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Title: **Imprisonment Gender Bias**

Synopsis

Thesis: It is proposed that men are more readily incarcerated, and for longer, than women for similar offences, the overall disparity due to sex being roughly a factor of 4.

Disclaimer: The author has no opinion about punishment of offenders. He is not advocating for either fewer criminal men to be incarcerated or for more criminal women to be incarcerated. But one or the other of these, or a combination of the two, is necessary if punishment is to be based on what you have done rather than who you are.

- [1] The ratio of men to women convicted of all offences is 2.8. Confining attention to the more serious (indictable) offences, the ratio is 5.9, Ref.[1]. But at 21st May 2021 there are just under 24 times as many men as women in prison, Ref.[2].
- [2] The presumption that this disparity on imprisonment, given conviction, is due to women's less serious offending (even given conviction) does not withstand scrutiny.
 - Patterns of offending are broadly similar for the two sexes, whether based on arrests, legal aid applications (prosecutions), or sentencing, **Figs. 1,2,3**, Refs.[1,3].
 - For most offences there is no reason to suppose that women's offending within a given category would be less serious than a man's, e.g., why would fraud or theft or causing injury/death by dangerous driving be less serious if the offender were female?
 - Violence against the person (VAP) offences are the most common convictions for both men and women, **Figs. 1,2**, and the break-down into six sub-categories of seriousness indicates a similar pattern of offending within the VAP category for the two sexes, **Fig. 4**.
- [3] Any disparity on arrest is unknown. Assuming arrest, disparities arise as follows,
 - Women are proportionally more likely than men to be cautioned rather than prosecuted, **Fig.5**;
 - Women are proportionally more likely than men to be discharged, **Fig.6**;
 - Given prosecution, men are proportionally more likely to be convicted, **Fig.7**;
 - Given conviction, women are proportionally more likely than men to be awarded a community sentence, **Fig.8**;
 - Given conviction, women are proportionally more likely than men to be awarded a suspended sentence, **Fig.9**;
 - Given conviction, men are 1.88 times more likely to be subject to immediate custody for the same offence, **Fig.10** and Ref.[6] (the disparity remains after controlling for offending history);
 - Given a sentence of immediate custody for the same offence, men receive a sentence on average 1.75 times longer than a woman, **Fig11**;
 - Given a sentence of imprisonment, accounting for parole men serve 20% more of their awarded sentence than women on average, Ref.[8].
- [4] The overall disparity is thus $1.88 \times 1.75 \times 1.2 \approx 4$, which crudely accounts for a conviction ratio for indictable offences of 5.9 becoming $5.9 \times 4 \approx 24$ times more men in prison.
- [5] Sexual offences are a special case in numerical terms, but are also an instance in which offending by women is regarded as less serious by virtue of their sex.

Cultural / Policy Bias

The cultural dimension on imprisonment relates to ancient/traditional perceptions of gender: women are vulnerable and to be protected; men are not - but men are required to be agentic. Consequently, there is a greater emphasis on understanding and rehabilitation for women, but for men a greater emphasis on their failure to meet expectations and hence upon culpability and punishment.

This is summarised by a quote from Baroness Corston's 2007 report on women in prison: "*equality does not mean treating everyone the same*", Ref.[9]. Throughout that influential report the ethos is that women should not be treated the same as men; that prisons, designed for men, are too harsh for women. Quote: "*Prison is disproportionately (sic) harsher for women because prisons and the practices within them have for the most part been designed for men*". This asserts that prison is harsher for one sex than the other. This is a doctrine of inequality. The same sentiment was expressed by Baroness Hale in 2005, "*It is now well recognised that a misplaced conception of equality has resulted in some very unequal treatment for the women and girls who appear before the criminal justice system. Simply put, a male-ordered world has applied to them its perceptions of the appropriate treatment for male offenders.... The criminal justice system could ... ask itself whether it is indeed unjust to women.*"

Lady Hale was later to become President of the Supreme Court. Whilst treating women well seems laudable, the corollary of Corston's dictum is that men should be treated more harshly, simply and solely for being male. This is pernicious, and clearly in conflict with everyone being equal before the law, yet this sentiment is now embedded in policy. It is a "woke" philosophy in which being anti-sexist is identified (spuriously) with preferencing one sex over the other.

For many years the guidance given to judges on addressing equality issues in The Equal Treatment Bench Book, Ref.[10], has promoted the same ethos, e.g., "*true equal treatment may not always mean treating everyone in the same way*". In June 2018, the Government launched a sex-specific strategy "to divert women in the criminal justice system away from custody", Ref.[11].

In as far as the attempt is made to justify this different treatment, rationalisation relies upon claims of endemic disadvantage to women (as compared with men). But this is simply untrue, as these submissions serve to demonstrate. It is fraudulent to claim, as the Judicial College do, that more men than women in elite occupations is evidence of relevant disadvantage to women. It is not the elites who are incarcerated: it is the disadvantaged. And being male intersectionally exacerbates other disadvantages, rather than the opposite.

Prisoners are not a representative cross-section of the public. They are disadvantaged, typically in multiple ways: from dysfunctional families or abusive family backgrounds, having been in care as a child, suffering mental ill-health or addictions, being educationally disadvantaged, perhaps by exclusion from school, or simply having low IQ. These disadvantages apply to both sexes, not just one, and some are worse for men than for women.

