



Prison Reform Trust response to the Justice Committee’s inquiry on the role of adult custodial remand in the criminal justice system – April 2022

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.

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Introduction

The Justice Committee’s examination of the use of custodial remand is timely. The rapid rise in the number of people in prison held on remand since March 2020—particularly those awaiting trial; and the increase in the length of time that people have been held—often prior to their trial—has been a largely unexplored outcome of the coronavirus pandemic.¹ The latest projections by the Ministry of Justice suggest that the remand population will continue to rise, reaching a record high of 13,800 by 2023, “due to the impact of the additional 23,400 police officers, coupled with high volumes of outstanding cases awaiting trial in the Crown Court”.²

Our response will focus on answering the following questions from the committee’s terms of reference:

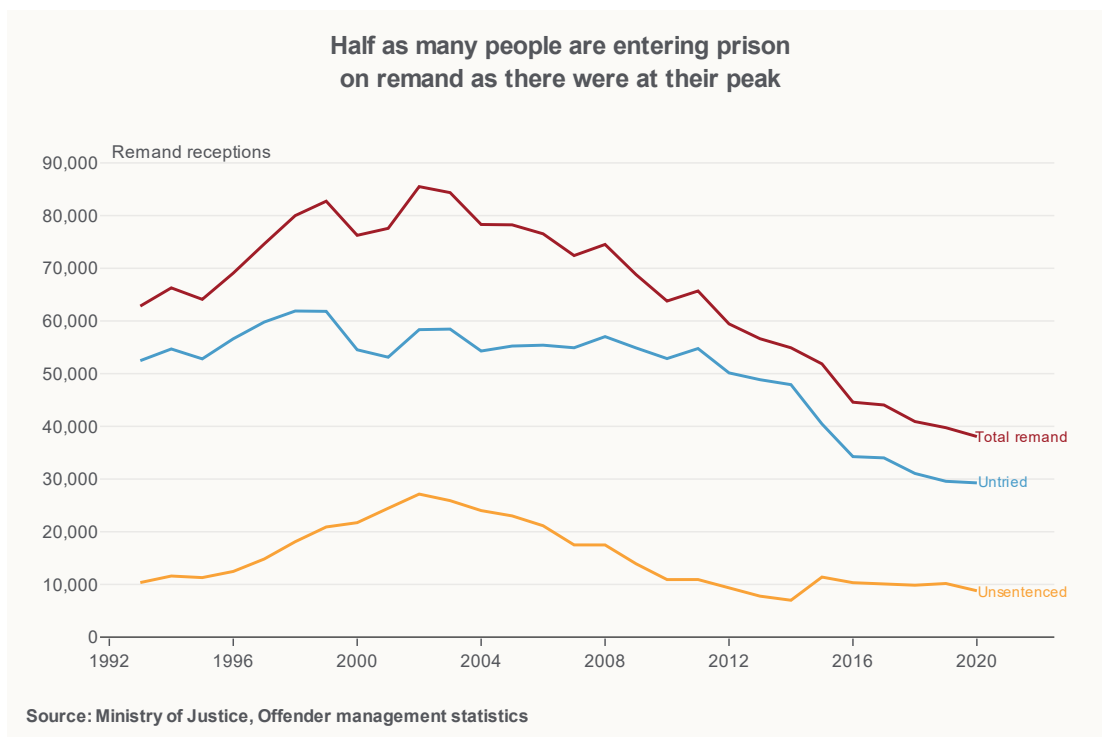
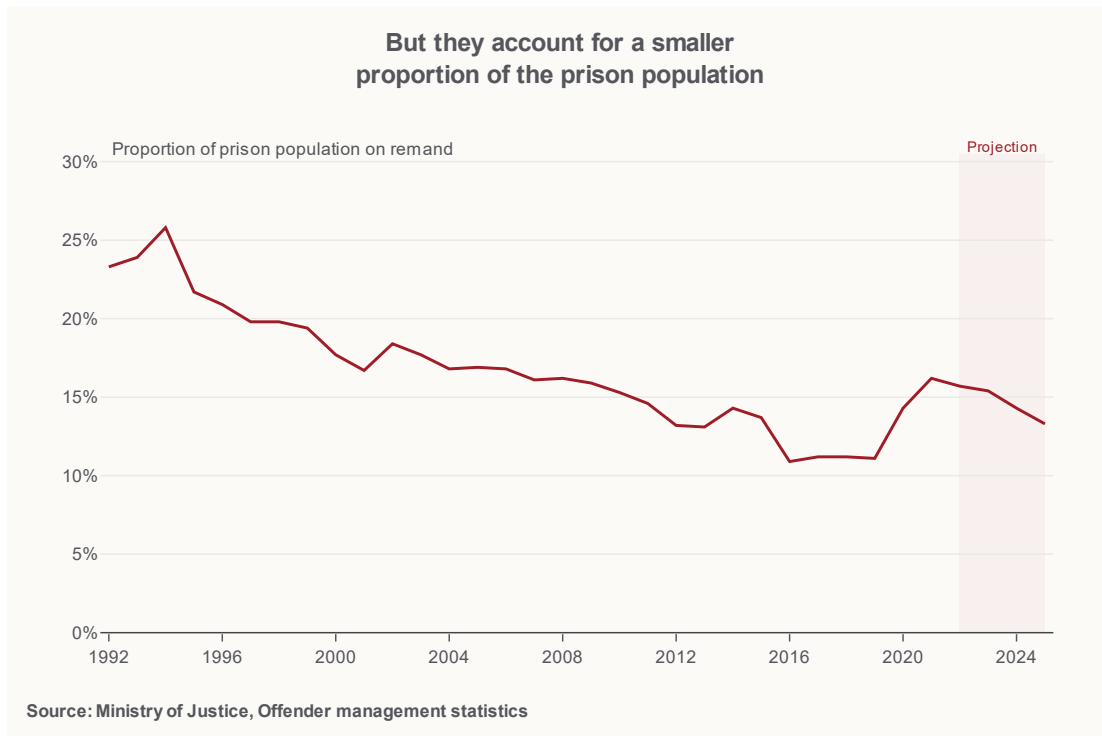
- What are the implications of people being held for long periods on remand?
- What effect does the increasing remand population have on the prison population?
- What support is available for remand prisoners?
- Whether there are differences in the use of remand in custody between men and women?

