



Analysis of Gender as a Factor associated with Custodial Sentences for Breach of a Court order

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Aim

The aim of this analysis was to investigate whether gender is associated with being sentenced to custody for breach of a court order, independently of offence type, criminal history and other factors.

Approach

This analysis used an extract from the Police National Computer (PNC) recording the sentence (disposal) given to all offenders convicted or cautioned for breach between 1 January 2011 and 31 December 2011 plus their previous criminal history (38,041 offenders)¹. The analysis looks specifically at sentences given for breach of a court order (community order, conditional discharge, and suspended sentence order). Where an offender had more than one breach in 2011, only the first sentence for breach is included in this analysis.

Logistic regression models were built using the PNC data to explore whether any independent associations were observed between main (index) offence type, criminal history, gender, age, nationality, ethnicity, and being sentenced to immediate custody. These models cannot account for all factors which were used in making sentencing decisions: for example there is no record of all aggravating and mitigating circumstances which were taken into account by the sentencing court, including the plea (guilty or not guilty), which is known to affect sentencing (MOJ, 2010). However, this approach shows which factors (out of all factors in the model) were independently associated with being sentenced to prison, and can highlight where further exploration may be warranted.

Results

Of the 38,041 offenders included in the PNC extract, 5,526 were female (15% of the cohort) and 32,515 were male (85% of the cohort). The number and type of court order which was breached is shown in **Table 1**.

Table 1. Type of court order which was breached (first breach only) in England and Wales, 2011.

Breach offence	No.	%
Breach of a community order	22,154	58
Breach of conditional discharge	8,539	22
Breach of suspended sentence order	7,348	19
Total	38,041	100

Totals may not add up to 100% because of rounding.

¹ The sample was restricted to offenders where the offence that had been breached was the main (index) offence at the time of sentencing.

Table 2 shows the sentences received by these offenders for the breach of a court order, by gender. The most frequent sentence for all offenders was 'other' (42%), followed by 'new court order' (37%), then 'immediate custody' (14%). 'Other' sentences included: order revoked; order varied; bound over; order to continue; order amended; no action on breach; and order extended. This suggests that the most common sentence for breach of a court order was a modification to the original order.

Fourteen per cent of offenders (n= 5,173) received an immediate custodial sentence for breach of the court order. Female offenders were less likely to receive immediate custody following a breach of a court order (9%, n = 497) than male offenders (14%, n = 4,676), although this was not adjusted for the type of index offence, criminal history, or other factors.

Fines, fully suspended sentences, and conditional and absolute discharges made up fewer than 10% of sentences received.

Table 2. Sentences received for breaching a court order, (first breach offence only) in England and Wales, 2011, by gender.

Gender	Female		Male		Total	
	n	%	n	%	N	%
Absolute discharge	2	<0.1	20	0.1	22	0.1
Conditional discharge	60	1.1	193	0.6	253	0.7
Fully suspended	189	3.4	1,043	3.2	1,232	3.2
Fine	225	4.1	1,114	3.4	1,339	3.5
Immediate custody	497	9.0	4,676	14.4	5,173	13.6
Community sentence	2,010	36.4	12,107	37.2	14,117	37.1
Other	2,543	46.0	13,362	41.1	15,905	41.8
Total	5,526	100	32,515	100	38,041	100

Totals may not add up to 100% because of rounding.

Table 3 shows the number and percentage of offenders that received an immediate custodial sentence by the type of court order breached. Offenders on suspended sentences were the most likely to receive a custodial sentence, with over half (54%) of this group being sentenced to custody. Community orders were the least likely to receive an immediate custodial sentence (2.5% were sentenced to custody), followed by offenders who had breached a conditional discharge (7.5% were sentenced to custody).

Table 3. Percentage of offenders sentenced to immediate custody for breach of a court order, (first breach offence only), in England and Wales, 2011 by type of court order breached.

Breach offence	Number sentenced to custody	Total breaching court order	% sentenced to custody
Breach of community order	550	22,154	2.5
Breach of conditional discharge	638	8,539	7.5
Breach of suspended sentence order	3,985	7,348	54.2
Total sentenced to custody	5,173	38,041	13.6

The main (index) offence which resulted in the court order which was then breached is shown in **Table 4**.

Table 4. Main (index) offence committed by those who received a court order and later breached the court order

Index offence²	No.	%
Violence against the person	3,111	8
Sexual offences	166	<1
Burglary	1,936	5
Robbery	258	<1
Theft and handling stolen goods	10,484	28
Fraud and forgery	1,091	3
Criminal damage	557	1
Drug offences	3,522	9
Other indictable ³ offences	2,163	6
Indictable motoring offences	225	<1
Summary offences excluding motoring	12,400	33
Summary motoring offences	2,128	6
Total	38,041	100

Totals may not add up to 100% due to rounding

The most frequently recorded main (index) offence (for which a court order was received and later breached) was Summary offences excluding motoring⁴ (33%), followed by Theft and handling stolen goods (28%). Less than one per cent of offenders who had breached a court order had an index offence for either Sexual offences, Robbery, or Indictable motoring offences.

Offenders breaching a court order were recorded as having an average (median⁵) of 11 previous cautions and convictions each. Female offenders who breached a court order had fewer previous cautions and convictions recorded than male offenders (median of 10 compared with 12).

Logistic regression model

To test for independent associations with being sentenced to custody for breach of a court order, gender, age, ethnicity, previous criminal history, index offence type, breach offence type, and previous breaches were entered together into a logistic regression model⁶ with 'sentenced to immediate custody' (or not) as the outcome. Ethnicity was grouped into two categories (white: 84%⁷ and Black, Asian, or Minority Ethnic (BAME):⁸ 16% of the sample, respectively).

Results from the model are shown in Annex A. A summary follows:

² Offence types are ordered by the standard PNC variable offence class.

³ An indictable offence is a serious offence which can only be tried in the Crown Court (and not a Magistrates' Court).

⁴ A Summary Offence is a less serious offence that is heard in a Magistrates' Court (such as minor criminal damage or being drunk and disorderly).

⁵ Arithmetic mean 18.33 (SD 23.13), min 1.0, max 365.0.

⁶ Area Under the Curve (AUC) for test sample = 0.888 (95% CI: 0.881 - 0.894, p < 0.01).

⁷ n=31,855

⁸ n=6,186

Gender

The odds of male offenders receiving an immediate custodial sentence for breach of a court order were approximately 73% higher than the odds of female offenders receiving the same.

Age

Each increasing year of age was independently associated with a less than 1% decrease in the odds of receiving an immediate custodial sentence for breach of a court order.

Ethnicity

The odds of BAME offenders receiving an immediate custodial sentence for breach of a court order were approximately 39% higher than the odds of White offenders receiving the same.

Previous convictions and cautions

The odds of receiving an immediate custodial sentence for breach of a court order increased by approximately 1% for each previous conviction or caution recorded.

Main (index) offence

The index offence type (which first resulted in a court order) was a predictor of receiving an immediate custodial sentence for breach of a court order, with Theft and handling stolen goods, Burglary, and Robbery most likely to result in a custodial sentence for breach.

Type of court order breached

Type of court order breached was a good predictor of custodial sentence with offenders who breached a suspended sentence order associated with an approximate 50 times higher odds of being sentenced to custody than offenders who breached a community order. Offenders who breached a conditional discharge were associated with approximately three times the odds of being sentenced to custody, compared with offenders who breached a community order.

Previous breaches

Previous breaches were independently associated with receiving a custodial sentence, particularly breaches of the same court order (where the court order was imposed before 2011, the offender may have breached the sentence once or more before the breach offence in 2011 which is included in this study): an approximate 15% higher odds of receiving a custodial sentence was associated with each breach offence. Each breach of previous court orders was associated with an approximate 2% increase in the odds of receiving a custodial sentence.

Summary

Male offenders were more likely to be sentenced to immediate custody for breaching a court order: the odds of male offenders receiving a custodial sentence was 73% higher than for female offenders.

A number of other factors were found to be predictive of custodial sentencing for breach offences: age; ethnicity; criminal history; index (main) offence type; type of court order breached; and number of previous breaches.

The differences in custodial sentencing rates may be due to factors which were not taken into account in the models. Sentencing outcomes may depend on a wide range

of other factors, e.g. family responsibilities, mental health issues, and opportunities for diversion from custody.

Annex A: Logistic regression model: sentenced to immediate custody for breach of a court order.

Logistic regression model (sentenced to custody or not) coefficient (B) standard error (S.E.) significance level, odds ratios (OR)⁹ and 95% confidence intervals (CI). Reference categories are labelled with *(re)*

Factor		B	S.E.	Sig.	OR	95% CI	
						Lower	Upper
Gender	Female (<i>ref</i>)	n/a	n/a	<0.01	n/a	n/a	n/a
	Male	.547	.061	<0.01	1.728	1.533	1.949
Age	Age at index offence	-.007	.002	<0.01	.993	.990	.997
Ethnicity	White (<i>ref</i>)	n/a	n/a	<0.01	n/a	n/a	n/a
	BAME	.332	.049	<0.01	1.393	1.266	1.534
Previous convictions and cautions	Number of previous convictions or cautions	.008	.001	<0.01	1.008	1.006	1.010
Index offence (which resulted in a court order, which was later breached)	Violence against the person (<i>ref</i>)	n/a	n/a	<0.01	n/a	n/a	n/a
	Sexual offences	-.246	.296	.406	.782	.438	1.397
	Burglary	.542	.092	<0.01	1.719	1.436	2.058
	Robbery	.488	.212	.022	1.628	1.074	2.468
	Theft and handling stolen goods	.668	.070	<0.01	1.951	1.701	2.239
	Fraud and forgery	.250	.129	.052	1.284	.998	1.653
	Criminal damage	.195	.183	.289	1.215	.848	1.741
	Drug offences	-.238	.089	.007	.788	.662	.938
	Other indictable offences	-.073	.096	.447	.929	.769	1.123
	Indictable motoring offences	-.080	.191	.674	.923	.634	1.343
	Summary offences excluding motoring	.000	.069	.995	1.000	.874	1.145
Summary motoring offences	.121	.098	.214	1.129	.932	1.367	
Type of breach offence	Breach of a community order (<i>ref</i>)	n/a	n/a	<0.01	n/a	n/a	n/a
	Breach of a conditional discharge	1.149	.062	<0.01	3.154	2.791	3.564
	Breach of a suspended sentence order	3.881	.052	<0.01	48.473	43.804	53.640
Previous breaches	Number of breaches since index offence	.139	.028	<0.01	1.149	1.087	1.215
	Number of breaches before the index offence	.021	.006	<0.01	1.021	1.010	1.033
(Constant)	n/a	-4.543	.107	<0.01	.011	n/a	n/a

⁹ The odds ratio can be interpreted as the independent association of each factor in the model with the outcome (sentenced to immediate custody), whilst controlling for all other factors in the model. A significance level of less than 0.05 shows whether the factor was significantly associated with immediate custody (compared with the absence of the factor, or with the reference category). An odds ratio greater than one (1.0), for those factors which were significantly associated with immediate custody, demonstrates an independent association with increased odds of immediate custody, and an odds ratio less than one demonstrates an independent association with decreased odds of immediate custody.

