

A suspect population: An examination of bail decision making for foreign national women in criminal courts in England and Wales

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Abstract

By law in England and Wales, defendants in criminal proceedings have a right to bail while awaiting trial or sentencing. The right to bail can be overturned and custodial remand imposed, only as an exceptional measure of last resort. Foreign national women are more likely to be remanded in custody than their British counterparts, often for less serious offences. They make up a significant and increasing proportion of prison admissions on remand, raising concerns that compliance with national and international standards of justice is being eroded in practice. This research explores these disparities by examining the context and processes in which bail decisions are made in England and Wales.

It draws on testimony from support workers, lawyers, and prosecutors, as well as court observations, to explore the issues that arise for foreign national women in bail proceedings. This research shows that a growing interdependence of criminal justice and immigration systems has led to the rise of a risk-averse culture that is directed at foreign nationals. Intimately linked to racialised anxieties around immigration and crime, 'foreignness' itself has become grounds for suspicion when assessing criminality and risk. This wider context drives punitive bail decisions for foreign national women, who are treated as a suspect population. Widely recognised as a vulnerable and disadvantaged group, they are less equipped to dispute these suspicions and have limited access to conditional bail. This is the only study of its kind and provides insights to illuminate and instigate a wider transformation in the use of custodial remand.

Findings

- Between 2015 and 2019, foreign national women accounted for 16% (on average) of all women admitted to prison on remand.
- The bail system systematically disadvantages women who are, or are perceived to be, of foreign nationality.
- Border control policies interact with criminal justice policies with negative effects for foreign national women.
- Experiences of punishment are shaped by immigration status, socio-economic status, gender and race.
- Hostile measures brought in under the Immigration Act 2014 impact on police bail decisions.
- Specialist support for foreign national women in the court setting is variable and often poor.
- Language and financial barriers, as well as unfamiliarity with the legal system impact on foreign national women's access to justice.
- Cuts to legal aid, privatised translation services and remote hearings discriminate against foreign national women?
- Perceived community ties or the lack thereof have increased significance for foreign national women at bail hearings.
- Foreignness has become grounds for suspicion of absconding in bail cases.
- Victims of trafficking and modern slavery without a safe address can be remanded in custody for their own protection.
- Foreign national women are more likely to be subject to bail conditions than British women and less able to meet them due to hostile environment measures.
- Ongoing immigration proceedings or deportation orders make custodial remand more likely.

Recommendations

1. There is an urgent need for criminal justice data disaggregated by gender, ethnicity and nationality to be collected and regularly published, to understand the inequities embedded in bail decision making.
2. Further qualitative research is needed to monitor bias or disproportionate outcomes for foreign nationals and the impact of remand decisions for foreign national women.