

## 2.3 Women and crime: The rise in female imprisonment in western jurisdictions

Gill McIvor<sup>1</sup>

Professor of Criminology at the University of Stirling, Scotland and Co-Director of the Scottish Centre for Crime and Justice Research

### *Abstract*

The majority of convicted offenders and the majority of those given sentences of imprisonment are men. Moreover, in comparison with men, women's offending is usually not serious and presents little risk of public harm. Despite this, over recent years female imprisonment rates have risen sharply across most western jurisdictions, increasing at a greater rate than the imprisonment rates of men. This chapter describes changes in female imprisonment across a range of jurisdictions and seeks to explain why female imprisonment has increased. It concludes that there is little evidence that more women are being imprisoned because of an increase in serious female offending. Instead it appears that a complex range of factors are responsible including, inter alia, legislative changes and increasingly punitive responses to women who offend.

### *Résumé*

La majorité des délinquants incarcérés et la majorité des condamnés à des peines fermes sont des hommes. De plus, comparées à celle des hommes, les infractions commises par les femmes sont en général peu graves et ne présentent que peu de risques pour la sécurité publique. Malgré cela, ces dernières années, les taux d'incarcération féminins ont augmenté de manière importante dans la plupart des pays occidentaux, et cet accroissement a même été plus rapide que l'accroissement de l'emprisonnement des hommes. Ce chapitre décrit les modifications survenues en matière d'incarcération des femmes dans toute une série de pays et tente d'expliquer pourquoi leur incarcération a augmenté. Il conclut qu'il n'existe pas de preuve de ce que les femmes sont emprisonnées du fait d'une aggravation de leur délinquance. Au contraire, il semble bien qu'un ensemble complexe de facteurs en soit la cause, lequel comprend inter alia, des changements législatifs et une réponse de plus en plus punitive à la délinquance des femmes.

---

<sup>1</sup> gillian.mcivor@stir.ac.uk

### 1. *Introduction*

Across jurisdictions, offending by women differs in a number of important ways from offending by men: it is less common, less frequent and less serious. Women are typically convicted of relatively minor crimes that pose little public risk and, because they are usually convicted of offences that are less serious than those committed by men, the sentences they receive are also different: for example, women are less likely than men to receive sentences of imprisonment. However, female imprisonment has increased dramatically in most western jurisdictions over the last 15-20 years as evidenced by increases in the numbers of women given sentences of imprisonment<sup>2</sup>, in daily female prison populations<sup>3</sup> and in the rate of imprisonment of women<sup>4</sup>. Moreover, because the rise in women's imprisonment has outstripped parallel increases in the imprisonment of men, women now make up a greater proportion of prisoners. What has fuelled this increase in women's imprisonment, which does not seem solely – if at all - to have been a reaction to increases in female crime? This chapter examines the international growth in female imprisonment and considers explanations that have been advanced to account for the increasing incarceration of women. In so doing it focuses principally upon those jurisdictions that have witnessed rapid growth in women's imprisonment and have been the focus of academic attention as a result.

### 2. *Female offending and responses to it*

Internationally, offending by women is characterised by its relative infrequency in comparison with offending by men. Across jurisdictions, women represent a relatively small proportion of those convicted and sentenced by the courts, especially in the higher courts dealing with more serious types of crime. In the United States, for example, local data collated centrally by the FBI indicated that 23 per cent of all arrestees were women (Federal Bureau of Investigation, 2004) while data from the Bureau of Justice Statistics showed that women represented 17 per cent of those convicted of felonies in 2002 (Durose and Langan, 2005). As is the case with men, black and Hispanic women are vastly over-represented in the state and federal prison population (Harrison and Beck, 2004).

<sup>2</sup> There are a number of ways in which the use of imprisonment can be analysed. The number of receptions or admissions to custody provides an indication of how many individuals are incarcerated over a given period of time (usually 12 months).

<sup>3</sup> This refers to the number of people in prison at a given census point and as such represents a 'snapshot' based on one day or on an average based on a series of successive snapshots. It is influenced both by the number of individuals imprisoned and by the lengths of sentences imposed.

<sup>4</sup> The daily female prison population in relation to the total adult female population (usually expressed as a rate per 100,000). Cavadino and Dignan (2006) suggest that, for the purpose of comparative analysis, the imprisonment rate is the best – if not perfect – indicator of a jurisdiction's punitiveness.

In Canada, 15 per cent of adult court cases in 2002-3 involved a female accused (McCutcheon, 2003) while in New Zealand, male offenders accounted for 82% of all cases that resulted in conviction in 2004 (Lash, 2006). Defendants in Australia who were prosecuted in 2004-5 were overwhelmingly male, with proportionately fewer women dealt with in the higher courts (13 per cent of defendants) than in the lower courts (21 per cent) (Australian Bureau of Statistics, 2010)

In England and Wales, women represented only 19 per cent of those cautioned by the police or convicted of an offence in 2002 (Home Office, 2003) and 19 per cent of defendants who were convicted of an offence in 2005 (Home Office, 2006). In 2006/7 men in England and Wales were five times more likely than women to be arrested for a notifiable offence (Institute for Crime Policy Research, 2009) while in Scotland, men accounted for 85 per cent of all convictions in 2007/8 (Scottish Government, 2009a). The fact that women's offending is also, in general, less serious than offending by men is reflected in the finding that in 2005 women represented 20 per cent of those convicted summarily (that is, of less serious offences) in England and Wales but only 15 per cent of those convicted of indictable (that is, more serious) offences (Home Office, 2006).

International data suggest that men are more likely than women to be convicted of almost all categories of offences. Moreover the 'gender ratio' (the proportion of men to women) tends to be greater for more serious violent and sexual crimes. Schwartz and Steffensmeier (2007) note that women in the United States are proportionately more likely to be arrested for minor property crimes while men are more likely to be arrested for relatively serious property crimes or crimes against the person.

