

## **The Rise of Female Imprisonment in Scotland**

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### **Introduction**

Offending by women differs in a number of important ways from offending by men: it is less common, less frequent and less serious (Burman 2004; McIvor 2007; Gelb 2010; Schwartz and Steffensmeier 2007)). Women are typically convicted of relatively minor crimes that pose less public risk and, because they are usually convicted of offences that are less serious than those committed by men, they are less likely than men to receive custodial sentences. However, female imprisonment has increased dramatically in many western jurisdictions over the last 15-20 years as evidenced by significant increases in the numbers given sentences of imprisonment, in daily female prison populations, and in the rate of imprisonment of women (McIvor 2010). Indeed, in many countries, including Australia, England and Wales, New Zealand, Scotland and the US, the female prison population has increased at a faster rate than the male prison population in recent years (Walmsley 2012).

Women in prison have been identified as a 'particular problem' in Scottish penal discourse from the late 1980s onwards (Burman and Batchelor 2009). Initially, this was due to concern about a perceived increase in the number of women, and particularly young women, appearing before the courts and a questioning of the appropriateness of sentencing and the availability of appropriate interventions for female offenders (Dobash and Gutteridge 1986). But then in the 1990s, following seven tragic suicides at HMPYOI Cornton Vale, mostly involving young women on remand, a review of the use of custody and alternative community disposals for female offenders was commissioned by the then Scottish Executive. This led, in 1998, to the report *A Safer Way* which emphasised the predominantly minor nature of female offending and drew attention to the social and psychological characteristics of women in prison in Scotland (i.e. problematic family relationships, lack of education and employment, s histories of abuse and violence, low self-esteem, mental health difficulties, substance misuse and self-harm) (Social Work Services and Prisons Inspectorates for Scotland 1998: 13). Importantly, the report also drew attention to the socio-economic conditions which shape much female offending, and listed the ways in which poverty and inequality constrain opportunity, access to health, social and welfare services, and the emotional effects of such deprivation upon women and their families (ibid: 14). A key objective of *A Safer Way* was a reduction in the imprisonment of women from 170 (in 1998) to no more than 100 prisoners; however, the number of custodial sentences imposed on females actually *increased* from 950 in 1998 to 1,048 in 1999, and the average daily female prison population increased to 212 in 1999, at that time the highest figure ever recorded. There was a 21 per cent increase in custodial sentences for females aged under 21 years, and a 12 per cent increase in the use of custody for women aged 21-30 (compared with a five percent rise in the use of custody for men of the same age group) (Scottish Executive 2000).

Following *A Safer Way*, an Inter-Agency Forum (IAF) on Women Offenders produced recommendations aimed at keeping women out of prison, where possible, and improving the conditions for those who were, by necessity, detained. Amongst these was the creation of 'Time Out' centres to provide a wide range of residential and non-residential support services for women, enabling them to get 'time out' of their normal (chaotic) environment without resorting to 'time in' custody, where many of them were being placed (Loucks et al 2006: 1). A Ministerial Group on Women Offenders (MGWO) with a remit to build on the work done by the IAF, was charged with implementing a package of measures designed to reduce significantly the number of women held in custody. The MGWO produced *A Better Way* in

2002 by which time another two women had committed suicide in Cornton Vale. *A Better Way* reiterated many of the concerns of *A Safer Way*, once more questioning the appropriateness of prison, and concluding that the existing system for dealing with women who offend was not working effectively (Scottish Executive 2002a). It identified three key problem areas: the number of short sentences, the number of women in prison for fine default, and the number of women on remand. By 2002, female sentenced receptions into prison continued to rise, as did the average daily female prison population, which showed an increase of 17 percent over the previous year (Scottish Executive 2002b). *A Better Way* advocated that greater emphasis be placed upon alleviating the social circumstances that lead some women to offend, intervening early to ensure that women's needs could be met without recourse to imprisonment, promoting the use of the full range of community disposals, and shifting the penal culture away from punishment and towards rehabilitation and 'treatment' (2002a: 38).

