

Gender, Crime, and the Disparities in the Criminal Justice System

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Crime rates in the United States have dropped overall, pointing to the efficacy of rehabilitation. When the data is separated by gender, however, female recidivism rates have exponentially increased. This suggests a failure in the criminal justice system- in fact, women may be more vulnerable to a cycle of crime. To resolve this issue, we must first understand what gender differences our system currently neglects. Studies have shown that women involved in crime experience greater amounts of psychological distress and trauma—both risk factors for recidivism. Thus, gender-focused programs may be necessary to properly address unique female pathways and experiences in crime.

Introduction

Before the United States legal system can create curated programs for specific groups to reduce and prevent crime, we must have an idea of where the key differences between groups are in our current statistical trends. Generalizations about pathways into crime can be difficult to pinpoint when individual factors vary significantly based on crime type and personal background. One key feature that existing research has been able to evaluate within these findings is the role that gender plays within these factors. Law and criminology have previously studied several questions involving gender, but one remains: what are the effects of gender discrepancy in the United States justice system? This article will analyze crime statistics and criminology theories to understand and reform a systemic issue in United States criminal law. Based on these findings, we will provide potential recommendations for institutional change in order to better address the needs of specific genders to prevent a cycle of crime and allocate more attention to underserved groups.

The substantial rise in crime within the female population presents a juxtaposition in crime rates based on a gross disparity between the genders.¹⁴² Despite an increase for one group, the overall rate of crime in the

141 Brandeis University Undergraduate, Class of 2021.

142 “Crime in the United States: Five-Year Arrest Trends by Sex 2013-2017.” *Federal Bureau of Investigation, U.S. Department of Justice* (2017).



US has declined in the past few decades.¹⁴³ This indicates there are factors causing female offenders to be left behind in many existing diversion programs designed to reduce crime. Initial research shows it is true that male recidivism remains statistically higher than females.¹⁴⁴ However, gender differences often begin with psychological norms and conformity to societal expectations. As such, criminology-related research may also help to inform what causes this gender disparity and how we might better address a frequently overlooked group. Ultimately, focusing on gender-specific solutions will improve the methods of reducing crime in our communities.

History of Women's Involvement with Crime and Law

143 "U.S. Arrests Estimates, 1980-2014." *Bureau of Justice Statistics, U.S. Department of Justice* (2019).

144 "Crime in the United States: Ten-Year Arrest Trends by Sex 2009-2018." *Federal Bureau of Investigation, U.S. Department of Justice* (2018).



Women have historically been underrepresented in studies of crime and rehabilitation. This may be a result of a large majority of female charges being within the category of property crimes or drug-related misconduct, because most women tend to avoid confrontational forms of crime as opposed to men.¹⁴⁵ Very few women commit violent crime, and as of 2018, 75% of those who had only perpetrated minor forms of assault.¹⁴⁶ The rate of women committing homicides has always been low and has declined within the past decade. Statistically, the average amount of time served for any conviction is also shorter for females than for males who have committed the same

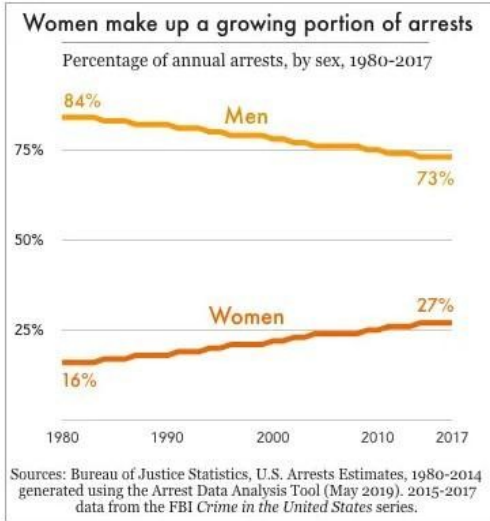


Figure 1: Female arrests have increased while males decreased

offenses.¹⁴⁷ Based on the types and degrees of crime that women are more prone to, our institutions consider the consequences of male crime as more threatening, and so provide these perpetrators with better services. In general, men are found to be more often violent and more likely to have a juvenile history or multiple convictions.¹⁴⁸

Women in the legal system do not receive adequate rehabilitation to suit their needs because they only make up a small portion of arrests. As of 2017, 27% of arrests were of women compared to 73% of men (Figure 1),¹⁴⁹ but the same graph shows a rise in female arrests. Some analysts argue that much of the initial surge in the incarceration of women is from amplified

145 Lawrence A. Greenfeld & Tracy L. Snell. “Women Offenders.” *Bureau of Justice Statistics Special Report*, (2000): 9.

146 “Crime in the United States: Ten-Year Arrest Trends by Sex 2009-2018,” (2018).