It is, of course, valid for judges to take account of mitigations and aggravations when sentencing, and examination of the data shows that women are more likely to have mitigations identified. But these are subjective judgments, on the whole, and so subject to the same traditional gender biases. One extreme manifestation of this bias is the claim that "*the vast majority of women in prison are there because of a man, because of exploitation*", Ref. [12]. This is a denial of women's agency and is profoundly misogynistic.

The narrative about women's disadvantage mitigating their criminality is frequently bolstered by claims that women are treated more harshly in the criminal justice system, especially as regards imprisonment. This is false as the above summary of the statistics demonstrates. Some of the false or grossly misleading claims that are made in this respect are refuted in the final section of the Notes, below.

References

[1] William Collins, [*The Empathy Gap*](#), Ips publishing, 2019.

- [2] [Prison population figures: 2021 - GOV.UK \(www.gov.uk\)](http://www.gov.uk)
- [3] [Statistics on Women and the Criminal Justice System 2015](#), A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991
- [4] Carly Lightowers (2019) *Drunk and Doubly Deviant? the Role of Gender and Intoxication in Sentencing Assault Offences*. The British Journal of Criminology 59(3), 693–717
<https://doi.org/10.1093/bjc/azy041>
- [5] [Criminal Justice System statistics quarterly: December 2016](#), Criminal justice statistics outcomes by offence tool.
- [6] [Hopkins, Uhrig, and Colahan, 2016](#), *Associations between being male or female and being sentenced to prison in England and Wales in 2015*. Ministry of Justice.
- [7] Starr, S. (2012). [Estimating Gender Disparities in Federal Criminal Cases](#). University of Michigan Law School Scholarship Repository
- [8] Ministry of Justice, [Offender Management Statistics quarterly: October to December 2017](#)
- [9] Corston, J. (2007). [The Corston Report](#).
- [10] Judicial College, [Equal Treatment Bench Book: new edition 2021](#)
- [11] Ministry of Justice, June 2018, [Secretary of State launches dedicated strategy to 'break the cycle' of female offending](#)
- [12] David Lammy MP, [Most Women In Prison Are 'There Because Of A Man'](#).
- [13] Ministry of Justice, [Criminal Justice System statistics quarterly: December 2017](#)
- [14] Ministry of Justice, (October 2015). [Female offenders and child dependents](#)

Conclusions

It has been shown that men are more readily incarcerated, and for longer, than women for similar offences. The frequent claims that women are more harshly treated than men in the criminal justice system are false and arise, not from empirical reality, but from traditional biases in the perceptions of the two sexes. This perspective is refuted both by the data and by a declared Government policy which is to explicitly deflect one sex but not the other away from imprisonment.

Recommendations

Advice should be sought from the EHRC or from an independent legal authority regarding the legality of the Government's specifically sex-biased policy on imprisonment, e.g., its consistency with the Equality Act 2010. The issue of the relative "needs" of the two sexes in this context must take into account the true empirical evidence, not popular narratives.

Notes

Pattern of Offending by Sex

Figures 1, 2 and 3 below are taken from Ref.[3]. Please note that each histogram shows the proportion of offenders of the same sex. Female offenders are far less numerous than male offenders, so these histograms should not be misinterpreted as the absolute numbers of offenders. However, they corrected indicate the similarity of the pattern of offending between the two sexes, i.e., the rank order of the various offence categories, VAP offences are most common for both sexes, followed by theft.

Figure 1: *Proportion of Arrests within each Offence Group by Sex, 2015/16.* From ([Ministry of Justice, 2016a](#)) Figure 4.05.

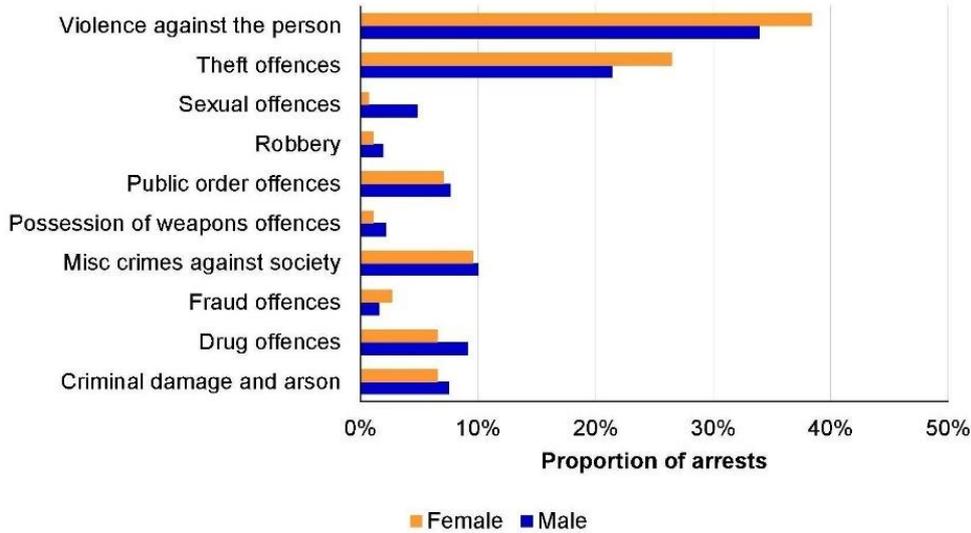


Figure 2: *Proportion of Sentenced Prisoners by Offence Group and Sex, June 2015.* From ([Ministry of Justice, 2016a](#)) Figure 7.08.

