

RESEARCH FINDINGS *No.10*

DOES THE CRIMINAL JUSTICE SYSTEM TREAT MEN AND WOMEN DIFFERENTLY?

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It is often suggested that the criminal justice system in England and Wales routinely discriminates against women. This paper, published under section 95 of the Criminal Justice Act 1991, concludes that the weight of evidence is against this claim.

KEY POINTS

- ▶ Neither research nor statistical evidence support the claim that women are systematically dealt with more severely than men.
- ▶ Women are less likely to commit crimes than men, though self-report studies indicate that official statistics exaggerate the difference.
- ▶ Women and men differ in the extent to which they commit different sorts of offences.
- ▶ A higher proportion of female offenders are cautioned for serious offences.
- ▶ The available evidence suggests that women are less likely to be remanded in custody than men.
- ▶ There are differences in the sentences men and women receive, but overall, women seem more likely to receive lenient sentences. This is so even when previous convictions are taken into consideration.

Academics, pressure groups and journalists have used a variety of criminal justice statistics to argue that the courts systematically discriminate against women. This paper shows that differences do exist in the way men and women are treated by the criminal justice system, but that these largely favour women.

THE EXTENT TO WHICH MEN AND WOMEN OFFEND

Criminal statistics both across time and different cultures show that an overwhelming majority of those caught, convicted and sentenced by the courts are male. Over the last ten years in England and Wales, around five males were cautioned or convicted for an indictable offence for every one female. Such statistics do not account for all crimes committed,

of course. Self-report studies – not without problems of their own – ask samples about the extent to which they have committed offences; these indicate that the discrepancy between males and females is more like two males for every one female, although the sex ratio does appear to increase with offence seriousness (see for example, Rutter and Giller, 1983).

Males are more likely than females to be reconvicted, according both to small-scale research (eg Farrington and Morris, 1983) and analysis of the Home Office Offenders' Index (a data-base which contains details of all offenders convicted of serious offences). Also, the average length of male criminal careers (3.3 years) is three times as long as that for females, although the ratio narrows when those with

careers less than one year are excluded, effectively eliminating those convicted of only one offence (Tarling, 1993).

THE TYPES OF CRIME MEN AND WOMEN COMMIT

On the basis of those convicted and cautioned, the male/female ratio in offending is at its greatest in the late teens and early 20s. This is not because females commit the same offences as males at a later age, but because they are much less likely to commit the sorts of offences committed by younger people, such as burglary, and theft from or of motor vehicles (Tarling, 1993).

Table 1: Percentage of males and females found guilty or cautioned for indictable offences (excluding motoring): 1992

Offences	1992	
	Males	Females
Violence	13	10
Sexual	2	<1
Burglary	13	2
Robbery	1	<1
Theft and handling	43	71
Fraud and forgery	5	7
Criminal damage	3	1
Drugs	11	5
Other non-motoring	9	3
Number (000's) = 100%	428.7	100.7

This table is based on figures taken from Table 5.11 of the Criminal Statistics, 1992

Although there has been a rise in the proportion of females dealt with for violence and for drug offences over the last 10 years, 71% of their offences in 1992 were theft and handling – in contrast to only 43% of males (see Table 1).

CAUTIONING

Cautioning is the main disposal used for female offenders. In 1992, 61% of all females convicted or cautioned for indictable offences received a caution compared with 36% of males. Women had higher cautioning rates across all age groups and most offences, with the exception of drugs.

A statistical exercise carried out by the Home Office examined the criminal histories of samples of those

cautioned in 1985 and 1988. This showed that, while a majority of both sexes had no criminal history, cautioned males were twice as likely as females to have been previously convicted. They were also more likely to have been cautioned on a previous occasion (Home Office, 1992b). The most likely explanation for this difference is the higher offending rate for males. However, without knowing more about these cases, and those in which the police took no further action or prosecuted the offender, we cannot eliminate the possibility that different standards are being applied when deciding whether to caution males and females.