Women's tendency to be involved in relatively minor crimes (and crimes which are often linked to the domestic sphere) is also evident from UK data. In 2005 women in England and Wales were more likely than men to have been convicted of Education Act offences (not sending children to school), non-payment of a television licence, cruelty to or neglect of children and prostitution (where 73%, 63%, 59% and 99% respectively of those convicted were women) (Home Office, 2006). Numerically, the most common offences for which women were convicted in 2005 were (in descending order): failure to pay for a television licence, driving while disqualified, shoplifting, non-payment of fares on public transport, common assault, offences under the Education Act and failing to surrender to bail (Home Office, 2006).

A broadly similar picture is found in Scotland where, aside from prostitution, the categories in which women formed a higher than average proportion of those convicted in 2004-5 included fraud (37 per cent), shoplifting (29 per cent), non-payment of a television licence (69 per cent) and 'other non-sexual crimes of violence' (42 per cent) which includes neglect or maltreatment of children (Scottish Executive, 2006a). In that year, the most common offences in respect of which women were convicted were failure to pay for a television licence, shoplifting, breach of the peace, assault (including resisting arrest), driving while disqualified and speeding. In Scotland more women than men had a

charge proved against them in 2007/8 in all crime and offence categories except 'other crimes of indecency' which includes convictions related to prostitution (Scottish Government, 2009a)

In a similar vein, data for Canada indicate that in 2002-3 men were disproportionately over-represented among those who appeared in court for crimes against the person, criminal code traffic offences and crimes against property. While women still represented the minority of those appearing in court, they accounted for a significant proportion of accused charged with prostitution (43% of case), fraud (29%) and theft, including shoplifting (28%) (McCutcheon, 2003). In New Zealand, women are disproportionately represented among those convicted of crimes against property, which includes shoplifting and fraud and under-represented among those convicted of offences involving violence (Lash, 2006) while in Australia, women are under-represented among those convicted for sexual offences and over-represented among those convicted of deception/fraud (Australian Bureau of Statistics, 2010).

The differences in offending patterns between men and women are reflected in different sentencing outcomes, with women less likely than men to receive a sentence of imprisonment. In European jurisdictions, women are most commonly imprisoned for drug offences or property crime (Quaker Council for European Affairs, 2007). In England and Wales the main offence groups in respect of which women were imprisoned in 2007 were theft and handling (31% of receptions into custody), 'other offences' (25%) and violence against the person (14%) (Institute for Crime Policy Research, 2009) and most sentences tend to be relatively short: for example, 71 per cent of women imprisoned in 2002 received sentences of less than one year (Home Office, 2003).

Women in Scotland are less likely than men to be imprisoned for violent crimes and sexual crimes and are more likely to receive a custodial sentence for crimes of dishonesty and crimes involving the possession or selling of drugs: for example, in 2004/5 adult female prisoners (that is, those aged 21 years and over) were most likely to have been imprisoned for other thefts (primarily shoplifting), drug offences, petty assaults and breaches of the peace (Scottish Executive, 2006b).

In the United States, women in prison are more likely than men to have been sentenced for drug or property crime while men are proportionately more likely than women to have been imprisoned for violent crimes (West and Sabel, 2008). In Australia men are most likely to have received a custodial sentence for 'acts intended to cause injury', sexual assaults and 'unlawful entry with intent' while women in prison are most likely to have been sentenced for illicit drug offences, acts intended to cause injury and fraud (Australian Bureau of Statistics, 2009).

According to the World female Imprisonment List (Walmsley, 2006) female prisoners usually constitute between 2 and 9 per cent of the total prison

population in a country though in some jurisdictions (for example, Hong Kong<sup>5</sup>) women make up more than one fifth of the prison population (Fair, 2009). There are, however, variations by continent: for example the percentage of female prisoners tends to be low in African countries, relatively high in the Americas and Asia and intermediate in Europe and Oceania (Walmsley, 2006). Recent analyses, moreover, indicate that in many European jurisdictions, rates of female imprisonment and women's 'share' of the prison population have risen and are continuing to rise.

### 3. *The rise in female incarceration*

Despite women's offending being largely of a non-serious nature, one of the most striking phenomena in recent years has been the dramatic increase in western jurisdictions in the numbers of women imprisoned, resulting in female prison populations reaching unprecedented levels. As Kruttschnitt and Gartner (2003, p. 17) have observed:

*"Growth...has been the general – though not the exclusive – rule for women's imprisonment in English-speaking Western countries in the 1990s, and this extends to women's relative representation in the prison population."*

The rise in female imprisonment has been particularly dramatic in the United States. Between 1986 and 1995 the number of women imprisoned for drug offences in the USA rose by 888 per cent, with the increase being more marked among states that had introduced severe penalties for drug offences and among black women. Around half of the women incarcerated in state prisons in the USA between 1986 and 1996 had been sentenced for drug offences (Mauer et al., 1999). By the end of the 1990s, 34 per cent of the female state prison population has been sentenced for drug offences, compared with only 15 per cent in the mid 1980s. The proportion of women imprisoned for violent and property offences declined over the same period (Kruttschnitt and Gartner, 2003). Between 1980 and 1997 there was a 574% increase in the numbers of women in state and federal prisons in the USA, while the proportion of women in the prison population increase from 4.1 to 6.4 per cent over the same period (Mauer et al., 1999). The proportion of women given probation for felonies, on the other hand, has decreased (Bloom et al., 2004).

