20

REMANDING WOMEN

Exploring the Scope for Using Therapeutic Jurisprudence as a Framework in the Bail and Remand Decision-Making Process

Lisa Mary Armstrong

Introduction

Women's experiences of bail and remand decision-making have attracted relatively little interest in the academic literature (Daly, 1995; Hedderman and Gelsthorpe, 1997; Steward, 2004; Heidensohn, 2006). This is surprising given the high levels of remand, particularly of female remand prisoners in some countries (Edgar, 2004; Corston, 2007; Player, 2007). For example, interestingly, Scotland has witnessed a significant increase in the remand population with recent figures suggesting that a quarter of women in custody are awaiting trial (Justice Committee, 2018; Howard League Scotland (HLS), 2021). The recent rise in remand prisoners prompted the Scottish Government to commission an exploratory study into bail and remand decision-making where it is hoped that the research generated from the study will assist in developing better alternatives to remand (Scottish Government, 2020). Historically, research about women and imprisonment tended to focus on whether women were treated more harshly or leniently than men in the sentencing process (Hedderman and Hough, 1994; Carlen, 2002). However, the evidence suggests that the reason for the rise in the female imprisonment population in Scotland over the past 15–20 years has more to do with the structural and social causes of crime than women's offending (Edgar, 2004; Corston, 2007; HLS, 2021). In the past, high imprisonment rates have been attributed to penal populism and 'tough on crime' policies (Pratt, 2016). Hedderman (2010, p. 67) explains that as a result women have been 'swept up in the generally tougher sentencing climate'. In addition, prison is used increasingly as a route for accessing help. For example, the evidence indicates that there is a worrying practice of remanding women on welfare/protective grounds (Edgar, 2004; Howard League for Penal Reform, 2020). The Corston Report (2007) and the more recent Female Offender Strategy (Ministry of Justice, (MoJ), 2018) were both instrumental in bringing to the forefront many of the issues women faced when embroiled in the criminal justice system (CJS). Disappointingly very few of the suggested recommendations have been implemented despite promises from various governments to make criminalised women a priority (Webster, 2017; Booth et al., 2018).

Due to a growing dissatisfaction with the legal system, there has been a move towards more emotionally intelligent ways of doing justice which recognise how salient 'understanding and managing emotions are in legal problem solving and job performance' (King, 2008,

 DOI: 10.4324/9781003202295-20

p. 1009). Drug courts, for example, first emerged in the US in the 1980s as a response to the growing problem of drug misuse and offending and were adopted by Scotland as a model in Glasgow in 2001 and later Fife in 2002 (McIvor, 2006). Devised as a means of countering the harmful effects of adversarial justice, non-adversarial approaches such as therapeutic jurisprudence (TJ), restorative and procedural justice have become more mainstream not only in criminal justice but in other areas such as education, employment, hospitals and communities (King, 2008). This chapter considers whether applying a TJ approach could improve women's experiences of the bail and remand decision-making process. It begins with a brief overview of the remand process adopting Scotland as a case study and discusses the current alternatives to remand. TJ is then introduced followed by an exploration of the different ways it has been utilised in the CJS before considering how it could be applied in the bail and remand process. Women often report that it is their treatment at the hands of legal professionals and other actors in the CJS that compounds their trauma (Carlen, 2002; Hedderman and Barnes, 2015). TJ recognises that the law and those that apply it can have a significant impact on the emotions and wellbeing of those whose life it touches. Rutter and Barr (2021, pp. 170–171), for example, argue that the 'responsibilisation and individualisation of criminalisation' in the CJS prevents women from moving forward with their lives as it entrenches feelings of shame and stigmatisation.

Remand is often framed by legal actors as 'just' part of the process this is despite being felt and experienced as a punishment (Feeley, 1979). For criminalised women, remand significantly increases the risk of losing their home, employment, incurring debt and for many mothers can result in their children being placed in care (Minson, 2020). Consequently, the gendered pains of remand are acutely felt by women and their families, the effects of which can continue long after a woman is released from prison (Masson, 2019). However, this chapter does not suggest that TJ is a panacea for the significant remand problem, rather it considers whether this approach could potentially ameliorate some of the harm caused by the practice of remand. Investing in welfare and services that are responsive to women's needs is the most effective way to help women escape the revolving door of justice (Corston, 2007; Baldwin, 2015; Masson et al., 2021).

Bail and Remand Decision-Making in Scotland

In Scotland, and many other countries, when a person accused of committing an offence appears in court for the first time, a decision is made as to whether they should be released on bail or remanded in custody. The term 'bail' describes the process where an accused is charged with an offence but released on the undertaking that they comply with the conditions set by the court (Home Office, 2020). The police can release someone after charging them if they agree to attend court when required (Justice Committee, 2018; Home Office, 2020). The courts can also release the accused after the first hearing or where a bail application has been granted while the accused is in custody awaiting trial or sentencing. There are two ways that someone can be remanded in custody – if the accused pleads not guilty and for sentencing where the court may need further information. This is usually in the form of background reports which assists the judge in deciding which sentencing disposal to make (Justice Committee, 2018).