Despite policy and practice efforts to reduce the use of imprisonment, the numbers of women sentenced to prison have continued to rise. The average daily female prison population in Scotland more than doubled between 1999-2000 and 2008-09 from 210 to 413, against a comparative increase of the male population of around 25 per cent (Scottish Government 2011). Females remanded to custody also more than doubled over the same period (from 1176 to 2338), as did the number of adult women received into prison under direct sentence (from 458 to 906). In addition, the average length of custodial sentences imposed on women also increased, from 228 days in 1999-2000 to 271 days in 2008-09 (McIvor and Burman 2011).

In Scotland, as in other jurisdictions, there have also been steady increases in male imprisonment, though the rise in custody rates has been disproportionately higher for women than for men. What is less clear is what has driven this increase, particularly since it does not appear to have been solely – if at all – a reaction to increases in the frequency or the seriousness of female crime. The growth in female imprisonment is of particular concern given the well documented impact of imprisonment on vulnerable women and their children (Murray, 2007; Robertson 2007) and in light of Scottish policy initiatives to reduce the use of short custodial sentences.

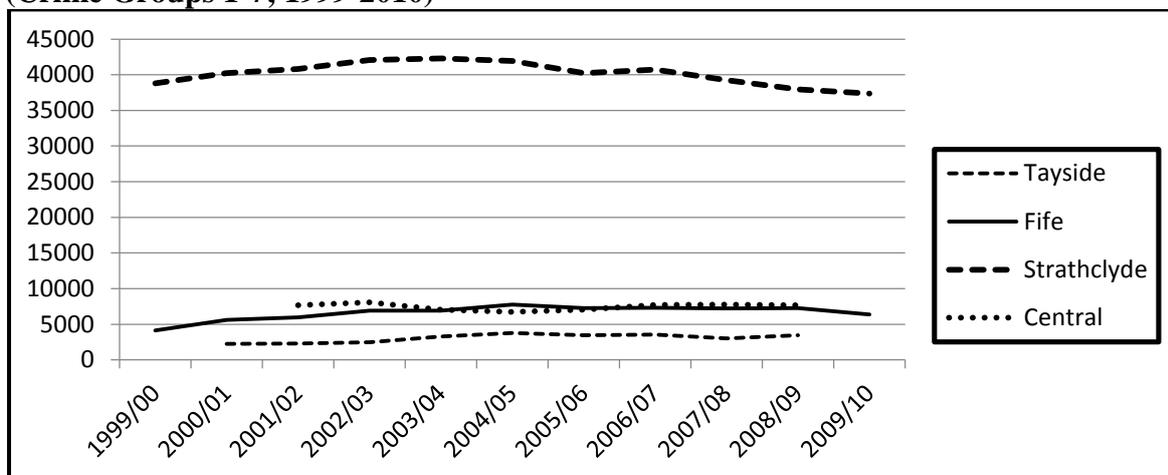
Against this backdrop of the dramatic rise in numbers of imprisoned women, and with an aim of informing the Commission for Women Offenders, we undertook research which explored the factors driving the increase in female imprisonment in Scotland (McIvor and Burman 2011). Specifically, we sought to explore whether this increase is a result of increasing numbers of women getting involved in crime, increasing participation in more serious crime, or changes in the pattern of prosecution and sentencing decision making. The focus was on changes in the number and characteristics of women processed through the criminal justice system without attempting comparisons with trends for male offenders.

Drawing upon statistical data provided by the police, Crown Office and Procurator Fiscal Service (COPFS) and the Scottish Government, in what follows we provide an analysis of trends over time, numbers of detected crime involving women, referrals to prosecution and their outcomes, and sentencing outcomes. Changes in the numbers and characteristics of women in prison are also examined. With the exception of police data, trends were analysed overall and by age group. What follows is essentially a statistical analysis of administrative data, which is extremely limited in the level of contextual information it can convey. Nonetheless, this provides a good picture of responses to female offending.

