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## **Girls in the Youth Justice System in England and Wales, 2002-2017**

**Authors: Elaine Arnull, Jihye Park & Karen Heimer**

### **Abstract**

This paper addresses a gap in the literature on youth justice in England and Wales by examining disaggregated patterns of juvenile court processing (i.e., proven offences) and custody. It provides new evidence to show that gendered effects are best observed over time.

Looking at juvenile justice data over time allows us to see the effects of policy that are obscured in the short-term. This is especially important when considering small and specific populations, such as girls. It is often assumed that policy impacts smaller groups in the justice system (in this case, girls) in the same way as the larger group (in this case, boys), with boys' experiences representing the norm (Estrada et al. 2016). In this paper, we call into question that assumption by considering female and male proven offences and juvenile custody over time in England and [Wales and show why gendered impacts should be given proper consideration \(Sherman & Balck 2015\)](#). We also examine changes in the gender gap in proven offences and juvenile custody over time.

### **Keywords**

Girls, juvenile justice, gender gap

## **Introduction: Juvenile Justice Policy England and Wales 2002-2018**

### ***Policy, Practice and the Effects on Children***

Newburn (2007:425) describes a movement towards punitive and penalist policies that began in the 1990s and made England and Wales the 'largest incarcerator' in western

Europe, even as crime rates began to drop. The data examined by our study began in 2002 at a time when government policy towards children and crime was characterised as dominated by a managerial, New Public Management (NPM) approach, and rhetoric about being ‘tough on crime’ (X 2016; Bateman 2011; Muncie 2006). In the USA, the period is also characterised as dominated by ‘law and order’ and ‘war on drugs’ policy foci, which centralised crime and exacerbated discriminatory effects (Wacquant, 2009; Farrall, et al., 2014).

In 1998, the newly elected Labour Government introduced a radically overhauled juvenile justice approach in the Crime and Disorder Act (1998)<sup>1</sup>. This sought to be tough on crime and its causes and included a plethora of legislation and fast-paced change (described by X and X, 2015: 13) characterised by an ‘...*increasing tendency to responsabilise children...*’ (Muncie, 2006). During this period, increasing numbers of children were brought into the juvenile justice system. In 2007 Rod Morgan, [chair of the Youth Justice Board \(2004-7\), resigned saying](#) policy was leading to the ‘...*youth courts and children's prisons ...being "swamped" with minor offenders who are "cluttering up" the system*’ (BBC Press Release 26.01.2007). He attributed this to government targets intended to enable children to link behaviour with consequences and said they were ‘...*having "perverse consequences" by swelling prisoner numbers unnecessarily*’ (BBC Press Release 26.01.2007). [Gendered or other differential effects were not reflected on, however, the impacts were discussed as though they had the same or similar consequences for all groups of children in the juvenile justice system \(see for example, Goldson, 2007\). This is, as Sherman \(2012\) discusses, a common failing when considering policy and administrative changes and their effects. In the early section of the paper, therefore, we](#)

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<sup>1</sup> The juvenile justice system in England and Wales then became known as the Youth Justice System; we have however referred throughout the paper as the juvenile justice system as it is a more familiar term for international readers.

provide the context for understanding how juvenile justice system changes have impacted girls and why the discussion to date has focussed principally (and often solely) on the effect on boys and without regard to gendered effects.

In 2011, the newly elected Coalition Government outlined a positive approach to children and young people (HM Government, 2011), yet continued the approach of law and order conservatism (X and X 2016:34-5), now combined with the social policies of austerity. At an international level this was considered to have profound consequences for children and was the subject of a United Nations critique (and concerns have continued, for example, Equality and Human Rights Commission, 2018).

In juvenile justice policy, ‘a child-first policy’ is described by the National Association Youth Justice (NAYJ) as applying since 2017 although they also note this is ‘hard to square’ (2020:7) with the experiences of children within the system. Nonetheless, around 2010, some commentators began to note declines in recorded crime amongst adults and children with the NAYJ, for example noting:

*“a self report survey of children aged 11 – 16 years in mainstream school indicates that just 18% admitted committing an offence within the past 12 months in 2009 compared with 26% in 2004.”* (Bateman 2010/11:5). Some commentators have argued that the worldwide declines in juvenile crime can be explained by changes to security systems that began to be introduced (for example in cars, Farrell et al, 2019), but it is unlikely this accounts for changes in the numbers of girls entering the system over time.

Consequently, we briefly discuss three areas that appear to have had a critical impact on juvenile proven offences and custody: first time entrants, breach policy, and the differential impacts of policy initiatives on girls and boys. In our analysis, we examine juvenile justice data for girls and boys to identify patterns over this period. As Baumer et al. (2018) discuss, there are ‘important nuances...’ in the relatively recent decline in

children entering juvenile justice systems and entering custody across the world, which *'are underappreciated and the reasons for it remain unclear'*. We, therefore, address an important gap in knowledge regarding the changing patterns of female and male child proven offences and custody in England and Wales during the 2000s **and consider if there was a gendered impact.**

### ***First Time Entrants to the Juvenile Justice System***

First Time Entrants (FTEs) are those children who have committed an offence and enter the justice system for the first time (Sutherland et al, 2017). Processing of FTE may occur for substantially different behaviours at different points over time.