¹ Table A1.1. Ministry of Justice. (2021). *Offender management statistics: Prison population 2021* [Dataset]. Ministry of Justice. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2020>

² Table 1.1. Ministry of Justice. (2021). *Prison population projections: 2021 to 2026*. <https://www.gov.uk/government/statistics/prison-population-projections-2021-to-2026>

Use of remand

The recent sharp increase in the remand population reverses the steady progress made since 2008 in reducing the number of people *in prison* on remand. However, as a proportion of the overall prison population, remand prisoners still account for one in six people (16%), which remains lower than in the early 1990s, where around one in four people in prison were on remand.



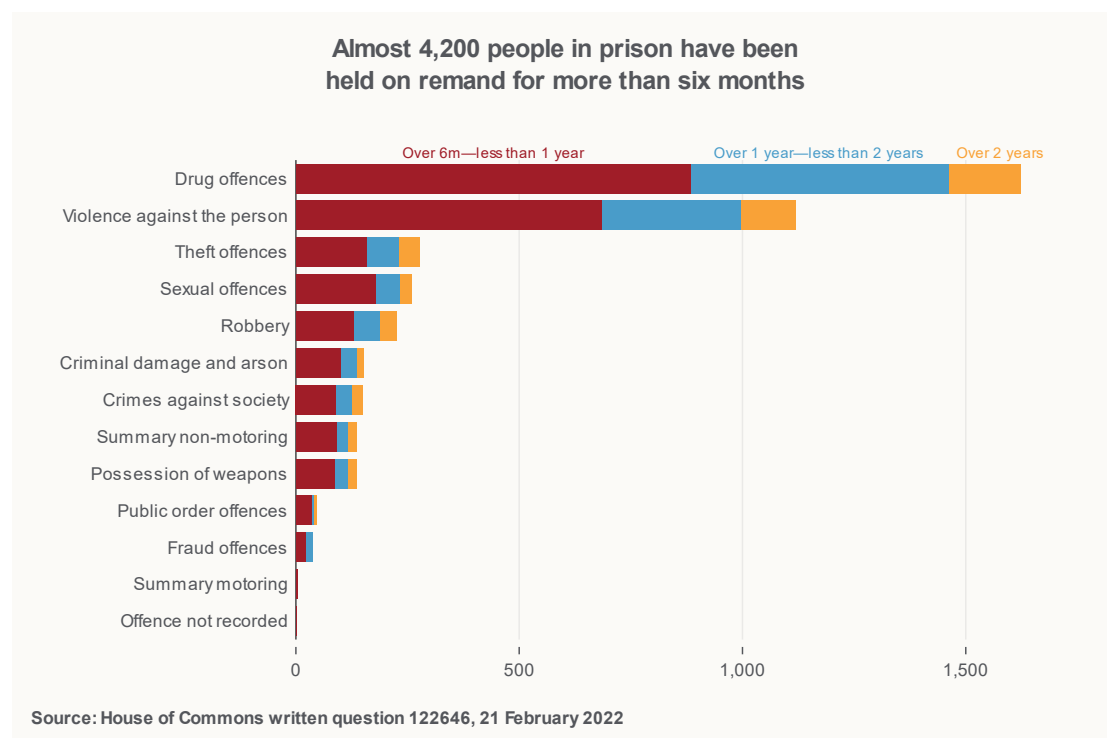
Furthermore, the number of people *entering* prison on remand has fallen sharply in the last decade, and is now at less than half the number it was at its peak in 2002. This suggests that the recent rise is primarily a symptom of people being held in prison on remand for longer periods, rather than a shift in the use of custodial remand by courts during the pandemic.

