

Cyflwynwyd yr ymateb i ymgynghoriad y [Pwyllgor Cydraddoldeb a Chyfiawnder Cymdeithasol](#) ar [Profiadau menywod yn y system cyfiawnder troseddol](#)

This response was submitted to the [Equality and Social Justice Committee](#) consultation on [Women's experiences in the criminal justice system](#)

WECJS 10

Ymateb gan: Dr Robert Jones, Prifysgol Caerdydd | Response from: Dr Robert Jones, Cardiff University





Canolfan
Llywodraethiant Cymru
Wales Governance
Centre

Dr Robert Jones
Wales Governance Centre
School of Law and Politics
Law Building
Cardiff University
Museum Avenue
CF10 3AX

Email: jonesrd7@cardiff.ac.uk
Tel: 02920 874133

Ms Jenny Rathbone MS
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

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Re: Experiences of the criminal justice system: women's experiences in the criminal justice system

Annwyl Ms Rathbone,

This letter is a response to the Senedd's Equality and Social Justice Committee's invitation to contribute to its *Experiences of the criminal justice system: women's experiences in the criminal justice system* inquiry. Cardiff University's Wales Governance Centre has carried out wide-ranging research into the topic of criminal justice in Wales for a number of years. Although this body of work has by no means focused exclusively upon the experiences of Welsh women, the research has uncovered a range of issues relating to female imprisonment and Welsh criminal justice policy more generally. To ensure that this submission does not exceed the recommended length I have focussed on one of the questions included in the Committee's consultation letter. The information set out here draws heavily upon the Wales Governance Centre's wider research including a forthcoming book on the Welsh criminal justice system, *The Welsh Criminal Justice System: On the Jagged Edge*, which will be [published](#) by the University of Wales Press in October 2022.

The progress being made, if any, by the Welsh Government in realising its ambitions for the transformation of services for female offenders including implementation of the Female Offending Blueprint.

1.1 The Welsh Government's *Delivering Justice for Wales* [strategy](#) reiterated its commitment to improving services for Welsh women and to diverting women away from the criminal justice system. This included recognition of the need to further develop the Women's Pathfinder Diversion Scheme and to 'embed good practice' and embolden 'radical change' across Wales. The strategy offered further details of the Welsh Government's support, alongside HM Prison and Probation Service (HMPPS) in Wales, for the 'Visiting Mum service' and provided an update on the progress being made on plans for a Residential Women's Centre in Swansea. This has since been followed by an update from the UK Ministry of Justice who have [provided](#) additional information about the aims and rationale for the Residential Women's Centre as well as further details about who will be held there.

1.2 These developments would appear, at least, to show that there has been some activity in this area and that many of the commitments set out in the *Female Offending Blueprint* remain intact. The extent to which that the Welsh Government can ever truly achieve 'its ambitions' in this policy space, however, poses a more challenging set of questions. While the delivery of female offending services might be seen as separate from the broader constitutional [debates](#) surrounding the Welsh criminal justice system, the arguments presented here will consider the pledges set out in the *Female Offending Blueprint* against the backdrop of Wales's continuing involvement in the England and Wales system. Drawing upon the Wales Governance Centre's latest research, this submission underlines the need to think about the 'unintended consequences' that UK justice policies can have in Wales, as well as the need to analyse the relationship between the constitutional arrangements that underpin the Welsh criminal justice system and criminal justice services/outcomes in Wales.

Wales as a 'policy taker'

1.3 Wales's devolution settlement means that the Welsh Government *inevitably* has a vital role to play in delivering services to women in contact with the criminal justice system in Wales. Equally clearly, however, by reserving the single England and Wales criminal justice system and legal jurisdiction to the UK level, that same settlement serves to ensure that in carrying out

those responsibilities, the Welsh Government is, also inevitably, a subordinate or ‘minor partner’ alongside the Ministry of Justice. While its formal responsibilities are extensive, the Welsh Government is ultimately a *policy taker* rather than a policy maker. Even in those areas of criminal justice policy where it has a clear locus, such as housing, education, health and tackling substance misuse, the ability of devolved government to act as an effective policy maker is constrained and, ultimately, undermined by the fact that the UK Government controls most of the key criminal justice policy levers.¹ The Welsh Government’s dilemma is compounded by the fact that the UK Government has consistently demonstrated its intent to pursue other, often incompatible, policy priorities to its own.

