

### 8.1.2.1 Gender Disparity by Offence Category

#### 8.1.2.1.1 Gender Disparity in Sentencing to Immediate Custody

The sentencing data tool from (Ministry of Justice, 2018a) can be used to extract the numbers of men and women sentenced (in any way) across 12 offence categories, as well as how many were sentenced to immediate custody. Hence, the percentage of convicted men who were sentenced to prison can be found for each of these 12 offence categories, as can the corresponding percentages for convicted women. For example, 24,754 men were convicted of violence against the person (VAP) in 2017, of whom 11,031 were sent to prison (45%). In the same year, 3088 women were convicted of VAP, of whom 658 were sent to prison (21%). The gender disparity in VAP was thus  $45\%/21\% = 2.1$  in 2017.

Table 8.2 gives the percentage of convicted offenders who were sentenced to prison for each of the 12 offence categories, and hence a disparity factor for each, in year 2017. The gender disparity is greater than 1, indicating that a convicted man is more likely to be imprisoned than a woman convicted of the same offence, and this is true for all offence categories.

**Table 8.2:** Gender Disparities on Sentencing for Various Offence Categories, 2017. Data from (Ministry of Justice, 2018a). See text for definition of this disparity.

Offence Category	Percentage of convicted men sent to prison	Percentage of convicted women sent to prison	Disparity on imprisonment
Violence against the person (VAP)	45%	21%	2.1
Sexual offences	60%	53%	1.12
Robbery	70%	68%	1.04
Theft	33%	20%	1.63
Criminal damage or arson	33%	24%	1.34
Drug offences	23%	15%	1.51
Possession of weapon	36%	23%	1.56
Public order offences	31%	20%	1.57
Miscellaneous crimes against society	32%	19%	1.75
Fraud	27%	11%	2.48
Summary Offences (Non-Motoring)	4.5%	0.5%	8.7
Summary Offences (Motoring)	0.8%	0.1%	6.7
<b>All offences</b>	<b>9.7%</b>	<b>2.5%</b>	<b>3.9</b>
<b>All indictable offences</b>	<b>34.2%</b>	<b>19.5%</b>	<b>1.75</b>

This is not new, and 2017 is not an uncharacteristic year. Figure 8.4a plots the gender disparity on imprisonment for indictable offences, calculated in the same manner, for years 2006 to 2016, (Office for National Statistics, 2018w). Figure 8.4b is the equivalent for summary offences, and shows very large disparity factors, up to a factor of 10. Similar data for years 1999 to 2009 can be obtained from (Ministry of Justice, 2012). Based on all offences (summary offences and indictable offences) the disparity on imprisonment has increased from 2.4 in 1999, to 3.4 in 2009 and to 3.9 in 2017, the latter from Table 8.2. Based on indictable offences only, the gender disparity based on Table 8.2 for 2017 is 1.75.

**Figure 8.4a:** Gender Disparity on Sentencing to Immediate Custody, 2006-2016 (Indictable Offences)

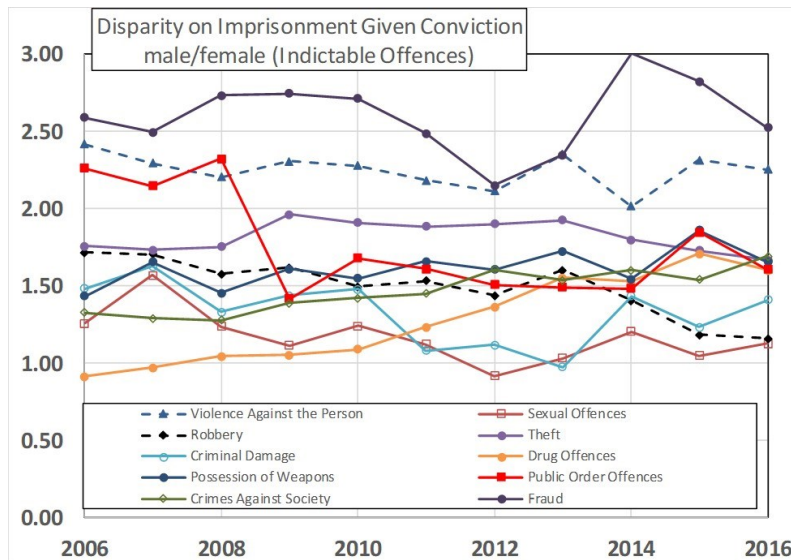
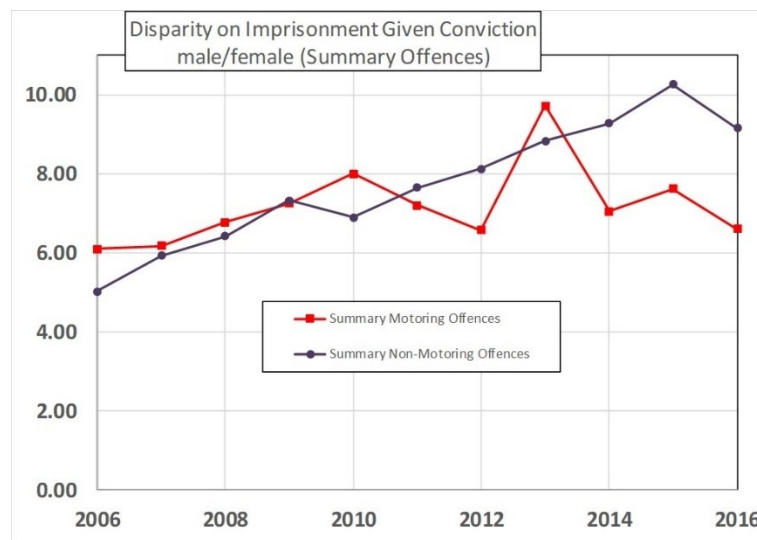