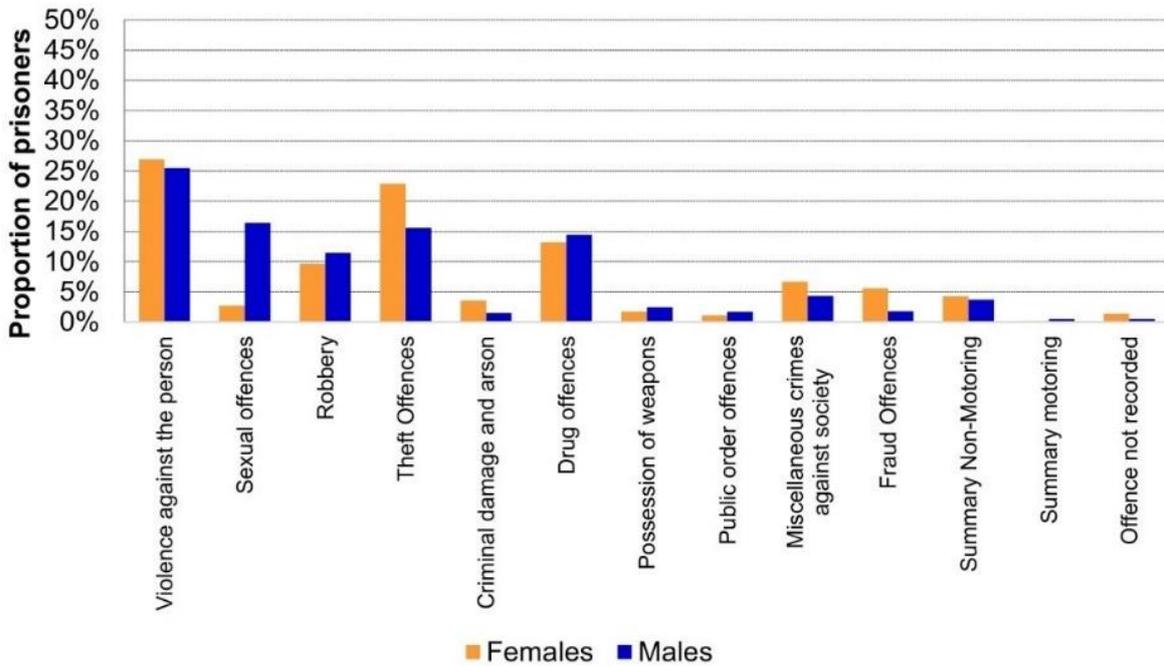
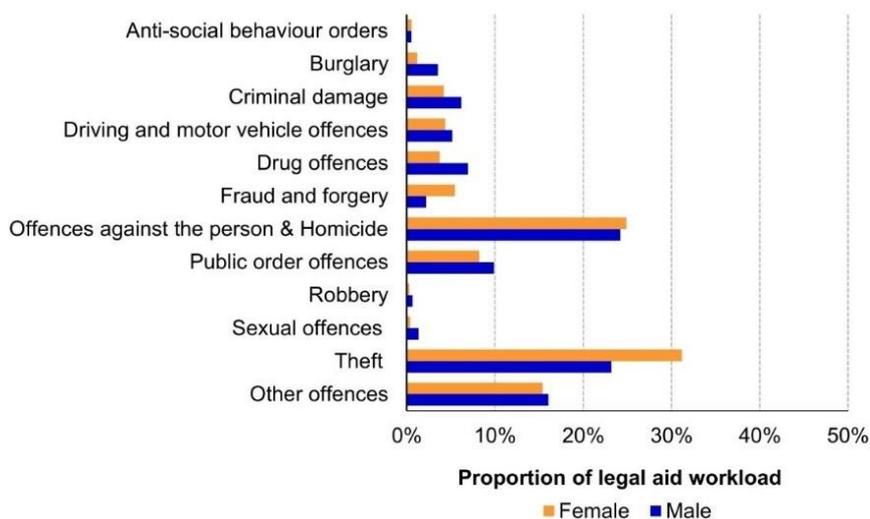
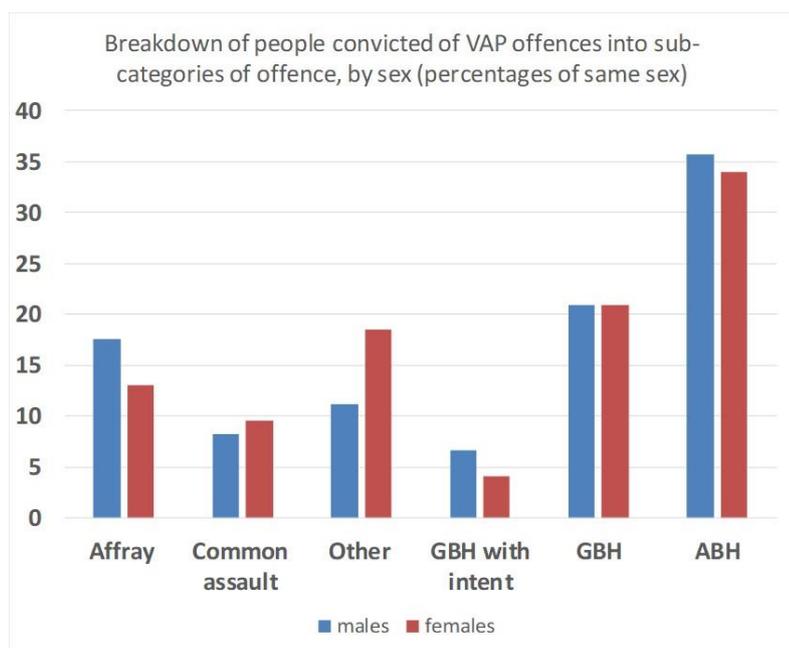