1.4 The Welsh Government’s ambitions to transform services for women in contact with the criminal justice system in Wales offers a clear example of the problems inherent within the current devolution dispensation. Since the *Female Offending Blueprint* was published in May 2019, for example, the UK Government, in pursuit of its own policy priorities, has unveiled a series of criminal justice initiatives and reforms that, according to its *own* projections, will undermine the pledges set out in the *Female Offending Blueprint*. This includes the Blueprint’s commitment to ‘reduce the number of women’ in the Welsh criminal justice system.

Rising prisoner numbers in England and Wales

1.5 The UK Government’s *Prison Population Projections 2021 to 2026* [show](#) that prisoner numbers in England and Wales will rise to 98,500 by March 2026.² As part of this increase, the Ministry of Justice anticipate that the number of adult female prisoners in England and Wales will increase by 36 per cent from 3,170 in July 2021 to 4,300 in March 2026. Based on disaggregated data from June 2021, this will see the number of Welsh women in prison rise from 227 to 308.³

1.6 According to the Ministry of Justice, the growth in the prison population is being driven directly by its own policy initiatives. Firstly, in his maiden speech as Prime Minister in July

¹ See New Schedule 7A to the Government of Wales Act 2006 <https://www.legislation.gov.uk/ukpga/2017/4/schedule/1/enacted>

² This represents an increase of more than 18,000 prisoners based on the level recorded in November 2021.

³ These data relate to all Welsh women in prison based on ‘home address’ prior to entering custody. The Ministry of Justice state that around 97% of prisoners have an origin location; i.e. addresses that are recorded on its central IT system. If no address is given, an offender’s committal court address is used as a proxy for the area in which they are resident. These data were obtained from the Ministry of Justice via the Freedom of Information Act 2000.

2019, two months after the *Female Offending Blueprint* was published, Boris Johnson [announced](#) that an additional 20,000 police officers were to be recruited across England and Wales. The Ministry of Justice anticipate that the recruitment of additional police officers will result in a rising number of charges and an increase in prisoner numbers. Although the *Female Offending Blueprint* included a commitment to build ‘confidence in alternatives to short-term custody and remand’, the Ministry of Justice have [forecast](#) that the ‘long-term remand population’ will increase due to the impact of the additional 23,400 police officers.

1.7 Secondly, in January 2022 the Ministry of Justice [announced](#) proposals to enhance the sentencing powers of Magistrates across England and Wales. Under the plans, which took [effect](#) in May 2022, the maximum prison sentence handed out by Magistrates has increased from six months to a year. This change is expected to contribute to rising prisoner numbers with the Howard League for Penal Reform [warning](#) that the plans will ‘disproportionately impact on minorities’, including women. When looking at disaggregated sentencing data, the average custodial sentence length for women sentenced in Wales has already increased from 7 months in 2017 to 13.6 months in 2021. While 23 per cent of the Welsh female prison population were serving sentences of four years or more in 2019, this had increased to 29 per cent in 2021.

1.8 Thirdly, the enactment of the Police, Crime, Sentencing and Courts Act 2022 will further contribute to the trend of sentence inflation and increasing prisoner numbers in England and Wales. The Ministry of Justice’s (2021:2) [own](#) Impact Assessment of the Sentencing, Release, Probation and Youth Justice Measures, for example, estimated that prison and youth custody services will face an ‘increased population’ with individuals being forced to serve longer periods in custody. By 2028/29, the Ministry of Justice [estimate](#) that the Bill will have led to a total increase in the England and Wales prison population of around 700 people.⁴ A [report](#) by Agenda and Alliance for Youth Justice has also raised concerns about the likelihood that vulnerable women will continue to be ‘punished rather than supported’ as a result of the new legislation.

⁴ In line with the estimates included in the Ministry of Justice’s Impact Assessment and disaggregated Welsh-only prison data, this will result in an additional 40 Welsh people in prison by 2028/29.

