

Senedd Cymru
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r
Cyfansoddiad
Gwneud i Gyfiawnder weithio yng Nghymru
MJW 05
Ymateb gan: Ymddiriedolaeth Ddiwygio
Carchardai

Welsh Parliament
Legislation, Justice and Constitution Committee
Making Justice work in Wales
Response from: Prison Reform Trust

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promote equality and human rights in the criminal justice system.

In addition, the Prison Reform Trust has had a long-term focus on reducing women's imprisonment, supported first by the Pilgrim Trust in 2012 and subsequently by a major grant from the National Lottery Community Fund in 2015. This has supported our UK-wide programme, 'Transforming Lives: reducing women's imprisonment', since then. The programme has a strong emphasis on local practice and on engaging with women with personal experience of imprisonment. We have worked with Welsh voluntary sector agencies including the North Wales Women Centre, Llamau, Safer Wales and others to inform our understanding of Welsh women's experience of criminal justice and have engaged with the All Wales Women in Justice Board since its inception.

An important strategic element of our Transforming Lives programme is its focus on interjurisdictional learning, because the statutory and policy frameworks as well as the political approach differ between England, Wales, Scotland, and Northern Ireland in a number of key areas.

www.prisonreformtrust.org.uk

Introduction

1. The Prison Reform Trust welcomes the opportunity to respond to the Committee's inquiry on Making Justice work in Wales. As a small charity, we regret that we do not have the capacity to provide a version of this submission in the Welsh language.

2. As a whole, Great Britain continues to have the unenviable record for the highest rate of imprisonment in western Europe.¹ However, new analysis by Cardiff University's Wales Governance Centre recently revealed that the number people held in Welsh prisons climbed to its highest ever level in March this year, and that the imprisonment rate in Wales stood at 163 per 100,000 of the population—significantly higher than the comparable rate of 139 per 100,000 in England, and 131 per 100,000 in Scotland.²
3. Furthermore, many Welsh prisoners serve their sentences in English establishments and vice versa—with a third (34%) of Welsh prisoners being held in prisons in England as of December 2019; and more than 1,700 English prisoners being held in prisons in Wales. All Welsh women prisoners serve their sentence in England.
4. As the Commission on Justice in Wales report acknowledged, the current limited role for the Welsh Government and the Senedd in determining the strategic priorities and approach to criminal justice has created a jagged edge of competing and potentially conflicting interests and accountabilities between the UK and Welsh governments.³
5. We support the commission's assessment that the experience of other nations points very strongly to the need to provide greater autonomy to Wales in shaping its justice system. Enabling it to radically reset sentencing policy—which has become increasingly punitive over the last three decades as a result of legislation passed in Westminster—in line with its wider strategic direction for other relevant health, education and social policy, which are already determined in Wales. In particular, we support a greater use of effective community sentences and supportive interventions to help people away from crime.

Part 1 – Fact finding and looking forward

Scrutiny of justice matters

6. Despite the extent of reserved matters in criminal justice, the Senedd's role in providing effective scrutiny and challenge of the policies and laws which govern the people of Wales cannot be understated. We support the recommendation of the Commission on Justice that the Senedd should take a more proactive role in appropriate scrutiny of the operation of the justice system, and that clear lines of accountability within the Welsh Government need to be in place to facilitate that.⁴
7. One recent example of the effective scrutiny—and divergence from UK legislation—that a more active approach can deliver, is the role that the Equality, Local Government and

¹ Institute for Crime and Justice Policy Research, World Prison Brief, available at <https://www.prisonstudies.org/>, accessed on 2 June 2020

² Jones, R. (2020) Covid-19 and imprisonment in Wales, Cardiff: Wales Governance Centre

³ The Commission on Justice in Wales (2019) Justice in Wales for the people of Wales, Cardiff: The Commission on Justice in Wales

⁴ Ibid.

Communities Committee played in securing the enfranchisement of some people in prison for council and Senedd elections, following its inquiry into voting rights for prisoners.⁵

8. The current Senedd inquiry into health and social care provision in Welsh prisons; and the recent mental health in policing and police custody inquiry are further welcome examples. Despite both prisons and responsibility for policing being non-devolved the Senedd is acknowledging the overlap of health and justice/devolved and non-devolved matters, and the tensions that a partial devolution model creates. This added scrutiny is welcome and we would urge Senedd committees to build on this. Furthermore, we support the recommendation from the Commission on Justice that “The All Wales Criminal Justice Board does not report publicly on progress and does not provide any account of performance to an elected body. The new Board, the Wales Criminal Justice Board, should report publicly on an annual basis, with relevant data, and its members be prepared to appear before an Assembly committee to explain progress.”⁶