Figure 3: *Proportion of Legal Aid Workload in Magistrates' Courts by Offence Group and Sex, 2015. From (Ministry of Justice, 2016a) Figure 5.10.*



Many people will assume that a violent offence by a woman will be less serious than a violent offence by a woman. But given conviction, the break-down of violence against the person (VAP) offences into six sub-categories of differing severity show a very similar pattern between the sexes – Figure 4 has been plotted from the data in Table 1 of Ref.[4].

Figure 4: *Pattern of Offending by Sex across Six VAP Sub-Offences*



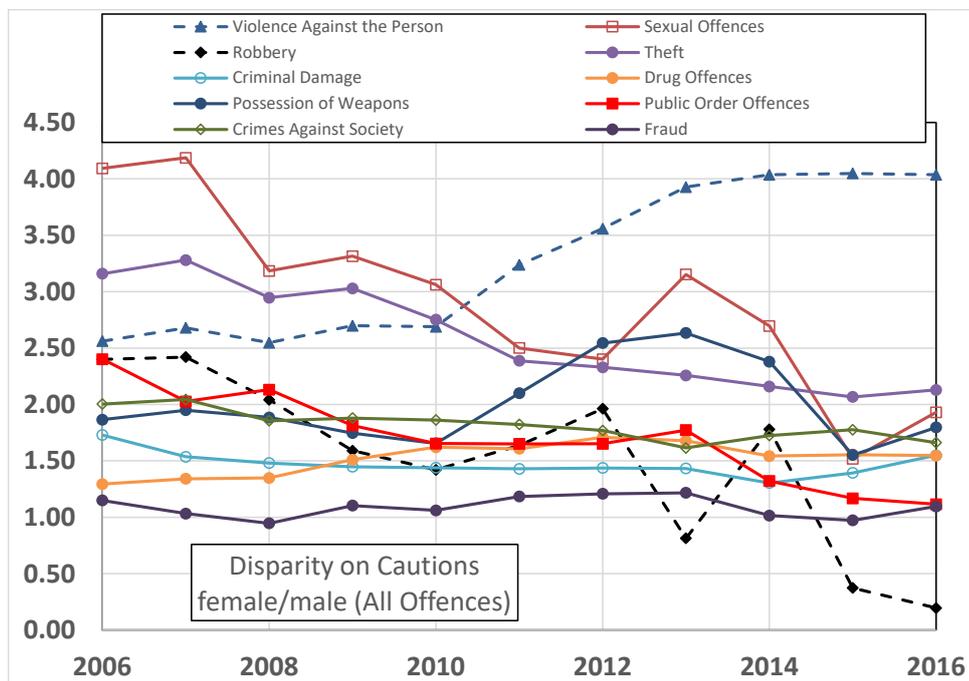
Sex Disparities

Disparity on Cautions

Following arrest, and their judgment regarding likely guilt, the police have an alternative to pressing for a prosecution. They may instead offer the arrestee a caution. If the arrestee accepts the caution, then prosecution 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. A gender disparity on cautions cannot be defined simply by the ratio of cautions accepted by men and women because men do commit more crimes. Instead, the number of cautions per prosecution is first evaluated for a given offence category. For that offence, the caution disparity is then defined as the number of cautions accepted by women per prosecution of women divided by the number of cautions

accepted by men per prosecution of men. The resulting caution disparities are plotted in Figure 5 for 2006 to 2016 and for the ten indictable offences, based on Ref.[5]. The Figure shows that women are substantially more likely to be cautioned rather than prosecuted, for every offence, and that this persists over time.

