



# Women and the Criminal Justice System

*Failing Victims  
and Offenders?*

Edited by  
Emma Milne,  
Karen Brennan,  
Nigel South and  
Jackie Turton



## Women and the Criminal Justice System

“Just over ten years ago the Corston report highlighted that the prison system was largely designed by men for men. The papers included in this volume reflect on women’s experiences in the criminal justice system: they consider what has, or has not, been achieved in the period since Corston, the current state of play, and what we need to think about in terms of future strategies. Its focus is on women’s involvement in the criminal justice system as a whole, rather than being simply characterized as ‘victims’ or ‘offenders’. Written by both leading experts and those relatively new to the field, it provides a timely and refreshing perspective that will be of great interest to academics and policy makers alike. The insights contained in each of the papers underscore the need for women’s experiences to be at the centre of debates on crime and criminal justice policy.”

—Jayne Mooney, *John Jay College of Criminal Justice, USA*

Emma Milne · Karen Brennan · Nigel South  
Jackie Turton  
Editors

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*We would like to dedicate this book to the professionals, volunteers and academics who work to improve the experiences of women as they come in contact with the criminal justice system.*

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# Contents

- 1 Women and the Criminal Justice System—Moving Beyond the Silo** 1  
*Karen Brennan, Emma Milne, Nigel South and Jackie Turton*
- Part I Women as Victims and Offenders**
- 2 Rape Myths in the Criminal Justice System** 15  
*J. M. Gray and M. A. H. Horvath*
- 3 False Allegations of Sexual Violence: The Reality** 43  
*Charlotte Triggs OBE*
- 4 Domestic Abuse: Predicting, Assessing and Responding to Risk in the Criminal Justice System and Beyond** 67  
*Aviah Sarah Day, Angela Jenner and Ruth Weir*

<b>5</b>	<b>Criminalising Neonaticide: Reflections on Law and Practice in England and Wales</b>	<b>95</b>
	<i>Karen Brennan and Emma Milne</i>	
<b>6</b>	<b>Understanding Violent Women</b>	<b>119</b>
	<i>Emma Milne and Jackie Turton</i>	
 <b>Part II The Criminal Justice System: Failing or Improving?</b>		
<b>7</b>	<b>Sentencing Women in the Transformed Probation Landscape</b>	<b>143</b>
	<i>Gemma Birkett</i>	
<b>8</b>	<b>Why Training Is Not Improving the Police Response to Sexual Violence Against Women: A Glimpse into the ‘Black Box’ of Police Training</b>	<b>167</b>
	<i>Elizabeth A. Stanko OBE and Katrin Hohl</i>	
<b>9</b>	<b>Why Focus on Reducing Women’s Imprisonment?</b>	<b>187</b>
	<i>Jenny Earle</i>	
<b>10</b>	<b>Women, Crime and Criminal Justice: Tales of Two Cities</b>	<b>221</b>
	<i>Loraine Gelsthorpe</i>	
	<b>Erratum to: Women and the Criminal Justice System</b>	<b>E1</b>
	<b>Index</b>	<b>245</b>



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Jackie has recently been working with a multidisciplinary team developing an evaluation strategy for community projects set up to support women (often victims themselves) who have "repeat losses to care"—children removed because of child protection concerns. Her recent co-authored publications detail the problems and difficulties for this set of women and the issues for evaluating small feminist-led community initiatives. She took on the role of Deputy Dean (Education) for the Faculty of Social Sciences at Essex in August 2016.