In Scotland, a sheriff or judge can only oppose bail in accordance with the grounds set out in the Criminal Procedure (Scotland) Act 1995 s. 23C. The law allows a judge to remand someone if there is a *substantial risk* they may reoffend, fail to show up for court, interfere with witnesses, obstruct the course of justice and for *any other substantial factor which appears*

to justify keeping the person in custody. As a significant number of female prisoners on remand in Scotland are untried and unconvicted, they are presumed innocent (HLS, 2021). This therefore makes the decision to remand someone who *may* reoffend problematic as it assumes guilt. In addition, those on remand awaiting trial receive no compensation for time spent if they are subsequently found not guilty, a majority of whom are women (Prison Reform Trust (PRT), 2019). For example, in Scotland, remand was responsible for approximately 24 per cent of women's receptions in 2018 of whom 70 per cent did not go on to receive a custodial sentence (Scottish Prison Service, 2018). For remanded women, their vulnerability and needs often play a significant role in the judge's decision. In Scotland, having no fixed abode has been cited as one of the most common reasons for refusing women bail (PRT, 2016; Justice Committee, 2018; Howard League Scotland, 2020). The decision to remand someone is normally the result of multiple factors such as the seriousness of the offence and having previous convictions (Scottish Government, 2018). Most women, however, are remanded for committing low-level offences unlike men who are more likely to be remanded for violent and sexual offences. As such, the decision to, and the process of, remand is inherently gendered (Steward, 2004).

Alternatives to Remand

Since the Corston Report (2007), the bail and remand process has undergone a very little transformation in Scotland. When considering both the high percentage of untried women on remand, and the number who do not go on to receive a custodial sentence, serious questions are raised about the legitimacy of this critical process, for example, how fundamental rights such as the presumption of innocence and right to liberty are impacted (Edgar, 2004; Player, 2007). The harm that imprisonment inflicts upon women's emotional and psychological wellbeing is well evidenced in the high levels of post-traumatic stress disorder, trauma, self-harm, poor mental health and self-inflicted deaths found among the female prison population (Edgar, 2004; Corston, 2007; Edgar and Rickford, 2009; Hackett, 2015; MoJ, 2018). The overuse of custodial remand interferes with the rights of female prisoners and raises serious questions about the legitimacy of their detention (Player, 2007). Player (2007, p. 402) explains that 'women remanded into custody have lost their liberty not as a legitimately imposed punishment for a crime but for reasons purporting to uphold broader communal interests'. Remand has such a profound impact on the lives of women and their families disrupting and damaging familial ties and relationships (Jardine, 2019; Booth, 2020). The harmful impact and consequences of custodial remand could best be avoided by utilising, and better funding, existing alternatives to remand in Scotland. It is suggested that if successful, these alternatives could be adopted by other countries who face issues with the overuse of remand for women.

The first alternative is Electronic Monitoring (EM), which has been considered an effective tool in reducing the use of remand and short-term prison sentences in some countries (Maes and Mine, 2013). Not only is it cost effective in comparison to a prison sentence, but it also ensures remand is used sparingly and only in exceptional circumstances (for example, Graham and McIvor, 2015; Scottish Government, 2019a). Maes and Mine (2013, p. 149) highlight that EM serves a social goal as it 'prevents the marginalising consequences of imprisonment as women are able to remain in their home/work environment'. Despite its availability in Scotland since 2002, EM has not been utilised as strategically as it could be. It is often underused with significant disparities in regional use across Scotland (Nellis, 2015). In 2011, an independent commission on women offenders was set up to explore ways to reduce

the female prison population. In their recommendations, they called for the Scottish Government to examine the potential of using EM as a condition of bail (Angiolini, 2012). EM was viewed as a 'cost-effective alternative to custodial remand coupled with effective holistic informed support like mentoring' (PRT, 2016, p. 3). Some of the criticisms, however, were that tags were 'cumbersome and stigmatising' (PRT, 2016 p. 3) and isolated women, which is very much echoed by research in England and Wales by Masson (2019, p. 158) where women on EM reported feeling 'branded, like cattle'. Despite the reservations mentioned in the PRT report, EM was encouraged in Scotland as an alternative to prevent the well-cited traumatic separation of mothers and their children through imprisonment (Baldwin, 2015; Baldwin and Epstein, 2017; Booth, 2017; Masson, 2019; Minson, 2020).