During the period considered in this paper, there was a substantial increase in FTEs to the juvenile system. X and X (2009:43) noted that their findings indicated the *'...increase in girls in the criminal justice system was occurring at the pre-court disposal stage'*, suggesting a change in the *'...policing of girls by capturing more first time, low-level offenders or formally reprimanding such offenders where previously no further action would have been taken.'* Similarly, Sutherland et al., concluded *"the fact that the changes occurred over a relatively short period of time, strongly suggests that the main driver was a change in criminal justice processes and/or decision making"* (Sutherland et al, 2017:2 writing for the Ministry of Justice). They also suggested subsequent decreases may have been attributable to positive effects of New Labour social policies which had countered negative social experiences.

Muncie (2006:11) argued that there was a relationship between FTEs and the *"...primacy afforded to intervention ..."* in social and juvenile justice policies in the early 2000s. The premise that intervention had a positive impact (Audit Commission, 1998; Goldson, 2007) informed by broader social policy focussed on respect, formed a core

underpinning philosophy of New Labour. More specifically, the philosophy argued it was a good thing to hold people responsible for their actions.

The process of responsabilisation impacted the juvenile justice system and arguably impacted children by increasing the number of FTE's (X and X, 2009; Sutherland, 2017). Within the juvenile justice system, children were held to account for keeping appointments and behaving appropriately towards staff, and failure to do so could lead to breach action.

### **Breach**

Breach is under-explored in research literature, and so we discuss this in some detail in the focused policy review because we consider that it plays a critical role in understanding youths' rates of proven offences and custody; [the literature generally does not discuss gender or, it focusses on boys or on aggregated data that obscures gendered patterns](#). 'Breach' is returning a [child](#) to court for non-compliance with a disposal, or for failure to behave appropriately, whilst complying with that disposal. In England and Wales, it is the statutory duty of the juvenile justice service to ensure compliance with the order of a court. This is set out in the Y: 6 where Strategic standard 11 outlines the responsibility to:

*“Establish and implement clear local policies and protocols in relation to: enforcement and compliance with court orders, remand and bail programmes.”*

Each local area could decide how to implement this statutory requirement, but data showed similarities in the way compliance was enforced between 1998 until 2006/7.

Breach proceedings were begun if, or when a [child](#):

*“... failed to keep appointments or observe a curfew, or to comply with other conditions of their order. Even where appointments are kept, bad behaviour can be taken as a failure to comply. The young person may or may not have committed further offences or anti-social acts.”* (Prison Reform Trust (PRT): 3)

A *child* ‘*might also be committed to custody as a result of formal breach proceedings*’ (PRT:4).

The guidance regarding the use of breach proceedings formed part of the overall responsabilisation approach (X 2016:68-9) described in policy documentation such as the Government’s Strategic Plan for Criminal Justice 2004–2008:

*“To re-balance the criminal justice system in favour of the law-abiding majority and improve public confidence, it was thought essential to ensure that the conditions of community penalties were fully adhered to and that (where necessary) enforcement action swiftly followed non-compliance.”* (Home Office 2007:7).

This led a large UK charity, Barnados, to submit evidence to a government consultation in 2011 recommending that no child under the age of 14 years should be sentenced to custody for a technical breach of an order, nor be sentenced to custody for an offence that would not originally have attracted a custodial sentence. Their submission and a report by the National Children’s Bureau and Prison Reform Trust (PRT) undertaken by Hart (2011) provide evidence of campaigns run by non-governmental bodies aimed at changing breach policy. Despite this, juvenile justice case management guidance published in 2014 appeared to follow earlier Home Office guidance that it was the responsibility of the case manager to ‘*...monitor the child or young person’s compliance with the arranged activities*’ (YJB, 2014: 2.25).

We identified in the literature arguments that there was an ‘*...an attempt to counter the inflationary impact of expanding sanction detections...*’ through the introduction in 2005 of ‘*...a contrary... target to reduce the number of children entering the criminal justice system for the first time*’ (Bateman 2011:7). Yet, this could not be traced in the policy documentation and the Chair of the YJB resigned in 2007 with publicly stated

‘despair’ at the rising numbers of children in the juvenile justice system. This indicated that if a ‘contrary target’ was set, it was ineffective at that point.

Certainly, the Prison Reform Trust (2011) notes that during this period the ‘... stream of criminal justice legislation’ meant practitioners and the public found it difficult to ‘understand an ever-changing and increasingly complex legislative framework’ (Prison Reform Trust undated: 2). Further, the National Audit Office in their review of the ‘cost of a cohort of young offenders’ noted that ‘...*young offenders considered in our analysis became increasingly more likely to commit breach offences. These are typically the result of failing to meet the requirements of a community penalty*’ (2011:13).

The campaigns and policy documentation appeared to suggest therefore that there was an active policy of pursuing breach action against children within the juvenile justice system that went beyond 2011 and that a ‘softer’ tone regarding breach was not taken until 2018 when the YJB said it had reviewed guidance and ‘...*removed unnecessary prescription to encourage practitioners to respond to the needs of each child and victim on a case by case basis*’ (YJB 2018:6). At this point, breach action also became defined as, ‘...*action or non-action by the child contrary to the requirements of a criminal court order above an agreed (emphasis added) threshold*.’ Consequences would however still involve ‘...*possible “breach action”*’ by the court’ (YJB 2018).

