strong risks that this will continue to be too little to be effective for those children whose lives are torn apart in these processes. However, we disagreed in 2019 when the Government did not think it necessary to put the consideration of the welfare of children whose parents are sentenced to prison on a statutory footing, and two years later, we continue to disagree. We cannot see how the

23 The Joint Committee on Human Rights, Twenty-Second Report of Session 2017–19, [The right to family life: children whose mothers are in prison](#), HC 1610 / HL Paper 411, para 46

24 The Joint Committee on Human Rights, Twenty-Second Report of Session 2017–19, [The right to family life: children whose mothers are in prison](#), HC 1610 / HL Paper 411, paras 49 and 51

25 Ministry of Justice, Government Response to the Joint Committee on Human Rights Twenty-Second Report of Session 2017–19: The right to family life: children whose mothers are in prison, [CP 197](#), November 2019, p 8

26 Ministry of Justice, Government Response to the Joint Committee on Human Rights Twenty-Second Report of Session 2017–19: The right to family life: children whose mothers are in prison, [CP 197](#), November 2019, pp 8–9

27 Ministry of Justice, Government Response to the Joint Committee on Human Rights Twenty-Second Report of Session 2017–19: The right to family life: children whose mothers are in prison, [CP 197](#), November 2019, p 8–9

28 Sentencing Council, [‘General guideline: overarching principles’](#), accessed 26 April 2021

welfare and best interests of children are being sufficiently considered if their welfare and best interests are not prioritised as a consideration when a parent is sentenced. We hope that the Government takes the opportunity of the Bill to reconsider its position.

21. We propose amendments 1–4 set out in the annex of this Report. These amendments:

- a) amend section 30 of the Sentencing Act 2020 to make clear the requirement for a sentencing judge to have a copy of a pre-sentence report, considering the impact of a custodial sentence on the dependent child, when sentencing a primary carer of a child (Amendment 1);
- b) amend section 52 Sentencing Act 2020 to require a sentencing judge to state how the best interests of a child were considered when sentencing a primary carer of a dependent child (Amendment 2);
- c) reflect the requirement for a sentencing judge, when sentencing a primary carer of a dependent child, to consider the impact of a custodial sentence on a child (Amendment 3); and
- d) reflect the requirement for a judge to consider the impact of not granting bail on a child when determining, in criminal proceedings, whether to grant bail to a primary carer of a dependent child (Amendment 4).

22. These new clauses merely reflect what ought to, but sadly often does not, happen to consider and respect the rights of the child when a primary carer is sentenced. We hope that their inclusion in statute will help to ensure that the rights of these children are not ignored in the future.

23. *The Police, Crime, Sentencing and Courts Bill is an opportunity to ensure that the best interests of children are upheld when sentencing a primary carer. We recommend that the Government adopts our amendments to the Police, Crime, Sentencing and Courts Bill to ensure that the best interests and welfare of children are suitably prioritised, and their rights protected when a primary carer is sentenced to prison.*