According to Frost et al. (2006), the number of imprisoned women stood at its highest recorded level in 2003, having increased in average by 5 per cent per

---

<sup>5</sup> Lee (2007) attributes the high female imprisonment rate in Hong Kong to an attempt to control migration of women who become involved in sex work from the People's Republic of China. Immigration legislation is used to criminalise female migrant sex workers who are deemed to have engaged in work without authorisation and who are at risk of imprisonment as a result.

annum since 1995. However the number of female prisoners under state or federal jurisdiction in the USA subsequently rose by 3.2 per cent per annum between 2002 and 2006 compared to an annual increase of 1.9 per cent for men (West and Sabel, 2008). In 2002-3 the number of women who received prison sentences of one year or more increased by 4.2 per cent compared with a 1.9 per cent increase in the numbers of similarly sentence men. While women comprised 5.7 per cent of all prisoners in 1990, by 2003 this had risen to 6.9 per cent. Between 1977 and 2004 there was a 757% increase in the numbers of women imprisoned in the United States while the rate of women imprisoned per 100,000 adult population increased from 10 to 64 (Frost et al., 2006). Raphael (2009) argues that the rate of imprisonment and average sentence length have increased while crime rates have decreased (with the exception of drug crime and parole violations).

The percentage of adult women in the US who had experienced imprisonment more than doubled between 1994 and 2001 (from 0.2 to 0.5 per cent) while the lifetime risk of imprisonment for women in the USA increased six-fold in the same period (from 0.3 to 1.8 per cent) which was double the rate of increase for men. The increase in female imprisonment has been more marked for black and Hispanic women with the result that by 2001 more black than white women had ever been incarcerated in the USA (Bonzcar, 2003).

Female imprisonment has similarly increased in the UK. Between 1992 and 2002 the average number of women in prison increased from 1,577 to 4,299 - an increase of 173% compared with an increase of 50% in the average male population - and the percentage of women in the prison population increased from 3.4 per cent to 6.1 per (Home Office, 2003). There was a 414% increase in the number of women imprisoned for drug offences in England and Wales (Councell, 2003). More recent data indicate that between 1996 and 2009 the female prison population in England and Wales increased from 2,300 to 4,300 women and from 4.1 to 5.1 per cent of the total prison population (Berman, 2009). Although the annual number of women remanded in custody in England and Wales decreased by 18 per cent between 2002 and 2006/7, the numbers received into custody under sentence increased by 5 per cent (compared to a 4 per cent decrease in the number of male receptions under sentence) (Institute for Crime Policy Research, 2009).

The average daily female prison population in Scotland almost doubled between 1999-2000 and 2008-9, from 210 to 413 (Scottish Government, 2009b) while there was an 83% increase in female remand population between 1997/8 and 2006/7 (Scottish Government, 2008). Women constituted 5 per cent of the total prison population in 2007/8 (Berman, 2009) compared with 3 per cent in 1996/7 (Scottish Executive, 2006b). The increase in the daily female population applied equally to young women and adults, though the average male sentenced young offender population decreased steadily over the same period (Scottish Executive, 2006b).

Between 1995 and 2002, the number of female prisoners in Australia increased by 78 per cent (compared with a 27 per cent increase in male prisoners) and the proportion of prisoners who were women increased from 4.8

to 6.6 per cent. Over the same period, the rate of imprisonment per 100,000 women rose by 60 per cent which was four times the increase in the imprisonment rate of men (15 per cent) (Gelb, 2003). More recent data indicate that between 1999 and 2009 the Australian female prison population increased by 57 per cent and women made up 7 per cent of the population in June 2009 (Australian Bureau of Statistics, 2009). In the state of Victoria there was a 76 per cent increase in the average number of female prisoners in between 1995-2001 (Victoria Department of Justice, 2001), despite it being the most liberal Australian state with regard to sentencing.

In New Zealand, the female sentenced prison population increased by 113 per cent between 1995 and 2004 while the male sentenced population rose by only 30 per cent over the same period (Lash, 2006). The growth in the female remand population was particularly dramatic, increasing by 387 per cent growth between 1995 and 2004 while the male remand population increased by 147 per cent (Lash, 2006). Between 1986 and 2009 the 'snapshot' female prison population increased by 297 per cent, from 98 to 389 women and the proportion of women in the sentenced prison population in New Zealand grew from 4 per cent to 5.9 per cent, reflecting continued rises in the numbers of both sentenced and female receptions and remands (Harpham, 2010). Harpham (2010) notes that the number of sentenced receptions has actually decreased slightly in the last two years, possibly as a result of use being made of a range of new non-custodial measures (home detention, community detention and intensive supervision) that were introduced in 2007.

Gartner et al (2009) argue that some countries have not experienced significant or extended rises in their female prison populations. They suggest that in Canada, for instance, the female prison population has remained relatively stable, with the marked increase being confined to federal prison where the number of female admissions increased by 57 per cent between 1994-5 and 2004-5 (Public Safety and Emergency Preparedness Canada, 2005). Overall, the proportion of those given prison sentenced who were women increased from 3.2 per cent of admissions in 1994-5 to 5.0 per cent of admissions in 2004-5 (Public Safety and Emergency Preparedness Canada, 2005).

Turning finally to other European jurisdictions Alameda (2005) observes that Spain has one of the highest rates of female incarceration in Europe, with women comprising 9 per cent of the total prison population (compared with 3.2 per cent in 1983). Between 1988 and 1998 the female prison population in Spain increased by 291 per cent, in comparison to an increase of 88 per cent in the male prison population (Alameda, 2005). More widely, a 2004 survey of 28 member states of the Council of Europe by the Quaker Council for European Affairs revealed a complex picture with respect to female prison populations. Most commonly, the number of women in prison had increased over the previous 10 years (for example, in Finland, Greece, the Netherlands, Germany and Poland) though in other countries (including Denmark, Italy, Norway, Sweden, Belgium and Portugal) female prisoner numbers were relatively stable over the same period or, in the case of Armenia and Switzerland, had

decreased. In around one half of the jurisdictions surveyed, the percentage of women in the prison population had increased (Quaker Council for European Affairs, 2007).