### ***Girls, Gender and Juvenile Justice***

The relationship between gender, offending behaviour, and the administration of justice is critical to this paper. During the period of 2002-9, there was a change in the nature of proven offences for which girls were processed in the juvenile justice system from offences mainly of theft and handling stolen goods, to an increasing proportion of offences of violence, such as assault and robbery. In England and Wales, this was first highlighted in a study by X and X (2009). Similarly, in jurisdictions around the world

greater numbers of girls were entering juvenile justice systems (Chesney-Lind 2006; Zahn et al. 2010; Carrington 2013).

Part of this increase appeared to be related to the numbers of girls entering systems as the result of violent offences, and research sought to account for and explore this (Chesney Lind, 2006; X and X, 2009; Ness 2010; [Sherman, 2012](#); Carrington, 2013; X, 2019). In addition, discussions focussed on girls' increase as a percentage of the overall total within juvenile justice systems, otherwise known as the narrowing of the gender gap. They included a variety of explanations about the relationship between gender, offending and crime (Chesney Lind, 2006; Sharpe and Gelsthorpe 2015; Paik, 2017), such as the hypothesis that girls had begun to behave more like boys because of greater gender equality (Jackson and Tinkler 2007), or the hypothesis that there was increasing equality in the treatment of girls and boys by the juvenile justice system, regardless of any change in actual offending behaviour (Schwartz and Steffensmeier 2008; Zahn et al. 2010; X et al. 2009), [or that systems based effects were having gendered impacts \(Sherman 2012; Sherman and Balck 2015\)](#).

In sum, we do not know enough about what specifically has happened regarding gender differences in juvenile justice in England and Wales. We cannot understand this process – or how policy changes may have impacted gendered justice – without a careful examination of juvenile justice data over time (Nilsson 2017). Of specific concern is how policy shifts may differentially affect the justice system experiences females and males.

## **Methodology**

We requested access to quantitative data from the Youth Justice Board of England and Wales to study patterns over time in female as compared to male custody and proven

offences within the juvenile justice system.<sup>2</sup> The YJB provided a longitudinal series of data between 2001/2-2016/17, which as the YJB was created in 1998 means the data essentially covers almost the whole period it has been in operation. The YJB provided data for the annual period beginning on April 1 and ending on March 31 of the subsequent year, and they list the two numerical years comprising the period; this is common in UK administrative data. For simplicity in this paper the end year will be referred to, so for 2001/2 data we will say 2002.

We obtained separate counts for proven offences and custody in youth institutions for girls and boys. A proven offence is defined by the Ministry of Justice as:

*'... an offence which results in the offender receiving a reprimand, warning, caution or conviction.'* (MOJ undated: 4). Custody includes all children sentenced to a custodial disposal in any part of the secure estate which has *'...three strands ... These are; secure children's homes (SCH), secure training centres (STC) and young offender institutions (YOI)'* (MOJ undated: 3). The gender disaggregation of the proven offence by offence type does not start until 2006/7; the YJB were unable to provide us with earlier data because it was either incomplete or not compatible with current categories.

We divided the counts of proven offence and youths incarcerated in each year data by the appropriate population totals for girls and boys aged 10-17 living in England and Wales in each year, to produce male and female rates of proven offences and custody (i.e. population adjusted the data). Gender-specific population denominators (ages 10-17) were obtained from the Office of National Statistics. We plotted the resultant rates for different combinations of gender and offence types for both proven offences and custody. We tell our story of gendered patterns of youth justice system experience below and link these

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<sup>2</sup> There is one previous analysis of girls' involvement in the English and Welsh juvenile justice system by Arnull and Eagle 2009. No subsequent quantitative study has been published. The present study does not replicate the earlier study by Arnull and Eagle (2009), which was much broader in scope.

changes to the policy and program shifts described above.

## **Findings**

### ***Proven offences.***

Our series of proven offences begins in the data year 2001/2. Figure 1 shows that girls' proven offences in 2002 were about 1570 per 100,000. By 2006 the girls' proven offence rate peaked at 2220/100,000 and then began to decline dramatically from 2007 through to 2012, after which the rate dropped off more slowly to reach a low point of 185/100,000 by 2017. Indeed, the decline in girls' proven offences between 2006 and 2017 was about 92%. This decline is remarkable and has not as yet been addressed in the research literature.

[Figure 1 Here]

The pattern for boys is fairly similar, although the male rate is higher, as expected (left axis male rates, right axis female rates). While the pattern of decline is very close to that observed for females, there are two differences across gender that are notable: First, the rate of proven offences increased among girls between 2002 and 2006, whereas for boys the rate held fairly stable and began to decline in 2005, paralleling the decline in female rates that begins in 2006. After 2006, the rate of proven offences for boys dropped in a similar fashion to the decline seen for girls. The decline in boys' proven offences between 2006 and 2017 was 89%, which is only slightly smaller overall than the drop in proven offences against girls.