The Female Offending Blueprint: On the Jagged Edge

1.9 The measures that have been introduced by the UK Government since the *Female Offending Blueprint* was published in May 2019 brings into sharp focus the problems associated with the devolution dispensation. The Welsh Government's efforts to 'transform' services for women provides a clear example of how the devolved government's attempts to shoulder its various criminal justice-related responsibilities in ways that are not only consistent with the values that it seeks to embody, but are also evidence-based, are frustrated by the constitutional structures that underpin the Welsh criminal justice system (Jones and Wyn Jones, 2022). Frustrated, not due to personalities or a lack of commitment from Welsh Government or Ministry of Justice officials based in Wales, we simply cannot avoid the conclusion that such frustration is the inevitable outcome of the constitutional underpinnings of the Welsh criminal system and devolved government's place within it. The Welsh Government does not control enough of the policy levers to make good on its avowedly progressive intentions and, crucially, it is powerless to prevent the UK Ministry of Justice from pursuing its own legislative and policy agenda, irrespective of how harmful or detrimental it may be to the realisation of its own policy ambitions.⁵

1.10 The policies and initiatives introduced by the UK Government since May 2019 raise serious questions over the fate of the Welsh Government's ambitions to 'transform' services for women in Wales. In light of the policies recently introduced by the UK Government, should the Welsh Government now abandon its hopes of implementing the *Female Offending Blueprint* and instead shift its focus to limiting the effects that UK policies will have in Wales? As argued in *The Welsh Criminal Justice System: On the Jagged Edge*, this is the 'perpetual dilemma' that faces the Welsh Government when seeking to carry out its responsibilities for the Welsh criminal justice system. Does it simply suspend its own policy vision or, alternatively, should it continue to 'use its tightly constrained powers' to pursue a different approach in Wales, 'doing so in full knowledge of that fact that the very structure of the system militates against any realistic chance of success'?

⁵ *The Welsh Criminal Justice System: On the Jagged Edge* considers prisoner housing policy as a further example of this problem.

1.11 It is not only the devolved government who are confronted with a dilemma. Having worked alongside the Welsh Government to produce the *Female Offending Blueprint*, Ministry of Justice officials based in Wales have since seen their joint vision usurped by colleagues in London acting in their England and Wales guise. No doubt a source of considerable frustration and embarrassment for Ministry of Justice officials who see partnership approaches and ‘joint-working’ as *the* solution to the problems created by the constitutional underpinnings of the Welsh criminal justice system, Ministry of Justice officials in Wales are caught between the proverbial rock and a hard place. On the one hand, they could forcibly make the case to their colleagues in London that a different approach is needed in Wales to fulfil the aims of its own joint-strategy. It is difficult to see, however, how this approach would work in practice. For example, would Magistrates in Wales *not* be given additional sentencing powers? Alternatively, would the Police, Crime, Sentencing and Courts Act 2022 be amended to ensure that its most punitive elements apply only to England? This approach is not only clearly unfeasible but, if pursued, would be politically perilous for a government determined to keep the single England and Wales jurisdiction intact.

1.12 A second and more likely option is that Ministry of Justice officials in Wales will privately lament the policy direction taken by their colleagues in London and will continue to emphasise the need to work in partnership with Welsh Government officials. While this approach might help to keep the ‘partnership working’ strategy on track, the vision set out within the *Female Offending Blueprint* will ultimately be frustrated as the UK Government’s justice policies begin to take effect. Given that Wales recorded the third highest rate of female imprisonment in western Europe in 2017 (Jones and Wyn Jones, 2022), these failings will have significant human consequences. Indeed, the real losers in this story will be the thousands of women and girls who might otherwise have been diverted away from the clutches of the Welsh criminal justice system in future years.

1.13 Notwithstanding the efforts being made by officials, policy-makers, service providers and practitioners to implement the *Female Offending Blueprint* in Wales, the policy represents a clear example of an ambitious plan which has fallen foul of the constitutional arrangements that underpin the criminal justice system in Wales. By no means some abstract or academic concern, the constitutional arrangements underpinning the Welsh criminal justice system cast serious doubt over whether the Welsh Government can ever truly ‘transform’ services or implement its own policy vision for women in Wales. It is hoped that the arguments presented

here can inform the Committee's ongoing inquiry into this important policy area. This includes its consideration of the arguments for reducing custodial sentences for women in Wales and the availability of custodial provision and support.

If the Committee requires any additional information please do not hesitate to contact me.

Yours sincerely,

Dr Robert Jones