### Trends in detected crime

In order to explore whether the increase in women's imprisonment in Scotland is a result of more women being arrested, information on numbers of women arrested or detained by police over a 10 year period (1999/2000 to 2009/2010) were obtained from five of the (then) eight Scottish police forces: Central Scotland Police, Tayside Police, Fife Constabulary, Strathclyde Police and Dumfries and Galloway Constabulary. Because arrest data is not routinely disaggregated by gender, the data obtained relates to numbers of detected crimes which involve females, rather than numbers of females involved in detected crime. As Table 1 shows, whilst there was some variation in the level of detail provided in terms of time period and crime categories, taken together the data demonstrated no overall significant change in detected crime involving women over the period.

**Figure 1: Total recorded crimes and offences involving female offenders, by 4 Forces (Crime Groups 1-7; 1999-2010)\***



Source: Data returned by individual Forces

\*: Zero returns from Tayside on Crime Groups 6 and 7

There were variations across force areas- for example, Strathclyde Police and Fife Constabulary saw a slight increase in numbers of crime and offences involving women between 1999-2000 and 2004-05, but this trend decreased in subsequent years. Despite some high profile announcements about the rise of violent females in Scotland (Burman and Batchelor 2009), the total number of non-sexual crimes of violence by women has remained remarkably stable since 2001. Overall, the numbers of detected crime involving women has decreased, but with some changes in certain crime and offence categories. For example, both crimes of dishonesty and motoring offences involving women showed an overall decrease, although with a small spike from 2006-2007 onwards, which can be largely attributed to increases in shoplifting. The categories of 'Other' Crimes, which include drugs offences, and Miscellaneous Offences, which include minor assault, public drunkenness and breach of the peace, both show an increase, which is attributable mainly to a slight increase in offences involving drug-possession and a larger increase in minor assaults and breaches of the peace.

The police data provide little evidence of an increase in the amount of detected crime committed by women over the ten year period, although there has been some variation in the patterns of offences, with increases in minor assaults and breaches of the peace and decreases in property crimes and motoring offences. These data provide no evidence that women are committing more crime or that the seriousness of women's crime has increased: if anything, it would appear that an increasing proportion of female crime is attributable to women's involvement in relatively minor miscellaneous offences.

## Trends in the prosecution of women

To investigate whether the increase in women's imprisonment is a result of more women being reported to the COPFS and more women being prosecuted as a result, we analysed a sample of first marking decision information for the period 2002 – 2010. Given the resource implications of providing data for all women referred over that period, a dip sample of first marking decisions in March and September each year was provided to enable us to assess changes over time in the numbers of women reported by the police to COPFS and in the patterns of first marking decisions. Resource constraints also meant that it was not possible for data to be stratified by area, which would have permitted more detailed regional analyses.

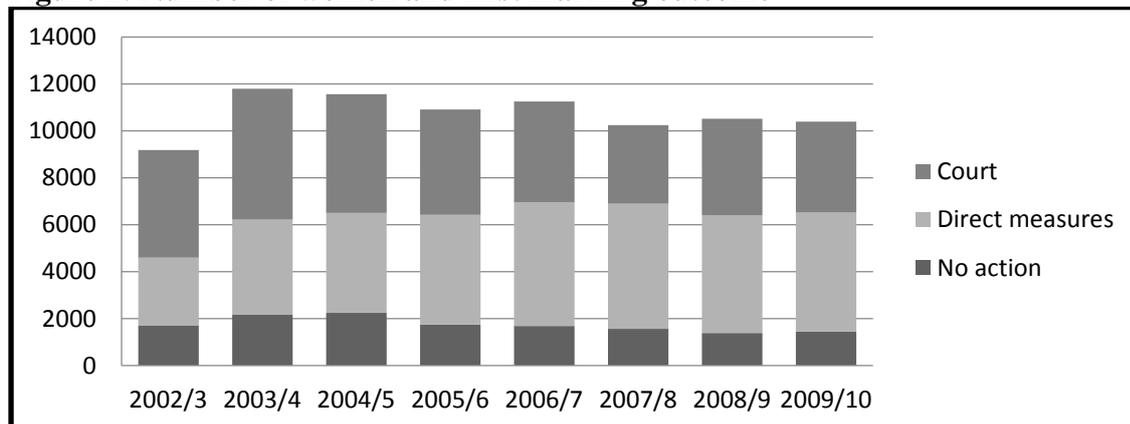
Nor, given the number and specificity of offence categories under which offences are recorded by COPFS was it possible for data to be disaggregated by offence type, preventing an examination of whether there were changes in the types of offences for which women were reported and in the marking decisions for particular categories of offence.