These fairly small differences across gender produce the female-to-male rate ratio, or gender gap, displayed in Figure 2. The gender gap changes somewhat during this period, with girls' proven offences being about 19% as high as the male rate in 2002, then rising to about 29% of the male rate by 2009, and then declining to about 21% of the male rate by 2017. The take-away message is that the increase in the gender rate ratio, or small

narrowing of the gender gap before 2009 is accounted for by an increased rate of female proven offences during this time period while male rates were stable and then slightly declining. After 2009, the relative declines across gender have the effect of reducing the rate ratio, which indicates a movement in the gender gap that is more similar to the 2002 (lower) levels.

[ Figure 2 Here]

### ***Proven offence, gender and offence type from 2007***

We can unpack the patterns for females and males during the period of decline, after 2007 because data on proven offences are available disaggregated by gender and offence type during this period. In this discussion, we follow the typologies suggested by X and X's (2009) analysis of offending by girls in England and Wales. Namely, girls offending can be viewed as follows: 'other' offences which are very small in number<sup>3</sup>, the larger category of theft<sup>4</sup>, and the largest category of violence; it is the latter two we discuss in this paper.

For the *theft category*, we see that girls accounted for a much larger proportion of offending and therefore that the gender gap was of the smallest magnitude given the available data. We also see a very substantial decline in girls' proven offences for theft. In 2007, girls were convicted of theft at a rate of 738/100,000 and this rate declined to 60/100,000 by 2017, which is a drop of 92%. By comparison, boys were convicted of theft at a rate of 1,316/100,000 in 2007 and the rate declined to 258/100,000 by 2017, which is a drop of 80%. As such, the female rate declined somewhat more sharply than the male rate.

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<sup>3</sup> Offences falling into the 'other' category include burglary, drugs and motoring offences. In each of these categories, girls accounted for 10% or less of boys' rates throughout the series.

<sup>4</sup> A category of theft includes handling stolen goods (receiving stolen goods, undertaking or assisting in the retention, removal, disposal, or realization of stolen goods, or arranging to do so), theft (extracting electricity, making off without payment, going equipped for stealing, intent to steal), and other

[Figure 3 Here]

The gender rate ratio, displayed in Figure 4, shows this comparison. The gender gap in proven offences for theft increased over the period (rate ratio declines), particularly after 2010, when girl's rates of theft were 65% of male rates and dropped precipitously to 33% of male rates in 2012, a period of only 2 years. The question is, what happened during this two-year period to create such a change in the gender ratio of the handling of offences for theft? Figure 3, above, shows that the source of this change was the much steeper drop in female proven offences for theft than the corresponding male decline.

[Figure 4 Here]

*Offences falling into the violence category* include a range of offences, including violence against the person and robbery.<sup>5</sup> Figure 5 shows the female and male rates for robbery proven offences, and Figure 6 shows the gender rate ratio. As can be seen from both graphs, robbery is an offence that is much more common among males than females, even at the height of female offending in 2007. Females are convicted for about 18% as much robbery as males. As such, this offence is much less common among females and the gender gap is much more pronounced than in the case of theft. Beyond this, the percentages of change in the female and male rates displayed in Figure 5 indicate that female rates declined much more between 2007 and 2017 than male rates. Specifically, female rates of robbery dropped from 38/100,000 in 2007 to a low of only 3/100,000 in 2017, which was a decline of 92%. By comparison, male robbery rates dropped from 208/100,000 in 2007 to 75/100,000 in 2017, a decline of 64%. Together, these trends produce the clearly declining female-to-to male rate ratio depicted in Figure 6: The gender gap in robbery increased between 2007 and 2017, with girls accounting for 18% of the boys' rate in 2007 and just 4% boys' rates in 2017.

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<sup>5</sup> A category of robbery includes assault with intent to rob and conspiracy to rob.

[Figure 5] & [Figure 6]

*Violence against the person* is one of the largest categories of proven offences by both males and females. Figure 7 shows that there is substantial decline for both sexes in violence against the person over the period studied. In 2007, the female rate of violence proven offences was 587/100,000, which had dropped to 187/100,000 by 2017; this was a decline of 68%. For males the rate of proven offences was 1447/100,000 in 2007 and was 585/100,000 in 2017; this was a decline of 60%. Thus, while there was some widening of the gender gap over time because female rates declined more than male rates (see Figure 8), the change in the gender gap was much less pronounced than in the case of robbery (which is an offence of violence). In 2007, the female rate of proven offences for violence was about 41% of the male rate and in 2017 it was 32% of the male rate. This appears consistent with a pattern indicated in an earlier study for 2000-2006 (X and X 2009).

[Figure 7 Here] & [Figure 8 Here]

We now turn to address a part of the story that does not fall into the above typology of offenders – namely, *what happened with breach during this period?* It must be remembered that youths cannot *enter* the juvenile justice system for breach; this is an offence that occurs after youth are already in the youth justice system.

*Breach*

Around 2008 it appears that breach rates for proven offences began to drop quickly. We contextualize the 2007 rates by noting that earlier rates were reportedly said to have been very high (Hart 2011).

The female rate of proven offences for breach was 103/100,000 in 2008 and dropped to a rate of about 10/100,000 in 2017, which was a 90% decline. Boys' rates of proven offences for breach were 502/100,000 in 2008 and 82/100,000 in 2017, constituting

84% decline. Examining the data suggests that this may be due in some part to a slowing of the decline for males in 2013, but not in the case of females.