The extension of Custody Time Limits (CTLs) from six months to eight months by the government in September 2020, combined with court closures has led to a large backlog of court cases to build and a rise in the number of people being held in prison on remand for longer periods. As the Ministry of Justice confirmed in its latest prison population projections:

*“Defendants have also spent more time on remand awaiting their court appearance.”*³

We are not currently aware of any routinely published data on the amount of time people spend on remand. However, analysis by Fair Trials following a series of requests under the Freedom of Information Act revealed that many people were being held beyond the CTL.⁴

Whilst the CTLs have now returned to their pre-pandemic levels, there were almost 4,200 people in prison on 31 December 2021 who had been held for more than six months on remand—and of these, two in five (41%) had been held for more than a year. It is particularly concerning to see some people held for more than two years who are there for non-violent offences including theft, drug offences, and summary offences—some of which are almost certain to result in release either immediately or very soon after sentencing, due to time served on remand.⁵



³ Ministry of Justice. (2021). *Prison population projections: 2021 to 2026*. <https://www.gov.uk/government/statistics/prison-population-projections-2021-to-2026>

⁴ Fair Trials. (2021). *Locked up in lockdown: Life on remand during the pandemic*. <https://www.fairtrials.org/articles/publications/locked-in-up-lockdown/>

⁵ [House of Commons written question 122646, 21 February 2022](https://www.parliament.uk/business/questions/written-questions-to-ministers-by-theme/justice/2022/02/21/122646)

What are the implications of people being held for long periods on remand?

People held in custody on remand are frequently held in some of the worst conditions in our prison estate. Category B reception prisons (historically known as local prisons) serve the local courts, receiving large numbers of people daily and holding a transient population. They are characterised by old, overcrowded and decrepit conditions—with some accommodation dating from the 19th century.⁶

As these prisons are intended to hold people for relatively short periods, and in the case of many remand prisoners—before they have been found guilty of a criminal offence, the facilities and support available are not intended for people spending long periods in prison.

Furthermore, as the National Audit Office found in 2019, a shortage of places in training prisons and a surplus in reception prisons is altering the population within reception prisons—holding longer-sentenced prisoners because of shortfalls in places to support prisoners to progress their sentences. A long term HMPPS project to reshape the prison estate has been repeatedly thrown off course.

The increase in the length of time that people are being held on remand, twinned with the changing population held in reception prisons, provides an environment that is failing to meet the needs of either population. Two years of severe regime restrictions, introduced to prevent the spread of Covid-19, have only compounded this. As HM Inspectorate of Prisons noted in their report on short scrutiny visits to reception prisons:

“The vast majority were locked up for nearly the whole day with usually no more than half an hour out of their cells. We found some examples of even greater restrictions. In one prison, a small number of symptomatic prisoners had been isolated in their cells without any opportunity to come out for a shower or exercise for up to 14 days. A prisoner who had been subject to such restrictions described to us the impact on his mental health and well-being.”⁷

Prior to the Covid-19 pandemic, prisons were facing a well-documented crisis in safety following nearly a decade of rapid deterioration.⁸