REMANDS

A smaller proportion of female offenders are remanded in custody than males. One of the few studies to investigate the reasons (Morgan and Pearce, 1988) concluded that this was partly because women were less likely than men to fall into 'high risk' categories, defined as those who had previously failed to appear after being given court bail, or had been charged with a further offence while on bail, or were of no fixed abode. This was only part of the story, however; women falling into 'low risk' categories were still less likely to be remanded in custody than their male counterparts.

Though relevant prison statistics are incomplete, they suggest that about 30% of women who were remanded in custody are subsequently sent to prison, compared with 40% of their male counterparts. Women on bail are also less likely to receive a custodial sentence – about 5% compared with 10% of men (Home Office, 1992a). Taken together, these findings suggest that men and women may be treated differently both at the remand and the sentencing stage.

SENTENCING

There are large overall differences in the sentencing of men and women (Figure 1). In particular women are far less likely than men to receive a custodial sentence for virtually all indictable offences. The only exception is for drugs, for which the proportions are roughly equal (14%).

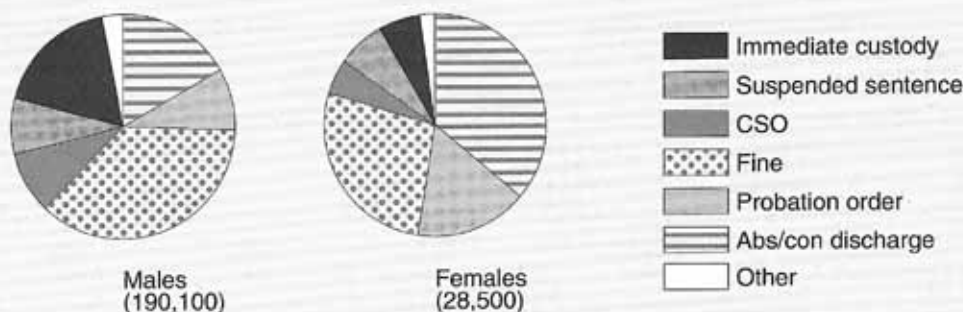
When women do receive prison sentences, these tend to be shorter than men's: in 1992 the average length of prison sentences awarded for indictable offences at the Crown Court was 17.7 months for women aged 21 or over and 21.1 months for men. The average length was lower for females

According to the National Prison Survey, 38% of women serving prison sentences in 1991 were there for their first offence, but only 10% of men. Prison statistics show that a much larger proportion of the female prison population are serving custodial sentences for less serious crimes. A common statistical fallacy is to infer from these and similar statistics that the criminal justice system discriminates against women. However, nothing can be inferred about discrimination on the part of sentencers from differences between the sexes in the proportion either of first-offenders or of property offenders **in prison**. One has to compare the proportions **sent to prison** of men and women who have committed similar crimes and have similar criminal histories.

convicted of burglary, fraud and forgery, robbery, and theft and handling, but higher for criminal damage and drug offences.

first-offenders – 4% compared with 8%; and those with one, two, or three or more previous convictions were all less likely to receive custodial sentences

Figure 1: Sentences awarded to males and females aged 21 or over convicted of indictable offences: 1992



This figure is based on Table 7.13 of the Criminal Statistics, 1992

One of the reasons that women receive fewer and shorter custodial sentences than men is that they are less frequently dealt with at the Crown Court. For example, in 1992, only 14% of the females aged 17 or over who were proceeded against for an indictable offence went to the Crown Court for trial compared with 24% of males. Recent Home Office research (Hedderman and Moxon, 1993) has shown that, in comparable cases, defendants who are sentenced at the Crown Court are about 3 times more likely to get a custodial sentence than those dealt with at magistrates' courts; such sentences also tend to be longer.