#### 4. *Explaining the rise in female imprisonment*

As the preceding analysis indicates, growth has been a defining feature of female imprisonment in most western jurisdictions over the last two decades. However, although similar trends can be identified internationally, reasons for the increasing imprisonment of women differ. Frost et al. (2006) point to the wide variations in imprisonment rates across US states (for example, from 11 or 129 per 100,000) to suggest that criminal justice policy and practice are pivotal in understanding the drivers of women's imprisonment. Kruttschnitt and Gartner (2003) argue that the growth in the *state* prison population in the USA is a result of an increase in arrests (particularly for drug offences), an increase in the likelihood of receiving a custodial sentence if convicted, an increase in the length of time served (due to longer sentences and greater restrictions on parole) and an increased likelihood of being returned to prison in violation of the conditions of parole. They attribute the growth in the *federal* female prison population to the 1984 Sentencing Reform Act which increased the likelihood of imprisonment and the length of time served. These increases in female imprisonment are, they suggest, a result of the 'war on drugs' (particularly at the state level), sentencing reforms and the introduction of sentencing guidelines (see also Frost et al., 2006).

Mauer et al. (1999) argue that 'war on drugs' policies have had a large and disproportionate impact on women, with the number of women incarcerated in state prisons for drug offences increasing by 888 per cent between 1980 and 1997. Minority women are being disproportionately represented among women given custodial sentences for drug offences and therefore bear the brunt of increasing punitive policing, prosecution and sentencing policies. Female arrests for substance-related offences have increased since 1960 (Schwartz and Steffensmeier, 2007) and the increase in the female prison population appears to have been driven primarily by sentences imposed for non-violent drug offences (Shaffer et al., 2009). The introduction of mandatory minimum sentencing statutes for drug offences resulted in a significant increase in the number of women in prison. The proportion of female state prisoners convicted of drug offences rose from 11% to 32% between 1979 and 2002, though there is also evidence that that the impact of drug enforcement varies across states, depending on how 'drug driven' the criminal justice system is (Frost et al., 2006, p.24).

As Bush-Baskette (1998) argues, ostensibly 'gender-neutral' sentencing laws failed to recognise and take account of the distinctions between major and minor players in drug organisations, with female couriers facing federal mandatory sentences of 15 years to life for a first felony conviction regardless of how 'culpable' they were or whether their involvement was coerced through threats of violence against themselves and/or their families. Mandatory



minimum sentences may also affect women more than men: for example, factors such as childcare responsibilities are no longer taken into account as mitigating circumstances in sentencing decisions and this is more likely to impact on women than on men (since women are more likely than men to have dependent children living with them) (Frost et al., 2006).

While recognising that the criminal justice system has become more willing to incarcerate women convicted of drug offences and for longer periods of time, Chesney-Lind and Pasko (2004) argue that the criminal justice system has become tougher at *all* levels of decision-making and on *all* types of offences, including those relatively minor offences that are traditionally committed by women. For example, although there has been an increase in female arrest rates, Schwartz and Steffensmeier (2007) explain the increase in female arrest rates with reference to an increased propensity to arrest minor offenders (or what been described in a related context as 'low hanging fruit' (Morgan, 2007)). Chesney-Lind and Pasko (2004) also argue that the development of new technologies for detecting drug use (such as urinalysis) has given rise to an increase in parole violations for failing random drug tests, with women being more likely than men to be imprisoned for a technical parole violation rather than a further offence.

It has also been suggested that female imprisonment has risen in the USA partly as a result of *young* women's increasing involvement in violent crime. Yin (2008), for example, reports that the percentage of females among those arrested for juvenile assaults increased from 21 per cent to 32 per cent between 1990 and 2003 while the female juvenile assault rate per 100,000 girls increased from around 200 to 750 between 1980 and 2003. However, there has been no change in the level of self reported assaults by girls and, as Zahn et al. (2008) note, there has been little change in the 'gender gap' in violent victimisation over time. Steffensmeier et al. (2005) attribute the increase in girls' arrests for assault to 'systemic' changes rather than to dramatic alterations in girls' behaviour. The former include broader definitions of what constitutes violent behaviour, an increase in the policing formerly 'private' disputes (at home and in school) and heightened official attention to fighting among girls. Zahn et al., (2008, p.15) conclude that "*there is no burgeoning national crisis of increasing serious violence among adolescent girls.*"

In the UK, the reasons for the increase in women's imprisonment are similarly complex (Gelsthorpe, 2006), though there is little evidence that it reflects marked changes in levels or patterns of female crime: as Hedderman (forthcoming) indicates, as in the USA the criminal justice response to women seems to be changing as much if not more than women's underlying behaviour. In England and Wales the number of women convicted *did* increase between 1992 and 2002, but this appears to be because fewer of those who were arrested were cautioned rather than having their case taken to court (Home Office, 2004; Player, 2005). Hedderman (2004) concluded that *some* of the increase in the numbers of women imprisoned in might be accounted more women appearing before the courts. However the scale of the increase, a lack of evidence that women were committing more serious offences and the

increasing use of custodial sentences across all offence types suggested instead that sentencing— especially in the Magistrates Courts – was becoming more severe.