In addition to enabling an analysis of overall trends, cases were also categorised by age to explore whether there were differences in the numbers referred and case outcomes for women of different ages. The data indicated that, apart from a slight increase between 2003-05, which may reflect the introduction of the new Scottish Crime Recording Standard,<sup>1</sup> overall numbers of women reported to COPFS remained relatively stable.

However, there are interesting differences in the data for different age groups. While the numbers of women aged 21-40 years of age remained relatively steady, there has been a steady decrease in the numbers of young women under 21 years of age and a corresponding increase in the numbers of those aged over 40 years reported to COPFS

When cases are reported to COPFS, a decision is taken whether to prosecute the offender in court, offer a direct measure or take no further action. Figure 2 shows the outcome of first marking decisions

**Figure 2: Number of women and first marking outcome**



Source: COPFS

More detailed analysis of the data indicates that there has been a reduction over time in the numbers of women marked for prosecution in the district and sheriff courts under summary proceedings (with the decrease in the former being particularly marked), while the numbers marked for prosecution under solemn proceedings have fluctuated from year to year but have

<sup>1</sup> Under the new Scottish Crime Recording Standard introduced for the 2004/05 financial year, the recording of crime in Scotland became victim led, meaning that reported incidents were more likely to be recorded as crimes, especially in the case of minor offences such as vandalism.

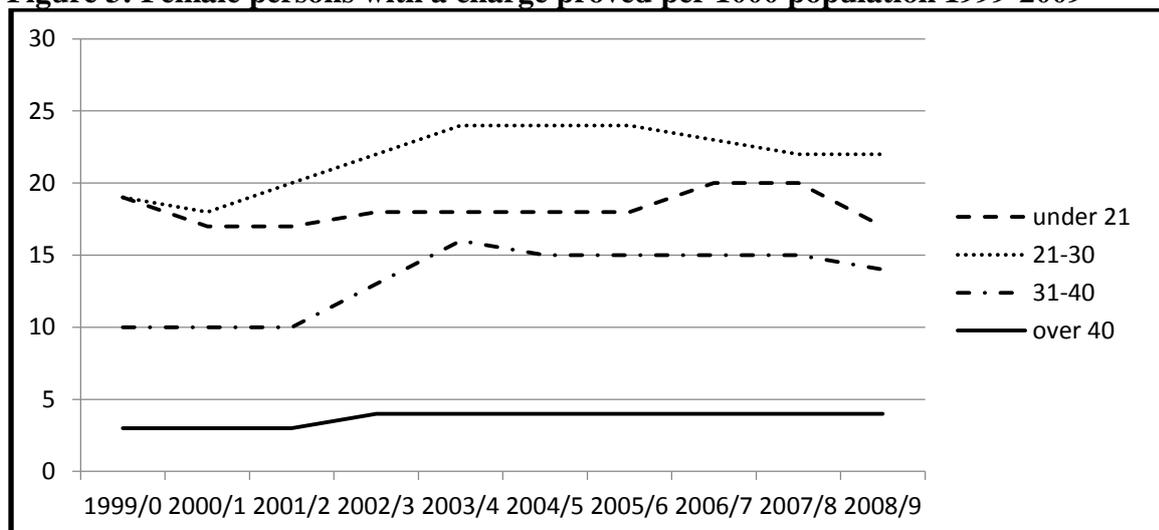
been uniformly low. The most dramatic increase is in the number of fixed penalties issued which rose from 319 in 2002/3 to 1440 in 2009/10, constituting 3.5 per cent and 13.9 per cent of marking outcomes respectively. Overall however, across all age groups, there has been a decrease in the number and proportion of women whose cases were marked for court since 2002-03 onwards. This downward trend has coincided with a steady increase in the use of direct measures since 2004-05 reflecting changes introduced by Summary Justice Reform