Figure 8.4b: Gender Disparity on Sentencing to Immediate Custody, 2006-2016 (Summary Offences)



In 2016 the Ministry of Justice published a report ‘Associations between being male or female and being sentenced to prison in England and Wales in 2015’ (Hopkins, Uhrig, and Colahan, 2016). This MoJ analysis was based on multivariate logistic regression models to account for possible dependences of imprisonment on not only sex and offence category but also ethnicity, age and previous criminal history. This allowed the associations between sex and imprisonment to be examined under similar criminal circumstances. Moreover, the MoJ used 20 offence categories, more than the 12 categories in Table 8.2. The MoJ’s headline finding was that under similar criminal circumstances the odds of imprisonment for males were 88% higher than for females, i.e., an imprisonment disparity factor of 1.88 in 2015. This is quite close to the disparity of 1.75 for indictable offences in 2017 from Table 8.2 even though based on a different methodology.

The MoJ rightly note this disparity might not be gender bias but rather that there could be systematic differences between the sexes in offending severity even within the same offence category. Essentially this is a recognition that even 20 offence categories may provide insufficient granularity. This does need further investigation, though it is worth noting that analyses of USA data, e.g., that by Sonya Starr of the University of Michigan in 2012 (see section 8.1.2.7), indicate a similar gender sentencing disparity based on far greater granularity. Some of the findings of the MoJ report for year 2015 were as follows (pages 3 and 4),

- Females were less likely to be imprisoned than males, 8% of those sentenced versus 18% of men.
- The most common offence for both sexes was Violence Against the Person (VAP)\*, accounting for 22% of women convicted and the same percentage of men convicted. However, whilst 20% of men convicted for VAP were imprisoned, only 7% of women convicted for VAP were imprisoned. (\*For women, theft also accounted for 22% of convictions).
- The second most common offence for both men and women was drink-driving, accounting for 15% of women's convictions and 12% of men's. However, whilst about 700 men were imprisoned for drink-driving, seemingly no women were (though "0%" may be rounded).
- 31% of men convicted of fraud or forgery were imprisoned, compared with 18% of women.
- 23% of men convicted for handling stolen goods were imprisoned compared with 10% of women.
- 63% of men convicted for domestic burglary were imprisoned compared with 35% of women
- 13% of men convicted of public order or harassment offences were imprisoned compared with 4% of women.
- 20% of men convicted for vehicle-related theft were imprisoned compared with 6% of women.
- 4% of men convicted of welfare fraud were imprisoned compared with 2% of women. (This was a rare instance of the absolute number of women offenders exceeding that of men).
- 11% of men convicted of absconding/jumping bail were imprisoned compared to 7% of women.

