Engender submission of evidence to the Scottish Parliament Justice Committee on the Management of Offenders (Scotland) Bill relating to Electronic Monitoring (EM) and its Impact on Women

The imprisonment rate for women in Scotland remains one of the highest in Northern Europe.[1] Although it has decreased, approximately 3,000 women are imprisoned each year in Scotland, almost two thirds of whom are detained while presumptively innocent.[2] Though the number of women in prison is decreasing, there continue to be concerns over the criminal justice system's response to women who offend due to diminished use of alternatives to custody, lack of trauma-informed services, and insufficient funding for community services.

Scotland has responded to the high number of women in prison with various initiatives, including the establishment of the independent commission to review policies and practices that could reduce the number of women in prison, which culminated in the Angiolini report, and most recently with a commitment to develop community custody units for women. However, while the needs of criminalised women have, at times, dominated criminal justice discourse, they are far from mainstreamed.

The need for tailored criminal justice system responses to women are based on well-known differences between men and women who come into conflict with the law, including:

- Women are less risky than men. They committed fewer, less serious offences and are less likely to reoffend than men.[3]
- Women's involvement in crime is often a means of economic survival for themselves and their families.[4]

[1] Prison Reform Trust. (2017). "*Why focus on reducing women's imprisonment in Scotland?*"
[2] Prison Reform Trust. (2017).
[3] Prison Reform Trust. (2017).
[4] Maidment, M.R. (1997). "*Toward a "Woman-Centered" Approach to Community-Based Corrections*". Women & Criminal Justice, 13:4, 47-68.

- Women have more complex needs related to their socio-economic circumstances, histories of abuse, mental health issues, and substance abuse problems; and
- Women are more likely to have caring responsibilities and be lone parents.

Criminal justice systems have – to a limited degree – been adapted to recognise these differences. However, it remains that women who come into conflict with the law are made to fit into a system designed for men.

The use of EM was and continues to be used as a tool to ensure offenders comply with court conditions, such as house arrest, allowing individuals to be sentenced to remain in their homes and, at the same time, their whereabouts be tracked by the technology they are forced to wear. Yet the increased use of this new form of punishment has occurred in the absence of consideration of potential gender differences. A common thread in criminological literature on EM is that the gender differences in experiences of EM, including the pains of EM as a punishment, are not well known.[5] That said, there is some research on the topic, which is explored in brief detail below.

"DESIGNED FOR MEN, BUT ALSO WORN BY WOMEN"[6]

1. Motherhood

Prison Reform Trust estimates that approximately 65 percent of women in prison in Scotland are mothers.[7] In addition, 32 percent of women in prison describe themselves as single parents, which is viewed an underestimate due to many women not wanting to disclose that they have children (e.g., for fear of social work involvement).[8]

The pains of imprisonment for mothers are well-documented. They include isolation, separation from family/support network and, in many cases, unsuitable visitation programs.[9] It has been found, however, that EM "brings with it a number of problems which negatively impact on mother-child relations". One study in Canada focused on establishing the gendered differences in EM by interviewing men and women who had experienced EM. Below is an extract from a single mother who participated in the Canadian study and who explains the consequences of EM on parenting:

[5] Graham, H. and McIvor, I. "*Electronic Monitoring in the criminal justice system*". Available from: https://www.iriss.org.uk/resources/insights/electronic-monitoring-criminal-justice-system
[6] Holdsworth, E. & Hucklesbury, A. "*Designed for men, but also worn by women*". Centre for Crime and Justice Studies. Available from: https://www.crimeandjustice.org.uk/publications/cjm/article/designed-men-also-worn-women
[7] Prison Reform Trust. (2017).
[8] Ibid.
[9] Maidment, M.R. (1997).

> *You don't want to trap small kids in the house. Look, when you've got two small kids, they are three and four, they don't want to be trapped in the house, especially a small apartment. It [EM] was really hard on the nerves especially with youngsters around all day.*[10]

Whilst difficult on mothers, the study found that children also suffered as a result of the restrictions EM placed on their mothers (e.g., not being able to participate in outdoor activities). Again, the study notes the following comment from a young mother:

> *It was hard because he wasn't even three [years old] then. [S]o if he wanted to go over to the store, I would say "No. I can't go over there right now. No, you'll have to wait until your daddy comes by". That was hard on a little baby. You know, he don't know.*[11]

In contrast, the study found that men viewed EM as an opportunity to spend more leisure time with their children. All men in the sample with children had the support of a partner, who was the primary caregiver. As none of the men in the study were primary caregivers or lone parents, they did not experience the same challenges as many of the women in the study.[12]

In addition to negatively impacting the mother-child relationship, parenting responsibilities and EM restrictions have resulted in additional punishment for women.[13] In a separate study from the one referenced above, researchers found that women were more likely to be punished for breaching EM restrictions due to caring responsibilities.[14] Some examples included "fetching children who were playing in the streets and refusing to come in, and rescuing children who had fallen over in the garden".[15] The study further found that the reality of EM was even more challenging for women who were lone parents, as these women had no one to call to run errands for them and, as such, these women were more likely to breach EM restrictions to meet their families' basic needs.[16]

