

# Is there Gender Bias in Prison Disciplinary systems?

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## Introduction

**Prisons in most developed countries have one general aim: to encourage prisoners to improve themselves through purposeful activity in prison<sup>1</sup> in order to rehabilitate them for re-entry into the community at the expiration of their custodial sentence and to discourage re-offending upon release<sup>2</sup>.**

To achieve these objectives, prison authorities allow prisoners to remain out of their cells for up to 12 hours per day to interact with other prisoners and staff, engage in prison employment or education and to complete programs designed to reduce their offending behaviour<sup>3</sup>. These interactions can and do lead to infractions of prison rules and regulations<sup>4</sup>, which are in place to maintain the good order and security of the prison and to ensure the safety and security of the prisoners, staff and the general public<sup>5</sup>. When these infractions occur and are brought to the attention of prison officials, prisoners can be informally warned or cautioned, given an immediate sanction such as a loss of privilege or can be formally charged in accordance with prison legislation.

Existing research suggests gender bias exists in relation to the severity of the penalties imposed for prison offences, suggesting that women receive harsher penalties than their male counterparts for similar offences committed in prison<sup>6</sup>. Similar research has been conducted as to the existence of gender bias in court imposed sentences, yielding mixed results<sup>7</sup>.

The issue of prison punishment has not been extensively studied, however, as discussed, some available research suggests that punishments are more severe for female prisoners<sup>8</sup>.

Females in the general population have a relatively minimal role in offending and make up only a small proportion of prison populations, typically 6 per cent<sup>9</sup>. In 2008, men were almost fourteen times more likely to be in prison in Australia than women, with women constituting only 7 per cent of the Australian prisoner population<sup>10</sup>. However, women offend more frequently against prison discipline than men in Western Australia, other Australian States and in overseas jurisdictions<sup>11</sup>.

In Victoria, in June 2001, 31 per cent of prisoners in the main women's prison were subjected to Governor's hearings whereas in the men's prisons, male prisoners were subjected to Governor's hearings at a rate of between 8.7 per cent and 11.7 per cent for the same month<sup>12</sup>. Similarly, although females make up only 8 per cent of Victoria's prison population, they are much more likely to be subject to a disciplinary hearing and more likely to be charged with offences relating to 'good order' than male prisoners<sup>13</sup>.

These results are replicated in the Western Australian prison system where, between November 2004 and April 2005, 250 women at Bandyup Women's Prison<sup>14</sup> — Western Australia's maximum security women's prison — were subject to 219 loss of privilege orders. Over the same period 570 men in Hakea Prison — Western Australia's maximum security

1. Australian Capital Territory Corrective Services (2009) *Annual Report 2007-08* Canberra: Government Printer.
2. Mahoney, D. (2005). *Inquiry into the management of offenders in custody and in the community*. Western Australia: State Government Printer.
3. Naylor, B. (2002). *Prison disciplinary systems: Process and proof*. Paper presented at the International Institute of Forensic Studies Conference, Prato, 2-5 July 2002.
4. Ibid.
5. Carlen, P. & Worrall, A. (2004) *Analysing women's imprisonment*. Devon: Willan Publishing.
6. Ibid.
7. Reuter, T. (1996). Why women aren't executed: Gender bias and the death penalty. *Human Rights*, 23 (4), 10-12.
8. Sisters Inside. (2004). *Culture within women's prisons*. Retrieved March 29, 2009 from <http://www.sistersinside.com.au/media/Culturesubmission.pdf>
9. Godfrey, B.S., Farrall, S. & Karstedt, S. (2005). Explaining gendered sentencing patterns for violent men and women in the late-Victorian and Edwardian period. *British Journal of Criminology*, 45, 696-720.
10. Quinn, K. (2008). *Gender Impact Assessment: Corrections*. Melbourne: Women's Health Victoria.
11. McClellan, D. (1994). Disparity in the discipline of male and female inmates in Texas prisons. *Women and Criminal Justice*, 5(2), 71-97.
12. Naylor (2002) see n.3.
13. Dugan, J., Roche, V, Tucker, I. (2003). *The prison discipline regime review*. Report to the Correctional Services Commissioner into prison discipline provisions, sanctions and privileges.
14. All figures from . Western Australian Inspector of Custodial Services. (2006). *Report of an announced inspection of Bandyup Women's Prison, Report 36*. Western Australia: Office of the Inspector of Custodial Services.

male prison — were subject to 215 loss of privilege orders and 370 men in the male maximum security Casuarina Prison had 250 loss of privilege orders. Staff at Bandyup Women's Prison have reportedly explained the high incidence of loss of privilege orders by suggesting that they tended to use the immediate sanction of a loss of privilege rather than proceeding with formal prosecutions. Bandyup held 4.2 per cent of Western Australia's total prison population in 2002/2003 but administered 12.4 per cent of its total prison charges. In 2003/2004 Bandyup held 5 per cent of Western Australia's total prison population but issued 16.7 per cent of its total prison charges. Incidents and penalties for discipline offences are reported to be notoriously difficult to research in prisons due to privacy legislation and the availability of documents to the general public<sup>15</sup>.