Conclusions and recommendations

1. The Government still does not know how many mothers of dependent children are in prison. It also does not know how many children are separated from their mother by her imprisonment. Despite this Committee's repeated recommendations that it should collect this data, the Government's insouciant approach continues to keep a group of children invisible to policy makers, the courts, the Prison Service and other support services. A lack of data inhibits the ability of the Government, prisons and local authorities to design and evaluate services for children whose mothers are in prison. It prevents children whose primary carer has been separated from them, through no fault of their own, from accessing the support that will help them during and after their mothers' sentence, and ultimately shows a blatant disregard for the rights of the child, as well as their parents' right to family life. (Paragraph 10)
2. We therefore propose inserting an amendment to the Police, Crime, Sentencing and Courts Bill. This amendment imposes a requirement on the Secretary of State to collect and publish data on the number of prisoners who are the primary carers of a child and the number of children who have a primary carer in custody. This amendment is set out as amendment 5 in the annex to this Report. (Paragraph 11)
3. *The Government should adopt our new clauses to the Police, Crime, Sentencing and Courts Bill to ensure data about primary carers in prison, and their dependents, is adequately captured and reported.* (Paragraph 12)
4. *We are not clear why an increase in police numbers will automatically increase the female prison population, and as such recommend that the Government writes to us, setting out its modelling and assumptions on which it has based its decision to expand the capacity of the prison estate due to the increase in police officers.* (Paragraph 13)
5. Whilst there have been some minor changes to guidance to try to give greater visibility to the obligation on the court to consider the best interests of children when a primary carer is sentenced to custody, there are strong risks that this will continue to be too little to be effective for those children whose lives are torn apart in these processes. However, we disagreed in 2019 when the Government did not think it necessary to put the consideration of the welfare of children whose parents are sentenced to prison on a statutory footing, and two years later, we continue to disagree. We cannot see how the welfare and best interests of children are being sufficiently considered if their welfare and best interests are not prioritised as a consideration when a parent is sentenced. We hope that the Government takes the opportunity of the Bill to reconsider its position. (Paragraph 20)
6. We propose amendments 1–4 set out in the annex of this Report. These amendments:
 - a) amend section 30 of the Sentencing Act 2020 to make clear the requirement for a sentencing judge to have a copy of a pre-sentence report, considering the impact of a custodial sentence on the dependent child, when sentencing a primary carer of a child (Amendment 1);

- b) amend section 52 Sentencing Act 2020 to require a sentencing judge to state how the best interests of a child were considered when sentencing a primary carer of a dependent child (Amendment 2);
 - c) reflect the requirement for a sentencing judge, when sentencing a primary carer of a dependent child, to consider the impact of a custodial sentence on a child (Amendment 3); and
 - d) reflect the requirement for a judge to consider the impact of not granting bail on a child when determining, in criminal proceedings, whether to grant bail to a primary carer of a dependent child (Amendment 4). (Paragraph 21)
7. These new clauses merely reflect what ought to, but sadly often does not, happen to consider and respect the rights of the child when a primary carer is sentenced. We hope that their inclusion in statute will help to ensure that the rights of these children are not ignored in the future. (Paragraph 22)
8. *The Police, Crime, Sentencing and Courts Bill is an opportunity to ensure that the best interests of children are upheld when sentencing a primary carer. We recommend that the Government adopts our amendments to the Police, Crime, Sentencing and Courts Bill to ensure that the best interests and welfare of children are suitably prioritised, and their rights protected when a primary carer is sentenced to prison.* (Paragraph 23)

Annex: Amendments to the Police, Crime, Sentencing and Courts Bill

Amendment 1: Requirement for a pre-sentence report when sentencing a primary carer

The amendment inserts a new sub-section (3A) and (5) into section 30 Sentencing Act 2020:

“After clause 130, insert a new clause 130A–

“Chapter 3–Sentencing of Primary Carers

Clause 130A–Pre-sentence report requirements

(1) Section 30 of the Sentencing Act 2020 shall be amended as follows.

(2) After sub-section (3), insert -

“(3A) A court must make inquiries to establish whether the offender is a primary carer for a child.

(3B) If the court establishes that the offender is a primary carer for a child, unless there are exceptional circumstances before sentencing the offender the court must obtain a pre-sentence report containing information to enable the court to make an assessment of the impact of a custodial sentence on the child.”

(3) After sub-section (4) insert—

“(5) In this section—

(a) ‘child’ means a person under the age of 18; and

(b) ‘primary carer’ means a person who has primary or substantial care responsibilities for a child.”.

Explanation: This clause amends section 30 Sentencing Act 2020 to make clear the requirement for a sentencing judge to have a copy of a pre-sentence report, considering the impact of a custodial sentence on the dependent child, when sentencing a primary carer of a child.

Amendment 2: Obligation on the sentencing judge to state how she has considered the consequences for the child in the sentencing remarks

This amendment would amend section 52 of the Sentencing Act 2020 which sets out the duty on the court to give reasons for and to explain the effect of a sentence—

“After clause 130, insert a new clause 130A–

“Chapter 3–Sentencing of Primary Carers

Clause 130A–Duty to give reasons for the sentence

(1) Section 52 of the Sentencing Act 2020 shall be amended as follows.