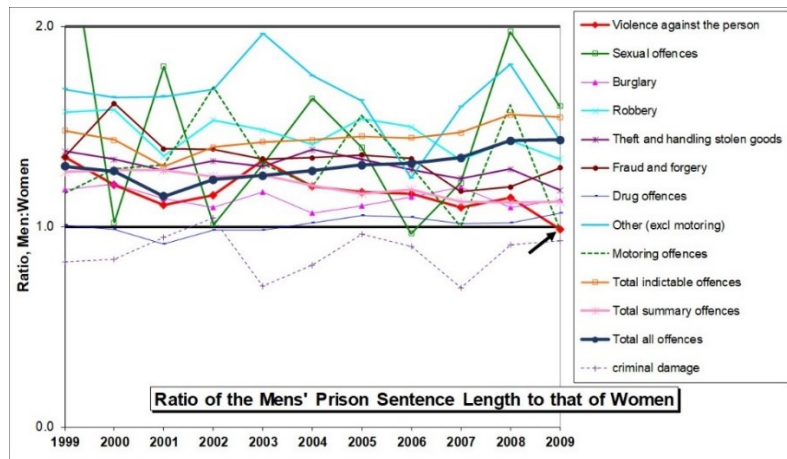
Women are systematically less likely to be imprisoned in every offence category. It is rather hard to understand why women's offending should be less serious in every category, including such things as fraud, forgery, handling stolen goods, vehicle related theft and jumping bail. A harsh penalty, such as imprisonment, for drink-driving is because of the danger this represents to the public. In what way is the danger less if the drink-driver is female? Yet no women were imprisoned for drink-driving to men's 700, despite drink-driving accounting for 15% of women's convictions.

#### *8.1.2.1.2 Gender Disparity in Sentence Length*

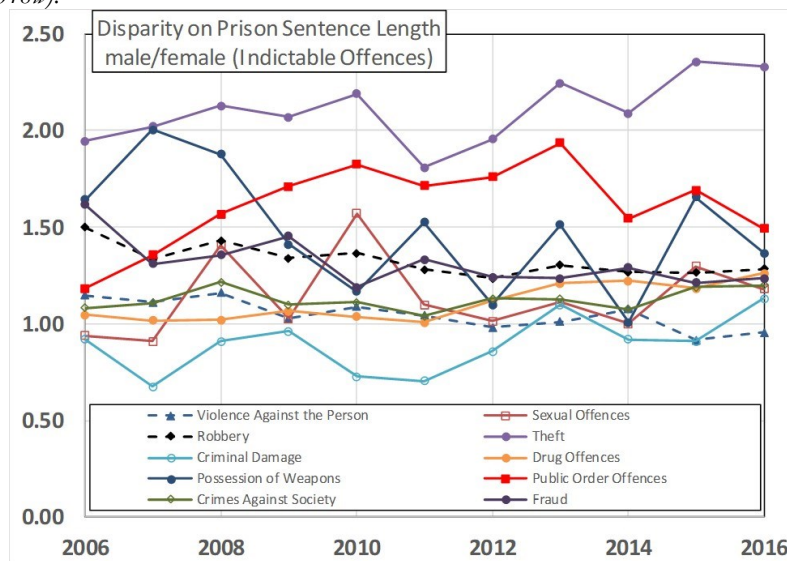
It is not only in the probability of being sentenced to immediate custody (assuming conviction) in which there is a gender disparity. Assuming a man and a woman are both convicted within the same offence category, and further assuming that both are sentenced to prison, the man can expect a longer sentence. The gender disparity in this case is defined as the ratio of the sentence lengths. These disparities on sentence length are plotted in Figure 8.5a for years 1999-2009 based on the same 12 offence categories as Figure 8.4 (Ministry of Justice, 2012). Figure 8.5b plots similar data for years 2006-2016 and for indictable offences. For all but one or two offences, the disparity is greater than one, i.e., men receive longer prison sentences even when a woman is convicted and sentenced to prison for the same offence category. Across all offences in 2009, the disparity in sentence length was about 1.4. But the average custodial sentence for men has been increasing over the last 11 years, as shown by Figure 8.6. That for women has not increased. The gender disparity in sentence length has therefore been increasing: in 2015, averaged over all offences, it reached 1.78 (Ministry of Justice, 2016a).

In 2016, Baroness Corston wrote an article in the Guardian attempting to refute claims that it is men, not women, who are treated more harshly in prison sentencing, (Corston, 2016). The article was sub-titled 'Labour peer Jean Corston says there is indisputable evidence that the justice system treats women harshly'. In the article Corston noted that, in 2009, 'women were sentenced to an average of 17.9 months in prison for violence against the person, compared with 17.7 months for men'. These figures are correct and correspond to a disparity on sentence length of 0.99. The data point in question is indicated by the black arrow on Figure 8.5a. Readers will come to their own view as to whether the point picked fairly represents the totality of the data in Figures 8.5a and 8.5b. Moreover, the Baroness was unmoved by the fact that the disparity on imprisonment for VAP in 2009 was over 2.