Kruttschnitt and Gartner (2003) note that in England and Wales, the proportion of women imprisoned for drug offences tripled between 1990 and 2000. In 2000, 37 per cent of women in prison had been sentenced for drug crime compared to 29 per cent ten years previously. Kruttschnitt and Gartner (2003) suggest that legislative changes in England and Wales in the 1990s may have resulted in an increase in determinate sentencing, increasing sentence lengths in the Crown Courts and pressure on judges to make greater use of custodial sentences. More recent analysis by the Ministry of justice (2009) reaches broadly similar conclusions. It attributes the increase in the overall (male and female) prison population to legislative and policy changes that have resulted in longer sentence lengths – between 2000 and 2008 the average time in prison increased by 14 per cent - and increased the likelihood of imprisonment for non-compliance with non-custodial sanctions and measures. The likelihood of receiving a custodial sentence for an indictable offence has also increased, suggesting a tendency towards tougher sentencing outcomes. Between 1992 and 2002, the Crown Court custody rate increased from 45 to 63 per cent while the custody rate for indictable offences at Magistrates Courts increased from 5 per cent to 17 per cent (Councell, 2003). The increase in the use of custody was most marked in the Magistrates Courts and for thefts, handling stolen goods and fraud. In the Crown Court, the use of custodial sentences doubled, and sentence lengths increased from 18 to 25 months (Player, 2005).

As Player (2005) observes, the 2003 Criminal Justice Act aimed to reduce disparities in sentencing but by placing emphasis on a number of sentencing objectives, it reduced the priority accorded to proportionality as a sentencing concern. This, combined with the introduction of 'persistence' as an aggravating factor in sentencing, and the increased sentencing powers in Magistrate's Courts may according to Player, have resulted in the 'up-tariffing' of women. Hedderman (forthcoming) similarly attributes the rise in female imprisonment in England and Wales to legislative changes but also points to the increased social and economic marginalization of women and a harsher, media-driven sentencing climate which has had a particular impact on the sentencing of less serious offending typically associated with women. Sharpe (forthcoming), moreover, argues that changes in police and court processing are primarily to blame for the rising population of *girls* in the youth justice system in England and Wales. In addition, more use is being made of conditions attached to community penalties and the rate at which girls are breached for non-compliance has increased. Sharpe suggests that the increase in their involvement in behaviour that brings them to the attention of the youth justice system is a result of an erosion of mainstream welfare services for girls. In Scotland too there is no evidence of increased female criminality (reflected in increased convictions) during the period when the female prison population rose: the number of women convicted per 100,000 adult population (10) was

identical in 1995/6 and in 2004/5 and, in fact, decreased between 1998 and 2003 (Scottish Executive, 2006a). Furthermore, the *number* of women given custodial sentences did not increase to any significant extent over this period. However, the average length of sentence imposed on women rose sharply (from 172 days in 1996/7 to a high of 276 days in 2002/3) suggesting that *some* women who were convicted were being dealt with more harshly by the courts (McIvor, 2007). Also notable is the steep rise in the number of women remanded in custody prior to conviction, from 1,009 in 1996/7 to 1,807 in 2004/5 (Scottish Executive, 2006b).

In an analysis of Scottish sentencer decision-making in border-line custody cases (that is, cases that might result in either a prison or community sentence), Tombs and Jagger (2006) found that sentencers in general had little doubt about the ineffectiveness of imprisonment, particularly for women. However some believed that prisons could provide offenders with rehabilitative services that they would not be able to access in the community. Like Sharpe (forthcoming) they attribute the growing use of imprisonment to the inability of other services and structures to address deeply rooted social deprivation, with the result that prison is invoked as a response to entrenched social problems.

While Gelb (2003) attributes the increase in female imprisonment in Australia to an increase in the proportion of women imprisoned for a violent offence, this would not appear to be reflected in other jurisdictions. Evidence from New Zealand also suggests that increases in women's imprisonment cannot be accounted for by the courts dealing with more serious female offenders. An increase in the numbers of women imprisoned following the introduction of the Sentencing Act 2002 (which aimed, among other things, to ensure that sentencing takes account of the gravity and seriousness of offending and the culpability of the offender) appeared to have occurred in the absence of any change in the average seriousness of cases resulting in conviction (New Zealand Ministry of Justice, 2004).

Kruttschnitt and Gartner (2003) suggest that female imprisonment rates in Canada did not follow an upward trend in the 1990s and that this may have been the result of a number of legislative and policy changes such as the rejection of sentencing guidelines, the introduction of conditional sentences (for less serious offences of the type that women are more likely to commit) and the development of a range of diversionary measures as alternatives to incarceration. However, Gartner et al (2009) argue that although there has been a decrease over time in admissions of *sentenced* women to provincial prisons, the number of female *remand* admissions has more than doubled since the mid 1990s. The growth in female imprisonment in Ontario - from 5.5 to 9.8 per 100,000 between 1981 and 2007 - is, they argue, attributable to an increase in the size of the female remand population. Thus it would appear that while fewer women are receiving prison sentences for less serious offences, this is being more than offset by the increase in the use of custodial remands.

Returning to Europe, Alameda (2005) suggests that a number of factors may have prompted Spain's increase in female imprisonment including the

relatively poor development of welfare services (encouraging a penal rather than welfare response to women who break the law), an increase in the number of imprisoned women sentenced for drug crime following the introduction of more severe penalties for drug offences in 1996, a lack of alternatives to imprisonment, a lengthening of prison sentences (especially for women) and the absence of organisations to support women in prison and advocate on their behalf.

## 5. Conclusions

This brief overview suggests that while many western jurisdictions share the experience of rising female imprisonment, the reasons underlying the increase are complex and diverse. As the Quaker Council for European Affairs has noted, there is a pressing need for further research to explore “*why women are imprisoned for certain crimes, how and why these might differ from the crimes for which men are imprisoned and how these differences vary between countries and regions*” (Quaker Council for European Affairs, 2007, p. 33)<sup>6</sup>. In the meantime, some broad trends can be discerned from the, albeit limited, comparative analysis undertaken here.

