



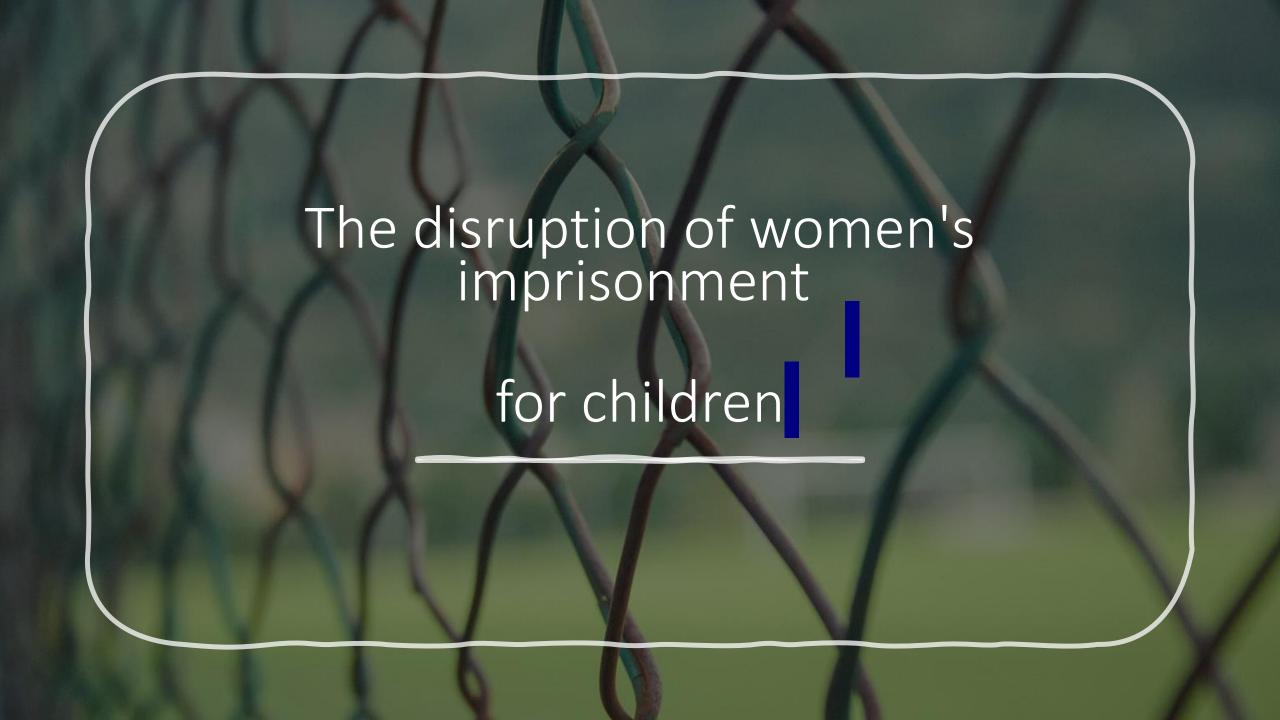
The Disruption of Women's Imprisonment: Prison Sentences, Negative Consequences and Non-Carceral Alternatives.

Disrupting Prison Policy Workshop

12th January 2024

Dr Shona Minson





## Short term impacts on children (Minson, 2017)

Impact of imprisonment on parent/child relationship

Impact of imprisonment on child's wellbeing and future outcomes

Physical separation

Change of home and carers

Increased poverty

Disrupted education

Social isolation : stigma and shame

Changes in parent /
child relationship
affecting future
stability

Difficulties in visits

Changed behaviours

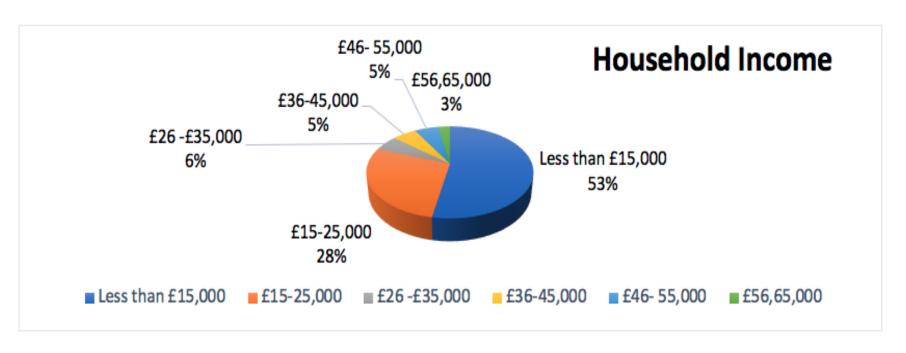
'Confounding Grief'