The data provided by COPFS are broadly consistent with the police data insofar as there is no evidence of an increase in the numbers of women reported to the COPFS over the period examined. Overall, there has been a decrease in the numbers and percentages of reports on women marked for prosecution in court – and an increased use of direct measures - suggesting that the continuing growth in female imprisonment in Scotland cannot be attributed to an increase in female prosecutions.

### Prevalence of female convictions

The COPFS data did not provide details of the specific offences with which women had been charged. To assess whether the increase in female imprisonment might be attributable to women’s increasing involvement in more serious offences, we examined data on the prevalence of convictions and the sentencing of women with a charge proved in Scottish Courts.

**Figure 3: Female persons with a charge proved per 1000 population 1999-2009**



Source: Scottish Government (2010) Criminal Proceedings in Scottish Courts, 2008-09

As Figure 3 shows, although the number of women with a charge proved per 1,000 population increased between 2001/2 and 2003/4, it has remained relatively stable since at a level similar to or lower than that during most of the previous decade. There is little evidence of a change in prevalence of convictions among young women under 21 years of age, with the most marked change occurring in respect of those aged between 31 and 40 years between 2001/2 and 2003/4. Generally speaking, however, (and apart from a rise in prevalence among young women between 2006 and 2008), since 2003/4 the prevalence of female convictions has remained stable or has decreased.

Overall, the numbers of women convicted of offences increased between 2001 and 2004-05 before levelling off, whilst those convicted of crimes increased slightly overall. The pattern differs, however, by age. Among women under 21 years of age, for example, numbers of

convictions remained relatively stable overall, although with an increase in convictions for offences, with a gradual reduction in convictions for crimes. Amongst those aged 21-30 years, the numbers convicted of crimes remained relatively steady while offence convictions convicted of offences increased between 2001 and 2004/05 before decreasing again. The most dramatic change has been among those aged 30 years and over, where the numbers convicted increased quite dramatically between 2001 and 2004/05 and has remained relatively stable since. However, although the percentage of women convicted of crimes (as opposed to offences) increased between 2003 and 2008/09, it was slightly lower (at 38% per cent) in 2008/09 than it was in 1999 (42%).

Turning to the specific types of crimes and offences, women were most likely to have been convicted of miscellaneous offences (mostly common assaults and breaches of the peace), motor vehicle offences and crimes of dishonesty (principally shoplifting). Numbers convicted of crimes of dishonesty have decreased steadily since 1999 and these crimes, accounted for less than one fifth of women convicted (18 per cent in 2008-9) compared with more than one quarter (27 per cent) in 1999. There has, however, been a steady increase since 2001 in the numbers convicted of 'other crimes', with this mostly reflecting increasing numbers of women convicted of crimes involving drugs and crimes against public justice (which includes perjury, resisting arrest, bail offences (other than absconding or re-offending) and wasting police time).

Again, however, a different pattern emerges when the data are broken down by age. Among young women under 21, there has been a sharp increase in convictions for miscellaneous offences (though this decreased from a peak in 2006-7) and slight but proportionate increases in numbers convicted of crimes against public justice and vandalism. There has also been a striking decrease in the numbers of young women convicted of crimes of dishonesty: these now account for only 14 per cent of women with a charge proved, compared with 35 per cent in 1999.