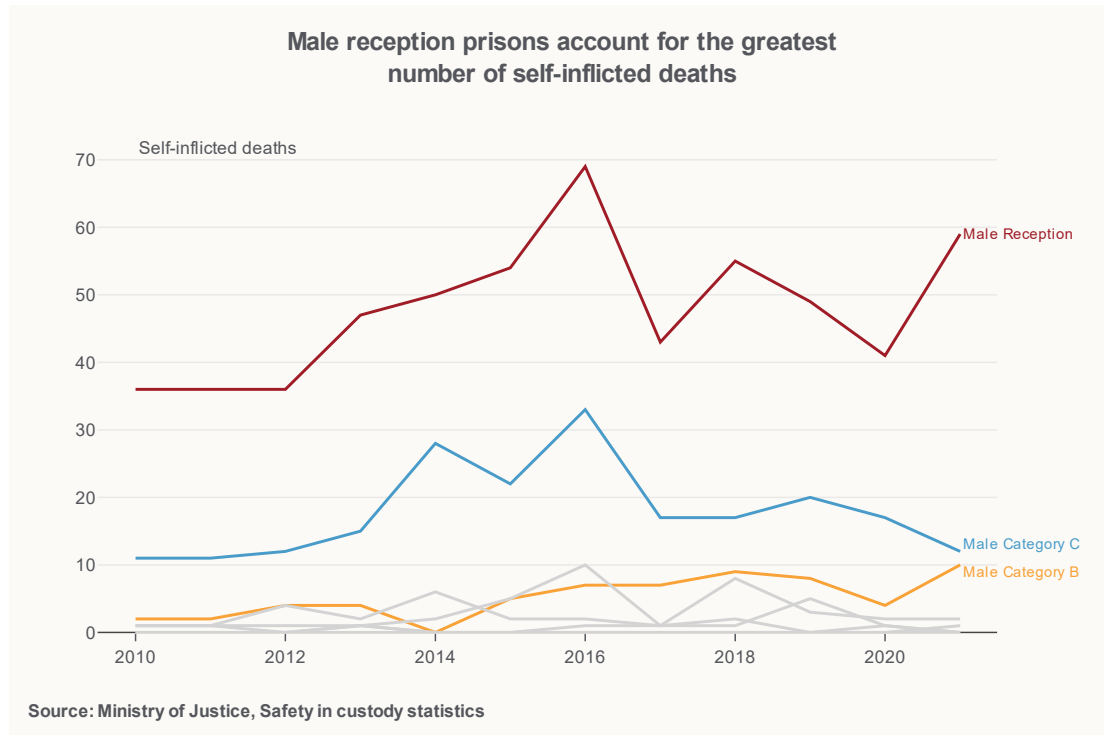
Male reception prisons account for the greatest number of self-inflicted deaths in the prison estate, and over a third (37%) of self-inflicted deaths in 2021 were by people held on remand.⁹

⁶ HM Inspectorate of Prisons. (2020). *Report on short scrutiny visits to local prisons*. <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/05/Locals-SSV-web-2020.pdf>

⁷ Ibid.

⁸ Prison Reform Trust. (2022). *Bromley briefings prison factfile: Winter 2022*. <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Winter%2022%20Factfile.pdf>

⁹ Table 1.11 and 1.7. Ministry of Justice. (2021). *Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to December 2021, Assaults and Self-harm to September 2021* [Dataset]. <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-june-2021/safety-in-custody-statistics-england-and-wales-deaths-in-prison-custody-to-september-2021-assaults-and-self-harm-to-june-2021>



As Fair Trials argues:

“The extended remand times, uncertainty of trial dates, long periods of isolation in prisons as well as isolation from friends, family and loved ones, and the conditions people are held in, has impacted prisoners physically, mentally and emotionally...”

What effect does the increasing remand population have on the prison population?

We agree with the assessment of inspectors in their investigation on the impact of the Covid-19 pandemic on the criminal justice system:

“Increased time spent on remand will inevitably add to the anxieties and frustrations of individual prisoners. A growing and increasingly-frustrated remand population has the potential to have a serious adverse effect on the stability of reception prisons.”¹⁰

Given the pressure on prison places for the foreseeable future (the government has no policy or plan to do away with prison overcrowding despite the massive £4bn investment in new prisons places to which it is committed), it is plainly desirable that remand periods should reduce and that custodial remands should never be used where imprisonment on sentence is unlikely.