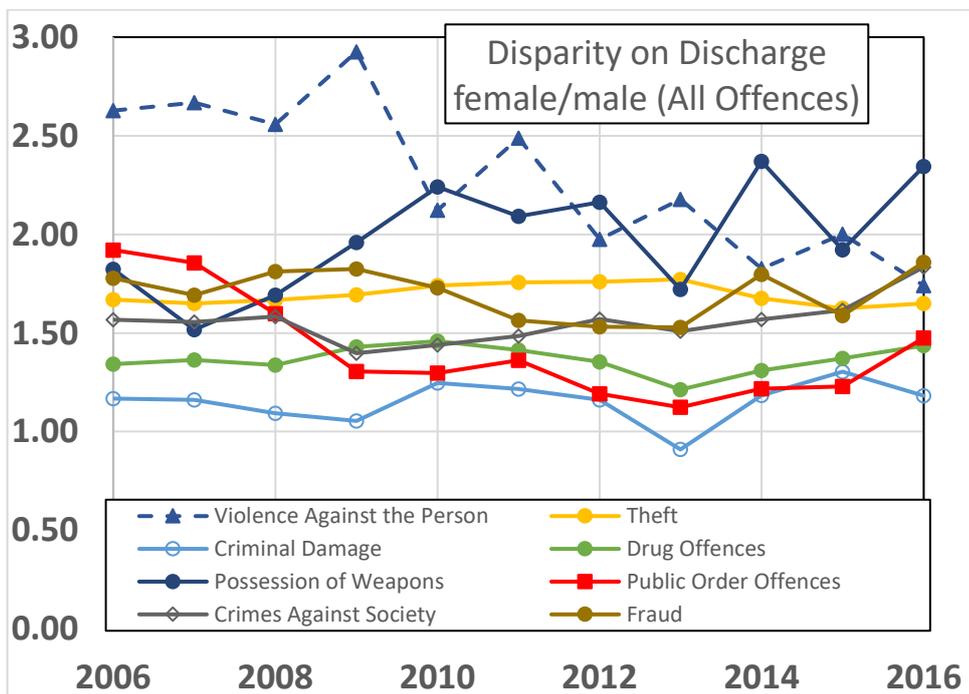
Figure 5: Sex Disparity on Cautions per Prosecution, All Ages, Summary & Indictable Offences



Discharge Disparity

Those prosecuted may eventually be discharged, perhaps an unconditional discharge or perhaps a conditional discharge. The discharge disparity is the fraction of prosecuted women who are discharged divided by the fraction of prosecuted men who are discharged. Figure 6 plots the discharge disparity for indictable offences based on the data in Ref.[5]. (Sex offences and robbery have been omitted because statistics are too small to be meaningful). The Figure shows that women are substantially more likely to be discharged, for every offence, and that this persists over time.

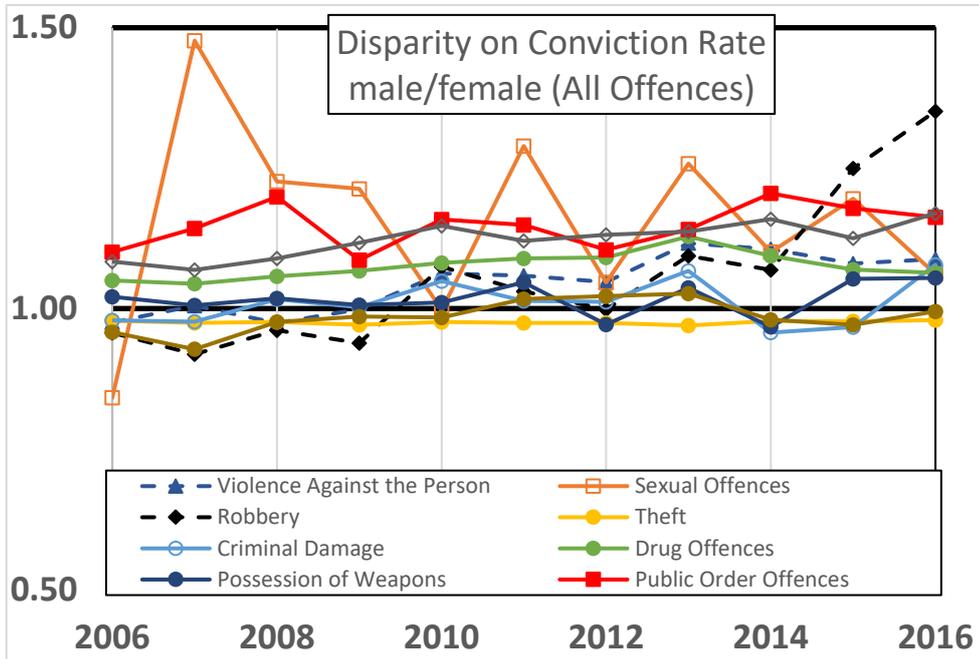
Figure 6: Sex Disparity on Discharge per Prosecution, All Ages, Summary & Indictable Offences



Conviction Disparity

In a similar manner, Ref.[5] gives the disparity on the proportion of prosecutions resulting in conviction as plotted in Figure 7, this time as the ratio of men to women.