It is important to recognise that there is little indication internationally that the growth in women’s imprisonment reflects women’s increasing involvement in more serious crime. While some jurisdictions report a rise in female involvement in violent crime, this is thought to reflect systemic changes in responses to female behaviour rather than an underlying increase in female violence. Ostensibly gender neutral legislative and policy changes that have been introduced in some jurisdictions have, it has been argued, had a disproportionate impact on women (for example the ‘war on drugs’, introduction of mandatory minimum sentences, sentencing guidelines and changes on sentencing powers) by increasing the likelihood of imprisonment and/or increasing the length of time served. The growth in women’s imprisonment has also been fuelled by women’s failure to comply with ‘technical’ aspects of supervision in the community and, in several jurisdictions, by a sharp rise in courts’ propensity to make use of custodial remands: a 2004 European survey suggested that, while the use of custodial remand varied considerably from country to country, 30 per cent of women in prison were, on average awaiting trial (Quaker Council for European Affairs, 2007).

Although in many jurisdictions women are now serving longer prison sentences, most women tend to be in custody for relatively short periods of time with limited opportunities to receive constructive help and the likelihood

<sup>6</sup> A similar point is made from a US perspective by Frost et al (2006, p.29) who argue that “*more research is needed to tell us how prisons are being used for women: what kinds of offenses are driving increases in the number of women in prison, and how the mix of females prisoners serving short and long sentences is affecting population levels. Further study is needed to determine to what extent variations in incarceration rates are driven by differences in law enforcement, sentencing, correctional practice.*”

that their circumstances will be even more disadvantaged when they are released. This suggests the need for greater use of non custodial sanctions and measures. As the Council of Europe (2008) has concluded:

*"A large number of imprisoned women do not need to be in prison at all. Most are charged with minor and non-violent offences and do not pose a risk to the public. Many are imprisoned due to their poverty and inability to pay fines. A large proportion need treatment for mental disabilities or substance addiction, rather than isolation from society. Many are victims themselves but are imprisoned due to discriminatory legislation and practice. Community sanctions and measures would almost certainly serve the social reintegration requirements of these women better than imprisonment... Yet it is evident that the use made of the possible alternatives to custodial sentences is far more limited than it needs to be; there is significant potential for change on the approach of policy makers and justice systems"* (paras. 60-61).

Danner (1998) predicted that not only would 'three strikes' and other harsh sentencing policies result in increased prisoner numbers in the USA, but that resources would be taken from other social services – particularly those for women and children – to meet the costs of increased prison populations. There is, indeed, evidence from across jurisdictions that the increased penalisation of the welfare state (Wacquant, 2009) has had a particular and pronounced impact on women for whom prison often appears to be employed as a 'welfare panacea' (Nugent and Loucks, forthcoming). Cavadino and Dignan (2006) suggest that internationally, lower rates of imprisonment tend to be associated with relatively comprehensive and well funded welfare provision and with lower levels of public punitiveness (even in states that have adopted increasingly 'tough' stances towards crime): this, for example, may explain the comparatively low and stable use of female imprisonment in France. Thus while there have been some reported successes in reducing the use of custodial sentences for women through the development of gender-appropriate community based resources (Frost et al., 2006), a significant and sustained reduction in female imprisonment may be unachievable in the absence of wider political and public commitment and socio-economic change.

## References

Almeda, E. (2005) 'Women's imprisonment in Spain', *Punishment and Society*, 7 (2): 183-99.

Australian Bureau of Statistics (2009) *Prisoners in Australia, 2009*, <http://www.abs.gov.au/ausstats/abs@.nsf/1020492cfc63696ca2568a1002477b5/8d5807d8074a7a5bca256a68!OpenDocument> (last accessed 6.7.10)

Australian Bureau of Statistics (2010) *Criminal Courts Australia, 2008-9*, [http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/0FF1A3C6572E0E51CA2576E3000AF4D8/\\$File/45130\\_2008-09.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/0FF1A3C6572E0E51CA2576E3000AF4D8/$File/45130_2008-09.pdf) (last accessed 6.7.10)

Berman, G. (2009) *Prison Population Statistics*, London: House of Commons Library.

Bloom, B., Owen, B. and Covington, S. (2004) 'Women offenders and the gendered effects of public policy', *Review of Policy Research*, 21 (1): 31-48.

Bonzcar, T.P. (2003) *Prevalence of Imprisonment in the U.S. Population, 1974-2001*, Washington DC: Bureau of Justice Statistics.

Burman, M. (2004) 'Breaking the Mould? Patterns of Female Offending', in G. McIvor, G. (ed.) *Women Who Offend*, London: Jessica Kingsley.

Bush-Baskette, S.R. (1998) 'The war on drugs as a war against black women', in S.L. Miller (ed.) (1998) *Crime Control and Women: Feminist Implications of Criminal Justice Policy*, Thousand Oaks, CA: Sage.

Cavadino, M. and Dignan, J. (2006) *Penal Systems: A Comparative Approach*, London: Sage.

Chesney-Lind, M. and Pasko, L. (2004) *The Female Offender: Girls, Women and Crime* (2<sup>nd</sup> edition), Thousand Oaks, CA: Sage.

Council, R. (2003) *The Prison Population in 2002: A Statistical Review*. London: Home Office.

Council of Europe (2008) Women in Prison, Parliamentary Assembly Report, <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doco8/edoc11619.htm> (last accessed 11.6.10)

Danner, M.J.E. (1998) 'Three strikes and it's women who are out: The hidden consequences for women of criminal justice policy reforms', in S.L. Miller (ed.) (1998) *Crime Control and Women: Feminist Implications of Criminal Justice Policy*, Thousand Oaks, CA: Sage.