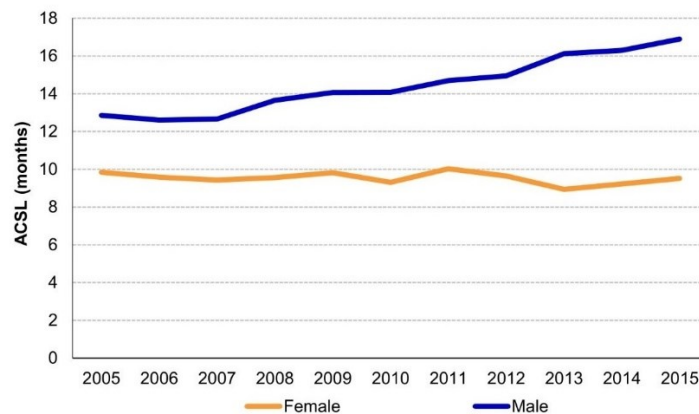
**Figure 8.5a:** *Gender Disparity on Sentence Length, 1999-2009 (assuming a prison sentence has been awarded), data from (Ministry of Justice, 2012)*



**Figure 8.5b:** Gender Disparity on Sentence Length, 2006-2016 (assuming a prison sentence has been awarded), data from (Office for National Statistics, 2018w).



**Figure 8.6:** Average Custodial Sentence Length for Offenders Sentenced to Immediate Custody, by Sex, 2005 to 2015. From (Ministry of Justice, 2016a).



The (Ministry of Justice, 2016a) have provided an opinion on the reason for the increasing average custodial sentence length (ACSL) for men,

*The overall increase in male ACSL is in part caused by changes in legislation and in part by the impact of sexual offences. More male offenders are being sentenced for sexual offences, and these sentences are getting longer (with*

the ACSL increasing by 20 months), which is driving up the overall average. The largest increase in ACSL within this offence group was for rape of a female child under 13 by a male, for which ACSL has more than doubled and the number sentenced to immediate custody is four times higher than in 2005.

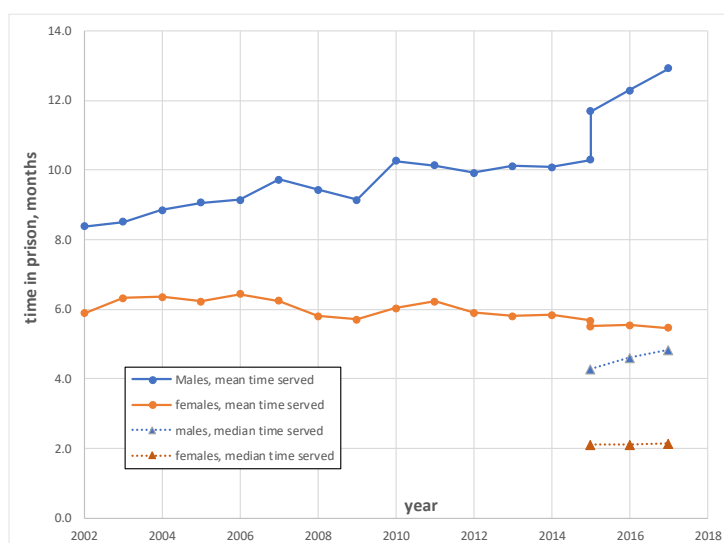
The total number of males sentenced to immediate custody for sexual offences in 2015 was around 4,000, up from 2,700 in 2005; this change could be related to improved reporting and recording of sexual offences, as well as an increased public focus. The number of females sentenced to immediate custody for sexual offences was much smaller - 57 in 2015, up from 23 in 2005.'

A number of concerns arise in the context of sexual offences. These issues will be addressed in chapters 19 and 20.