147 Greenfeld & Snell, “Women Offenders,” (2000): 5.

148 Anonymous Prosecutor in discussion with the author, May 2021.

149 “Crime in the United States: Five-Year Arrest Trends by Sex 2013-2017,” (2017).



prosecution toward female perpetrators of domestic violence in the 1990s.¹⁵⁰ However, this justification is far too outdated to explain why many categories of major crime have continued to occur at an increasing rate for females in the past two decades.¹⁵¹

The tendency to focus more attention on men over women due to perceived higher threat is also seen in criminal law enforcement. Overall, men are more likely to be contacted by the police while females are more likely to initiate contact to report crimes, disturbance, suspicious activity, or other reasons for seeking help even though they usually avoid doing so.¹⁵² For both traffic and street stops, males are more likely than females to have their most recent contact with authorities be initiated by the officers, whereas women will more often look to police as a source of security and assistance.¹⁵³ Such findings may be compounded by the idea that women are often victims of crime. In 2000, a survey found that 60% of women who entered the realm of recidivism experienced physical or sexual abuse in the past, with just over 50% reporting that their aggressor was a family member or intimate partner.¹⁵⁴ This percentage has only grown since, which indicates a clear connection for female pathways to crime. In 35 states, the crime rates for women have been consistently higher than crime rates for men in the past five years.¹⁵⁵ Even though a low percentage of offenders are women, their involvement in crime reflects unique, gendered problems that are not sufficiently addressed in our justice system. A collective history of victimization is evidence of the need female offenders have for enhanced support and resources. Different life circumstances also illustrate that women's motives in committing crime diverge from men. While male pathways are often explained as part of their inherent gendered traits, such as an expectation for violence, women appear to be more externally motivated. Some scholars claim that women involved in crime may be

150 Greenfeld & Snell, "Women Offenders," (2000): 3.

151 Greenfeld & Snell, "Women Offenders," (2000): 11-12.

152 Elizabeth Davis, Anthony Whyde, & Lynn Langton. "Contacts Between Police and the Public, 2015." *Bureau of Justice Statistics Special Report*, (2018): 11.

153 Davis, Whyde, & Langton. "Contacts Between Police and the Public, 2015," (2018): 27.

154 Greenfeld & Snell, "Women Offenders," (2000).

155 Sawyer, Wendy. "The Gender Divide: Tracking Women's State Prison Growth." *Prison Policy Initiative* (2018).



propelled by the need to support children or other family members.¹⁵⁶ Numerous incarcerated women also suffer from chronic substance abuse, but the lack of treatment programs in certain states creates difficulty for those seeking recovery.¹⁵⁷ Gender-specific challenges can be overwhelming, so we must determine why they exist before we can propose resolutions.

Criminology Theories: Pathways to Crime for Men and Women

From a psychological and criminological perspective, there are circumstances of perceived gender biases targeting both men and women leading to the idea that males involved in the criminal justice system require more attention. In the process of implementing these male-centric programs, the criminal justice system has neglected the perspectives of women. A notable issue starts with psychological beliefs about gender wherein young men have grown up in a society that reinforces male assertiveness and dominance.¹⁵⁸ Traditional gender roles have historically shaped men to be controlling and aggressive, and the perspectives resulting from this are further exacerbated for communities of color. Such principles can create problematic behavior in young boys, posing a risk for societal perception of future criminal actions. One study examined boys between the ages of 8 and 14, discovering that criminal offenses were more likely if the subject accumulated behavioral problems earlier in childhood.¹⁵⁹ The risk for future violent crime was highest for those who exhibited conduct issues alongside aggressiveness, while failure in school combined with aggressiveness correlated with high risk for future property offenses.¹⁶⁰ These findings indicate that the pathways to crime are influenced by reinforcement of outdated gender norms.

A similar criminology study found that certain childhood factors are reliable predictors of male crime. Stressful situations such as parent separation, conflict, socio-economic instability, and poor child-rearing can contribute to recidivism later in life because of their tendency to enable children to participate in delinquent behavior.¹⁶¹ The behaviors most strongly associated with higher levels of repeated offenses were reports of

156 Abrams & Greaney, "Report of the Gender Bias Study," (1989): 119-120.

157 Abrams & Greaney, "Report of the Gender Bias Study," (1989): 123.

158 Lee Ellis. "A Theory Explaining Biological Correlates of Criminality." *European Journal of Criminology* 2 no. 3 (2005): 288.

