

**Welsh  
Government  
prosecution  
code**

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**Response form**

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**The Prison Reform Trust**

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. Our main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families.

Between 2012-15 the Prison Reform Trust (PRT) led a programme to reduce women's imprisonment, supported by the Pilgrim Trust. Following a major grant from the Big Lottery Fund, PRT has renewed its drive with a UK-wide programme, 'Transforming Lives – reducing women's imprisonment 2015-18', in partnership with Families Outside, Soroptimist UK, Hibiscus Initiatives and User Voice. We are also working with a number of Welsh voluntary sector agencies including the North Wales Women Centre Llamau, Safer Wales and Gibran to better understand the voices of women with direct experience of the criminal justice system.

Further information about the programme's aims, objectives and methods are at <http://www.prisonreformtrust.org.uk/women>

**Our Response**

The Prison Reform Trust welcomes the publication of the Welsh Government Prosecution Code and the opportunity to contribute to this consultation. Given our current focus we have focused primarily on the distinct needs of women in the criminal justice system and we have therefore limited our response to the feedback set out at questions 4 and 6 below.

Our recommendations build upon the proposals set out in more detail in the attached discussion papers Fair Cop and Sentencing of Mothers:

- [Fair Cop? Improving outcomes for women at the point of arrest](#): This discussion paper builds the case for greater use of 'problem-solving approaches' for women at the point of arrest in cases where the harm caused by an offence is low but the needs of the individual may be multiple and/or complex
- [Sentencing of Mothers: Improving the sentencing process and outcomes for women with dependent children](#): An overview of current sentencing practice for women with dependent children and sets out a number of proposals

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**Q1:** Are the roles of the Counsel General and the Welsh Ministers in relation to Welsh Government prosecutions explained clearly enough?

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**Q2:** Is the sufficient evidence stage of the Prosecution Test explained clearly enough?

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**Q3:** Is the public interest stage of the Prosecution Test explained clearly enough?

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**Q4:** Are the public interest factors explained clearly enough?

We welcome the recognition in the 'General Prosecution Principles' that prosecutors should have due regard to the requirements of the United Nations Convention on the Rights of the Child.

However, we would contend that as currently worded the draft Prosecution Code does not provide sufficient guidance on how primary caring responsibilities should be taken into account when applying the public interest factors, most notably the 'circumstances of the suspect'. This should be given particular consideration when deciding whether to prosecute women given the growing body of research evidence about the harm caused to children by the imprisonment of their mother, who is almost always the primary carer.

Estimates vary and are inevitably made more problematic by the reluctance of some women to disclose that they have children for fear of consequences, including possible state intervention. However, in 2010 it was estimated that 17,240 children were separated from their mothers by imprisonment, whilst approximately 3,000 babies aged two years and under have their mothers imprisoned each year. A major study found that two-thirds (66%) of imprisoned women are mothers of children under the age of 18. A third (34%) of these women had children under the age of five, and a further 40% had children aged between five and ten.

The 'Well-Being of Future Generations Act (Wales) 2015' places a wellbeing duty on all public bodies in Wales that includes the prevention of long-term harms such as adverse childhood experiences. The evidence suggests that the consequences of imprisonment for women and their families are far reaching. Prisoners' families experience financial, housing, emotional and health problems as a result of the decision to imprison, with one third of women, for example, losing their home and possessions whilst in prison. Imprisonment also has a lasting impact on women's capacity to find employment. For example, in 2011-2012 less than one in ten (8.7%) women had a successful employment outcome on release, compared to 27.3 % of men. Parental imprisonment trebles the risk of antisocial behaviour in children, with the cost to the state of imprisoning mothers for non-violent offences estimated at more than £17million over ten years, primarily because of the increased likelihood of their children not being in education, employment or training.

Given the emerging evidence-base we recommend that the Prosecution Code should make clear that in cases where the suspect is identified as a primary carer the public interest factors, most notably c) 'the circumstances of the suspect' and i) 'consideration of whether a prosecution is proportionate to the likely outcomes', it may be appropriate to administer a caution (see below for discussion of simple and conditional cautions) in place of a prosecution in court.