### 8.1.2.2 Gender Parole Disparity

Prisoners on determinate sentences do not usually serve their full sentence. The parole system usually permits prisoners to be released early. The proportion of sentence served differs systematically for men and women. In 2015, 2016 and 2017 the median release for male prisoners was 53%, 58% and 59% of their full sentence respectively (Ministry of Justice, 2018b). For women prisoners the median sentence actually served was 46%, 46% and 47% of their full sentence respectively. Consequently, there is a gender disparity in the proportion of time served, over and above the awarded sentence length, of between 1.15 and 1.26. Figure 8.7 shows how the actual prison time served by male and female prisoners has changed since 2002. That for women has decreased slightly. But for men, the mean time served has increased substantially (by more than 50%).

**Figure 8.7:** Actual Time Served in Prison by Sex. Data from (Ministry of Justice, 2018b). Note the large difference between mean and median terms.



The difference in early release between the sexes is not due to better behaviour in prison by women. In fact, the number of disciplinary offences per 100 prisoners is similar in men's and women's prisons, perhaps with somewhat more in women's prisons, see Table 8.3.

**Table 8.3:** Disciplinary Offences within Men's and Women's Prisons. Data for 2005 to 2009 from (Ministry of Justice, 2010b), data for 2010 and 2015 from (Ministry of Justice, 2016b). Incidents per 100 prisoners.

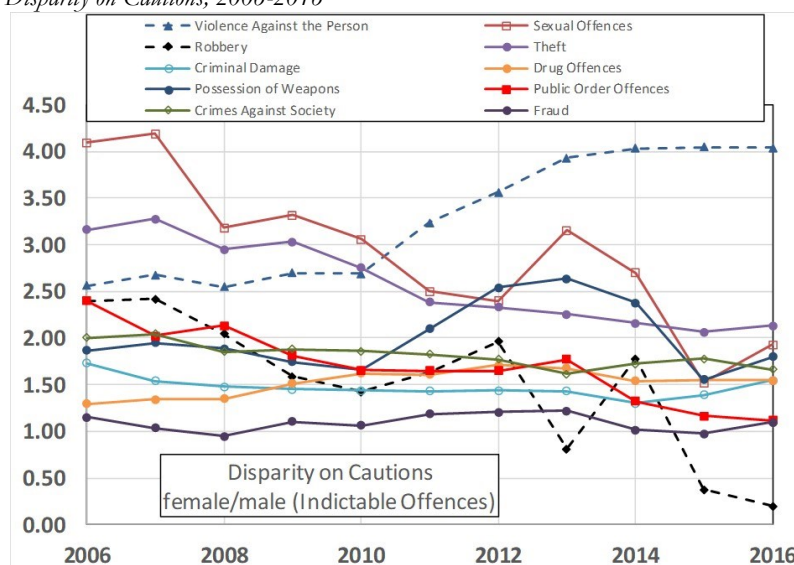
Sex	2005	2006	2007	2008	2009	2010	2015
All Offences / Adjudications							
<b>Men</b>	143	131	133	133	124	210	170
<b>Women</b>	193	204	189	180	150	160	210
Violent Offences / Assaults							
<b>Men</b>	23	22	22	22	21	-	24
<b>Women</b>	33	33	30	31	24	-	20

### 8.1.2.3 Other Known Disparities

Women who are convicted are more likely than convicted men to receive a conditional discharge or unconditional discharge, more likely to be given a suspended sentence, and more likely to be given a community sentence. These disparities have been quantified by Collins (2018a). The likelihood of a prosecution resulting in a conviction is subject to less disparity, but where there is disparity it is men who are more likely to be convicted.

An issue which receives less attention is the use of cautions. Following an arrest, the police have an alternative to pressing for a prosecution. They may instead offer the arrestee a caution. If the arrestee accepts the caution, prosecution, and any further action, is avoided. However, by accepting the caution the arrestee is admitting guilt, and will then have a record to that effect. Where the arrestee is indeed guilty, to accept a caution is to be let off lightly compared with the possible consequences of being prosecuted and convicted.

**Figure 8.8:** Gender Disparity on Cautions, 2006-2016



To evaluate a gender disparity on cautions, the number of cautions per 100 prosecutions for the same offence is first calculated. The caution disparity is then defined as the number of cautions accepted by women per 100 prosecutions of women divided by the number of cautions accepted by men per 100 prosecutions of men for the same offence. The resulting caution disparities are plotted in Figure 8.8 for 2006 to 2016 and for ten indictable offences. The caution disparity is almost always larger than 1, i.e., more women than men escape prosecution by accepting a caution. The caution disparity is particularly large for VAP offences in recent years (about 4). Consequently, claims about the relative number of violent offences committed by men and women based on conviction data alone will be misleading, as more women than men who are arrested for violence will avoid prosecution via a caution (quantified in section 9.1.2).