¹⁰ Criminal Justice Joint Inspection. (2021). *Impact of the pandemic on the criminal justice system*. <https://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2021/01/2021-01-13-State-of-nation.pdf>

What support is available for remand prisoners?

“Prisoners on remand also have additional rights and privileges beyond those afforded to sentenced prisoners, including being able to send and receive additional letters, to access additional visits and, within reasonable expectations, to have limited contact with convicted prisoners, including not sharing a cell with a sentenced prisoner, unless they choose.”¹¹

Victoria Atkins, Minister of State (Ministry of Justice)

This response to a recent written parliamentary question reflects the additional entitlements afforded under The Prison Rules 1999 to remand prisoners in recognition of their presumed innocence whilst awaiting trial.

However, remand prisoners have historically received less help and support as sentenced prisoners, both whilst in prison and on release. Changes to prison regimes in response to the Covid-19 pandemic, and the recent reunification of probation services have exacerbated this, at least in the short term.

“Remand prisoners were locked up for up to 23.5 hours a day with very few activities on offer; this was particularly concerning for the 60 prisoners who had been on remand for more than a year...the prison’s biggest, ongoing challenge will remain recruiting and retaining enough high-quality staff so that it can expand the regime and make sure that prisoners, particularly those on remand, are given opportunities for education and training.”¹²

However, it would be wrong to see this solely as a temporary impact of the pandemic. For many years, the reality for remand prisoners has been a worse daily regime than sentenced prisoners, with fewer opportunities for purposeful activity and less time out of cell as a result. If the intention of the Prison Rules quoted by the minister is to reduce the pains of imprisonment for people considered innocent, that intention is manifestly not delivered in practice.

Whilst it is undoubtedly positive that there are now less than half the number of people in prison on remand than during its peak in 2002, we remain of the view that the failure to provide consistent and timely bail information to courts and prisons is leading to the unnecessary and inappropriate use of remand.

Providing routine access to a bail information service would benefit courts, prisons and defendants. However, the government has confirmed in its response to several recent parliamentary questions that “no courts or prisons have a full and pro-active Bail Information Service (BIS) with dedicated Bail Information Officers”.¹³

We are particularly concerned at the lack of support available for people already held in prison on remand, where doing so may enable them to be bailed prior to their court hearing.

¹¹ [House of Commons written question 76700, 25 November 2021](#)

¹² HM Inspectorate of Prisons. (2022). *Report on an unannounced inspection of HMP Thameside*. <https://www.justiceinspectores.gov.uk/hmiprison/wp-content/uploads/sites/4/2022/02/Thameside-web-2021.pdf>

¹³ [House of Commons written question 77546, 7 September 2020](#)

We are aware of three separate BIS projects undertaken by HMPPS in recent years:

1. **A temporary BIS for courts**—This ran throughout April to August 2020 in response to the Covid-19 pandemic, before reverting to an ad-hoc service available at the specific request of the court.
2. **A pilot BIS in courts and prisons**—This ran from September 2020 to Spring 2021 and provided a dedicated Bail Information Officer in several courts and prisons in North West England and in Wales.
3. **A Covid-19 response BIS**—Run in conjunction with the pilot BIS, this service was introduced in all public sector remand prisons.¹⁴

The trials ran until Spring 2021 and “aim[ed] to inform the design, resourcing and delivery of a future dedicated and proactive national BIS”, however, to date no further information or findings have been made available.¹⁵ We would urge the committee to seek further information about these pilots, including lessons learned and plans for extending bail information to courts and prisons.

The rapid rollout of video calling facilities to prisons has been one positive innovation during the Covid-19 pandemic. Faced with the prospect of not knowing when they might see their loved ones following the suspension of face-to-face visits, it has provided a vital lifeline to maintaining links in the community, and will continue to be a valuable addition to physical visits.

However, we share the concerns of Fair Trials regarding access to legal advice and the implications that has in ensuring fairness and justice. Their research found that access to legal advice and speaking to a lawyer while on remand has been severely restricted by the widespread use of ‘remote’ video-link calls.

“People said the [video] connections were often poor, meetings were short, and prison authorities error led to conferences being missed or cut even shorter, and there were concerns over confidentiality.”¹⁶

Even more concerning are claims made by some respondents to Fair Trials’ study that they felt that they had no choice but to plead guilty to offences they had not committed.