In comparison, bail supervision is a service that is delivered by social work or a third-sector body (Scottish Government, 2019b). The provision of supported bail and supervision prevents the unnecessary use of judicial remand ensuring that it is only reserved for those who commit serious offences. It gives the courts confidence that an individual will comply with their bail conditions and encourages the use of non-custodial options. By providing support to criminalised women in a community setting, it ensures that their families are not needlessly impacted and allow them to maintain their employment and housing (Scottish Government, 2019b; HLS, 2021). The lack of requests for bail information and supervised bail across all areas of Scotland and the precarity of funding have hindered the development and expansion of bail initiatives/schemes (Abercrombie, 2017). There are also a small number of supervised bail projects across Scotland such as Glasgow's Supported Women's Bail Service which aims to reduce remand by using gender-specific services to address women's needs and the underlying causes of their offending (Abercrombie, 2017). Utilising EM more effectively and investing in sustainable bail supervision models would significantly reduce the number of women remanded in prison; however, there are other approaches to this, for example, TJ. The next section of the chapter explores using TJ as a framework in the bail and remand decision-making process.

What Is Therapeutic Jurisprudence?

TJ is a body of principles and practices that can be used and applied as an alternative response to criminal justice and beyond (Wilson, 2017, p. 79). Wexler (2000, p. 125) describes it as the 'study of the role of law as a therapeutic agent' and further as a 'perspective that regards the law as a social force that produces behaviours and consequences which can be therapeutic and anti-therapeutic'. TJ considers the impact that the law can have on someone's emotional and psychological wellbeing (Wexler and Winnick, 1996). According to its critics (for example, Petrila, 1993; Slobogin, 1995), TJ as a concept has been far more difficult to pin down than other non-adversarial approaches such as restorative justice (RJ). Whereas RJ is understood as a process guided by a set of core concepts, TJ is not as unanimously defined and has been considered among other things a theory or philosophy (Frieberg, 2019). Wexler (2011, p. 33) has, however, been quick to point out that 'TJ has never pretended to be a full-blown theory…it is simply a field of inquiry'.

TJ originally grew as an approach to mental health law (Wexler, 1992) and some of its concepts and practices have been adopted in other problem-solving and specialised courts such as domestic abuse courts (Winick, 2001), family courts (Lens et al., 2013) and juvenile justice (Richards et al., 2017). In her empirical study, Wilson (2017) found that drug courts, which are just one manifestation of TJ, contributed to the gendering of women. During observations of female drug court participants, Wilson found that the courts' constructions

of gender conflicted with the normative goals of TJ. For example, promoting wellbeing is one of TJ's goals, however judges and other actors routinely ignored the context of women's lives and made several gendered assumptions, such as women should be good at multitasking and organised. The research tells us that many criminalised women have extensive histories of abuse and are often living with poor mental health, addiction and/or are in abusive and controlling relationships (Edgar, 2004; Corston, 2007). As a result, their lives are often chaotic because of the difficulties they encounter in trying to manage their life circumstances and trauma.

In its early years, TJ attracted much criticism, for example, that it was too broad or vague, paternalistic and coercive and that it subverted the principles of due process (Petrila, 1993; Slobogin, 1995). All these arguments have been countered to some degree by its advocates (for example, Birgden, 2014; Stobbs, 2017). As TJ promotes maximising the wellbeing of individuals and an ethic of care, one may assume that there are potential benefits in applying this approach to criminalised women. However, the generalisability of TJ is problematic as it ignores the complexity of vulnerable women's lives and needs (Wilson, 2017). Comparisons can be drawn with RJ, for example, Masson and Österman (2017) note that by ignoring gender there has been a failure to mainstream criminalised women's needs and circumstances into RJ practice. Without adapting TJ to incorporate women's needs, there is therefore a danger of making generalisations of what works for women – a one-size-fits-all approach.

A TJ Framework for Criminalised Women

Remand, like sentencing, is a social process (for example, Steward, 2005; Tata, 2020) whereby outcomes are shaped by the decisions of many including the police, prosecutors, defence solicitors, judges and even criminalised women themselves (Jones, 2011, please see Chapters 21–25 regarding sentencing). To examine the potential ways TJ could be applied to the bail and remand process it is necessary to understand decision-making in practice. Wexler (1990, quoted in Madden and Wayne, 2003, p. 340) explains that there are situations when laws, legal procedures or the actions of legal actors 'produce outcomes for individuals that are harmful or anti therapeutic, even when the intent was to produce a positive outcome'. Judges who remand women for their 'own protection', for example, may feel that this is the better option given the lack of credible alternatives or where all other possibilities have been exhausted because of repeat offending (Player, 2007). This exacerbates the problems and issues that women experience where even a short spell in prison on remand can result in them losing their homes, employment, incurring debt and most devastatingly of all having their children placed in care (Corston, 2007; Howard League, 2020; Masson, 2019, 2021). While TJ considers the impact of legal rules and procedures on the wellbeing of individuals, Winick (2003) also emphasises the importance of analysing how TJ principles and practices are applied by legal and criminal justice actors. He explains that whether 'legal or other actors are aware of the fact their actions and words can and do have a profound impact upon the mental health and psychological wellbeing of the people they come across in the legal environment' (Winick, 2003, p. 1063). TJ could serve as a valuable tool in addressing some of the issues women experience when interacting with legal and criminal justice actors.