### 8.1.2.4 Pattern of Offending by Gender

To rationalise the disparities observed above, the argument is sometimes made that women's pattern of offending is different from men's, implying that it is generally less serious even in the same offence category. But actually women's and men's patterns of offending are very similar, as shown by Figure 8.9 (arrests) and Figure 8.10 (prisoners). Note that these Figures do not show absolute numbers, but the proportions of offenders of the same sex. The volume of offending (at least as indicated by convictions) would be far greater for men than for women. However, Figures 8.9 and 8.10 do faithfully depict the pattern of offending by sex, i.e., which types of offences are most common. The only major difference in pattern of offending is for sexual offences and there are particular issues associated with

that (see chapters 19 and 20). Further evidence for similar patterns of offending by the two sexes is the closely comparable distribution of legal aid amongst crime categories (Figure 8.11). The commonest reason for a man to be arrested is for violence. Some people might be surprised to learn that the same is true for women (Figure 8.9). Similarly, the largest proportion of male prisoners were sentenced for violence against the person (VAP). It may surprise some people that the same is again true for women (Figure 8.10). This point is brought out clearly in the report ‘Statistics on Women and the Criminal Justice System 2015’, (Ministry of Justice, 2016a), which states,

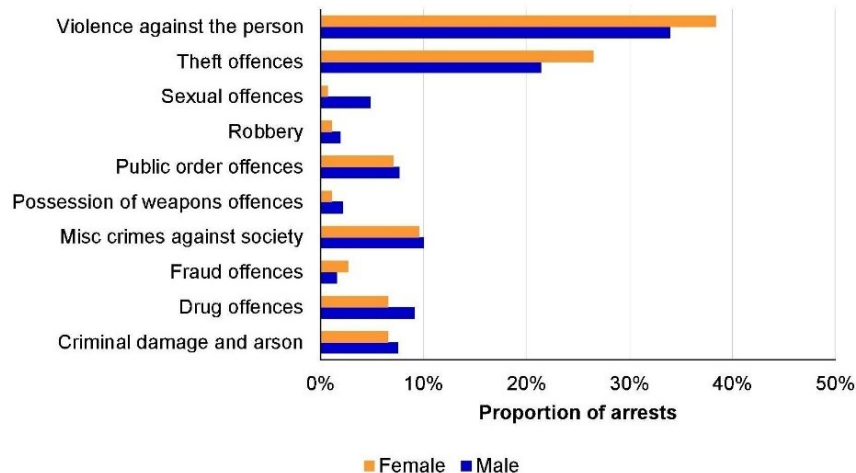
*(page 118), ‘For both male and female prisoners, the most common offence group for which they were convicted at 30 June 2015 was violence against the person (25% and 27% respectively).’*

The exception to the generally similar pattern of offending between the sexes is sex offending. Sex offences accounted for about 5% of men sent to prison in 2017, (Ministry of Justice, 2018a), but about 16% of male prisoners are inside for sex offences, see Figure 8.10. The distinction arises from the long sentences awarded for sex offences. Sex offences are perhaps the most extreme example of gender disparity. Sex offences committed by women are regarded as less serious than those committed by men, even when perpetrated against children. And female sex offending against adult males is popularly regarded as a virtual impossibility. These matters are taken up in chapter 20.

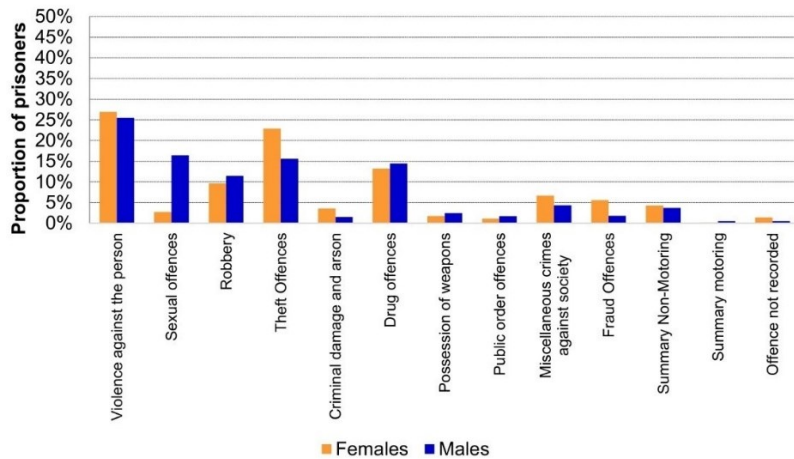
#### 8.1.2.5 Overall Gender Disparity in Criminal Justice