“Many of those who wrote to us spoke about pleading guilty to get out of extended remand time, to avoid longer time in prison than they would get even if they were convicted, and several spoke about the pain of wanting to get out but not wanting a criminal record or to plead guilty to something serious that they had not done.”

¹⁴ [House of Lords written question HL14044, 23 March 2021](#)

¹⁵ [House of Commons written question 143752, 1 February 2021](#)

¹⁶ Fair Trials. (2021). *Locked up in lockdown: Life on remand during the pandemic.* <https://www.fairtrials.org/articles/publications/locked-in-up-lockdown/>

Whether there are differences in the use of remand in custody between men and women?

On 31 December 2021, 20% of the women in prison were being held on remand, compared to 16% of male prison population.¹⁷ Yet almost nine in 10 women on remand are low to medium risk of serious harm,¹⁸ and many women remanded into custody do not go on to receive a custodial sentence – in 2019 70% of women remanded by the magistrates' court and 59% tried by the Crown Court didn't receive a custodial sentence.¹⁹ Women also continue to be remanded 'for their own protection' under the Bail Act 1976 – this is wholly inappropriate. Prison is a damaging and unsafe environment for people in crisis and should never be considered a place of safety.²⁰

The government confirmed in December last year that:

*"Following a commitment from the Government earlier this year, MoJ is reviewing the use of the power in the Bail Act 1976 which allows a court to remand a defendant for their own protection. This work is ongoing, and we are on track to complete our review into uses of the power by the end of the year."*²¹

We would urge the committee to seek further information on the status of this review and when its findings will be made available.

Being remanded to custody can be particularly devastating for women, who are more likely to be primary carers of children. Even short periods of maternal imprisonment can have significant effects on a child's long-term health and wellbeing.²² One woman told PRT she had been held on remand for 14 months and had not been able to see her child once because the prison was too far away, and it was too difficult to travel to visits. Another woman told the PRT advice and information service she was five weeks pregnant, had been remanded for a week and had been refused the five-minute phone call she was allowed to make. Unconvicted prisoners remanded to custody should receive a number of special rights and privileges, including receiving

¹⁷ Table 1.1. Ministry of Justice. (2022). *Offender management statistics: Prison population: 31 December 2021* [Dataset]. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2021>

¹⁸ Ministry of Justice. (2018). *Female offender strategy*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719819/female-offender-strategy.pdf

¹⁹ Ministry of Justice. (2020) *Criminal justice system statistics quarterly: December 2019—Remands: magistrates' court data tool and Remands: Crown Court data tool*. <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>

²⁰ All Party Parliamentary Group of Women in the Penal System (2020) *Prison for their own protection: The case for repeal*. <https://howardleague.org/wp-content/uploads/2020/10/APPG-For-their-own-protection-FINAL.pdf>

²¹ [House of Commons written question 84368, 8 December 2021](#)

²² Beresford, S. (2018). *What about me? The impact on children when mothers are involved in the criminal justice system*. Prison Reform Trust. <http://www.prisonreformtrust.org.uk/portals/0/documents/what%20about%20me.pdf>

as many visits as they wish.²³ However, in practice this is often not the case. Unconvicted women may even be less likely to be considered for enhanced child-centred visits such as family days.²⁴

Often prisons are not incentivised to work constructively with women they receive on remand for short periods.²⁵ Recent HM Inspectorate of Prisons reports have found a lack of resettlement support for women on remand, and this cohort of women no longer being able to access consistent help with housing or finances.²⁶

Data

There are several limitations with the availability of data to analyse the use of remand in England and Wales. The most obvious being how long people are held on remand.

As the response to a recent parliamentary question showed, data is available in a format that is publishable.²⁷ We recommend that as a minimum, this information should be routinely published as part of offender management statistics each quarter. We would also recommend that this information is provided in a format to enable analysis by all statutorily protected characteristics.

A similarly simple question that we are currently unable to answer is “why is a person remanded?”. Confirming that this information was not currently available, Alex Chalk said:

*“Information about the reasons for remand decisions is not centrally held within the Court Proceedings database. It is therefore not possible to identify whether defendants were remanded in custody for their own protection or welfare...”*²⁸

Concerns ahead

In addition to the post-pandemic recovery of courts and prisons, there are several other challenges on the horizon—some of which could directly impact on the number of people held on remand.

²³ Prison Reform Trust website

<http://www.prisonreformtrust.org.uk/ForPrisonersFamilies/PrisonerInformationPages/Unconvictedunsentencedandcivilprisoners>

²⁴ Beresford, S. (2018). *What about me? The impact on children when mothers are involved in the criminal justice system*. Prison Reform Trust.