There are various ways in which TJ can be implemented in the CJS and these are by no means exhaustive. It may, for example, be 'practiced at the organisational level of the court by devising new procedures, information systems and sentencing options and by establishing links to social service providers to promote therapeutic outcomes' (Casey and Rottman, 2000, p. 14). There are instances where the application of TJ may also require amending

legislation, legal rules, procedures and policies (Casey and Rottman, 2000). More recently, TJ has been promoted in the application of international legislation namely the Bangkok Rules (United Nations, 2010). Crewe (2020) notes that the rules have been notoriously difficult to enforce because of their soft law status. She goes on to explain that understanding how legal actors make decisions is important for examining whether TJ could be used to implement the Bangkok Rules (2010).

The use of TJ, however, is not limited to legal actors. It has been suggested that TJ principles and practices could be adopted by police and social workers. Using TJ in this way could potentially help to reduce the number of women remanded to prison. Currently, TJ approaches to policing are underexplored; however, Perlin and Lynch (2016) examined the use of TJ in interactions with the police and people with mental disabilities. They argue that inappropriate arrests play a significant role in the number of people we see with mental disabilities in prison (Perlin and Lynch, 2016). This can be attributed to a lack of training and resources in which to manage people with mental disabilities and ill mental health (Angiolini, 2012; Hackett, 2015). For example, the number of women arrested who suffer from chronic mental health problems is continuing to rise (APPG, 2021). In England and Wales, it was estimated that 50,374 women were arrested for non-violent offences in the year ending 31 March 2019 and were considered vulnerable and/or under the influence at the time of committing the alleged offence. This would suggest that intervening with the use of TJ at an earlier point in the system could potentially stem the flow of women into the courts and prisons. Many women in the remand population suffer from poor mental health (Mental Welfare Commission, 2021) and this can be exacerbated by their time spent in prison, which is a risk factor for self-harm and suicide (Rickford, 2003; Corston, 2007).

Social workers also play an important role in the CJS by providing support and supervision to those in the community who have offended. In addition, they may deliver prison and community programmes to aid rehabilitation and provide courts with social work reports (McIvor, 1994; Social Work Scotland, 2018). Their role can also involve advocacy which is a useful tool when working with those who have contact with the CJS. Many criminalised women may feel disempowered by the legal process, for example, Steward (2005) found that remand hampered women's access to legal advice. Madden and Wayne (2003) draw similarities between TJ values and those of the social work profession noting that social workers are uniquely positioned to play a role in advancing the goals of TJ. They advocate for using TJ as a framework to structure social workers' analysis of legal issues and suggest that 'examining legal situations from the perspective of TJ provides guidance as to the roles social workers can assume' (Madden and Wayne, 2003, p. 339; see also Wexler and Winick, 2008). TJ provides another lens for social workers to analyse the law critically and use that knowledge to initiate changes to laws, policy and practice. The challenge lies in persuading social work professionals that TJ has the potential to transform their practice and the lives of the individuals they support. It would require a certain commitment from social workers who could potentially use their position to 'influence the legal system through education, advocacy and proactive legal policy development' (Madden and Wayne, 2003, p. 342).

Therapeutic Jurisprudence and Pretrial Services

The last, and what has been described as the most effective way of reducing remand by Travers et al. (2020), is by offering pretrial services. Like specialist courts, pretrial services are designed to meet the social and psychological needs of vulnerable people and are similar in that they seek ways to reduce imprisonment by addressing those needs (Castellano, 2011;

Maurutto and Hannah-Moffat, 2013; Travers et al., 2020). In the US, they were designed to improve the sharing of information between other actors and judges at the decision-making stage (Mahoney et al., 2001). While there are many models which deliver pretrial services internationally, there is a lack of consistency in service provision (Travers et al., 2020). In Australia and the US, many of these models are run by agencies 'loosely connected to the court' (Travers et al., 2020 p. 173) who usually rely on funding from public and private sources. However, this is not the case with the Magistrates Early Referral into Treatment Program (MERIT) in New South Wales, Australia and Court Integrated Services Program (CISP) in Victoria, Australia. These models do not provide or monitor services, instead they provide access to a wide variety of services which are funded by the state government (Travers et al., 2020), and CISP was created to specifically reduce the remand population.

One of the criticisms of pretrial services is that they are believed to be even more controversial in removing due process rights (Travers, 2020). As mentioned previously, many women on remand are untried and therefore presumed innocent (Edgar, 2004; Corston; 2007; Player, 2007). Diverting women who would have been either released without charge or given bail into therapeutic programmes could be viewed as net widening. The criticisms levelled in the literature about the 'punitiveness and coercion of drug courts' (Travers et al., 2020 p. 188) could therefore equally be applied to pretrial services (see Casey and Rottman, 2000). Maurutto and Hannah-Moffat (2006, p. 202) argue that specialised courts use 'welfare and treatment' alongside more 'punitive elements'. They argue that bail can be used to justify the imposition of seemingly 'therapeutic conditions' which effectively blurs the 'penal and administrative boundaries' (Maurutto and Hannah-Moffat, 2006, p. 207). Travers et al. (2020), however, proffer that the reasons for expanding therapeutic programmes and initiatives are to reduce the use of remand and imprisonment more generally and the emotional and financial costs associated with incarceration.