### Longer term impacts

'Turning Points' (Mears and Siennick, 2016)

Less likely to be in education, training or employment in later life; more likely to have mental health and addiction problems, and are likely to earn less than their counterparts aged 30 (Hirschi, 1969; Fox and Benson, 2000; Green and Scholes, 2004; Murray and Farrington, 2008, Mears and Siennick, 2016)

Children who experienced parental imprisonment were more likely to die before the age of 65 than their peers (van de Weijer, S.G.A., Smallbone, H.S. & Bouwman, V. J Dev 2018).



• Minson, S. 2021 'The impacts of prison lockdowns on children with a parent in prison

# Is the impact on children relevant to the sentencing of primary carers?

Should the courts be involved in addressing it?

#### No

- unfair to those who don't have children
- criminal court is not a welfare court
- they did the crime they have to do the time

#### Yes

- Social situation is always relevant
- England & Wales sentencing guidelines
   & case law require it
- Ireland proportionality

# A different framework

#### A Children's Rights Perspective ....

#### **United Nations Convention on the Rights of the Child 1989**

- Article 2 the right to non-discrimination
- Article 3 the right for a child's best interests to be a primary consideration
- Article 12 the right to be heard
- Article 20 the right to special protection and assistance

#### **Human Rights Act 1998**

- Article 8 the right to family life
- Article 14 the right to enjoyment of rights without discrimination

Children separated from their parents by the state in another court

Is disruption addressed?

#### **Family courts**

- Children Act 1989 (section 1)
   'Best interests of the child are the paramount consideration of the court'
- 'Welfare Checklist'
- Child's wishes and feelings
- Guardian ad Litem
- Legal representation
- Provision of alternative caregivers

#### 'General Guideline: overarching principles' 1st October 2019

#### Expanded explanation for 'sole or primary carer of dependent relative'

The court should not impose a sentence of imprisonment where the impact on dependants would make a custodial sentence disproportionate to achieving the aims of sentencing

The court should consider the impact of the sentence length on dependants and whether the sentence can be suspended

The court should consider the effects on dependants when deciding on the requirements of community sentences

When the defendant is a pregnant woman, the relevant considerations should include the effect of a sentence of imprisonment on the woman's health and any effect of the sentence on the unborn child.

The court must ensure that it has all relevant information about dependant children before deciding on sentence (in accordance with the case of R v Bishop [2011])