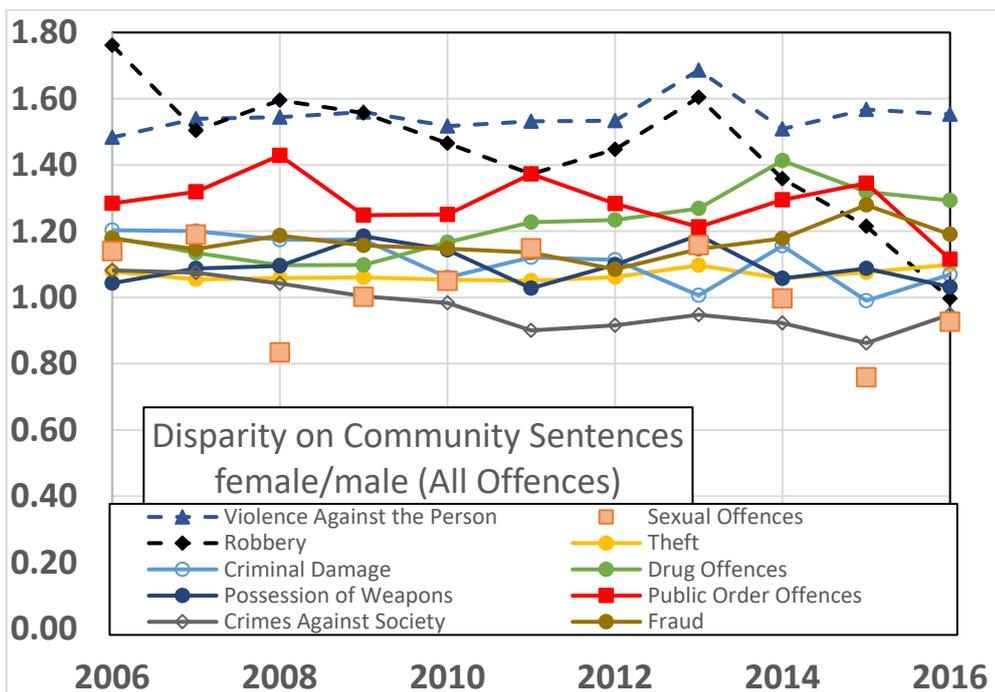
Figure 7: Sex Disparity on Discharge per Prosecution, All Ages, Summary & Indictable Offences



Community Sentence Disparity

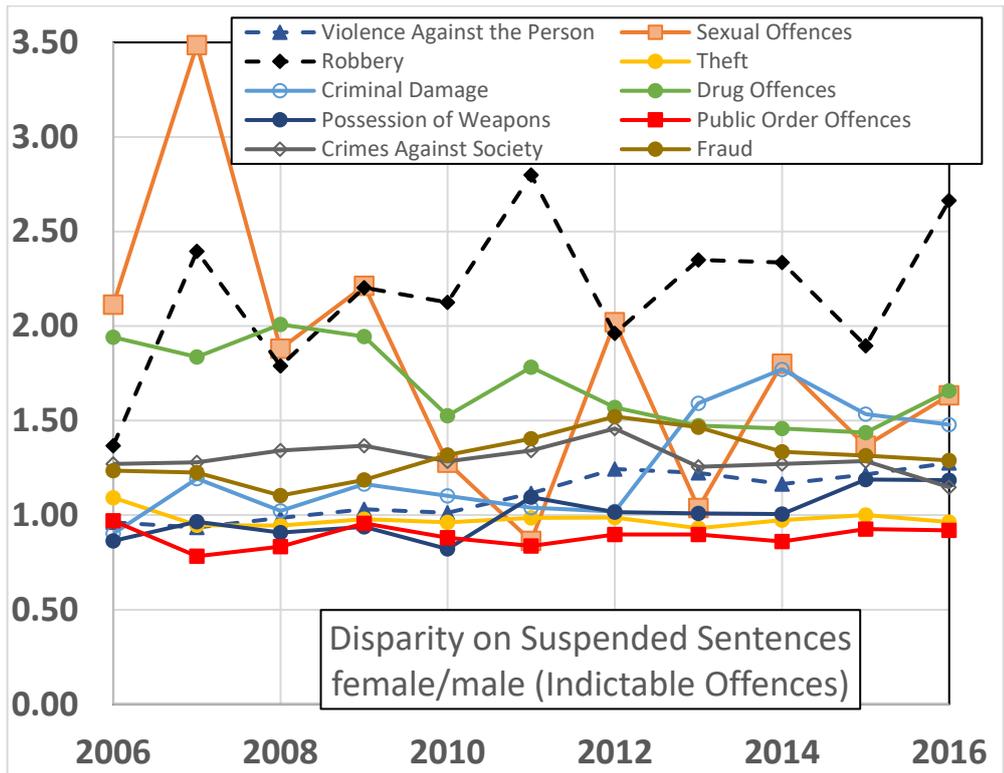
People convicted may be awarded a community sentence (such as unpaid work in the community). The community sentence disparity is the fraction of convicted women who are awarded a community sentence divided by the fraction of convicted men who are awarded a community sentence, plotted in Figure 8 based on data from Ref.[5]. There are some disparities below one, but the bulk are above one, indicating that women are more likely than men to be awarded a community sentence, especially for violent offences.