[Figure 9 Here]

The female-to-male rate ratio begins at 0.2 in 2008 and drops to 0.12 in 2017. The gender gap in breach is thus quite significant by 2017, with girls accounting for only about 12% as much breach as boys, and with the male rate being about 8 times greater than the female rate in 2017 (82/100,000 for males and 10/100,000 for females). This pattern was likely affected both the number of convicted girls and the number of girls in custody. This is because a young person '*may be committed to custody as a result of formal breach proceedings*' (Hart 2010:4). Based on previous research (X and X 2009:46), girls' offences for five offence categories rose consistently between 2000 and 2006 (violence against the person, robbery, criminal damage and arson, public order and breach).<sup>6</sup>The dramatic change that we show here in regard to breach is more in keeping with a system change rather than a change in girls' behaviours.

[Figure 10 Here]

### ***Custody***

The YJB provided us with annual custody estimates, disaggregated by gender, for the years 2001/02 through 2016/17. The data are based on the monthly average numbers of 10- to 17-year old youths in custody, with YJB data years running from April of one year to March of the next year. As with proven offences, we will denote the year beginning April 1, 2001 and ending March 31, 2002 as 2002 in our discussion below.

As Figure 11 shows, custody rates were fairly stable with slight variations up until 2009. The figure also shows that female rates were quite low compared to male rates. The

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<sup>6</sup> Note this finding was made using Themis data supplied by the YJB in 2006/7. This data was gathered centrally by the YJB and held on the Themis database, although holding data from all YOTs it was limited by the fact that information was recorded at the offence or disposal level rather than the offender (individual) level. For a discussion see the original report.

average monthly rates for females held in custody between 2002 and 2009 vacillated between 6.5/100,000 and 7/100,000. Overall then, the female rates were fairly stable, and much lower than the corresponding rates for males, which shifting between 96/100,000 and 97/100,000 during the same period. In 2009, the female rate was 7/100,000 and the male rate was almost 14 times higher, at 97/100,000.

[Figure 11 Here]

After 2009, we see substantial declines in both the male and females average monthly custody rates. Indeed, between 2009 and 2010, female rates dropped from 7 to 5.6/100,000 (20% decline) and male rates dropped from 97 to 83/100,000 (14% decline). Female rates then continued to decrease through 2017, at which time they were approximately 1/100,000, for an 86% decline between 2009 and 2017. Male rates decreased to 32/100,000 in 2017, for a 67% decline between 2009 and 2017.

[Figure 12 Here]

Figure 12 shows the change in the gender rate ratio of custody between 2002 and 2017. The female-to-male rate ratio vacillated some between 2002 and 2008, with the highest ratio being about .08 in the years 2003, 2006, 2007 and 2008. Again, this highlights the very great difference between male and female custody rates, with female rates being less than 1% of male rates even in the years when female custody was at its' highest since 2002. Figure 12 also shows that – as with proven offences – the gender gap in custody has widened over time, as the gender rate ratio has declined. Male rates of youth custody have declined over time, but female rates have become so very low that the effect is to increase the gender gap substantially.

As we have seen for proven offences, the social policy changes and a process of responsabilisation appears to have been ameliorated after 2009 and to have impacted practices across the juvenile justice system. This is not a gendered change and was not

aimed in particular at girls, nor did any of the lobbying documentation, regarding breach for example, mention girls. Girls were not therefore intended beneficiaries of the changes, but we surmise that the technical changes impacted practice in such a way that it contributed to the observable fall in the actual numbers of girls and boys entering the juvenile justice system (perhaps for breach of bail, or a pre-court disposal for example) and thus the youths subsequently prosecuted for breach during their order and entering custody.

Thus, whilst the overall numbers of children entering custody declined, girls benefited more than boys. However, as we will see the changes in breach patterns *cannot* explain the overall declines in custody.

We attempt to unpack the overall patterns of custody noted here by examining average monthly custody by offence type for females and males. We were able to obtain data from YJB at this level of disaggregation for the years 2011-2017, but not for earlier years. As mentioned in our discussion of proven offences, the *violence category* includes a range of offences, including violence against the person and robbery. These offences account for a large fraction of youth custody. They thus may help us to understand changes in gendered patterns of custody.

The rate of custody for violence against the person is higher than for any of the other offence groups. As Figure 13 reveals, the highest rate of custody for violence against persons in the data that we were able to obtain occurs at the outset of the series, in 2011, for both females and males. Females were incarcerated at a rate of 1.7 per 100,000 in 2011 (average monthly  $n = 45$ ) and 0.7 per 100,000 in 2017 (average monthly  $n = 17$ ). This represents a decline of 59% in custody of females for violence against others over this relatively short series. Males were incarcerated at a rate of 16.5 per 100,000 in 2011 ( $n = 449$ ) and 11.8 per 100,000 in 2017 ( $n = 311$ ), for a decline of 28%. As such, the decrease

in female custody outstrips the decline in male custody rates for violence against persons in this period.