Summary

The overuse of remand is a significant issue for women in many countries, including Scotland. Despite the punishing nature of the remand process, which ultimately pushes women further into the carceral net, judges continue to remand women for their 'own protection' (Player, 2007; HLS, 2021). This is incredibly problematic given that prison is an infinitely more damaging place for vulnerable women (Rickford, 2003; Corston, 2007; MoJ, 2018). In Scotland, the alternatives to remand such as EM are poorly utilised, and the availability of bail support and supervision schemes are patchy due to the precariousness of funding (Nellis, 2015; PRT, 2016). This increases the likelihood of criminalised women being remanded putting them at serious risk of being made homeless, losing their job, incurring debt and having their children taken into care (Corston, 2007; Masson, 2019). The gendered pains of remand are therefore far reaching, long lasting and a significant barrier preventing criminalised women from moving forward with their lives. The lack of access to housing is also a considerable issue for women as it may be viewed by courts as contributing to their risk of reoffending or failure to show up for court (see Masson, 2021).

The inability of conventional courts to tackle the underlying causes of crime has, however, paved the way for problem-solving courts (Maurutto and Hannah-Moffat, 2006). These therapeutic orientated courts have grown phenomenally in the UK, the US, Australia and further afield (King, 2008; Travers et al., 2021). It has been argued that for criminalised women who are at risk of being remanded, TJ principles and practices could be used in a variety of ways to mitigate some of the harm experienced while navigating the bail and remand

process. One way it could assist is by encouraging the implementation of gender-specific legislation such as the Bangkok rules (2010). Here, this important legal framework could be enforced in courts and prisons so that female prisoner's rights are respected and protected (Crewe, 2020). Social workers are also well placed in their role to advocate for changes to laws, policy and practice. TJ values have much in common with the social work professions' ethical code as it seeks to maximise an individual's emotional and psychological wellbeing by treating them with dignity and respect (Wexler, 2010; BASW, 2021).

Criminalised women explain that the way they are often treated by legal and other actors in the CJS can have a profound impact on their sense of self causing shame and stigma and inevitably preventing them from moving forward. In addition, the police could play a significant role in helping to divert vulnerable women out of the CJS by using TJ principles and practices to enhance their understanding of the issues criminalised women routinely encounter. The generalisability of TJ is, however, problematic as there is a need to incorporate criminalised women's needs into its principles and practice for them to obtain any benefit (Wilson, 2017).

Implementing pretrial services such as those discussed here hold some promise but would need to be adequately funded by the government, for example, like the CISP and MERIT programmes in Australia. This money would then need to be ringfenced as cuts to women's services have left criminalised women with very few alternatives. Women need gender-specific alternatives to remand which provide access to advocacy, structured social services, and comprehensive support. This individualised support must include access to mental health and addiction services and assistance with housing, securing employment or education and training (Masson, 2021).

Many promises to improve the experiences of women in the CJS have been made over the years by various governments, yet progress has been painfully slow (Booth et al., 2018). In the meantime, vulnerable women continue to experience enduring harms through, what is often, unnecessary, and prolonged contact with the CJS. We must continue to challenge imprisonment as a legitimate response to vulnerable women who are experiencing multiple forms of disadvantage. When remand is seen as the only option for vulnerable women, it is evident that we need to see more investment in initiatives that address inequality and injustice.

References

Abercrombie, K. (2017) 'The Glasgow Women's Supported Bail Service' *Scottish Justice Matters* 8(2) Available at: http://scottishjusticematters.com/the-journal/women-justice-november-2017/ (Accessed: 17 August 2021)

All Party Parliamentary Group on Women in the Penal System (2021) *Arresting the Entry of Women into the Criminal Justice System*. London: The Howard League Available at: https://howardleague.org/wp-content/uploads/2020/09/APPG-on-Women-in-the-Penal-System-briefing-2-FINAL.pdf (Accessed: 21 May 2021)

Angiolini, E. (2012) 'Commission on Women Offenders' Available at: https://www.webarchive.org.uk/wayback/archive/3000/https:/www.gov.scot/Resource/0039/00391828.pdf (Accessed: 13 July 2021)

Baldwin, L. (2020) '"A Life Sentence": The Long Term Impact of Maternal Imprisonment'. In Lockwood, K. (eds) *Mothering from the Inside*. Bingley: Emerald Publishing Limited pp. 85–101

Baldwin, L. and Epstein, R. (2017) 'Short But Not Sweet: A Study of the Impact of Short Custodial Sentences on Mothers and their Children' Available at: https://www.dora.dmu.ac.uk/xmlui/handle/2086/14301 (Accessed: 12 July 2021)