## Contributors

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# List of Tables

Table 5.1	Estimated number occurrence of neonaticide 2002/2003 to 2015/2016	98
Table 9.1	Cost-benefit calculation for investing in women's centres. <i>Source</i> Women-centred working: Taking forward women-centred solutions (Carroll 2016, p. 17)	209



# 1

## Women and the Criminal Justice System—Moving Beyond the Silo

Karen Brennan, Emma Milne,  
Nigel South and Jackie Turton

The experience of women as offenders and victims is different to that of men and their interactions with the criminal justice system are shaped by their gender. Gender is not the only factor impacting individual experiences but women's involvement with criminal justice is

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quantitatively and qualitatively different to that of men. In the first instance, women tend to commit less crime than men. According to Ministry of Justice statistics, in 2012/2013 only 15% of people arrested in England and Wales were women, and women made up only 5% of the prison population (Ministry of Justice 2014). Secondly, the offending profile for women is distinct from men's as they commonly commit a different range of offences. They commit more acquisitive crime and they are less involved in serious violence, criminal damage or professional crime (Gelsthorpe and Wright 2015). Finally, evidence suggests that the motivation for crimes committed by women is often different to their male counterparts, furthermore punishment, particularly penal punishment has a disproportionate adverse effect on female offenders (Scruton and Moore 2004). The end result of all these factors is a small number of offenders who are female and are pushed into a mechanism for punishment that was designed for and is dominated by men—the modern prison estate.

These issues and concerns were highlighted by the Corston Report (2007, p. 2) which noted that the prison system is 'largely designed by men for men' suggesting that women have been marginalised within it. As such, prison can be disproportionately harsh for women. Corston concluded that a distinct approach was needed and that, in contrast to the view that 'equal' must mean 'the same' for all people regardless of gender, in the context of the prison, equal treatment for women requires a different focus. Unfortunately, the impact of the Corston Report has been seen by many to be limited. A number of academics and professionals working with women in the field have been critical of responses by the criminal justice system to female offenders over the last ten years (Annison et al. 2015; Birkett, this volume; Earle, this volume). Although the problems surrounding the fate of female offenders have received some political focus—for example, in February 2016 the then Prime Minister, David Cameron (2016) indicated in his speech on prisons that there was 'a strong case' for women with small children to be diverted from prison—the political focus on crime and offenders has diminished significantly since the vote on Brexit in June 2016. For women, the political rhetoric has failed to translate into effective measures (for further discussion see Earle in this volume).



In cases where women are victims of violence, they are far more likely than men to have been attacked by a person with whom they are intimately acquainted. Domestic abuse, including emotional violence, continues to feature in the lives of too many women. Women are twice as likely to be a victim of domestic violence than men. In the year ending March 2016, 7.7% of women, equating to 1.3 million individuals experienced this form of violence, compared to 4.4% of men (CSEW 2017). This paints a bleak picture for the experience of women. On average in England and Wales, two women a week are killed by a violent partner or ex-partner. This constitutes nearly 40% of all female homicide victims (Povey 2015; Wykes and Welsh 2008). When considering women's lives as a whole, rather than just an experience over the last year, 27.1% of women and 13.2% of men have experienced domestic abuse since the age of 16 (CSEW 2016). These numbers illustrate that the experience of violence is very clearly gendered—men are likely to be attacked by a person they do not know, while women are at threat from men with whom they are acquainted, often intimately. A similar pattern of victimisation can be identified in sexual crime more generally; 3.2% of women have experienced sexual assault, compared to 0.7% of men. When considering this figure, we must acknowledge that intimate partner violence and abuse may include sexual violence. Recent research and media revelations have confirmed the pervasiveness of sexual harassment and assault within the workplace and on the street, as illustrated in the social media campaign #MeToo, launched at the end of 2017 (Khomami 2017). The recent study by Walby and Allen (2004) concluded that 45% of women have experienced some form of domestic violence, sexual assault or stalking in their lifetime.