### **Purpose of Research and Methodology**

The purpose of the current research was to investigate differences and similarities in the rate of offending against prison discipline between male and female prisoners in the England and Wales prison system and to investigate whether any difference exists between the sentences imposed on male offenders and female offenders in regards to particular prison offences.

### **Research Results**

The population of prison establishments in England and Wales has increased in recent years, however no such rise has been recorded in the rate of offences against prison discipline. The male prisoner population in England and Wales increased from approximately 58500 prisoners in 1997 to almost 76000 prisoners in 2007. The female prisoner population increased from almost 2700 in 1997 to just below 4400 in 2007. Although offences against prison discipline have remained relatively stable in both male and female prison populations despite the significant rise in population, female prisoners have continued to be punished for offending behaviour at a higher rate than male prisoners over this period.

Female prisoners are punished at a higher rate for most groups of offences including violence, wilful damage and other offences whereas males are punished at a higher rate for unauthorised activities and possession. The greatest rates of offending in both male and female prisoner populations are recorded for disobedience and disrespect, however, females are almost twice as likely to be punished for this type of offending as male prisoners. Female prisoners exhibit a higher rate of violent offending for assaults on staff, assaults on other prisoners and assaults on any other person where the total rate of punishment for 'assault' offences in the female prison population was found to be more than double the rate for male prisoners. In addition, female prisoners are punished more frequently for all disobedience and disrespect offences, with the exception of the offence of 'falsifying a drug test sample' where male prisoners were slightly more likely to be prosecuted for this offence. Male prisoners were less likely to receive punishment for offences such as 'threats/abusive words or behaviour' with 19.31 offences punished per 100 compared to 31.16 offences punished per 100 for female prisoners, and 'disobeys any rule or regulation' with males recording 3.29 offences punished per 100 compared with 15.82 offences punished per 100 female prisoners.

Male prisoners were more frequently punished for unauthorised use of controlled drugs and possession of controlled drugs, whereas female prisoners were punished more frequently than male prisoners for having an unauthorised article. Female prisoners were more likely to be punished for knowingly consuming alcohol than male prisoners; however male prisoners were more likely to be punished for conducting drug transactions than female prisoners.

### **Rates of Punishments Issued for Prison Offences**

Similarities are evident in the relationships between the use of punishments in regards to the male and female prisoner populations, Forfeiture of privileges'

The greatest rates of offending in both male and female prisoner populations are recorded for disobedience and disrespect, however, females are almost twice as likely to be punished for this type of offending as male prisoners.

15. Cerveri, P., Colvin, K., Dias, M., George, A., Hanna, J., Jubb, G., Vidyasagar, A. & Weigall, C. (2005). *Request for a systemic review of discrimination against women in Victorian prisons*. Federation of Community Centres and the Victorian Council of Social Services.

was the most frequently used punishment in both male and female prisoner populations, and stoppage or reduction of earnings was the second most frequently used penalty, followed by confinement to cell or room. The one notable difference occurred in regard to the use of prisoners' removal from their wings or living units — male prisoners were subject to this penalty at a rate of 3 punishments per 100, whereas this punishment was not used against female prisoners who offended. The proportion of each available punishment being used in each group of offences showed very little variation between male and females. For example, 47.15 per cent of male prisoners charged with offences (excluding escape or abscond) received the penalty of forfeiture of privileges and 47.87 per cent of female prisoners received the same penalty. Similarly, 30.26 per cent of male offenders received the penalty of confinement to cells or rooms for all offences (excluding escape or abscond) as did 30.07 per cent of female offenders.

### Explaining Gender Bias in Offending and Punishment

A theory which may explain why women are possibly treated more severely in terms of being punished for offending behaviour is that of the 'evil woman thesis' or 'selective chivalry theory'<sup>16</sup>. The theory is predicated on the belief that women whose criminality violates the conventional norms of femininity are treated more harshly than men convicted of comparable offences. Female offenders can be seen by some as 'doubly deviant' and are punished for the offence *as well as* for defying gender and social norms, representing a threat to the stability of family life and of social order<sup>17</sup>. Similarly, with regards to prison systems and prison discipline, female prisoners may be seen to abrogate socially constructed ideals of compliant, law abiding women and they may also be seen to have contravened their primary maternal role as nurturing responsible parents<sup>18</sup>.