Barlow, C. and Weare, S. (2018) 'Women as Co-Offenders: Pathways into Crime and Offending' *The Howard Journal of Crime and Justice* 58(1) pp. 86–03

BASW (2021) *The BASW Code of Ethics for Social Work*. Birmingham: BASW. Available at: https://www.basw.co.uk/about-basw/code-ethics (Accessed: 25 August 2021)

Birgden, A. (2014) 'Maximising Desistance: Adding Therapeutic Jurisprudence and Human Rights into the Mix' *Criminal Justice and Behaviour* 42(1) pp. 19–31

Booth, N. (2017) 'Maternal Imprisonment: A Family Sentence'. In Hudson, J., Needham, C. and Heins, E. (eds) *Social Policy Review 29: Analysis and Debate in Social Policy 2017*. Bristol: Policy Press

Booth, N. (2020) *Maternal Imprisonment and Family Life: From the Caregiver's Perspective*. Bristol: Policy Press

Booth, N., Masson, I. and Baldwin, L (2018) 'Promises, Promises: Can the Female Offender Strategy Deliver?' *Probation Journal* 65(4) pp. 429–438

Burman, M. and McIvor, G. (2013) 'The Rise of Female Imprisonment in Scotland' *Scottish Journal of Criminal Justice Studies* 19 pp. 28–42

Carlen, P. (2002) *Women and Punishment: The Struggle for Justice*. Collumpton: Willan Publishing

Casey, P. and Rottman, D. B. (2000) 'Therapeutic Jurisprudence in the Courts' *Behavioural Sciences and the Law* 18(4) pp. 445–457

Castellano, U. (2011) *Outsourcing Justice: The Role of Non-Profit Caseworkers in Pretrial Release Programs*. Boulder, CO: Lyne Rienner

Corston, Baroness, J. (2007) *The Corston Report: A Review of Women with Vulnerabilities in the Criminal Justice System*. London: Home Office

Crewe, H. (2020) 'Therapeutic Jurisprudence and Babies in Prison' *Forum Prava* 64(5) pp. 17–23

Criminal Procedure (Scotland) Act 1995 (online) Available at: https://www.legislation.gov.uk/ukpga/1995/46/section/204 (Accessed: 12 July 2021)

Daly, K. (1995) 'Gender and Sentencing: What We Know and Don't Know from Empirical Research' *Federal Sentencing Reporter* 8(3) pp. 163–168

Earle, J. (2018) 'Broken Trust: The Rising Numbers of Women Recalled to Prison' *Prison Reform Trust* Available at: http://www.prisonreformtrust.org.uk/Portals/0/Documents/Broken%20Trust.pdf (Accessed: 12 March 2021)

Edgar, K. (2004) 'Lacking Conviction: The Rise of the Women's Population' *Prison Reform Trust* Available at: http://www.prisonreformtrust.org.uk/uploads/documents/Lacking%20Conviction.pdf (Accessed: 12 March 2021)

Edgar, K. and Rickford, D. (2009) *Too Little, Too Late: An Independent Review of Unmet Mental Health Need in Prison*. London: Prison Reform Trust Available at: http://www.prisonreformtrust.org.uk/Portals/0/Documents/Too%20Little%20Too%20Late%20-%20a%20review%20of%20unmet%20mental%20health%20need%20in%20prison%20.pdf (Accessed: 11 April 2021)

Feeley, M. (1979) *The Process is the Punishment: Handling Cases in a Lower Criminal Court*. New York: Russell Sage Foundation

Frieberg, A. (2019) 'Therapeutic Jurisprudence in Australia: Paradigm Shift or Pragmatic Incrementalism' *Law in Context* 20(2) pp. 6–23

Graham, H. and McIvor, G. (2015) *Scottish and International Review of the Uses of Electronic Monitoring*. Stirling: Scottish Centre for Crime and Justice Research. Available at: https://www.sccjr.ac.uk/wp-content/uploads/2015/08/Scottish-and-International-Review-ofthe-Uses-of-Electronic-Monitoring-Graham-and-McIvor-2015.pdf (Accessed: 23 July 2021)

Hackett, L. (2015) 'Working with Women and Mothers Experiencing Mental Distress'. In Baldwin, L. (eds) *Mothering Justice: Working with Mothers in Criminal and Social Justice Settings*. East Sussex: Waterside Press, pp. 43–64

Hedderman, C. and Barnes, R. (2015) 'Sentencing Women: An Analysis of Recent Trends'. In Roberts, J. (eds) *Exploring Sentencing Practice in England and Wales*. London: Palgrave McMillan, pp. 93–117

Hedderman, C. and Gelsthorpe, L. (1997) 'Understanding the Sentencing of Women Home Office' Research Study No 170. London: Home Office

Hedderman, C. and Hough, M. (1994) 'Does the Criminal Justice System Treat Men and Women Differently?' Research Findings 10. London: Home Office