The private and invisible nature of violence against women, including sexual violence, means that these crimes have, in the past, been overlooked. These issues have garnered more attention in recent decades and there have been many efforts to improve protection for victims of domestic and sexual abuse and to produce more effective criminal justice responses. This has included reform of criminal laws and rules of evidence: for example, reform of sexual offences in the Sexual Offences Act 2003, restrictions on the use of sexual history evidence at trial in the Youth Justice and Criminal Evidence Act 1999 and the creation of

a new controlling or coercive behaviour offence in the Serious Crimes Act 2015, as well as changes in policies, procedures and practices in different criminal justice agencies, including the police and the CPS. However, notwithstanding growing awareness of the particular vulnerability and difficulties faced by victims of domestic and sexual violence, and some well-intended efforts to respond to this, problems have stubbornly persisted in investigation, prosecution and criminal justice responses to these crimes. Perhaps what this shows is that the law and the criminal justice system will have limited effect if they work in a silo that does not allow for connection with, and understanding of, wider social and cultural factors, which include patriarchal structures, gender norms, ‘rape myths’ and social inequalities such as the link between gender, poverty and violence (McManus et al. 2016). A more holistic approach is therefore required, in particular, one which takes account of the non-legal factors, particularly those relating to gender, in the criminal justice response to these crimes—crimes which are gendered.

It is hardly surprising then that the subject of ‘women and criminal justice’ has been, and remains, high on the agenda of feminist research, political discussion and the focus of activists within the voluntary sector. However, the different ways in which women may be involved with the criminal justice system are often treated as very distinct, separating women as victims or women as offenders. It is with this consideration in mind that we brought together academics, professionals and activists to consider the current state of research and practice concerning women as victims and offenders. The conference, held in April 2016 at the Royal Statistical Society in London, was entitled *Women and the Criminal Justice System—Past, Present and Future*. It is from the inspiring papers, discussions and motivations for change that this book developed.

This volume attempts to bridge the gap between the ‘woman as victim’ and the ‘woman as offender’ by considering women’s involvement in the criminal justice system as a whole—to move beyond the silos of seeing two distinct groups that can sometimes overlap. Furthermore, it aims to put women at the centre of the debate on crime and punishment. Too often in political discussions, academia and media reports, women’s involvement in the system is marginalised, ignored or lost in the concerns about male crime. Reports such as Corston’s offer evidence

that responses to women involved in the criminal justice system are failing on many levels; therefore, we need to find new ways of addressing these issues. The contributors to this book—academics and professionals working with women—make a powerful case that a focus on women in the criminal justice system needs to be seen as a high priority in terms of research, policy and practice, if we are to ensure justice for women.

This book gathers together some of the leading experts in England and Wales to reflect on what has happened in the past, what is going on right now and what needs to be done in future for women as victims and offenders. The book is separated into two parts, reflecting two of the themes that emerged from the conference, namely the position of women as victims and offenders, recognising that these are often not mutually exclusive experiences, and the question of whether the criminal justice system is failing or improving in the light of some recent developments.

In their chapter *Rape Myths in the Criminal Justice System*, Gray and Horvath explore the role of sexist cultural norms pertaining to sexual violence, in other words ‘rape myths’, in the criminal justice system. These myths lead to a fallacious understanding of sexual violence and affect decisions made at each stage of the criminal process following the reporting of a sexual crime; from decisions made by police officers in investigating an allegation (something which is also touched on in other chapters in this book), though to the jury’s decision at trial. In their chapter, Gray and Horvath provide an introduction to the topic of rape myths, focusing in particular on their role at trial and in juror verdicts. They consider what has been done to try to reduce the use of rape myths in court and to diminish the impact of such stereotypical expectations regarding sexual violence on jurors. They argue that a thorough assessment of current interventions is needed and that efforts to challenge rape myths in the courtroom should continue.

The issue of rape myths and the negative impact they have on criminal justice decision-making is also highlighted by Triggs in her chapter, on *False Allegations of Sexual Violence: The Reality*. The categorisation of a report of rape as being false not only means that the complaint is not pursued (something which is problematic if the police or prosecutors