The criminal justice process consists broadly of four sequential processes, (i) Arrest, (ii) Decision to Prosecute, (iii) Conviction, and, (iv) Sentencing. In the foregoing sections I have addressed quantitatively only gender disparity in sentencing, assuming all is fair up to and including conviction. Given the strong case for gender bias in sentencing, it is natural to be concerned that

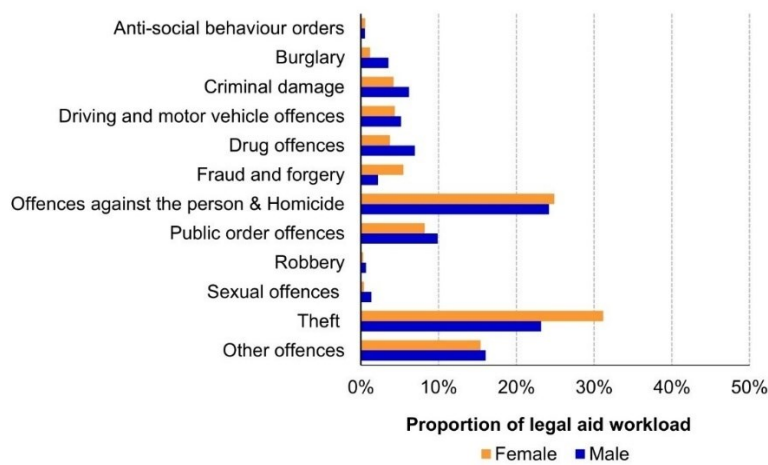
**Figure 8.9:** *Proportion of Arrests within each Offence Group by Sex, 2015/16. From (Ministry of Justice, 2016a) Figure 4.05.*



**Figure 8.10:** *Proportion of Sentenced Prisoners by Offence Group and Sex, June 2015. From (Ministry of Justice, 2016a) Figure 7.08.*



**Figure 8.11:** *Proportion of Legal Aid Workload in Magistrates’ Courts by Offence Group and Sex, 2015. From (Ministry of Justice, 2016a) Figure 5.10.*



there might also be gender bias in the earlier three steps in the criminal justice process. Obtaining data on these earlier steps is not so easy. In particular, if the police do not arrest a person, then that person and their potential misdemeanour never appear in any statistics. Consequently, the disparity in sentencing must be interpreted as a lower bound to the overall disparity in the criminal justice process. I have noted above that there is a small disparity in conviction rate and a large disparity in the use of cautions (Figure 8.8), both to men’s disadvantage.

Given conviction, the overall disparity on imprisonment comprises: disparity in being sentenced to immediate custody for the same crime category; disparity in sentence length awarded for the same crime category; and disparity in the proportion of time actually served (parole). For the most recent years for which data has been obtained (2015 to 2017) these disparity factors have been estimated, above, to be 1.88, 1.78 and about 1.2 respectively. The product of these provides the overall prison-time disparity of  $1.88 \times 1.78 \times 1.2 = 4.0$ .

This overall disparity is more than enough to account for there being 21 times more men in prison despite the number of indictable offences committed by men exceeding that committed by women only by a much smaller factor (about 6).

It has not been conclusively proved that this disparity is gender bias, rather than a pervasive tendency for men’s offending to be more serious across all offence categories. However, that assumption is seriously challenged by the similarity of men’s and women’s patterns of offending, as well as the occurrence of gender disparity across all offence categories. If you run over someone due to driving drunk, why should you be more culpable if male? Similar remarks apply for fraud or theft



or any of the majority of offences which do not involve violence or a sexual offence. Even that proviso about violent offences appears to be only popular prejudice. Lightowlers (2018) has provided a breakdown of VAP offences into six sub-offences of varying severity. The pattern of offending across these six VAP sub-offences is again very similar for the two sexes (Figure 8.12). This seems to be a convincing refutation of the “pattern of offending” explanation of the gender disparities.

Any residual doubt that the criminal justice process is systemically sex biased is unlikely to survive consideration of the policies that are in operation, as we shall see next.

**Figure 8.12:** *Pattern of Offending by Sex across Six VAP Sub-Offences*