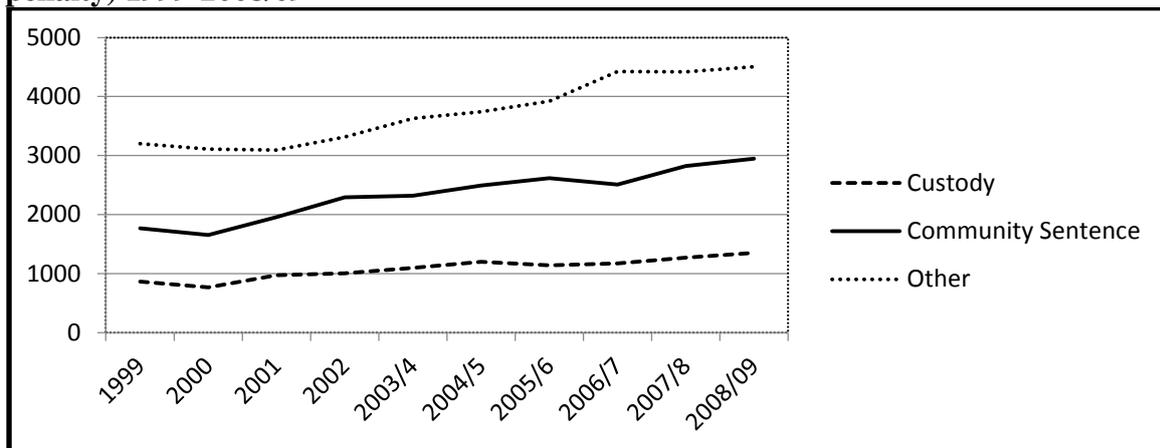
The age group 21-30 years saw a slight reduction in convictions for crimes of dishonesty, whilst those convicted of 'other' crimes has risen steadily. A broadly similar pattern is found among women aged 30 and over, with two important differences: first, the level of convictions for property crime is much lower overall among this age group; and second, there has been a relatively large increase in those convicted of motor vehicle offences, including convictions for drunk/drug driving which increased by almost four-fifths (78 per cent) between 1999 and 2008/09.

### **Trends in sentencing of women**

The preceding analysis suggests that any changes over time in the numbers of women convicted in Scotland are largely attributable to women's involvement in offences as opposed to crimes. Overall, statistical data indicate that the majority of female offending has typically not been of a serious nature and this remains the case. Here we consider how the sentences imposed by Scottish Courts have changed since 1999.

As Figure 4 shows, for women generally there has been a steady increase in the numbers receiving custodial sentences and community sentences and 'other' sentences. The numbers given financial penalties has fluctuated but showing a downward trend

**Figure 4: Women (all ages) with a charge proven by main penalty (excluding financial penalty) 1999-2008/09**



Source: Scottish Government (2010) Criminal Proceedings in Scottish Courts, 2008-09

There are differences across the age groups. Numbers of young women under 21 given custodial sentences have decreased, while the numbers given community sentences and other disposals have increased. For those aged 30 years and over, the proportionate use of fines decreased and the use of imprisonment and community sentences increased proportionately more than for other age groups of women.

Further analysis of sentencing by age and offence type suggests that courts have become less likely to imprison young women under 21 years of age who are convicted of property offences but more likely to imprison those convicted of crimes against public justice. Among women aged 21 years and older, the courts have become more likely to impose custodial sentences for crimes against public justice, drug crimes and public order offences (common assaults and breaches of the peace). In addition, custodial sentences are increasingly likely to be imposed upon women over 30 years who have been convicted of shoplifting and other theft.