are incorrect in their conclusion on this because sexual offenders are then not prosecuted) but also because it can result in the prosecution of the complainant for an offence such as Perverting the Course of Justice or Wasting Police Time. Triggs explores recent developments in how the CPS deals with suspected false rape allegations. For example, a case where a vulnerable woman, the victim of domestic abuse, was prosecuted by the CPS when she withdrew a complaint of rape she had made against her husband, resulted in the production of policy guidelines for prosecutors when deciding whether to prosecute someone on the grounds that they have made a false allegation or have withdrawn a complaint they had made. Triggs shows that the idea that women ‘cry rape’ without reason is not supported by statistics and that very few false allegations are made. A recent review by the CPS also highlights that even where a false allegation of sexual offending has been made, the motive is often not malicious but is connected with particular vulnerabilities of the accuser. Triggs also points to the difficulties that arise in relation to identifying a false allegation of sexual offending, something which is compounded by stereotypical views of how ‘real victims’ behave and the absence of a specific offence defining the meaning and scope of a ‘false rape allegation’. Although the CPS has engaged in useful reflection on its approach to suspected false allegations, Triggs highlights the problems that will continue to beset this issue particularly in the context of police investigations.

Moving onto the topic of domestic violence, which is similarly plagued with difficulties in terms of producing effective criminal justice responses that protect victims, Day, Jenner and Weir in their chapter *Domestic Abuse: Predicting, Assessing and Responding to Risk in the Criminal Justice System and Beyond* present findings from three research projects, each of which takes a different approach to this issue. The first study examines the issues of underreporting and predictors of risk. The second focuses on the police response to domestic violence, something which has drawn media attention in recent years when women were killed by their partners/former partners after the police failed to take effective action following reports of current or previous violence. This research draws attention to the gaps in service provision to victims. The final project examines specialist courts and the work of

independent domestic violence advisors. These projects seek to feed into current approaches to tackling domestic violence, and to improve criminal justice responses, examining ways in which professionals within the system might predict, assess and respond to risk in relation to domestic abuse.

In *Criminalising Neonaticide: Reflections on Law and Practice in England and Wales*, Brennan and Milne consider the unusual case where a woman is suspected of killing her newborn baby following a secret pregnancy and birth. This chapter explores what current research tells us about the circumstances and incidence of what has been termed ‘neonaticide’. Following this, the difficulties from a legal perspective, and that arise when seeking to prosecute women for homicide when their babies die after a concealed pregnancy and unassisted birth are considered, particularly, evidential shortcomings which may make it difficult to prove the requirements for criminalisation under English and Welsh homicide laws. There is limited research on current criminal justice practice in these cases, and therefore little is known about the approach taken by the police, prosecutors and the courts in cases involving suspected homicides of newborns. This chapter highlights the complexities of these cases in terms of their circumstances and the vulnerability of women who conceal their pregnancies. The need for further research on the criminal justice responses is highlighted, and the appropriateness of criminalising women and girls in these cases, particularly given their unique circumstances of vulnerability, is questioned.

Milne and Turton, in their chapter *Understanding Violent Women*, consider recent research concerning women’s violence, the public and professional responses to violent women, and how researchers have attempted to understand their behaviour. The chapter focuses on two ‘extreme’ acts of female violence—women who kill and women who sexually abuse children—to explore what we know about female violence and the significance of gender in both the social and legal contexts. The chapter illustrates the importance of understanding women’s acts of violence within the context of their gender, as women who commit violent crimes challenge gender role boundaries in significant ways. Milne and Turton argue for the importance of including gender as a variable in any analysis of violent offending, in addition to an intersectional approach. To negate the experience of gender, the narratives

surrounding women who are violent are either subsumed into male paradigms or become embedded in professional discourse that inevitably leads to the reproduction of the gendered environments.

The second part of the book moves on to explore issues connected with the question of whether the criminal justice system is improving or failing in its response to female offenders and victims. First, considering the impact of government reforms in 2013 to improve outcomes for women offenders, Gemma Birkett, in her chapter *Sentencing Women in the Transformed Probation Landscape*, examines awareness amongst magistrates of the reforms in the Transforming Rehabilitation strategy. Through her interviews with magistrates, Birkett reveals a lack of awareness of the sentencing developments under the Offender Rehabilitation Act 2014, with many magistrates expressing unease when discussing the new legislation as they were unaware of the specific changes it introduced, and only a few had read official documents relating to the Transforming Rehabilitation agenda. Furthermore, few magistrates who participated in the research had knowledge of the gender-specific strategies that were being developed by Community Rehabilitation Companies in their area. Perhaps most worrying, Birkett's research highlights that most magistrates who participated in the research were clear that they did not treat women differently, considering *equal* treatment to mean the *same* treatment. This situation persists despite official guidance to the contrary. Birkett concludes that it is clear that official bodies (including the Ministry of Justice, NOMS, the Judicial Office and the Magistrates' Association) should work to ensure that sentencers are aware of policy developments.