[Figure 13 Here]

Interestingly, the gender difference in the declines in custody for violence is more pronounced than is the case for proven offences for violence against others. Compare, for example, Figure 8 above with Figure 14. With regard to custody, we see a greater drop in the female-to-male rate ratio than is the case for proven offences. The female rate of custody for violence is equal to about 11% of the male rate in 2001, and at about 6% of the male rate in 2017. As such, the gender gap in custody for violence against others increased between 2011 and 2017. It is also the case, however, that female rates of proven offences for violence against others were close to 40% of male rates in 2011 and 32% in 2017. This comparison indicates two things: 1) Female-to-male rates of custody are lower than we would expect given female-to-male rates of proven offences in the case of violence against others. 2) The decline in the female-to-male rates of custody over time are greater than we would expect given changes in proven offences for violence against persons in the same time period. Violence accounts for 42% of all girls in custody in 2011 and 68% of girls in custody in 2017; by comparison custody for violence accounts for 23% of all male custody in 2011 and 37% in 2017. Given that violence against the person accounts for a substantial proportion of all girls incarcerated in 2011 and especially in 2017 (almost 7 in 10), these gendered patterns of custody for violence are clearly an important part of the story regarding the gender gap in overall custody.

[Figure 14 Here]

Robbery is another violent crime that is important for understanding custody patterns. As Figure 15 shows, the peak rates for females and males occurred in 2012 and were 1 per 100,000 ( $n = 26$ ) and 18 per 100,000 ( $n = 495$ ), respectively. The female rate

dropped to 0.16 per 100,000 by 2017 ( $n = 4$ ), which was a decline of 84%. The male dropped to 7.5 per 100,000 in 2017 ( $n = 198$ ), which was a decrease of about 58%. These changes create the declining female-to-male gender rate ratio, and thus increasing gender gap in custody for robbery, depicted in Figure 16. We also noted a substantial decline in the gender rate ratio for proven offences for robbery (see Figure 6 above).

[Figure 15 and Figure 16 here]

Although the rates of custody for breach are low, it is notable that the rates for both females and males declined between 2012 and 2014. When we examine breach, which may have resulted in custodial disposals in the early 2000s (Barnados 2011), we see that the rates and raw counts are so low for females and males that they are not contributing much to custody at all. For example, females are incarcerated at a rate of 0.76 per 100,000 in 2011 ( $n = 20$  girls on average throughout the year) and this drops to 0 in 2017 ( $n = 0$ ). For males the rate of custody is 11 in 2011 ( $n = 302$ ) and this drops to 0.08 per 100,000 ( $n = 2$ ) in 2017. So, by 2017, the custody rate for breach becomes nil. Because the rates are so low throughout the series, custody for breach actually contributes little to our understanding of the gender gap in custody of youths.

[Figure 17 here]

## Discussion

In this paper, we have considered the assumption that policy impacts subgroups of the population -- in this specific case male and female youth -- in the same way as it impacts groups that are not disaggregated by gender or other characteristics (Estrada et al. 2016) by considering the gender gap in proven offences and juvenile custody in England and Wales. The longitudinal data has shown that the patterns in girls' and boys' rates of proven offences and custody 2002- 2017 were different. The early effects of changes such as responsabilisation and its manifestations, for example, bringing more children into the

juvenile justice system), target setting (for example for the number of Offences Brought to Justice (OBJT) and a harsher breach policy with reduced discretion, appears to have had a negative impact on girls, bringing more girls into the juvenile justice system. The rate of proven offences increased among girls between 2002 and 2006, whereas for boys, the rate held fairly stable and began to decline in 2005, thereafter paralleling the decline in female rates that begins in 2006<sup>7</sup>.

These fairly small differences across gender produce the female-to-male rate ratio, or gender gap, displayed in Figure 2. During this period girls' proven offences were about 19% as high as the male rate in 2002. They then rose to about 29% of the male rate by 2009. Following this time, they declined and were at about 21% of the male rate by 2017. The increase in the gender rate ratio, or narrowing of the gender gap before 2009 is accounted for by an increased rate of female proven offences during this time period while male rates were stable and then slightly declining. After 2009, the gender gap is more similar to the 2002 levels.

A large part of the decline in the female rate of proven offences is related to theft, and we ask what happened to impact theft so much that it created such a profound drop in the gender rate ratio? Figure 3, shows the much steeper drop in female proven offences for theft than the corresponding male decline, and we have been unable to find any academic sources to account for this. The accounts regarding males and car crime (for example, Farrell et al, 2019) do not provide an explanation. [Other accounts considering policy and practice changes and a reduction in targets set for Offences Brought to Justice \(OBJT: 2008; see for example, Sutherland et al 2017\) around 2008-9 have not considered girls in particular. However, as girls offending is usually found to be less serious, these changes](#)

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<sup>7</sup> The decline in boys' proven offences between 2006 and 2017 was 89%, which is only slightly smaller overall than the drop in proven offences against girls (92%).

may have contributed to lower numbers of girls being brought into the system.

Nonetheless, our data shows after 2007 girls overall rate declined, but relative to boys increased until 2009. If practice changed ahead of the policy change, as Sutherland et al (2017) noted regarding OBJT, then this did not impact girls to the extent that subsequent small policy and practice changes introduced during 2008 and 2009 appear to have done. This is an area that could benefit from further exploration.