2. Reinforcing traditional gender roles

EM has also been found to reinforce traditional gender roles.[17] Again, the study in Canada found "most women reported increased amounts of time spent on domestic

[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Holdsworth, E. & Hucklesbury, A.
[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] Ibid.

tasks such as cooking and cleaning".[18] Further, the restrictive nature of EM resulted in women not having enough time to complete tasks outside the home, which meant that women either went without the items they required or rushed to complete the tasks within their allotted time out of the home.[19] In most cases, women were required to carry-on with the same responsibilities during EM as they were before, with their partners assuming no additional responsibilities during their time on EM.

A number of women on EM reported that, compared to prison, EM "was more difficult as they experienced increased stress, while being responsible for more tasks with little support".[20] For the women who participated in the study, children were the sole reason EM was a preferred sanction to a prison sentence.[21]

3. Mental health

Women who come into conflict with the law have complex needs, including mental health. In 2015, the Scottish Prison Service Prisoner Survey found:

- 52 percent of women admitted that they had self-harmed;
- 64 percent of women felt suicidal;
- 74 percent had feelings of anxiety and depression; and
- 72 percent of women suffer from emotional difficulties.[22]

Less is known about the impact, if any, of EM on women's mental health, but anecdotal evidence suggests that it can have a negative impact. The following was reported by a Criminal Justice Social Worker as a concern around EM, curfews and isolation:

> *…I think given the high degrees of self-harm in some women having them restricted to a place for long periods of time potentially increases the risk of self-harm and for men as well obviously…for some women it just, I mean it would increase their risk of self-harm most definitely… Some of these women are traumatised and damaged you know, experiencing acute trauma, and more therapeutic interventions are what's required to be honest.*[23]

Given the high proportion of women in the criminal justice system who struggle with significant mental health issues, the above is cause for concern.

[18] Maidment, M.R. (1997).
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] Prison Reform Trust. (2017).
[23] Graham, H. and McIvor, I. (2016). "*Electronic Monitoring as an alternative to custody in Scotland*". Presentation at the Prison Reform Trust event in Glasgow, Scotland, titled "Women and Remand in Scotland".

EQUALITY IMPACT ASSESSMENT OF EM

The Scottish Government's "Equality Impact Assessment (EQIA) for the Management of Offenders (Scotland) Bill, Electronic Monitoring" references concerns noted during its consultation process, including:

- "women may feel disproportionately embarrassed by being subjected to what they could perceive is 'male punishment'"; and
- "women may have restricted clothing options due to the placement of the tag".

Beyond these two statements, the EQIA does not identify the adverse impacts of EM on women, and no reference is made to the findings of existing research on the gendered impacts of EM. More concerning, however, may be how the Scottish Government envisions these challenges being addressed:

> *The majority of the negative impacts are situations that are relevant to the current electronic monitoring regime and are dealt with in the current suitability assessments carried out by Criminal Justice Social Work colleagues. This will continue to be the case.*

Evidence shows, however, that existing processes may not be suitable for addressing these adverse impacts. Studies have shown that EM curfew hours are set in "routine and unimaginative ways" and that "sentencers are slow to grasp that they can and should take account of individuals' circumstances when deciding the length of community orders".[24] The EQIA does not explore these known limitations with the use of EM.

In the absence of a robust EQIA, the Justice Committee may wish invite experts on the gendered impacts of EM to give evidence on the subject.

CONCLUSION

Whilst the research on gender and EM is limited, a common theme emerging from the existing research is that the implementation and operation of EM is the latest criminal justice system response that fails to consider women's needs and experiences. As succinctly explained by one study:

> *Based upon women's…primary responsibilities for childcare and domestic labour, the nature and extent of their criminal convictions, and the level of state intrusion into their lives (e.g., welfare officers, child protection agencies), EM serves to*

[24] Holdsworth, E. & Hucklesbury, A.

further marginalize women due, in part, to the lack of feminist guiding principles being extended to the community setting.[25]

This finding is not dissimilar from research conducted in Scotland, which found that practical considerations and challenges may be engaged when EM is used on women, specifically women who have primary caregiving responsibilities.[26] In response to these findings it has been put forward that there may be scope for a less standardised approach to EM, including tailored uses of curfew times and better training (including gender sensitivity training) for those responsible with imposing community sanctions.

In the absence of both a robust EQIA and a detailed briefing on the gendered impacts of EM, we would urge the Committee to further explore the impact of EM on women, and how EM can be responsive to the needs of women and to their realities as primary caregivers.

FOR FURTHER INFORMATION
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ABOUT US
Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women's power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.

[25] Maidment, M.R. (1997).
[26] Graham, H. and McIvor, I. (2015). "*Scottish and International Review of the Uses of Electronic Monitoring*." The Scottish Centre for Crime and Justice Research. Report No.8/2015.