Heidensohn, F. (ed.) (2006) *Gender and Justice*. Collumpton: Willan Publishing

Home Office (2020) Bail and Refusal of Bail by Criminal Courts and police Officers (Version 5.0). Available at: https://assets.publishing.service.gov.uk (Accessed: 21 June 2021)

Howard League for Penal Reform (2020) *Reset: Rethinking Remand for Women*. London. Available at: https://howardleague.org/wp-content/uploads/2020/07/Rethinking-remand-for-women.pdf (Accessed: 25 February 2021)

Howard League Scotland (May 2021) The Scandal of Remand in Scotland: A Report by Howard League Scotland Available at: http://howardleague.scot/news/2021/may/scandal-remand-scotland-report-howard-league-scotland-%E2%80%93-may-2021 (Accessed: 11 May 2021)

Jardine, C. (2019) *Families, Imprisonment and Legitimacy: The Cost of Custodial Penalities*. London; Abingdon: Routledge

Jones, S. (2011) 'Under Pressure: Women Who Plead Guilty to Crimes They Have Not Committed' *Criminology and Criminal Justice* 11(1) pp. 77–90

Justice Committee (2018) 'Inquiry into the Use of Remand in Scotland' 7th Report (Session 5) Scottish Parliament Available at: https://sp-bpr-en-prod-cdnep. azureedge.net/published/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland/JS052018R07.pdf (Accessed: 11 May 2021)

King, M. S. (2008) 'Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice' *Melbourne University Law Review* 32 pp. 1096–1126

Lens, V. (2013) 'Therapeutic Judging in a Traditional Family Court' *Family Court Review* 59(3) pp. 423–443

Madden, R. G. and Wayne, R. H. (2003) 'Social Work and the Law: A Therapeutic Jurisprudence Perspective' *Social Work* 48(3) pp. 338–347

Maes, E. and Mine, B. (2013) 'Some Reflections on the Possible Introduction of Electronic Monitoring as an Alternative to Pre-trial Detention in Belgium' *The Howard Journal of Criminal Justice* 52(2) pp. 144–162

Mahoney, B., Beaudin, B. D., Carver, J. A., Ryan, D. B. and Hoffman, R. B. (2001) *Pre-trial Services Programs: Responsibilities and Potential* US Department of Justice: National Institute of Justice

Masson, I. (2019) *Incarcerating Motherhood: The Enduring Harms of First Short Prison Sentences on Mothers*. Abingdon: Routledge.

Masson, I. (2021) 'Reducing the Enduring Harms of Short Terms of Imprisonment'. In Masson, I., Baldwin, L. and Booth, N. (eds) *Critical Reflections on Women, Family and Justice* Volume 1. Bristol: Policy Press, pp. 81–105

Masson, I. and Österman, L. (2017) 'Working with Female Offenders in Restorative Justice Frameworks and Ethical Practice' *Probation Journal* 64(4) pp. 354–371

Maurutto, P. and Hannah-Moffat, K. (2006) 'Assembling Risk and the Restructuring of Penal Control' *British Journal of Criminology* 46(3) pp. 438–454

McIvor, G. (1994) 'Social Work and Criminal Justice in Scotland: Developments in Policy and Practice' *British Journal of Social Work* 24(4) pp. 429–448

McIvor, G., Barnsdale, L., Eley, S., Malloch, M., Yates, R. and Brown, A. (2006) *The Operation and Effectiveness of the Scottish Drug Court Pilots*. Edinburgh: Scottish Executive (Social Research)

Mental Welfare Commission for Scotland (2021) *Concerns about the Care of Women with Mental Ill Health in Prison in Scotland: An Analysis of the Records of Nine Women in Custody*. Edinburgh: Mental Welfare Commission. Available at: https://www.mwcscot.org.uk/policy-and-research/research-policy-reports (Accessed: 5 October 2021)

Ministry of Justice (MoJ) (2018) 'Female Offender Strategy' Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719819/female-offender-strategy.pdf (Accessed: 12 April 2021)

Minson, S. (2020) *Maternal Imprisonment and the Rights of the Child*. London: Palgrave Macmillan

Nellis, M. (2015) *Standards and Ethics in Electronic Monitoring: Handbook for Professionals Responsible for the Establishment and the Use of Electronic Monitoring*. Strasbourg: Council of Europe. Available at: http://s.iriss.org.uk/2yuq5hf (Accessed: 21 July 2021)

Perlin, M. L. and Lynch, A. J. (2016) '"Had To Be Held Down By Big Police": A Therapeutic Jurisprudence Perspective on Interactions Between Police and Persons with Mental Disabilities' *Fordham Urban Law Journal* 43(3) Available at: https://ir.lawnet.fordham.edu/ulj/vol43/iss3/5

Petrilla, J. (1993) 'Paternalism and the Unrealised Promise of Essays in Therapeutic Jurisprudence' *NYLS Journal of Human Rights* 10(3) pp. 877–905