(2) After sub-section (9), insert –

“Offenders who are primary carers

(10) A court sentencing a primary carer for a child must state how the best interests of the child were considered in determining the sentence (including, if appropriate, consideration of the views of the child).

(11) A court sentencing a pregnant woman must state how the best interests of the baby were considered in determining the sentence.

(12) In this section—

- (a) ‘child’ means a person under the age of 18; and
- (b) ‘primary carer’ means a person who has primary or substantial care responsibilities for a child.”

Explanation: This clause amends section 52 Sentencing Act 2020 to require a sentencing judge to state how the best interests of a child were considered when sentencing a primary carer of a dependent child.

Amendment 3: Welfare of child to be a distinct consideration when sentencing a primary carer

“After clause 130, insert a new clause 130A–

“Chapter 3–Sentencing of Primary Carers

Clause 130A–Restrictions on imposing imprisonment on a primary carer

(1) After section 227 of the Sentencing Act 2020, insert–

“Section 227A: Restrictions on imposing imprisonment on a primary carer

(1) This section applies where a court is considering imposing a custodial sentence on—

- (a) a primary carer for a child, or
- (b) a pregnant woman.

(2) The sentencing court must—

- (a) consider the impact of a custodial sentence on the child or unborn child, and

- (b) presume (subject to victim impact and any other sentencing considerations) that a non-custodial sentence is in the best interests of the child or unborn child.
- (4) In this section—
 - (a) ‘child’ means a person under the age of 18, and
 - (b) ‘primary carer’ means a person who has primary or substantial care responsibilities for a child.”.

Explanation: This clause reflects the requirement for sentencing judge to consider the impact of a custodial sentence on a child when sentencing a primary carer of a dependent child.

Amendment 4: Welfare of child to be a distinct consideration when determining bail for a primary carer

“After clause 43, insert a new clause 43A–

“Bail

Clause 43A–Bail and primary carers

- (1) Section 4 of the Bail Act 1976 is amended as follows.
- (2) After sub-section (9), insert -

“(10) Where a court determines whether to grant bail in criminal proceedings to a person to whom this section applies who is a primary carer for a child or pregnant, the court must—

- (a) consider the impact of not granting bail on the child or unborn child; and
 - (b) presume (subject to victim impact or other relevant considerations) that it is in the best interests of the child or unborn child for bail to be granted.
- (11) In this section—
 - (a) ‘child’ means a person under the age of 18, and
 - (b) ‘primary carer’ means a person who has primary or substantial care responsibilities for a child.”.

Explanation: This clause reflects the requirement for judge to consider the impact of not granting bail on a child when determining, in criminal proceedings, whether to grant bail to a primary carer of a dependent child.

Amendment 5: Data Collection on children of prisoners

“After clause 130, insert a new clause 130A–

“Chapter 3–Sentencing of Primary Carers

Clause 130A–Data collection in relation to primary carers

- (1) The Secretary of State shall collect and publish annual data identifying—
 - (a) how many prisoners are the primary carers of a child,
 - (b) how many children have a primary carer in custody, and
 - (c) the ages of those children.
- (2) In this section—
 - (a) ‘child’ means a person under the age of 18, and
 - (b) ‘primary carer’ means a person who has primary or substantial care responsibilities for a child.””

Explanation: This imposes a requirement on the Secretary of State to collect and publish data on the number of prisoners who are the primary carers of a child and the number of children who have a primary carer in custody.

Declaration of interests

Lord Brabazon of Tara

- No relevant interests to declare

Lord Dubs

- No relevant interests to declare

Lord Henley

- No relevant interests to declare

Baroness Ludford

- No relevant interests to declare

Baroness Massey of Darwen

- No relevant interests to declare

Lord Singh of Wimbledon

- No relevant interests to declare

Formal minutes

Wednesday 12 May 2021

Virtual Meeting

Members present:

Ms Harriet Harman MP, in the Chair

Lord Brabazon

Joanna Cherry MP

Baroness Ludford

Dean Russell MP

Baroness Massey of Darwen

Lord Singh of Wimbledon

Draft Report (*Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill*), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 23 read and agreed to.

Annex and Summary agreed to.

Resolved, That the Report be the First Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till 19 May at 2.40pm.]