159 Ellis, "A Theory Explaining Biological Correlates of Criminality," (2005): 292.

160 Hamalainen, Minna & Pulkkinen Lea. "Problem Behavior as a Precursor of Male Criminality." *Development and Psychopathology* 8 no. 2 (1996): 447.



truancy and other behavioral conduct problems as well as low education level.¹⁶² Self-reported internal distress notably served as a sign for risk of future criminal activity, but these youth were given a voice through early assessments so appropriate measures could be taken to intervene with various educational programs and social skills training before they encountered opportunities to enter crime.¹⁶³ These results contribute to our understanding of why many treatment programs are particularly concerned with male offenders since society may believe this behavior has the potential to become a positive feedback loop. The prevalence of young males committing offenses that are considered more extreme and thus more harmful to the public also contributes to prioritizing their treatment.¹⁶⁴

It is equally imperative to note that traditional gender roles still influence how women are perceived. Those who conform to the expectations that females ought to be submissive and avoid confrontation are indeed more leniently treated than male offenders.¹⁶⁵ For example, one prosecutor interviewed by the author believes committing forgeries or retail theft are passive crimes and often result in a reduced charge for first offenses.¹⁶⁶ Women who do not conform to societal gender expectations, however, are treated even more harshly compared to men, often with more severe charges and longer sentences.¹⁶⁷ With the development of modern feminism, female offenders who do not conform to gender roles may be more common than in the past. Perhaps as a result, society perceives the actions of women as not so easily excused now as they once were.¹⁶⁸

Two theories borrowed from criminology can help explain our society's evolving treatment of accused females. The Chivalry Hypothesis suggests that a male-dominated criminal justice system will more often excuse women due to the dated attitude that men are obligated to protect

161 Andre Sourander, Henrik Elonheimo, et al. "Childhood Predictors of Male Criminality: A Prospective Population-Based Follow-up Study From Age 8 to Late Adolescence." *Journal of the American Academy of Child and Adolescent Psychiatry* 45 no. 5 (2006): 581.

162 Sourander, et al. "Childhood Predictors of Male Criminality." (2006): 584.

163 Sourander, et al. "Childhood Predictors of Male Criminality." (2006): 588.

164 Anonymous Prosecutor in discussion with the author, May 2021.

165 Abrams & Greaney, "Report of the Gender Bias Study," (1989): 129.

166 Anonymous Prosecutor in discussion with the author, May 2021.

167 Abrams & Greaney, "Report of the Gender Bias Study," (1989): 128-129.

168 Anonymous Prosecutor in discussion with the author, May 2021.



women.¹⁶⁹ The majority of positions for judges, law enforcement officers, and attorneys continue to be dominated by males, so when faced with a female defendant that fits their schema of how women should behave, they may show more compassion toward them.¹⁷⁰ Alternatively, the theory of Paternalism emphasizes the “weaker sex” as incapable of committing serious crimes because male authorities view them as childlike, naïve, and therefore not fully responsible.¹⁷¹ Both theories can be used to reward female offenders in traditionally submissive roles with lower charges while punishing those who violate gender expectations with more severe charges. Failing to meet a standard ideal induces additional perceived criminalization of the conduct that conflicts with the expectation.

The Female Experience in the Criminal Justice System

169 Abrams & Greaney, “Report of the Gender Bias Study,” (1989): 128.

170 Abrams & Greaney, “Report of the Gender Bias Study,” (1989): 130.

171 Abrams & Greaney, “Report of the Gender Bias Study,” (1989): 131-132.



Although men are perceived as more aggressive and there are overall higher numbers of male offenders,¹⁷² the socialization of these beliefs alone cannot explain the gender disparity found in criminal arrests. The rising crime rates for women on average nationally suggest a missing link that the existing system has failed to address adequately.¹⁷³

One example found that 100% of women in a Framingham, Massachusetts facility reported experiencing at least one of these situations during their time in rehabilitation: sexual or physical abuse, rape, forced prostitution, or separation from

children.¹⁷⁴ Over time, treatments have rarely focused on female interests which means that women are deprived of services to resolve traumatic experiences in their past simply because they obtained shorter terms of incarceration. Intentionally or not, criminal law has focused on and reflected male interests for too long. We have only recently begun to notice the enduring effects of this systemic flaw.