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In the case of the current research, female prisoners may be subjected to gender bias similar to that previously described in terms of their offending coming to the attention of prison authorities. Rules may be ignored by prison officials in male prisons whereas they may be strictly enforced in female institutions. For example, swearing by male prisoners may be socially acceptable for male prisoners and ignored, whereas female prisoners are challenged and punished for such behaviour.

This may explain the disproportionately higher rate in the current research for the offence of 'threats/abusive words or behaviour', along with other offences, in the female prisons. Prison staff may choose to ignore offending behaviour in male populations or issue informal cautions for offending behaviour in male prison populations, whereas prison staff may choose to formally charge prisoners in female prison populations.

Further research was conducted to examine whether prison incidents were a reflection of the offending behaviour which caused the offender to receive a custodial sentence<sup>19</sup>. Data indicated that this is not the case, as 63 per cent of male prisoners were imprisoned for violence offences, sexual offences, robbery and burglary compared to a total of 36 per cent for these offence groups for female prisoners however female prisoners were more often punished for violence offences within the prison environment

than male prisoners, where 22 per 100 male prisoners were punished for violence offences in comparison to 30 per 100 female prisoners.

Other explanations for the disparity in the rate of punishment for offending against prison discipline might be that female prisoners indeed commit proportionately more offences than males. If prison officials and other individuals required to make decisions regarding the punishment of offending for male and female prisoners show no bias in terms of

16. Rodriguez, Curry & Lee. (2006). Gender differences in criminal sentencing: Do effects vary across violent, property and drug offences? *Social Science Quarterly*, 4.
17. Noblet, A. (2008). *Women in prison: A review of the current female prison system: Future directions and alternatives*. *Internet Journal of Criminology*. Retrieved September 2, 2009 from <http://www.internetjournalofcriminology.com/Noblet%20-%20Women%20in%20Prison.pdf>
18. Farrell, A. (1998). Policies for incarcerated mothers and their families in Australian corrections. *Australian and New Zealand Journal of Criminology*, 31(2), 101-119.
19. Garde, V. (2003). Profiling violent incidents: An explorative study. *International Journal of Forensic Psychology*, 1(1), 142-146.

whether or not punishments for offending are applied, other variables may become relevant. For example, female prisoners may simply be more difficult to manage and more resistant to authority than male prisoners<sup>20</sup>. In addition, the rate of offending against prison discipline may have a direct correlation with the incidence of instability, aggression and violent behaviour resulting from drug or alcohol related mental disorders<sup>21</sup> within the female population. Female prisoners in United Kingdom prison establishments were almost twice as likely to be imprisoned for drug offences as male prisoners (28 per cent of the female prison population in comparison with only 15 per cent of the male prison population). This may in turn influence rates of female prisoners' drug or alcohol induced mental disorders as 23 percent of sentenced female prisoners were reported to be drug dependent compared with 11 per cent of male prisoners in the United Kingdom<sup>22</sup>.

To reduce the likelihood of disparities, prison staff may benefit from training in gender differences in conflict and dispute resolution to reduce the frequency by which female prisoners are charged with offending against prison discipline, conversely staff that work with male offenders may also benefit from training to ensure that male prisoners are not foregoing formal sanctions for offences that they should, indeed, be punished for. Another possible explanation for the disparity in punishments between male and female prisoners is that male prisoners may offend covertly and therefore be harder to detect. Similarly more staff may be employed or available in female establishments which may aid in the detection of prison offending, or female prisons may have less access to meaningful activities which results in female prisoners being idle for much of the day<sup>23</sup> thus resulting in more altercations and disobedience due to boredom.

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The lack of programs designed and available for women in the Western Australian prison system in terms of reducing violence and drug use in preparation for prisoners' release into society<sup>24</sup> may also have an impact on prison offending, as without access to such programs female prisoners may be less equipped to desist from violent behaviour and drug activities prior to their release into society than male prisoners who have accessed similar programs in male prisons. More research is clearly needed in this area.