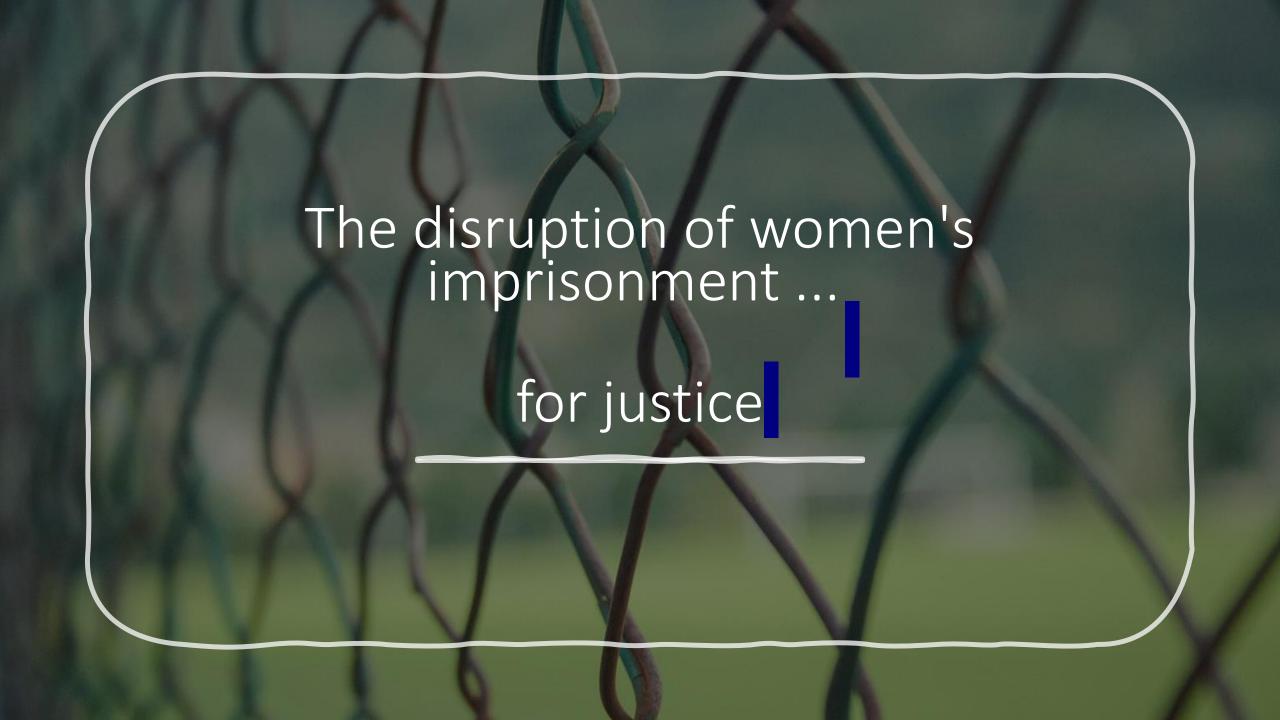
The court should consider whether proper arrangements have been made for dependant children when imposing a custodial sentence, and consider adjourning sentence in such cases in order for proper plans to be in place for children

The court should ask the National Probation Service to address the defendant's caring responsibilities and the impact of any sentence on the care of their dependants in a Pre-Sentence Report

## Possible additional next steps ....

The Government could introduce a statutory duty to be placed upon the courts to consider the best interests of the child and other dependents or the impact that the sentence would have upon them. This would be in line with existing sentencing guidelines and case law in this area.

Children with a primary carer in prison could be identified as children in need under section 17 of the Children Act 1989. This should be automatic and apply across every local authority in England and Wales.



### Article 6 European Convention on Human Rights

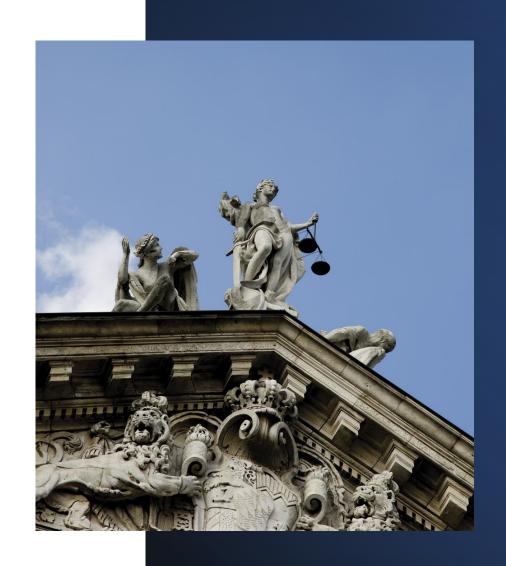
In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 6.1

#### What does this mean?

- Adversarial proceedings
- Equality of arms
- Appropriate administration of evidence
- Reasoned judicial decisions

Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (civil limb) (2022)



### Court Practice

Family Procedure Rules 2010

#### **The Overriding Objective**

#### 1.1.

- (1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.
- (2) Dealing with a case justly includes, so far as is practicable—
- (a)ensuring that it is dealt with expeditiously and fairly;
- (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- (c)ensuring that the parties are on an equal footing;
- (d)saving expense; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