Funding

9. The Commission on Justice has already forensically examined both the multiple funding arrangements which limit the Welsh Government’s scope to make comprehensive plans for public spending that integrate justice with other devolved policy areas; and the impact of the substantial cuts to the departmental budget for the Ministry of Justice during the last decade.⁷
10. Mayors in large English cities, such as London and Manchester are, with support from the UK government, taking forward “whole system” approaches which—through greater devolution of powers—enable them to provide more integrated services which better meet the specific needs of their cities. But between the UK and Welsh governments there remains a tension over the coordination of funding and the ability to set specific policies to meet the particular needs of the people of Wales.
11. One of the curious features of imprisonment is that its cost is neither known nor considered by the communities which create the demand for it. It is a “free good” in the criminal justice system, with no local accountability or incentives for controlling demand or expenditure. The public is informed only in the broadest terms of the cost of imprisonment and there is no local benefit to reducing it. Yet the intergenerational costs of imprisonment are considerable.⁸ A study of “justice reinvestment” pilots shows that local authorities are able to influence demand, and we urge that further work be undertaken to make the local costs

⁵ Equality, Local Government and Communities Committee (2019) Voting rights for prisoners, Cardiff: National Assembly for Wales

⁶ The Commission on Justice in Wales (2019) Justice in Wales for the people of Wales, Cardiff: The Commission on Justice in Wales

⁷ Ibid.

⁸ For examples of costings see Prison Reform Trust (2016) Leading Change: the role of local authorities in supporting women with multiple needs, London: Prison Reform Trust

and drivers of imprisonment transparent, and to allow for the reinvestment of at least a portion of savings from its reduction to be invested locally rather than absorbed centrally.

12. Wales represents a promising area to consider absorbing the responsibility and funding for imprisonment as part of the devolution deal in its next iteration. We believe this would promote far greater transparency about the costs and consequences of imprisonment and inspire consideration of how to provide a service to the public and local courts which both commands their confidence and achieves best value for money. It would help focus minds on the reality that people from Wales who have been convicted of crimes, including those in custody, remain the responsibility of local services and are most likely to desist from crime if those services and agencies collaborate effectively both during and after their sentence.
13. This is particularly pressing when short prison sentences have the worst reconviction outcomes, failing victims, our communities and those who have offended. Nearly half of all people (48%) are reconvicted with a year of release from prison; for those serving a sentence of less than 12 months this increases to nearly two-thirds (65%).⁹
14. Our factsheet on women's imprisonment in Wales reveals that in 2018 69% of custodial sentences for women were for less than 6 months compared to 54% of those for men.¹⁰

The existing operation of justice functions in Wales and the impact of relationships between UK and Welsh competence

15. We do not wish to repeat the detailed findings from the Commission on Justice; however, we briefly outline below some of the key points that the committee might wish to consider.
16. The growth in the use of prison for both men and women across England and Wales for most of the last three decades has created a situation in which the resources to provide a safe, decent, fair and constructive prison system have consistently lagged behind the demand for imprisonment.
17. That demand has been driven in part by the imprisonment of people who would be better dealt with in the community, and sometimes outside of the criminal justice system altogether. But it has also in the last decade or so been driven predominantly by a politically inspired growth in the severity of punishment, with higher maximum penalties for serious crime dragging up sentence length more generally, and the imposition of indeterminate sentences reaching epidemic proportion, with much longer periods of those sentences being served in custody.

⁹ Ministry of Justice (2019) Proven reoffending statistics: July to September 2017, London: Ministry of Justice

¹⁰ Prison Reform Trust (2019) Why focus on reducing women's imprisonment: Wales fact sheet, London: PRT, available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Why%20Women%20Wales%202018%20data%20.pdf>

18. Westminster governments have stoked demand for imprisonment, and then in response to the financial crisis dramatically cut the resources available, resulting in the collapse of safety and order which has been thoroughly documented both in the government's own statistics and in successive reports by HM Chief Inspector of Prisons. Not all prisons have been affected equally, and in Wales it is the older prisons in the public sector which have suffered most.
19. A fundamental re-think of who goes to prison and for how long is overdue, and represents the essential foundation for a permanent solution to the crisis the prison service as a whole is facing.
20. Although many areas of criminal justice, including policing, probation, prisons, the courts and most areas of substantive law are not currently devolved, many of the solutions to crime, and the basis for effective preventive strategies, lie outside the justice system.
21. The provision of effective diversionary services with help to prevent people from coming into contact with the criminal justice system in the first place is vital. The existing responsibilities of the Welsh Government for health include mental health and substance misuse services, both in the community and in prisons. The policies and services in these areas are of crucial importance to enhancing community safety, reducing crime and promoting rehabilitation.
22. In prisons, there are a range of prison-related services such as healthcare and housing which are already devolved to the Welsh Government. Responsibilities for education extend to education for prisoners in Wales. Skills training is also a devolved function. All are essential for effective rehabilitation.
23. We support the commission's recommendation that policing and crime reduction policy, including drug abuse and mental health related issues, should be determined in Wales so that it is aligned and integrated with Welsh health, education and social policy.
24. As HM Inspectorate of Prisons and the commission highlighted, problems arise at the intersection of devolved and non-devolved policy areas, the so-called "jagged edge". For example, whilst health services are devolved, prison services remain a competence for the UK Government. As the commission highlighted following its own experience, this can have a demonstrable effect on peoples' lives:

"On our visit to HMP Cardiff, we heard from prisoners about lengthy delays in receiving medication and, in the case of anti-psychotic drugs, the danger this can cause to the individual and other prisoners."¹¹
25. As the commission acknowledged, despite attempts between both governments "to mitigate the effects of the complexity by agreeing in March 2018 a concordat on

¹¹ The Commission on Justice in Wales (2019) Justice in Wales for the people of Wales, Cardiff: The Commission on Justice in Wales

arrangements for consultation and cooperation...[it] does not really address the problems or provide a sustainable or long-term solution to the effect of separating justice from other devolved fields.”¹²

26. A similar Mental Health Concordat between the Welsh Government and partners including the police and other justice bodies to work together to ensure that front-line services most likely to come in to contact with people in mental health crisis are supported is welcome. However, as the Minister for Health and Social Services acknowledged in supplementary evidence to the commission “[e]nsuring that public authorities collaborate so as to provide a seamless experience for those in need of support is difficult”.

Part 2 – Analysis of how the justice system could operate more effectively in Wales

Implications, consequences and practicalities of any potential justice devolution

27. We welcome the continued emphasis on cooperation between the Welsh and UK governments, most recently through the development of blueprints for the delivery of both Female Offending and Youth Justice services. The Female Offending Blueprint for Wales promises a whole system approach (as mentioned earlier) which prioritises early intervention and prevention.
28. Existing services, such as the North Wales Women’s Centre, provide an insight into what is possible when services are designed with the needs of their communities in mind. Providing effective support in a safe, non-stigmatising settings for women to address drivers to their offending such as problematic substance use and abusive relationships is key.¹³ Women who attend and receive support from women’s centres are less likely to reoffend than those who do not. A report by the Justice Data Lab found that the one year proven reoffending rate for women who had received support was 30%, compared to 35% for those who did not.¹⁴ There is also extensive qualitative evidence of the effectiveness of women-specific support services. Increased funding would enable women’s centres in Wales to support the unmet needs of women who may otherwise face short custodial sentences.
29. The Women's Pathfinder, supported by the South Wales Police and Crime Commissioner, the Gwent Police and Crime Commissioner, HM Prison and Probation Service and the Welsh Government, is diverting women across South Wales and Gwent. In North Wales and Dyfed-Powys the police are adopting the ‘Checkpoint’ model.
30. The Women's Pathfinder commenced in 2014, aiming to ‘design and deliver a women specific, whole system, integrated, multi-agency approach to women in contact with the

¹² The Commission on Justice in Wales (2019) Justice in Wales for the people of Wales, Cardiff: The Commission on Justice in Wales

¹³ Radcliffe, P. and Hunter, G. (2013) The Development and Impact of Community Services for Women Offenders: An Evaluation, London: ICPR. Available at www.icpr.org.uk/media/34025/ReportNuffieldfinal.pdf

¹⁴ Justice Data Lab (2015) Justice Data Lab Reoffending Analysis Women’s Centres throughout England. London: MoJ

Criminal Justice System'. It includes case conference meetings and co-location of statutory probation services with voluntary sector, women-centred partners. The focus has been on diverting low risk women away from the criminal justice system into community support at the earliest opportunity. To date over 1,500 women have accessed early intervention/support from voluntary sector partners based within the local custody suites across the four police forces. An evaluation by the University of South Wales evidenced a 26% reduction in women's reoffending and found that the re-arrest rate in the pilot sites was around half that in the comparison sites (17.8% compared with 35%).

31. However, funding remains short-term and piecemeal. The recent UK government announcement of £2.5m to services in England and Wales working to divert women away from crime, will be spread very thinly.¹⁵ Furthermore, there is very little detail on the first Residential Women's Centre, to be established in Wales, including what it might be like and who it might be for. Looking forward, it is important that a more sustainable and co-ordinated funding solution is found to support all women's support services.

¹⁵ Ministry of Justice website, 'Funding boost to steer more women away from crime', available at <https://www.gov.uk/government/news/funding-boost-to-steer-more-women-away-from-crime>