Linked with earlier chapters by Gray and Horvath, and Triggs, which touch on some of the difficulties encountered in responding to sexual violence, in their chapter *Why training is not improving the police response to sexual violence against women: A glimpse into the 'black box' of police training*, Stanko and Hohl look at the specific issue of police responses to complaints of sexual offences and the seemingly intractable issue of the 'justice gap'. Previous research which has highlighted the crucial role the police play in contributing to rates of attrition (which hover at around 6–7%) has emphasised the need for better police training to help address this issue, the idea being that if police officers have a better

and more accurate understanding of the impact of sexual violence on victims, are trained to avoid relying on rape myths, and overall develop a better attitude towards victims, this will improve their decision-making during the investigation stage, leading to fewer cases dropping out of the system. Stanko and Hohl explore the effectiveness of police training to date, aiming to stimulate debate about training and why it has so far been ineffective at improving outcomes. They also reflect on challenges presented by academic and police training collaborations and offer some suggestions on how training might improve decision-making by police officers.

Jenny Earle in her chapter *Why focus on reducing women's imprisonment?* explores the gender-specific factors that lead to women's participation in crime, including the fact that previous victimisation can be a crucial factor in a woman's involvement in criminal offending. She argues that despite the fact that women make up only a very small proportion of the prison population, around five per cent, there must be a specific focus on women's imprisonment. Through the lens of the Prison Reform Trust's national advocacy programme, Earle considers opportunities and barriers to women's justice reform, concluding that women's centres and gender-specific services are the best option for women, and that prison is rarely a necessary, appropriate or proportionate response to women who come into contact with the justice system. Earle calls for the government to put in place the measures necessary to achieve the goal of reducing the number of women imprisoned for relatively minor offences, arguing that it is time for political leadership to follow-through on the rhetoric in support of such policies.

In the final chapter, *Women, Crime and Criminal Justice: Tales of Two Cities*, Gelsthorpe outlines the distance that exists between policy visions relating to women and criminal justice, both positive and optimistic, and the practice, which may offer a gloomier outlook. Criminal justice reforms have often created less noteworthy shadows, in this case, a failure to reduce the number of women within the prison estate, and a higher proportion of women being imprisoned for non-violent offences and for short sentences. Furthermore, there is evidence of police increasingly referring women for formal criminal justice proceedings, rather than referring offending women to Women's Centres on an

informal basis. The tale of gloom is even worse for vulnerable women, such as women who have been trafficked. Gelsthorpe concludes that while women may no longer be ‘correctional afterthoughts’ there is more work to do in ensuring consistency in provision of women’s centres, facilitating proper evaluation of the work within, promoting scrutiny of net-widening potential in initiatives, and promoting the use of imprisonment as a last resort, to name but a few areas requiring further attention.

This collection was drawn together in 2017, ten years after the publication of the Corston Report. As several contributors note, while much has been achieved since then, there are also reasons to be less than cheerful about whether Corston has had enduring impact. Indeed our contributors provide reasons for reflection on whether the system is improving in its preparation for working with women, in its training or its capacity for change. The system needs to challenge wider societal normative expectations and values in order to pursue effective criminal justice reform and better outcomes. It needs to be able to recognise the uniqueness of the experiences of women, adopting the message from Corston—‘equality’ does not require ‘sameness’ of treatment. There is more that could be said. Our hope is that the work of our contributors will encourage others to continue the conversation and debate.

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# **Part I**

## **Women as Victims and Offenders**