Player, E. (2007) 'Remanding Women in Custody: Concerns for Human Rights' *Modern Law Review* 70(3) pp. 402–426

Pratt, J. (2006) *Penal Populism*. Abingdon: Routledge

Prison Reform Trust (2016) 'Women and Remand in Scotland: Roundtable Report' Available at: http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Remand%20Scotland%20June%2020%202016.pdf (Accessed: 12 March 2021)

Prison Reform Trust (2017) '"There's a reason we're in trouble" Domestic Abuse as a Driver to Women's Offending' Available at: http://www.prisonreformtrust.org.uk/WhatWeDo/Projectsresearch/Women/DomesticAbuse (Accessed: 12 July 2021)

Prison Reform Trust (2019) 'Prison: the facts Bromley Briefings' Available at: http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Prison%20the%20facts%20Summer%202019.pdf (Accessed: 3 March 2021)

Richards, K. Bartels, L. and Bolitho, J. (2017) 'Children's Court Magistrates': Views of Restorative Justice and Therapeutic Jurisprudence Measures for Young Offenders' *Youth Justice* 17(1) pp. 22–40.

Rutter, N. and Barr, U. (2021) 'Being a 'good woman': Stigma, Relationships and Desistance' *Probation Journal* 68(2) pp. 166–185

Scottish Government (2019a) *Electronic Monitoring: Uses and Challenges*. Edinburgh: Scottish Government

Scottish Government (2019b) 'Bail Supervision: National Guidance' Available at: https://www.gov.scot/publications/national-guidance-bail-supervision/ (Accessed: 12 July 2021)

Scottish Government (2020) 'Understanding the Use of Remand' Available at: https://www.gov.scot/news/understanding-use-of-remand/ (Accessed: 11 July 2021)

Scottish Prison Service – SPS (2018) 'Prison Population' Available at: www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx (Accessed: 11 July 2021)

Slobogin, C. (1995) 'Therapeutic Jurisprudence: Five Dilemmas to Ponder' *Psychology, Public Policy and Law* 1(1) pp. 193–219

Social Work Scotland (2018) Social Work Changes Lives (Criminal Justice Media Briefing) Available at: www.adsw.org.uk

Steward, K. (2004) 'Remanding Women: A Qualitative Study of Magistrates' Decisions in Contested Remand Hearings in Three Metropolitan Boroughs' PhD thesis University of London Available at: http://etheses.lse.ac.uk/1799/ (Accessed: March 2021)

Stobbs, N. (2017) 'Therapeutic Jurisprudence and Due Process – Consistent and Practice' *Journal of Judicial Administration* 26(4) pp. 248–264

Tata, C. (2020) *Sentencing: A Social Process* London: Palgrave Macmillan

Travers, M., Colvin, E., Bartkowiak-Théron, I., Sarre, R., Day, A. and Bond, C. (2020) *Rethinking Bail: Court Reform or Business as Usual*? London: Palgrave Macmillan

United Nations (2010) 'The United Nations Rules on Women Prisoners and Prisoners: Short Guide' Available at: https://www.penalreform.org/wp-content/uploads/2013/07/PRI-Short-Guide-Bangkok-Rules-2013-Web-Final.pdf (Accessed: 14 May 2021)

Webster, R. (2017) 'Women in the Justice System 10 Years Post Corston' Available at: https://www.russellwebster.com/corston-plus-10/ (Accessed: 10 April 2021)

Wexler, D. B. (1992) 'Putting Mental Health into Mental Health Law: Therapeutic Jurisprudence' *Law and Human Behaviour* 16(1) pp. 27–38

Wexler, D. B. (2000) 'Therapeutic jurisprudence: An Overview' *Disability Law Symposium Legal and Treatment Issues* 17(1) pp. 125–134

Wexler, D. (2011) 'From Theory to Practice and Back Again in Therapeutic Jurisprudence: Now Comes the Hard Part' *Monash University Law Review* 37(1) pp. 33–42

Wexler, D. B. and Winick, B. J. (1996) *Law in a Therapeutic Key*. Durham, NC: Carolina Academic Press Studies in Law and Psychology

Wexler, D. B. and Winick, B. J. (2008) 'Therapeutic Jurisprudence' *Therapeutic Jurisprudence, in Principles of Addiction Medicine*, 4th Edition Available at: http://ssrn.com/abstract=1101507 (Accessed: 11 April 2021)

Wilson, A. (2017) 'Therapeutic Jurisprudence in Criminal Justice: A Gendered Engagement' PhD thesis University of South Wales Available at: http://unworks.unsw.edu.au/fapi/datastream/unworks:46236/SOURCE02?view=true (Accessed: 11 April 2021)

Winick, B. J. (2000) 'Applying the Law Therapeutically in Domestic Violence Cases' *University of Missouri Kansas City Law Review* 69(1) pp. 33–91

Winick, B. J. (2003) 'Therapeutic Jurisprudence and Problem-Solving Courts' *Fordham Urban Law Journal* 30(3) pp. 1055–1103