- Durose, M.R. and Langan, P.A. (2005) *State Court Sentencing of Convicted Felons 2002*, Washington D.C.: Bureau of Justice Statistics, <http://www.ojp.usdoj.gov/bjs/pub/pdf/sco202st.pdf>
- Fair, H. (2009) 'International review of women's prisons', *Prison Service Journal*, 184:3-8.
- Federal Bureau of Investigation (2004) *Crime in the United States, 2003*, Washington D.C: FBI, <http://www.fbi.gov/ucr/03cius.htm>. (last accessed 6.7.10)
- Frost, N.A., Greene, J. and Pranis, K. (2006) *Hard Hit: The Growth in the Imprisonment of Women, 1977-2004*, New York, NY: Institute on Women and Criminal Justice.
- Gartner, R., Webster, C.M. and Doob, A.N. (2009) 'Trends in the imprisonment of women in Canada', *Canadian Journal of Crime and Criminal Justice*, 51 (2): 169-98.
- Gelb, K. (2003) 'Women in prison: Why is the rate of incarceration increasing?', paper presented at *Evaluation in Crime and Justice: Trends and Methods*, Canberra, ACT: Australia.
- Gelsthorpe, L (2006) 'Women and criminal justice: Saying it again, again and again', *The Howard Journal*, 45 (4): 421-4.
- Harpham, D. (2010) *Offender Volumes Report 2009*, Wellington, New Zealand: Department of Corrections.
- Harrison, P.M. and Beck, A.J. (2004) *Prisoners in 2003: Bureau of Justice Statistics Bulletin*, Washington, D.C.: US Department of Justice.
- Hedderman, C. (2004) 'Why are more women being sentenced to custody?', in G. Mclvor (ed.) *Women Who Offend*, London: Jessica Kingsley.
- Hedderman, C. (forthcoming) 'Recent policy developments in the England and Wales', in R. Sheehan, G. Mclvor and C. Trotter (eds.) *Working with Women Offenders in the Community*, Cullompton: Willan.
- Home Office (2003) *Statistics on Women and the Criminal Justice System*, London: Stationary Office.
- Home Office (2004) *Statistics on Women and the Criminal Justice System*, London: Stationary Office.
- Home Office (2006) *Criminal Statistics 2005 England and Wales*, London: Home Office

Institute for Crime Policy Research (2009) *Statistics on Women and the Criminal Justice System*, London: Ministry of Justice.

Kruttschnitt, C. and Gartner, R. (2003) 'Women's imprisonment', in M. Tonry (ed.) *Crime and Review of Research (Volume 30)*, Chicago, IL: University of Chicago Press.

Lash, B. (2006) *Conviction and Sentencing of Offenders in New Zealand 1995-2004*, Wellington, New Zealand: Ministry of Justice.

Lee, M. (2007) 'Women's imprisonment as a mechanism of migration control in Hong Kong', *British Journal of Criminology*, 47:847-60.

Mauer, M., Potler, C. and Wolf, R. (1999) *Gender and Justice: Women Drugs and Sentencing Policy*, Washington, DC: The Sentencing Project.

McCutcheon, A.C. (2003) *Adult Criminal Court Statistics 2002-3*, Ottawa: Statistics Canada.

Mclvor, G. (2007) 'The nature of female offending' in R. Sheehan, G. Mclvor and C. Trotter (eds.) *What Works with Women Offenders*, Cullompton: Willan.

Ministry of Justice (2009) *Story of the Prison Population 1995-2009 England and Wales*, London: Ministry of Justice.

Morgan, R. (2007) 'A temporary respite: Jailing young people in ever larger numbers is not the answer to tackling youth crime', *The Guardian*, 19.02.07.

New Zealand Ministry of Justice (2004) *Forecasts of the Male and Female Sentenced Prison Populations, 2004*, Wellington: New Zealand Ministry of Justice.

Nugent, B. And Loucks, N. (forthcoming) 'Female offenders in the community: The context of female crime', R. Sheehan, G. Mclvor and C. Trotter (eds.) *Working with Women Offenders in the Community*, Cullompton: Willan Publishing.

Player, E. (2005) 'The reduction of women's imprisonment in England and Wales: Will the reform of short prison sentences help?', *Punishment and Society*, 7 (4): 419-39.

Public Safety and Emergency Preparedness Canada (2005) *Corrections and Conditional Release Statistical Overview*, Ottawa: Public Safety and Emergency Preparedness Canada.

Quaker Council for European Affairs (2007) *Women in Prison: A Review of the Conditions in Member States of the Council of Europe*, (Brussels: QCEA).



Raphael, S. (2009) 'Explaining the rise in US incarceration rates', *Criminology and Public Policy*, 8 (1): 87-96.

Schwartz, J. and Steffensmeier, D. (2007) 'The nature of female offending: Patterns and explanation', in R.T. Zaplin (ed.) *Female Offenders: Critical Perspectives and Effective Interventions (Second Edition)*, Boston, MA: Jones and Bartlett.

Scottish Executive (2006a) *Criminal Proceedings in Scottish Courts 2004/5*, Edinburgh: Scottish Executive.

Scottish Government (2006b) *Prison Statistics Scotland, 2004/5*, Edinburgh: Scottish Government.

Scottish Government (2008) *Prison Statistics Scotland, 2007/8*, Edinburgh: Scottish Government.

Scottish Government (2009a) *Criminal Proceedings in Scottish Courts, 2007/08*, Edinburgh: Scottish Government.

Scottish Government (2009b) *Prison Statistics Scotland, 2008/09*, Edinburgh: Scottish Government.

Shaffer, D. K., Hartman, J.L. and Listwan, S.J. (2009) 'Drug abusing women in the community: The impact of drug court involvement on recidivism', *Journal of Drug Issues*, fall: 803-28.

Sharpe, G. (forthcoming) 'Beyond youth justice: Working with girls and young women who offend', in R. Sheehan, G. McIvor and C. Trotter (eds.) *Working with Women Offenders in the Community*, Cullompton: Willan Publishing.

Steffensmeier, D., Schwartz, J., Zhong, S.H., and Ackerman, J. (2005) 'An assessment of recent trends in girls' violence using diverse longitudinal sources: Is the gender gap closing?', *Criminology*, 43(2):355-406.