### The Need for Equitable Punishments

It is evident that penalties should reflect the seriousness of the offence and act as a punishment for the offender and as a deterrent to future offending by the offender and others<sup>25</sup>. It has been suggested that the gender of an offender in itself should not be a matter relevant to sentencing<sup>26</sup>. However, the problems faced by female offenders should not be ignored: with high incidences of complex drug abuse, unhealthy family relationships and physical and emotional abuse<sup>27</sup>. In society, women's lives are very different to those of men in ways that should be taken into account in

sentencing in open court where a gender-neutral stance would not tackle these pre-existing disadvantages<sup>28</sup>. However, it would be wrong to not to highlight that similar issues also affect male prisoners — both populations possess the same criminogenic factors such as poor cognitive skills, strong ties to and identification with anti-social role models, weak social ties, anti-social attitudes and feelings, dependency on drugs and alcohol and adverse family or social circumstances<sup>29</sup>. Furthermore unfairness of discipline in the prison system is a major cause of dissatisfaction among inmates<sup>30</sup>. In addition, offenders who perceive punishment for prison indiscipline as fair are more likely

20. Naylor (2002) see n.3.

21. Noblet (2008) see n.18.

22. Worrall, A. (2002). Community sentences for women: Where have they gone? Probation and Community Corrections Officers' Association. Re.

23. Western Australian Inspector of Custodial Services. (2006) see n.14.

24. Ibid.

25. Queensland Government. (2004). *Legislation Review, Corrective Services Act 2000*. Offences and penalties consultation paper. Queensland: Department of Corrective Services.

26. Queensland Taskforce on Women and the Criminal Code. (2008). *Taskforce Report*. Queensland Government. Retrieved March 29, 2009 from <http://www.women.qld.gov.au/resources/criminal-code/documents/chapter-10.pdf>

27. Sisters Inside (2004) see n.8.

28. Queensland Taskforce on Women and the Criminal Code. (2008) see n.28.

29. Noblet, A. (2008).see n.18.

30. Weatherburn, D. (1982). *Prisoner perceptions of the prison environment*. Retrieved April 4, 2009 from <http://www.criminologycouncil.gov.au/reports/1-82.pdf>

to be compliant, while offenders who perceive punishment as unfair are more likely to be defiant<sup>31</sup>. In Victoria, Australia, complaints are regularly received regarding the absence of reasons for the imposition of penalties and in regards to inconsistencies in the administration of the disciplinary process and disparities in the withdrawal of privileges and the impositions of sanctions<sup>32</sup>. One of the most common complaints in the Victoria prison system is the lack of consistency between prisons — prisoners charged with identical offences can receive substantially different penalties — for example, a prisoner assault resulted in six different outcomes in Victoria, ranging from a reprimand at Wron Wron to 28 days loss of privileges at Fulham Correctional Centre<sup>33</sup>. It must be noted, however, that while offences may appear the same, extenuating circumstances make each case different and may therefore warrant a different penalty — there must be flexibility and discretion allowed in imposing penalties which are ultimately fair and reasonable and take into account the circumstances of each particular case<sup>34</sup>.

### Conclusion

Female prisoners were punished more frequently for offending against prison discipline than male prisoners, however both male and female prisoners received similar penalties in terms of the type of punishments issued.

This study has shown that females were recorded as being punished for offending behaviour consistently

more often than men in terms of all groups of offending, aside from the offence groups of 'Escape/Abscond Offences' and 'Unauthorised Transactions/Possessions Offences'. The total rate of punishment for offending against prison legislation in the female population remained, in 2007, as per previous years, higher than that recorded in the male prisoner populations in United Kingdom prison establishments. In addition, this study has shown that female prisoners were recorded to be treated relatively equally in terms of punishments issued for offending against prison legislation to male prisoners. This study found little or no difference in the type of punishments issued to female prisoners in comparison to those issued to male prisoners in United Kingdom prison establishments, although the available data was insufficient to ascertain whether there were differences in terms of the severity of the penalties imposed on the male and female prisoner populations.

The collection and analysis of additional information such as the severity of the offences committed and offenders' prior history of prison offending would provide a full examination into whether male and female prisoners are treated equally in terms of prison punishments when the severity of punishments is taken into account and will also give prison policymakers guidance on where resources should be allocated, in terms of staffing, training and program development and implementation in regards to reducing prison offending

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31. Dugan, J., Roche, V, Tucker, I. (2003) see n.13.

32. Law Institute of Victoria. (2003). *Prison discipline review*. Retrieved April 5, 2009 from [https://www.liv.asn.au/members/sections/submissions/20030507\\_20/20030603pris.pdf](https://www.liv.asn.au/members/sections/submissions/20030507_20/20030603pris.pdf)

33. Duggan, J., Roche, V, Tucker, I (2003) see n.13.

34. Ibid.