# Comparative study

# 2 jurisdictions within the UK

#### **England and Wales**

Family Court (2 lower tiers including lay bench)

Family Division of the High Court

No legal aid available for family matters unless the state (local authority) is involved

#### **Scotland**

Children's Hearings

**Sheriff Courts** 

Legal Aid available for people in prison involved in family matters in the court





## Barriers to Participation

Preparation

Presence

Prominence

# Why does procedural justice matter?

#### **Social Psychology:**

Procedural justice is an instrumental good which strengthens the legitimacy of the legal system

'the manner in which disputes are handled by the courts has an important influence upon people's evaluations of their experiences in the court system' (Tyler, 2007)

#### **Dignitarian Theories:**

Regardless of outcome procedural justice has an inherent 'process value' which is the respect for people as active subjects (Bottoms and Tankebe)

#### **Relational theories:**

Procedural justice has normative importance, and requires a critique that recognises social oppression, inequality and injustice and their effects on the lives of members of minority social groups (Myerson, Mackenzie, MacDermott, 2021)

## Embedded Procedural Injustice

'I think fundamentally there is a real problem in trying to ensure equal footing. And Part 1 in the Family Procedure Rules is very clear about that. There are so many other areas within family proceedings where we always return to that, about putting people on a fair footing.

But I think you're prevented in achieving that, when you have a mother or father in prison.'

(Judge 2)

# The disruption of women's imprisonment .. for good

# Reducing women's imprisonment



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# Presumption against short sentences extended

Published: 26 June 2019 17:49

Part of: Law and order

Disruptive short sentences create revolving door.

Ineffective short prison sentences of 12 months or less are expected to reduce after MSPs voted for a presumption against their use.

Such sentences often disrupt factors that can help prevent offending, including family relationships, housing, employment and access to healthcare and support.

Around 90% of women sent to prison are given a custodial sentence of a year or less, many of whom have experienced abuse, mental health and addiction problems.

## Reducing women's imprisonment

Justice Secretary Humza Yousaf said:

"The extension of the presumption against short sentences is crucial to ongoing work to support reintegration and rehabilitation, helping keep crime down and communities safe.

"We know from evidence and research that community-based interventions are more effective than disruptive short prison sentences. With such a high proportion of women prisoners serving custodial sentences of 12 months or less, this extension could have a significant impact on women in the justice system.

"This presumption is not a ban; it will encourage courts to consider alternatives to custody which can be more effective in rehabilitating individuals as they pay their debt to society. Impact will be monitored closely and there will always be serious crimes where it is decided in court that prison is the right option."

# Reducing women's imprisonment

#### **Professor Cyrus Tata, University of Strathclyde**

'Last resort' logic is still in the presumption

Prison used as the default when appropriate services aren't available

'Individual professionals (judiciary) are left to shoulder the impossible burden of chronic societal failures'

Prion rather than the alternative must be justified – no longer 'the last resort'.