Female offenders usually lack the typical factors used to predict criminal activity. Instead, criminal cases often describe women as ill and pathological, reinforcing the stereotype that psychological hysteria explains all abnormal female behavior.¹⁷⁵ The reliance of our justice system on these explanations reflects society’s unwillingness to address female problems as anything other than illness. Although some criminal cases do have a basis in psychological disorders and mental health can play a role, we must also

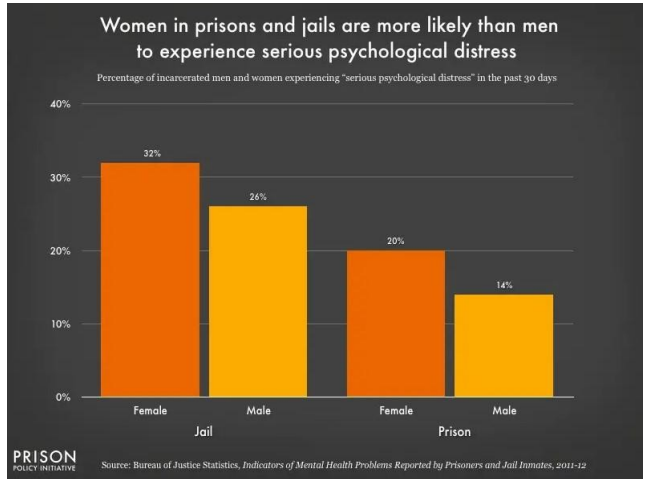


Figure 2: Women are more prone to psychological distress

172 Abrams & Greaney, “Report of the Gender Bias Study,” (1989): 124.

173 “Crime in the United States: Five-Year Arrest Trends by Sex 2013-2017,” (2017).

174 Abrams & Greaney, “Report of the Gender Bias Study,” (1989): 118.

175 Dorothy E. Roberts. “The Meaning of Gender Equality in Criminal Law.” *Journal of Criminal Law and Criminology* 85 no. 1 (1994): 10.



consider the pathways that have led women into recidivism. The previously discussed traumatic situations many women trapped in crime face may explain why 66% of incarcerated women currently report a history of general mental unwellness.¹⁷⁶ A larger percentage of females than males in both prisons and jails meet the threshold for serious psychological distress regardless of their crime or sentence length (Figure 2).¹⁷⁷ As recently as 2017, two-thirds of women in US prisons reported also suffering from mental disorders, and many experienced distress such as feelings of worthlessness or anxiety within a month preceding the survey.¹⁷⁸ These statistics indicate most rehabilitation that women currently receive has been unsuccessful because they are often provided poorer quality support services compared to men in the same facilities.

The root cause of increased female crime rates lies in the incongruent pathways to crime between men and women. Women experience different risk factors in entering crime compared to men,¹⁷⁹ especially upon receiving one conviction, because they are more susceptible to harm from backgrounds of instability. Mental illness, past trauma, and substance abuse are all capable of kindling an onset to crime and are subsequently worsened by incarceration.¹⁸⁰ Victimization from abuse in particular is a good predictor of mental health complications which in turn predicts entrance into criminal activity.¹⁸¹ Those with severe psychological distress usually experience higher rates of victimization, more extensive histories of prior offenses, and increased probability of violent crime.¹⁸² As such, correctional programs should recognize the female experience of victimization in combination with mental health as an influence on entering crime.

176 Roberts. "The Meaning of Gender Equality in Criminal Law." (1994): 10; Jennifer Bronson & Marcus Berzofsky. "Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12." *Bureau of Justice Statistics Special Report*, (2017): 7.

177 Bronson & Berzofsky. "Indicators of Mental Health Problems." (2017): 10-11.

178 Bronson & Berzofsky. "Indicators of Mental Health Problems." (2017): 14.

179 Anonymous Prosecutor in a survey response to the author, May 2021.

180 Shannon M. Lynch, et al. "Women's Pathways to Jail: Examining Mental Health, Trauma, and Substance Use." *Bureau of Justice Assistance Policy Brief* (2013).