Interestingly, the gender difference in the declines in custody for violence is more pronounced than is the case for proven offences for violence against others (compare, for example, Figure 8 above with Figure 14). Given that violence against the person accounts for a substantial proportion of all girls incarcerated in 2011 and especially in 2017 (almost 7 in 10), these gendered patterns of custody for violence are clearly an important part of the story regarding the gender gap in overall custody. During this period there is a shift in the offence for which a girl comes into the system or goes to custody – this changes from a large proportion of theft to violence and remains there. 68% of girls in custody are incarcerated for an offence of violence.

In their study in 2009, X and X highlighted changes regarding girls in the juvenile justice system; with policy bringing girls in for low-level offending and breach of orders and noted a changing pattern with rising convictions for violence. From their access to more detailed individual level records they argued at that time that girls convicted of violent offences in particular, appeared to have little ‘wrong’ in their lives according to the assessments undertaken of them, other than they found themselves in conflict with other girls. They argued it would be preferable to divert them from the juvenile justice system, because their offending was at a low level of seriousness. Other commentators writing in different jurisdictions but witnessing similar patterns of girls with low-level violent

offending being brought into the system have subsequently made similar arguments (see for example, Sherman 2012; Sherman and Balck 2015).

Baumer et al (2018:55) commenting on USA data say, the data “...are limited in their capacity to assess the role of the mechanisms that may account for ... trends.” And we would suggest this is the case here. Girls came into the system less for offences of violence against the person after 2007/8, but the drop off was not as significant as for other offences and the gender gap for the offence of violence remained reasonably flat. Further, in 2011, 42% of incarcerated girls were convicted of violence against the person compared to 68% by 2017 and yet we know this is a lower rate of custody than boys’ rates. It may be that we would understand this crime trend pattern better if we had more integrated information about offences (see Baumer et al 2018:56 and Sherman and Balck, 2015). Girls continued conviction and detention for offences of violence after 2007 (when all other categories fall significantly) leave us asking whether there has been a ‘real’ rise in girls’ use of violence leading to prosecution and conviction; or whether there is simply less tolerance of girls’ use of violence than previously (see discussions by Carrington 2013). What remains unclear, is why the pattern for offences of violence would be different for girls, than for all of the other offence groups and thus why the gender gap for the offence of violence has remained reasonably flat.

Our data indicates juvenile justice policy had gendered effects that were not given proper consideration. There was a significant number of children brought into the system during this period and then subsequent falls<sup>8</sup>. In England and Wales girls accounted for a rising proportion of children with a proven offence in the juvenile justice system 2002-7, peaking in 2006. After 2007 their overall rate declined, but relative to boys increased until

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2009. The systemic changes, therefore, brought an increasing number of children into the juvenile justice system for low-level offending and for the first time (Sutherland et al 2017:34).

Calls for policy changes regarding breach (Barnados and PRT 2011) focused on, and impacted boys most after 2012. But this missed the changes in policy in 2008, of prosecuting after *two* missed appointments or infringements, rather than just *one*. And it was this 2008 change that appears to have ameliorated girls' breach rates. This change appeared to have gone unnoticed by commentators and because we were unable to trace policy documentation that provided a context for our findings of change beginning around 2008 we began a dialogue with the Ministry of Justice. They traced policy changes showing that in 2008 Schedule 2 of the CJIA replaced Schedule 8 of the CJA 2003. These changes were reflected in the 2009 National Standards for Youth Justice (replacing the 2004 National Standards). Previously under paragraph 5(1) of Schedule 8 of the CJA 2003, the officer responsible for monitoring compliance with orders had a duty to give a warning if the child failed to comply with the requirements of a community order, unless they had already given another warning in the last 12 months, in which case the responsible officer was to refer to an enforcement officer to commence breach proceedings. With the introduction of YROs, under para. 4(1) of Schedule 2 of the CJIA 2008 and the 'custody and resettlement: section 7 case management guidance' (in conjunction with the 2019 National Standards), the responsible officer may now give 2 warnings for "less serious" breaches before instigating formal proceedings,<sup>9</sup> or may commence proceedings without warning if the breach is considered to be "serious".

Our findings suggest it is this apparently minor change in policy, allowing *two* warnings to be given for *less serious* breaches that impacted the number of girls (and boys)

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<sup>9</sup> Emphasis added

in the juvenile justice system in England and Wales. Importantly, as Chesney Lind (2006) and Sherman (2012) have argued, minor procedural and policy changes may impact female experience within criminal and juvenile justice systems to a significant extent.

## Conclusion

Discretionary and policy effects appear in our findings to have impacted girls and boys differentially. Some have suggested ‘*the more limited, less serious, nature of girls’ criminality (as well as the persistence of sexist attitudes)*’ (Bateman 2011:14) was impacted by, and particularly susceptible to, the effects of policy driven target setting for the police. However, the gendered effects for girls went beyond the discretion exercised by police. Our findings highlight that the removal of informal discretion and the responsabilisation of non-conforming or delinquent behaviour, **had relatively far-ranging impact across the juvenile justice system and included sentencing and the use of custody for children.**

The policy of responsabilisation, of holding children to account for low-level, delinquent or transgressive behaviour from the late 1990’s to mid- 2000s, brought more girls into the juvenile justice system as first time entrants<sup>10</sup>. As Carrington (2013) notes, much discussion to date about girls’ offending has focused on either/or:

*“A key issue in this debate is whether statistical increases in female offences are generated by less serious offences being brought into the system or changes in policy and policing that disproportionately impact upon girls”.* (2013:4)

Our findings suggest that for girls between 2000-2008 in England and Wales it was not either/or, but the combination that drove up girls’ rates of involvement in the juvenile justice system and custody relative to boys. Responsibilisation and net-widening (holding

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<sup>10</sup> National Statistics and MOJ (2018:6) report on adult women notes that in 2017, a greater proportion of female offenders were first time offenders (females 34% and males 21%).

children accountable for their behaviour and charging them with a criminal offence) *and* discretion (with regard to judging compliance) had a particular and gendered impact on girls.