<http://www.prisonreformtrust.org.uk/portals/0/documents/what%20about%20me.pdf>

²⁵ Robson, M. (2022). *A suspect population: An examination of bail decision making for foreign national women in criminal courts in England and Wales*. The Griffins Society.

<https://www.thegriffinsociety.org/suspect-population-examination-bail-decision-making-foreign-national-women-criminal-courts-england>

²⁶ HM Inspectorate of Prisons. (2022) *Focus on women’s prisons: A briefing paper for HM Inspectorate of Prisons*. <https://www.justiceinspectrates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2022/02/Womens-briefing-paper.pdf>

²⁷ [House of Commons written question 122646, 21 February 2022](#)

²⁸ [House of Commons written question 1031, 21 May 2021](#)

Recruitment of 23,400 new police officers

The Ministry of Justice projects that the prison population will increase to 98,500 by March 2026.

“This [increase in the prison population] is largely a result of the recruitment of an extra 23,400 police officers, which is likely to increase charge volumes and therefore increase the future prison population.”²⁹

The remand population is also projected to continue to rise, reaching a record high of 13,800 by 2023, “due to the impact of the additional 23,400 police officers, coupled with high volumes of outstanding cases awaiting trial in the Crown Court”.³⁰

Extension of magistrates’ sentencing powers

The extension of magistrates’ sentencing powers to enable them to give prison sentences of up to 12 months, contained within the Judicial Review and Courts Bill and approaching its final parliamentary stages, is a further concern. Magistrates are responsible for most remand decisions. The extension of sentencing powers means that fewer cases will need to be transferred to the Crown Court, therefore increasing the number of hearings undertaken by magistrates. We recommend that any training by the Judicial College as a result of these measures, should also include guidance on the use of custodial remand.

Staffing

The government’s Prisons Strategy White Paper commits to recruiting up to 5,000 additional prison officers in public and private prisons “by the mid-2020s” and to introduce a retention framework.³¹

But at a time when the labour market is becoming increasingly competitive, there are worrying signs that the prison service is struggling to recruit and retain enough staff.

In the year to September 2021, 2,587 prison officers, around one in nine (11%) of those employed, left the prison service. Most officers (52%) who left the service in the last year had stayed in the role for less than three years.³²

Despite this, a recommendation by the independent prison service pay review body to increase prison officers’ pay was recently rejected by the government—the latest in a series of rejections of the body’s recommendations.

²⁹ Ministry of Justice. (2021). *Prison population projections: 2021 to 2026*. <https://www.gov.uk/government/statistics/prison-population-projections-2021-to-2026>

³⁰ Ibid.

³¹ Ministry of Justice. (2021). *Prisons strategy white paper*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038765/prisons-strategy-white-paper.pdf

³² Table 4 and 13. Ministry of Justice. (2021). *HM Prison and Probation Service workforce statistics: September 2021* [Dataset]. <https://www.gov.uk/government/statistics/her-majestys-prison-and-probation-service-workforce-quarterly-september-2021>

The government faces a dramatic fall in the number of people applying to become a prison officer at a time when one in nine prison officers are leaving the profession every year. And it will do so after repeatedly denying prison officers a pay rise recommended by an independent pay review body.

The warnings from successive recent inspection reports could not be any clearer—small signs of progress cannot survive either an increase in overcrowding levels or a failure to solve the staffing crisis afflicting some of the prisons that will first feel the effect of any surge in receptions from the courts.³³

It will be in the reception prisons where remand prisoners are held — repeatedly singled out by inspectors as falling furthest short of the standards they set — that this coincidence of too many prisoners and too few staff will be felt soonest and most severely. Given the well-known vulnerability of people in the early days of imprisonment, and the psychological harm caused by the uncertainty inherent in being on remand, an increase in self harm and suicide is a wholly predictable and likely consequence. We would urge the committee to press the government for its assessment of that risk and the measures it is taking to reduce it.

³³ HM Inspectorate of Prisons. (2022). *Report on an unannounced inspection of HMP Wandsworth*. <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2022/01/Wandsworth-web-2021.pdf>; and HM Inspectorate of Prisons. (2021). *Report on an unannounced inspection of HMP & YOI Rochester*. <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2022/01/Rochester-web-2021.pdf>