**Q5:** Is the relationship between the Code and the Code for Crown Prosecutors explained clearly enough?

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**Q6:** Is there any section of the Code that you think should be expanded, and, if so, what do you think should be included?

We welcome the discretion granted to prosecutors when applying the 'prosecution test' and the recognition that in appropriate cases *'the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by way of Simple Caution rather than bringing a prosecution'*. We agree with the direction that *'a Simple Caution may be administered in place of a prosecution in court if it is an appropriate response to the seriousness and consequences of the offending'*.

However, we are concerned that prosecutors discretion to recommend a simple caution where it is in the public interest to do so is currently underused and could place a far greater emphasis on reducing re-offending. Given the commitments made in the 'Wales Reducing Reoffending Strategy 2014-2016' and the forthcoming refresh document we encourage the Welsh Government to explore whether this power could be extended to incorporate the use of conditional cautions. Such a move would allow prosecutors to attach conditions to a simple caution for 'reparation, rehabilitation or punishment' purposes, and this could include attendance at a women's centre or other community services that are proven to reduce women's offending.

We believe such a move would be consistent with recent policy commitments and the emerging evidence-base on reducing women's offending.

1. In September 2013 the Ministry of Justice and Home Office launched a review of out of court disposals in England and Wales. In their joint response to the review, the government and College of Policing proposed a simplified two-tier system:
  - A suspended prosecution: Based upon the existing conditional caution model and designed to tackle more serious offending, such as theft, violence or drug offences, where there is sufficient evidence to prosecute but the public interest is better served through the offender complying with appropriate conditions.
  - A new, statutory community resolution aimed at lower-level and/or first time offending such as minor incidents of criminal damage or low-value theft. This disposal would allow the police to apply a wide range of approaches to tackling offending, ranging from an apology to the victim through to financial compensation or rehabilitative measures.

The independent evaluation of the pilot schemes will be published shortly, and decisions on future reform are under review by Ministers following the General

Election. In the future it is likely that the police and prosecutions will be expected to adopt a stronger focus on conditionality when dealing with low-level offending behaviour and cases that are not in the public interest.

2. A conditional caution would also allow prosecutors to place a number of rehabilitative conditions on the caution where it would be in the public interest to do so. As the draft Prosecution Code notes, 'the decision to prosecute is a serious step' and this is particularly true for women, many of whom are victims of sexual and physical abuse and primary carers for dependent children. Where the public interest is not served by a prosecution the available evidence suggests that women's centres may be far more effective in addressing women's offending:

- In 2015 the Ministry of Justice 'Justice Data Lab' assessed the impact on re-offending of support provided to female offenders by Women's Centres throughout England. The one year proven re-offending rate for 5973 offenders who received support provided by Women's Centres throughout England was 30%, compared with 35% for a matched control group of similar offenders from England. This was based upon analysis of information that has been supplied by 39 Women's Centres throughout England to the National Offender Management Service (NOMS).
- A careful analysis by Hedderman and Jolliffe (2015) found that women released from prison are twice as likely to reoffend as a comparable cohort of women given community orders. Propensity score matching (PSM) using information on over 3,000 women's current offence and criminal history was used to create a sample of 320 women who had been sentenced to prison who were equivalent on all measured variables to 320 women who received a community sentence. Twelve months after release those from prison were found to have committed significantly more and more costly offences and also to be more likely to be sent back to prison. The overall additional cost of prison in this sample was conservatively estimated to be £3.6 million.
- There is also evidence from the National Offender Management Service (NOMS) that women are more likely to comply with a community order or period of licence supervision than men, which justifies confidence that many will engage constructively with an out of court disposal order with conditions.

**Q7:** We would like to know your views on the effects that the Code would have on the Welsh language, specifically on

- i) opportunities for people to use Welsh and
- ii) on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

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**Q8:** Please also explain how you believe the proposed Code could be formulated or changed so as to have

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and
- ii) no adverse effects on opportunities for people to use the Welsh language

and on treating the Welsh language no less favourably than the English language.

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**Q9:** We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

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Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: