

The number of convictions before the imposition of a short sentence of immediate custody: ethnicity and gender differences

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Summary

This Data Insight examines ethnicity and gender differences in the number of non-custodial and suspended sentences a person receives prior to receiving a short sentence of immediate custody. It focuses on short custodial sentences of less than one year. The analysis is based on short custodial sentences given between 1 January 2018 and 31 December 2020. It includes previous convictions from 1 January 2013 to 31 December 2020

What we did

I first linked the Data First magistrates' and Crown Court datasets using the case table from the criminal courts, prisons and probation linking dataset. The resultant combined magistrates' and Crown Court dataset contains all court convictions from 1 January 2013 to 31 December 2020. I then identified the first sentence of immediate custody that a person receives during the time-period covered by the dataset. Next, I counted the number of convictions a person received during the time-period prior to receiving the sentence of immediate custody. These are all non-custodial or suspended sentence orders, so include conditional and unconditional discharges, fines, community orders and suspended sentence orders. In other words, all sentences that are not immediate custody (i.e., they do not result in the person being immediately sent to prison).

Background

Research indicates that people of minority ethnic backgrounds are overrepresented within the criminal justice system in England and Wales. This is particularly the case for people who are Black, who are overrepresented at every stage of the criminal justice process except for caution (Phillips and Bowling, 2017). One recommendation of the Lammy Review, an independent review of ethnic minority groups within the Criminal Justice System, is the need to identify and publish how outcomes differ for people of different backgrounds (Lammy, 2017). The overall aim of this research project is to use the Data First magistrates' and Crown Court datasets to increase understanding of racial disparities within the criminal justice system. The project has been shaped by consultation with the ADR UK User Representation Panel which is made up of representatives of organisations which work with or on behalf of service users. Service users are people who have become involved with the criminal justice system, for example as defendants or as people who have been convicted. One of the members of the panel indicated it would be particularly interesting to examine differences between different groups in the number of non-custodial and suspended sentences a person receives prior to receiving a sentence of immediate custody, particularly where the prison sentence is for a relatively minor offence such as theft. This Data Insight investigates this issue.

I wanted to identify first sentences of immediate custody for less serious offences (i.e., offences that could potentially be dealt with using a community-based sentence instead of immediate custody). To do this in an objective way I based the analysis on sentences of immediate custody of less than one year. The dataset includes only convictions from 1 January 2013 onwards. To include previous convictions over a reasonable time-period I based the analysis only on short sentences of immediate custody given between 1 January 2018 and 31 December 2020. This meant that the dataset included previous convictions over at least a five-year period.

Finally, I compared the number of previous convictions within the datasets that a person has prior to receiving the first short sentence of immediate custody by ethnicity and gender. Ethnicity data is collected by the police. This analysis is based on self-identified ethnicity which is collected during a custody interview. The defendant is asked to identify their own ethnicity from a list of 16 options (Indian, Pakistani, Bangladeshi, Any other Asian Background, Caribbean, African, Any Other Black Background, White and Black Caribbean, White and Black African, White and Asian, Any Other Mixed Background, Chinese, Any Other Ethnic Group, British, Irish and Any Other White Background). Responses are then placed into five broader ethnic groupings (White, Asian, Black, Mixed and Other). The group 'Other' includes people who selected 'Chinese' or 'Any Other Ethnic group' from the list of 16 options. This analysis is based on the broad ethnic groupings because, particularly in relation to women, there are too few people in some groups to break the findings down to more refined ethnic groups.

What we found

The findings presented are simple distributions which do not take account of other factors such as other characteristics of the defendant, type of court and plea type. The latter is known to vary by ethnic group (MOJ, 2019) and to impact on sentence length and type. Offence seriousness has been controlled for to some extent by focusing only on short custodial sentences which can only be used for less serious offences.

The findings are based on 37,898 men and 4,001 women. Figure 1 provides the average number of non-custodial and suspended sentences a person receives prior to obtaining a short custodial sentence broken down by broad ethnic group and by gender. It can be seen for both men and women that people in the White ethnic group on average have more convictions before they receive a short sentence of immediate custody than those in other ethnic groups. The differences are particularly pronounced for women. White women have a mean 4.14 convictions prior to receiving a short sentence of immediate custody compared to 3.69 for women from the mixed ethnic group, 2.84 for Asian women, 2.71 for Black women and 1.27 for women in other ethnic groups. White men have a mean 3.26 convictions prior to receiving a short sentence of immediate custody compared to 3.08 for men from the mixed ethnic group, 3.11 for Black men, 2.62 for Asian men and 1.67 for men in other ethnic groups. Statistical analyses using negative binomial regression indicate that both men and women in the White ethnic group have significantly more previous convictions before receiving a short sentence of immediate custody than those in any other ethnic group except the mixed ethnic group. For both men and women those in the other ethnic group have the fewest convictions before they receive a short custodial sentence.

Figure 1: Number of convictions before a short sentence of immediate custody

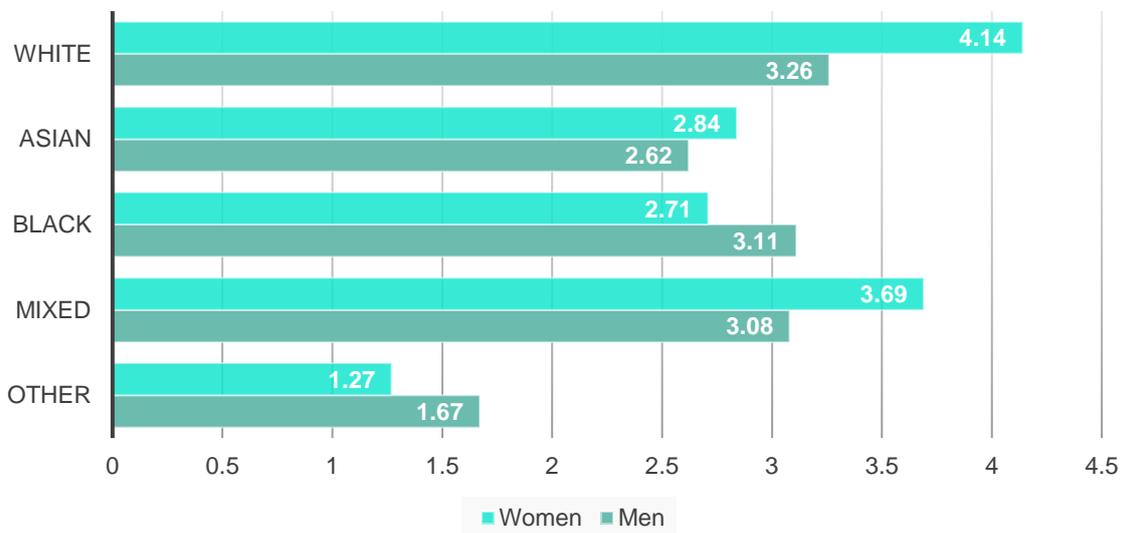


Figure one provides data in relation to broad ethnic groups. This does however mask some differences. For example, within the White ethnic group, White British men have an average 3.57 convictions before receiving a short sentence of immediate custody compared to 1.62 for men of any other White background.

Why it matters

The above findings indicate that people from minority ethnic groups tend to receive a short sentence of immediate custody, as opposed to an alternative sentence such as a community order or suspended sentence order, with fewer previous convictions than those from the White ethnic group. Custody is intended as a last resort. Short prison sentences offer only limited public protection, while providing insufficient time for meaningful rehabilitative activities (MOJ, 2018, p.17). Short custodial sentences have consistently been found to be less effective than community sentences in preventing reconviction (Mews et al 2015; Eaton and Mews 2019, Hamilton, 2021). Short custodial sentences can aggravate vulnerabilities causing disruption to the lives of offenders and their families, and crises in employment, housing and contact with dependents which may increase the risk of further offending and contribute to intergenerational offending (MOJ, 2018).

What next?

A next step is to investigate the role of factors such as guilty pleas. Ethnic minority defendants are less likely to plead guilty compared to white defendants (MOJ, 2019). According to the Lammy Review, a reason for this is a lack of trust in the criminal justice system which makes defendants from ethnic minority groups less likely to cooperate with the police or trust the advice of legal aid solicitors (Lammy, 2017). As incentives are offered for an early guilty plea, pleading not guilty and then subsequently changing your plea or being found guilty in court will increase the severity of your sentence.

Another issue to be investigated is whether there are differences between different ethnic groups and men and women in the length and requirements of community-based orders, whether this impacts on successful completion of those orders and whether ultimately this contributes to different groups receiving a short custodial sentence after fewer non-custodial and suspended sentence orders. It would also be extremely interesting to look at defendants' pathways through the dataset to determine whether there are compounding effects of receiving a sentence of immediate custody with relatively few previous convictions by examining whether this leads to harsher sentencing for any subsequent conviction.

Acknowledgements

This work was produced using administrative data accessed through the ONS Secure Research Service. The use of the ONS data in this work does not imply the endorsement of the ONS or data owners (e.g. MoJ and HM Courts and Tribunals Service) in relation to the interpretation or analysis of the statistical data. This work uses research datasets which may not exactly reproduce National Statistics aggregates. National statistics follow consistent statistical conventions over time and cannot be compared to Data Firstlinked datasets.

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The partnership is coordinated by a UK-wide Strategic Hub, which also promotes the benefits of administrative data research to the public and the wider research community, engages with UK Government to secure access to data, and manages a dedicated research budget.

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