Figure 8: Sex Disparity on Community Sentences, All Ages, Summary & Indictable Offences



Disparity on Suspended Sentences

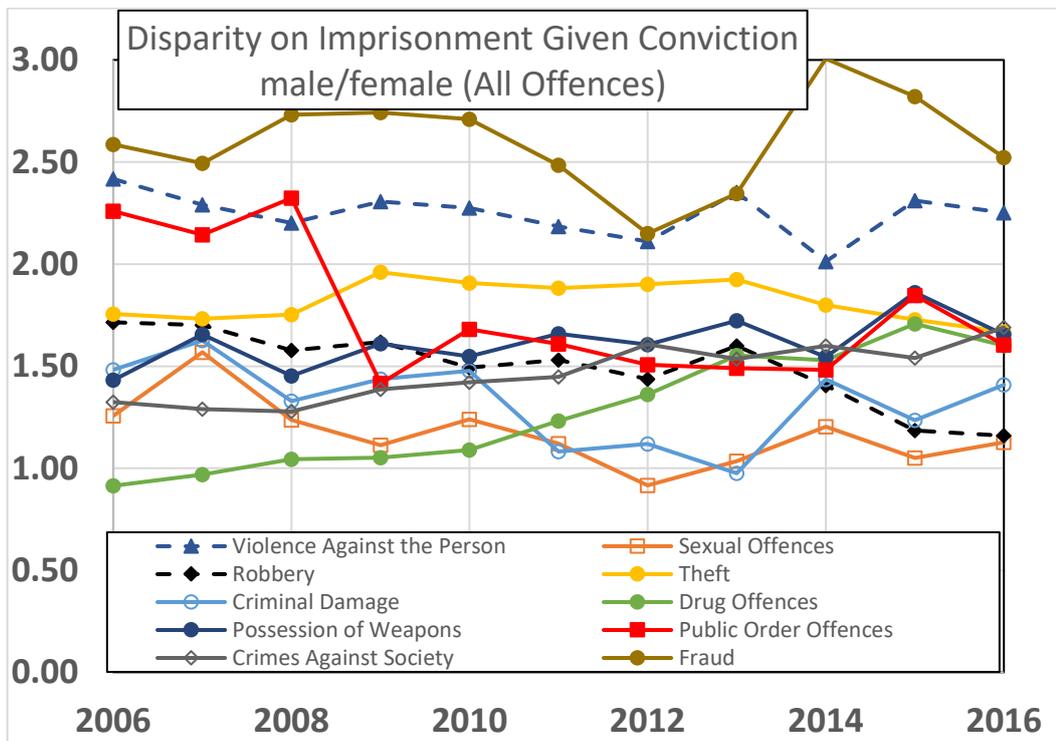
Figure 9: Sex Disparity on Suspended Sentences, All Ages, Summary & Indictable Offences



Disparity on Immediate Custody Given Conviction

Ref.[5] yields Figure 10, the disparity on imprisonment being defined, for a given offence, as the ratio of the fraction of convicted men imprisoned to the fraction of convicted women imprisoned.

Figure 10: Sex Disparity on Imprisonment, All Ages, Summary & Indictable Offences



In 2016 the Ministry of Justice published Ref.[6]. 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 used in the above Figures. 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.

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. In respect of VAP offences this is refuted by Figure 4. It is worth noting that analyses of USA data, e.g., that by Sonya Starr of the University of Michigan in 2012, Ref.[7], indicate a similar gender sentencing disparity based on far greater offence granularity.

Some of the findings of the MoJ report for year 2015 were as follows,

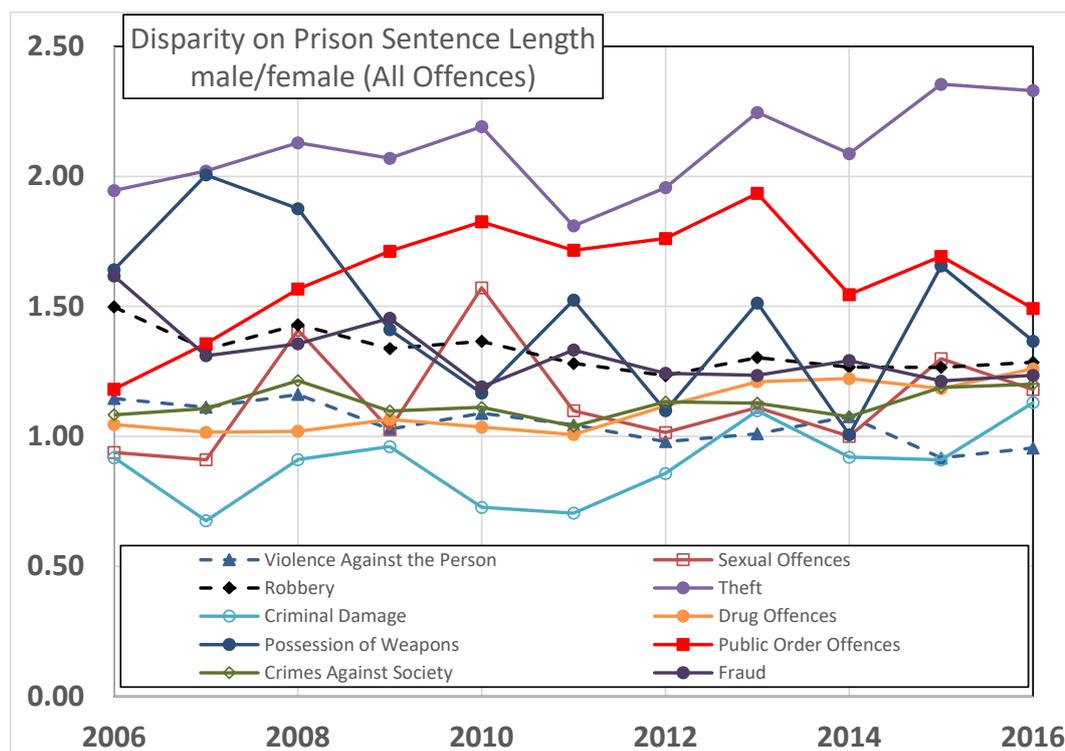
- Females were less likely to be imprisoned than males, 8% of those sentenced versus 18% of men.
- The most common offence for both sexes was Violence Against the Person (VAP)*, accounting for 22% of women convicted and the same percentage of men convicted. However, whilst 20% of men convicted for VAP 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.