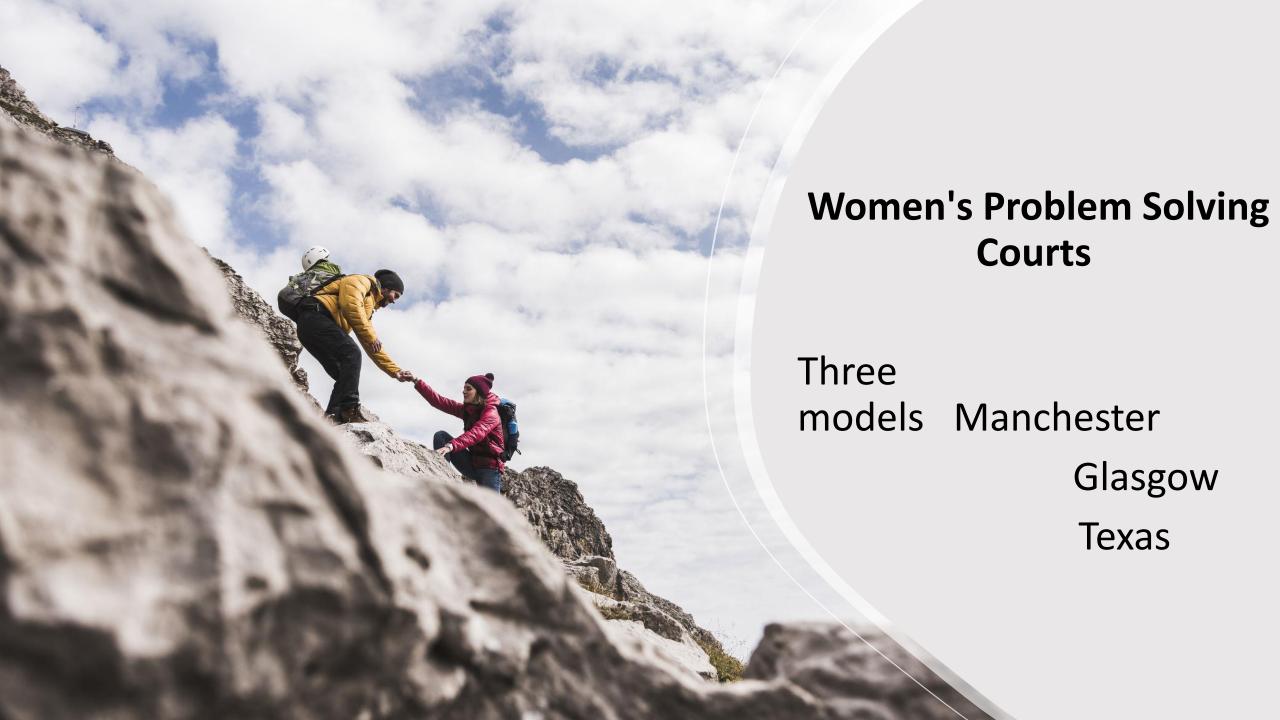
2 stage decision making:

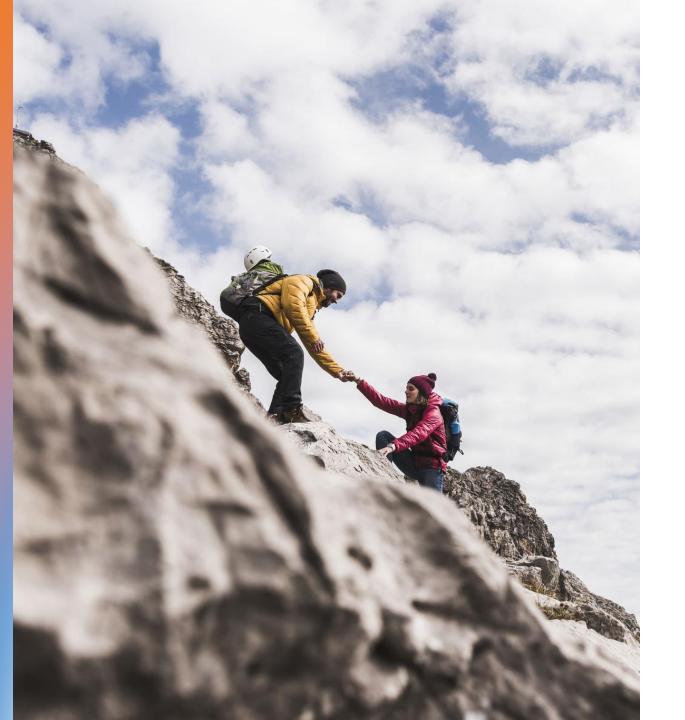
passing a prison sentence

Imprisonment only to be used if it is warranted by the seriousness of the offending AND rehabilitation / help should be excluded as a ground for

Set a target date: Close the prisons, shift the budget to the community services.







#### Manchester

Post-sentence

Lay bench

No sanction for non-attendance

#### **Glasgow**

Deferred structured sentence

**Dedicated Sheriff** 

Can issue warrant for non-attendance

Used to prepare for undertaking community sentence

#### **Texas**

Diversion

May conclude without conviction