The relationship between gender and crime is one which has been explored with a focus on pathways into offending behaviour (Chesney Lind 1989; X and X 2009; Carrington 2013), differential effects of parenting (Nilsson 2017; X and X 1999) other risks (Scott and Brown 2018), or differential effects of adjudication, administration or sentencing (Baumer et al 2018; Evangelist et al 2017; [Sherman and Balck 2015](#); X, X and X 2009; Chesney Lind 1989). Our study shows differential patterns for girls relative to boys both with regard to proven offences and custodial rates during the period 2002-2017 in England and Wales.

The drive to bring children to justice appears to have affected girls more than boys as the rate of girls' proven offences increased from 2002 through 2006 and 2007, at a time when boys' rates of proven offences were stable or declining (Figure 1), consistent with an earlier trend noted by X and X (2009). Although girls' rates are lower than boys' rates, the increase and slower decline of female rates before 2009 produced an increasing gender rate ratio of proven offences from 2002 through 2009 (see Figure 2). This means that the "gender gap" in proven offences was narrowing during this time. After this time, girls' rates of system interaction through proven offences began to fall more quickly than boys rates, producing the drop in the gender rate ratio after 2009 (Figure 2), which indicates that the gender gap became larger, with females benefiting more than males, after 2009.

The period of harshness in the early 2000s affected girls more strongly than boys. This was followed by a period of greater discretion that also seems to have impacted girls somewhat more than it impacted boys. This suggests that shifts in juvenile justice policy – regardless of direction - may have greater impacts on girls than boys.

More specifically, once in the system, we see both girls' and boys' rates of custody fluctuated from about 2002 until they began a long-term decline in 2008 for girls, and in 2009 for boys (See Figure 11). The drop for girls was even greater than for boys, producing a consistently declining gender rate ratio after 2008 (Figure 12), which indicates an increasing gender gap. Again, the use of breach differs interestingly across gender. Custody for breach decreases quite dramatically between 2012 and 2014 for both boys and girls, and then declines more slowly to what may be historically low rates after 2014 (Figure 17). Again, the rate of decline is even more precipitous for females than males, especially after 2015 (Figure 18), driven by the drop in rates of custody for breach to near zero for girls 2017 (see female line, Figure 17). Once breach protocols are relaxed in 2008 and breach is used less, girls benefit more thereafter.

The findings indicate support for Jackson & Tinkler's (2007: 262) argument that compliant behaviour is judged by a complex set of social messages. The period of responsabilisation in England and Wales 2002-2008, negatively impacted girls and boys, bringing girls into the system in greater numbers. When a less stringent approach is taken (for example in the minor administrative changes in 2008), girls are impacted more and benefit more. We cannot explain that, except to note that girls offending is commonly less serious, perhaps allowing for more discretion or leniency to be applied, for example regarding sentencing and offences of violence; and secondly that perhaps this was also true of non-compliance which led to breach. Moving forward, this could be usefully examined by an exploration of juvenile justice files that would show the nature of the offence, the type of sentence applied and the reasoning for it and the nature of any non-compliance. [Sherman \(2012:1619\) in a series of papers examining the administration of justice in the USA and its gendered impacts has argued:](#)

‘Gender bias for girls in juvenile justice systems occurs in small and hidden ways every day. Well-meaning decision makers act to protect girls, or act out of frustration at girls’ misbehavior, and in doing so push girls deeper into the system through mechanisms such as aggressive enforcement of warrants and violations of probation. System policies allow, and in some cases reinforce, these decisions so that girls with minor offences and technical violations are driven deeper into the justice system. This occurs routinely, making data analysis of cases over time essential for jurisdictions to see the patterns in their actions.’

Sherman (2012) seeks to describe effects within the juvenile justice system in the USA that inadvertently impact girls who are brought into the system by administrative and policy changes. Her studies show the levers of those changes are different, but what is remarkably similar is the gendered impact of responsabilisation, net-widening, mandatory responses to low-level delinquency, and the harsh penalisation of non-compliance and probation violations. Research in a variety of jurisdictions targeted on unpicking the detail of administrative system change and the way it impacts, is therefore important for the future. It will enable a better understanding of how, and where, gendered decision-making applies and where gendered effects occur.<sup>11</sup>

In this paper, our findings indicate that although it may often be assumed that policy impacts the smaller group (here, girls) in the same way as the larger group (here, boys) (Estrada et al 2016), this was not the case in 2002-17 in England and Wales. This suggests that juvenile justice policy should take account of differential effects on smaller and minority populations.

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<sup>11</sup> We have a separate paper detailing the disproportional effects for Black and Minority Ethnic boys and girls during this period.

## **Declaration of Interest**

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