The annual number of female receptions into prison has grown steadily since 1999 and reached a peak in 2008-9. The growth is attributable to an increased number of female custodial remands (as has also been witnessed in a number of other jurisdictions) and an increase in the number of adult women received into prison under direct sentence, both of which have doubled since 1999. By contrast, there has been a decrease in the numbers of young offenders received under direct sentence and in the number of women (all ages) given custodial sentences for fine default.<sup>2</sup>

In summary, the data suggest that the courts are increasingly more likely to imprison for crimes against public justice, regardless of the age of the offender. This may also partly explain the marked growth in the use of custodial remands. However there is little evidence that the courts are becoming more punitive towards young women (and, in the case of shoplifting and other theft there is evidence of increased leniency), but clear evidence that the sentencing of older women is becoming increasingly punitive across a wider range of offences. It is not clear from the existing data why this should be the case, though one

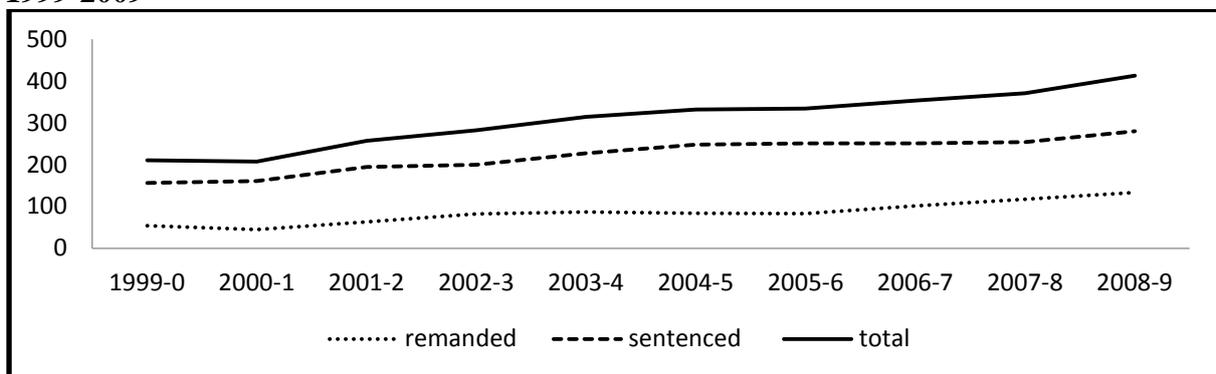
<sup>2</sup> This is likely to be as a result of the introduction in 2007 of mandatory supervised attendance orders as an alternative to custody for default on a fine (up to £500). The overall number of female prison receptions in 2008-09 would have been even higher in the absence of this legislated provision.

possibility is that there has been an increase in the number of women sentenced who are repeat offenders - although this data was not available to us.

### Women in prison

As Figure 5 shows, there has been a steady increase in the average daily female prison population since 1999, with the average numbers of female remand prisoners (both untried and convicted awaiting sentence) and adult sentenced female prisoners rising steadily. In terms of remand, the analysis indicated that there has been a steady increase in the average daily remand population (both untried and convicted awaiting sentence) over the last 10 years, from 54 in 1999-2000 to 133 in 2008-09, yet on average, only thirty per cent of those remanded go on to receive a custodial sentence (McIvor and Burman 2011).

**Figure 5: Average daily female population in penal establishments by type of custody 1999-2009**



Source: Scottish Government (2009) Prison Statistics Scotland, 2008/09,

Once again however age profile is important. There has been an overall decline in receptions of young women under 21 years received into prison under direct sentence (from 25% in 1999 to 12% in 2008-09), while the greatest proportionate increases have been among the older age groups. Between 1999 and 2008-9 the number of receptions of women aged between 21-30 years increased by 54%; for those aged 31-40, it increased by 167%; for those aged 41-50 it increased by 242%, and; for those aged 51 and over, by 312%. Although it is recognised that these percentages are based on very low numbers, it is nonetheless consistent with an emerging pattern in which the growth in female imprisonment can be attributed in the main to the imprisonment of older women

As well as the number of sentenced female receptions having increased, there has been a steady increase in the average length of custodial sentences imposed (from 228 days in 1999 to 271 in 2008-09). The expansion of the female sentenced population has not been uniformly distributed across different sentence lengths. There has been a decline in the number of sentences of up to three months, but a considerable increase in the numbers sentenced to between six months and up to two years (where the number of receptions increased from 187 to 394 or 111% between 1999 and 2008-9), followed by those serving sentences of between two and up to four years. These data suggest that not only are there more women in custody, but they are, on average, serving longer sentences. Moreover, an increase in sentence lengths will also contribute to an increase in the average daily population, because women thus sentenced will remain in custody for longer periods of time.