Disparity on Prison Sentence Length

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 average sentence lengths for the given offence. Ref.[5] yields Figure 11.

Figure 11: Sex Disparity on Sentence Length, All Ages, Summary & Indictable Offences



Disparity on Parole

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, Ref.[8]. 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.

False Claims About Women’s Harsher Treatment in Imprisonment

Claim: 84% of women’s prison sentences are for non-violent offences

True, but the same remark is true also for men. It is important to distinguish between the proportion of people sentenced to prison per year for a given offence, and the proportion of people currently in prison for a given offence. It is correct that 84% is a typical figure for the proportion of women sentenced to prison for non-violent offences in a given year, but so it is also for men, Ref.[13]. As for people in prison, Ref.[3] 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).’

Claim: Women are more likely than men to be imprisoned for a first offence

False. This is perhaps the most frequently repeated woosle in the context of criminal justice. Ref.[3] states (page 98), ‘In 2015, the most common disposal for offenders convicted of an indictable offence with no previous sanctions was a community sentence for both males (33%) and females (29%). However, males were much more likely to receive an immediate custodial sentence (25%) than females (14%). In comparison, a higher proportion of females received suspended sentences and conditional discharges compared with males’. This consistent with Figures 8 and 9, above.

Claim: Women are more likely than men to be imprisoned for minor offences like shoplifting

False. Ref.[3] states (page 152), ‘The custody rate in 2015 for females sentenced for shoplifting was 15%, and for males was 22%’. It also states that, ‘For both sexes, 89% of offenders sentenced (for shoplifting) had a previous caution or conviction for shoplifting.’

Claim: Men’s harsher sentencing is due to their offending history

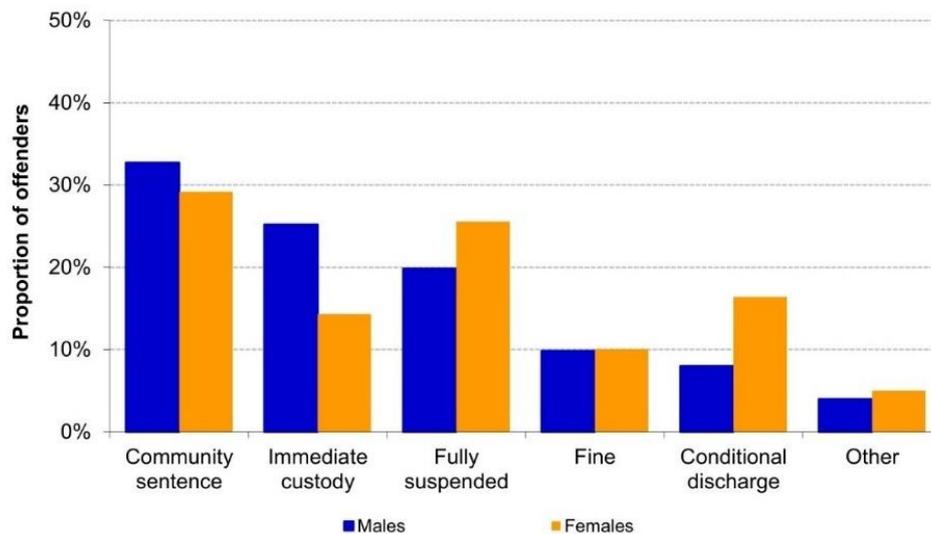
False. The degree of recidivism is not markedly different between men and women and does not appear to account for different sentencing. Quotes from Ref.[3] are,

(page 11) ‘Males were more likely to be sentenced to immediate custody and to receive custodial sentences of 6 months or longer than females with a similar criminal history.’

(page 11) ‘Although males were more likely to reoffend, females had a higher number of proven reoffences on average per reoffender.’

Figure 12 shows that men are nearly twice as likely to be imprisoned for a first indictable offence, whereas women are twice as likely to receive a conditional discharge.

Figure 12: *Proportion of Offenders Sentenced for an Indictable Offence who have No Previous Sanctions, by Sentencing Outcome and Sex, 2015*



Claim: Most women in prison had been caring for dependent children

False. Page 2 of Ref.[14] identified that, ‘Between 24% and 31% of all female offenders were estimated to have one or more child dependents. Among the different disposal types, women receiving immediate custody were significantly less likely to have child dependents (between 13% and 19%).’ Being in care of a child is a recognised mitigation against imprisonment which shows in these figures.