Tombs, J. and Jagger, E. (2006) 'Denying responsibility: Sentencers' accounts of their decisions to imprison', *British Journal of Criminology*, 46: 803-21.

Victoria Department of Justice (2001) *Statistical Overview of the Victorian Prison System 1995/1996 to 2000/2001*, Melbourne: Victoria Department of Justice.

Wacquant, L. (2009) *Punishing the Poor: The Neoliberal Government of Social Insecurity*, Durham, NC: Duke University Press.

Walmsley, R. (2006) *World Female Imprisonment List*, London: International Centre for Prison Studies.

West, H.C. and Sabol, W.J. (2008) *Prisoners in 2007*. Washington DC: Bureau of Justice Statistics.

Yin, S. (2008) *Are US Girls Becoming More Violent?*, Washington DC: Population Reference Bureau.

Zahn, M.A., Brumbaugh, S., Steffensmeier, D., Feld, B.C., Morash, M., Chesney-Lind, M., Miller, J., Payne, A.A., C. Gottfredson, D.C. and Kruttschnitt, C. (2008) *Violence by Teenage Girls: Trends and Context*, <http://www.ncjrs.gov/pdffiles1/ojjdp/218905.pdf> (Last accessed 21.6.2010)

### 3. Récidive: Mesure de la diversité des récidives en France Recidivism

Annie Kensey, PhD

Démographe à la Direction de l'administration pénitentiaire

#### *Abstract*

The study of recidivism cannot be reduced to a quantitative approach. Debates generated in France by the enactment of several laws (2005, 2007, 2008 et 2010) which aimed at tackling recidivism, showed how essential recidivism rates and sharing knowledge about data analysis can be. A national inquiry, based on a cohort follow up provides for a rather comprehensive overview of released sentenced prisoners. This chapter will present its main findings. The research used a nationally representative cohort of sentenced inmates, who were released between may 1, 1996 and April 30, 1997. We examined their criminal record, five years after their release. We showed that the risk of reoffending was strikingly higher for those who committed property offences than for those who committed violent offences. We also analysed these people's characteristics, and how the implementation of their sentence, particularly as of back door (release) measures, impacted on their reoffending.

#### *Résumé*

Si l'étude de la récidive ne doit évidemment pas se limiter à une approche quantitative, les débats récents en France autour des dernières lois votées en 2005, 2007, 2008 et 2010 pour lutter contre la récidive ont montré toute l'importance des taux de récidive et de la connaissance que l'on peut apporter en termes d'analyse des données. Une enquête nationale, reposant sur l'observation suivie permet d'avoir un panorama assez complet concernant des condamnés sortants de prison. Ce chapitre en présente les principaux résultats, elle a été menée sur un échantillon national représentatif des détenus condamnés libérés entre le 1<sup>er</sup> mai 1996 et le 30 avril 1997. Nous examinons leur casier judiciaire cinq ans après leur sortie de prison. Nous montrons que le risque de récidive est nettement plus élevé pour les auteurs d'une atteinte aux biens que pour ceux qui ont commis une atteinte aux personnes. Les caractéristiques des individus et les conditions d'exécution des peines, notamment les aménagements de peine, sont analysés au regard de la fréquence de la récidive.

## *Introduction*

Si l'étude de la récidive ne doit évidemment pas se limiter à une approche quantitative, les débats récents en France autour des dernières lois votées en 2005, 2007, 2008 et 2010 pour lutter contre la récidive ont montré toute l'importance des taux de récidive et de la connaissance que l'on peut apporter en termes d'analyse des données. Une enquête nationale, reposant sur l'observation suivie permet d'avoir un panorama assez complet concernant des condamnés sortants de prison. Cet article en présente les principaux résultats. La recherche a été menée sur un échantillon national représentatif des détenus condamnés libérés entre le 1<sup>er</sup> mai 1996 et le 30 avril 1997. Nous examinons leur casier judiciaire cinq ans après leur sortie de prison. Nous montrons que le risque de récidive est nettement plus élevé pour les auteurs d'une atteinte aux biens que pour ceux qui ont commis une atteinte aux personnes. Les caractéristiques des individus et les conditions d'exécution des peines, notamment les aménagements de peine, sont analysés au regard de la fréquence de la récidive.

La lutte contre la récidive se traduit généralement par un durcissement de la législation pénale. Les dernières lois votées en France depuis 2005 le montrent. Elles occasionnent des débats qui posent de façon récurrente la question notamment de l'efficacité des peines d'emprisonnement comme mode de lutte contre la récidive. Face à ces débats, l'observation statistique est essentielle, puisque régulièrement des taux de récidive sans fondement sont évoqués. Les lois se succèdent donnant le sentiment que la question est traitée sérieusement par les pouvoirs publics. L'idéologie sécuritaire tire profit du discours sur la récidive. Pourtant la question de sa définition et de sa mesure est peu évoquée alors que les problèmes d'ordre méthodologique sont nombreux.

L'objet de cet article est de présenter l'état des connaissances sur le sujet. Les diverses méthodes employées pour l'analyse de la récidive permettront d'approcher les difficultés d'une notion qui semble « aller de soi ».

### *1. Etude de la reprise judiciaire : méthodologies*

Une approche méthodique de la récidive, permet d'apporter des éléments vérifiables notamment sur les caractéristiques des populations. Cela peut se faire de plusieurs façons : l'analyse rétrospective consiste à lier les antécédents des condamnés avec leur nouvelle condamnation mais elle ne permet pas de calculer des probabilités.

A travers une approche rétrospective reposant l'exploitation exclusive du casier judiciaire, la récidive fait l'objet d'études statistiques annuelles (SDSED, 2006). Cette approche complémentaire établit la proportion de condamnés avec antécédents (dans les cinq ans qui précèdent la condamnation de référence, treize ans pour les récidives criminelles) parmi les condamnés d'une année (la dernière étude concerne les condamnés de 2004).