There has been an increase since 1999 in the number of women given custodial sentences for non-sexual crimes of violence, drug related crimes and miscellaneous offences (principally

common assault and breach of the peace). Since 2004-5 there has, however, been a reduction in the numbers of women in prison sentenced for crimes of dishonesty. Proportionately fewer women are in prison as a result of having been convicted of offences of dishonesty while proportionately more have been imprisoned for non-sexual crimes of violence, 'other' crimes (principally drug crimes) and miscellaneous offences. This is broadly consistent with changes over time we have previously identified in the types of offences for which women have received a custodial sentence.

### **Conclusions**

Overall the findings of this research suggest no evidence of increasing participation of women in crime; the police data showed that the number of recorded crimes involving females remained relatively stable over the period. The research also shows that women continue to commit relatively minor crimes, with the total number of recorded crimes of violence involving females remaining remarkably stable, although there have been some changes in the pattern of offences committed by women, with increases in minor assaults and breaches of the peace. Similarly, there was no evidence of an increase in the numbers of women prosecuted; indeed the COPFS data revealed a decrease in the number and proportion of women whose cases were marked for court since 2002-03 onwards, and this downward trend has coincided with a steady increase in the use of direct measures since 2004-05.

There is little evidence that overall female convictions in Scotland have increased significantly. For the most part, increases in numbers of women with a charge proven have been in relation to offences, while increase in some types of crimes (crimes against public justice and drugs) have been accompanied by decreases in women's involvement in other types of crime (dishonesty). The changing pattern of female convictions clearly warrants explanation, though it is only possible to speculate as to the underlying reasons. It would, however, be consistent with an increase in alcohol related offending among women of all ages and an increase in drug-related offending among older women, offset by reductions in economically motivated property crime. There is also evidence from other jurisdictions, however, that apparent increases in minor violent offences among women may reflect changes in policing more than changes in women's behaviour per se (see, for example, Bloom et al 2004; Chesney-Lind and Pasko 2004).

Importantly, the analysis showed steady increases in the number and proportion of women receiving custodial, community and 'other' sentences while the proportion given financial penalties has decreased. These trends are particularly salient for women over 30. It appears that the courts have become less likely to imprison young women under 21 years of age convicted of property offences but more likely to imprison those convicted of crimes against public justice. Amongst women aged 21 years and older, the courts have become more likely to impose custodial sentences for crimes against public justice, drug-related crimes and public order offences such as common assaults and breaches of the peace. In addition, custodial sentences are increasingly likely to be imposed upon women over 30 years of age convicted of shoplifting and other theft. Taken together, these data suggest that the proportionate use of custodial sentences has increased in response to crimes against public justice, regardless of the age of the offender. Otherwise, there is little evidence that the courts are becoming more punitive towards young women aged under 21, but clear evidence of greater use of custody for older women across a wide range of offences.

In conclusion, our analyses suggest that the growth in the female prison population is more likely attributed to the increasing use of custodial sentences by courts than any changes in the

pattern of female offending. The sentencing of women poses considerable challenges, yet it is clear that this is a key driver in imprisonment rates and it suggests the need for further investigation. The reason for the increase in more punitive sentencing of women (which, published data suggest has also occurred, though to a lesser degree, in respect of men) is not immediately obvious. One possibility is that there has been an increase in the number of women sentenced who are repeat offenders and whose previous convictions are resulting in them being dealt with more severely by the courts. Further research might usefully focus on whether there have, indeed been changes in criminal histories of women appearing before the courts which might account, at least in part, for this worrying 'punitive turn'.

The full report on which this paper is based is available at [www.sccjr.ac.uk/pubs](http://www.sccjr.ac.uk/pubs)

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