Another possible explanation for the apparently more lenient sentencing of women offenders is that, as discussed above, they are less likely to have previous convictions than men. However, analysis of an Offenders' Index sample of 21,000 offenders convicted of a serious offence in 1991 shows that women first-offenders are half as likely to be given a sentence of immediate imprisonment as male

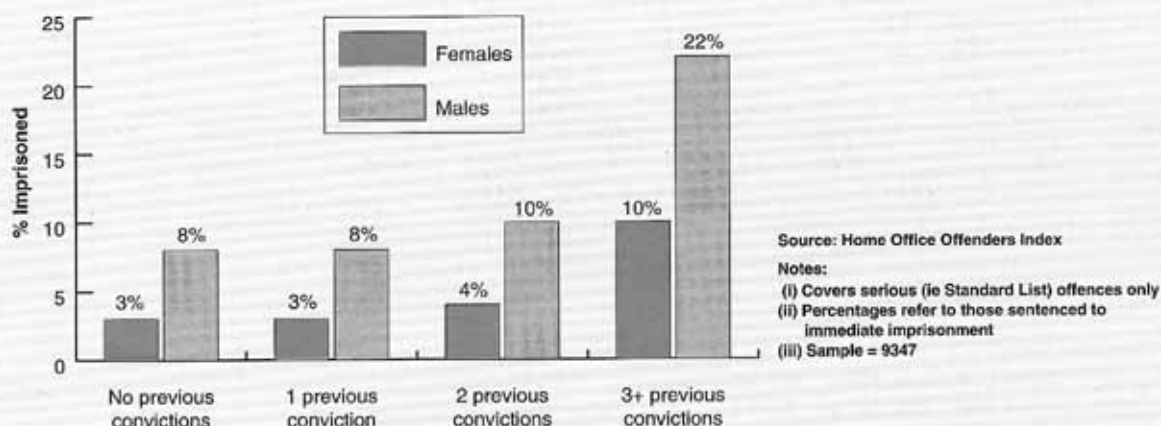
than equivalent men. The same pattern is repeated for individual types of crime such as theft (see Figure 2) and causing actual bodily harm. Given that these two types of offence account for two thirds of female convictions for serious offences, it is hardly surprising that such offenders constitute a large part of the female prison population.

Hood (1992) reached a similar conclusion in his study of the way men and women are sentenced at the Crown Court. He found that women were less likely to be sentenced to custody than men when legal and socio-demographic factors were taken into account.

HOMICIDE

Despite recent claims to the contrary, women are at less risk of imprisonment than men even in cases of domestic homicide. An analysis of cases dealt with between 1984 and 1992 shows that 23% of females compared with only 4% of males indicted for homicide were acquitted on all charges. Of those

Figure 2: Percentage of convicted offenders given custodial sentences for theft in 1991



found guilty, 80% of the women compared with 61% of the men were found guilty of the lesser charge of manslaughter; and more than two-thirds of the men convicted of manslaughter received a prison sentence compared with less than half the women. The fact remains, of course, that women are at much greater risk of domestic homicide.

Much of the controversy around recent cases has surrounded the use of the provocation defence, which is said to be less easy for women to deploy. Information on recent cases shows that 36% of the women convicted of manslaughter used this defence, and under a third (32%) of the men. By combining the percentages employing the provocation defence with the percentages of men and women convicted of manslaughter, we can infer that a defence of provocation was accepted in about 29% of cases involving female defendants compared with 20% of cases involving men.

CONCLUSIONS

This paper presents available research and statistics which call into question claims that the criminal justice system is systematically more severe towards women than men. If anything, the evidence points to more lenient treatment of women. Some caveats are needed, however. First, there is still insufficient evidence to be definitive: it

could be that even when individual offence categories are examined, the statistics mask differences between men and women in the seriousness of their offending. In other words, it is possible that on the face of it, women are being treated leniently – but not as leniently as their less serious offending warrants. However, there is no statistical support for (or against) this hypothesis; and testing it would require analysis within very detailed offence categories.

Secondly, the question remains whether there is equally suitable provision for women as for men throughout the criminal justice system. There are grounds (albeit not fully researched) for believing that, in a system which deals very largely with male offenders, the needs of women offenders are not always effectively addressed. For example, an investigation by HM Inspectorate of Probation (1991) found that a limited range of community penalties was available for women in some areas.

Finally, the paper has not considered whether there are disparities in treatment **within** gender. The likelihood that female offenders may overall receive more lenient treatment than males obviously does not rule out the possibility that individual women receive unusually harsh treatment.

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