181 Lynch, et al. "Women's Pathways to Jail," (2013).

182 Lynch, et al. "Women's Pathways to Jail," (2013).



Suggested Upgrades in Rehabilitation Services for Women

Women face different difficulties within the criminal justice system because it neglects the uniqueness of the female gender. Thus, women’s rehabilitation services need to implement gender-specific treatment to optimize care and prevent future recidivism.¹⁸³ For example, Women Overcoming Recidivism Through Hard Work (WORTH), a program in Connecticut, recognized this necessity and

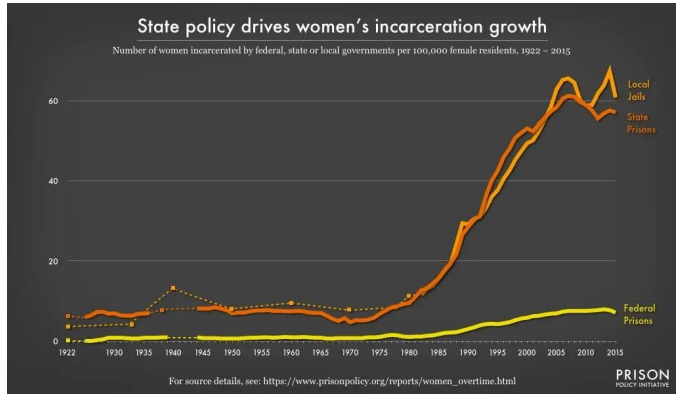


Figure 3: States drive the gender disparity in incarceration rates

established a prison intended for women.¹⁸⁴ There, incarcerated women created a community that fostered accountability and healing rather than punishment.¹⁸⁵ The program included youth mentoring opportunities, which were restorative and gave them the positive outlook they needed to change their lifestyle.¹⁸⁶ Given that women have significantly different experiences with the traditional criminal justice system and its prisons, if rehabilitation strategies are not gender-specific, they may not function the same way for women as for men. To continue reducing crime, our correctional systems must emphasize the importance of supporting women to prevent reentry.

Such modifications should be applied to individual state programs to address the complex needs for women in the criminal justice system, such as parent-child relationships, reunifying families, as well as unique mental and physical health concerns. Until recently, statistics for incarcerated women have been obscured by total rates. Society must work to reduce criminal offenses for both sexes, not exclusively males. The rate of women in federal

183 Anonymous Prosecutor in discussion with the author, May 2021.

184 Ryan Shanahan, et al. “How Young Women are Building Promise in a Connecticut Prison.” *Vera Institute of Justice* (2018).

185 Shanahan, et al. “How Young Women are Building Promise in a Connecticut Prison.” (2018).

186 Shanahan, et al. “How Young Women are Building Promise in a Connecticut Prison.” (2018).

prisons has remained relatively constant, but the average rate of all 50 states' prisons illustrates a much steeper and more rapid rise (Figure 3).¹⁸⁷ Since national statistics show that specific states are driving this gender disparity, the changes will be most effective if enacted at both state and local levels. Some states' efforts to reduce the population of offenders may have ended up benefitting men significantly more.¹⁸⁸ Other states whom we ought to make an example of, such as New York and California, have inverted the course of female incarceration with rates lower than the calculated average by implementing programs that cater to women.¹⁸⁹

Proposal for Change

Ultimately, the criminal justice system should focus on treating female pathways to crime including mental health, past trauma, and substance use in lieu of criminalizing women merely because they do not conform to the expected gender norms. In their efforts to reduce crime, states can advocate for initiatives that will assist and enhance opportunities for former inmates. While it is true that female convicts returning from prison need housing, employment, and financial support, they also would benefit greatly from a higher availability of guided strategies to overcome trauma and stress that they may have experienced before and during incarceration.

Gender-focused programs are the best option to address the reentry needs of women in crime because they strive for life-changing goals such as family reunification and treatment for mental and physical health. Women can benefit from resources which focus on reconnecting them to society, aiding in breaking these cycles of crime. Our traditional programs place the larger male prison population as a priority and deny adequate services to women,¹⁹⁰ but the continually rising female crime rate demonstrates that it is necessary to shift attention toward this underrepresented group. Through tackling the gender disparities of incarcerated women, our criminal justice system could develop the appropriate tools to also address unique needs of non-binary, non-conforming, and transgender identities.

187 Sawyer. "The Gender Divide." (2018).

188 Anonymous Prosecutor in discussion with the author, May 2021.

189 Sawyer. "The Gender Divide." (2018).

190 Wendy Sawyer. "Who's Helping the 1.9 Million Women Released from Prisons and Jails Each Year?" *Prison Policy Initiative Report* (2019).



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