**Call for input to a thematic report: Gender, sexual orientation and gender identity**

**Submission by Keep Prisons Single Sex**

**Introduction:**

This submission is in response to question 3 on data collection, which we will be answering with reference to collecting data on offending in England and Wales. In our opinion the policies and practices relating to data collection in that area mean that the reliability and validity of these data has been seriously and permanently compromised. This has negative implications for service planning and development across all areas of the criminal justice system.

Keep Prisons Single Sex was established in 2020 to campaign for the rights of women in prison to single-sex spaces and services as is their legal entitlement under the Equality Act (2010), Schedule 3, paragraphs 26, 27 & 28 and Schedule 23, paragraph 3. This submission is written by Director, Dr Kate Coleman FRSA.

**The importance of sex-disaggregated data on offending:**

Sex, not gender identity (whether legal recognition of acquired gender has been obtained, or whether this is established on the basis of self-declaration) is recognised throughout the criminal justice system as important to analysing patterns of offending, pathways into offending and risk. This is notwithstanding that gender reassignment is a protected characteristic in the Equality Act (2010).

For example, it is well-established that offending patterns differ on the basis of sex, both for all offences and for individual offence categories. Males and female offend at different rates, with males offending at an increased rate compared to females. Some offence categories, including serious violent and sexual offences, are only very rarely committed by females. Pathways into offending also differ between the sexes. For women, history of male violence and sexual violence, including coercive control, frequently forms a distinct pathway into offending, which is not seen for male offenders, when considered as a group. Indeed, it is recognised within the criminal justice system that female offenders are frequently the victims of more serious crimes that those they are charged with. This is notwithstanding that male offenders may also have been victims of abuse and that this may be bound up with their offending. Within the prison system, it is acknowledged that female offenders present a lower risk than males do, and this is reflected in the security arrangements in place for male and female prison estates. This is notwithstanding that the risk females present, both to prison officers and to each other, is not zero and that male prisoners may also be vulnerable within the male estate.

When analysing offending, the causes of offending and risk sex-disaggregated data is required.

See e.g. MoJ, Statistics on Women and the Criminal Justice System, 2015; MoJ, Managing Vulnerability: Women Fact Pack, June 2018; MoJ, Female Offender Strategy, June 2018.

**Data collection on crime and offending:**

Despite the established and recognised importance of sex as a key variable in analysing patterns of offending and the causes of offending, data are often collected on the basis of gender identity, not sex.

For example, Fair Play for Women, a UK-based group that campaigns for the sex-based rights of women, submitted Freedom of Information Access requests to 46 regional police forces and five national services asking how suspects’ sex is recorded when a crime is reported. Sixteen regional forces stated that suspects’ sex is recorded on the basis of self-identified gender identity, not sex. This reflects the National Police Chiefs Council guidelines that recommend using people’s self-identified gender, rather than sex in record keeping and data collection. There was no separate field enabling transgender status to be recorded.

https://fairplayforwomen.com/police\_record\_males\_as\_female/

What this means is that it is impossible to correctly analyse changes in rates of reported crime. Where offence categories are only very rarely committed by females, any increase in the rates of female offending for these categories may be remarkable and significant, requiring further analysis and attention. However, where reported crime uses suspects’ self-declared gender identity to record sex, we cannot conclude that apparent rise in female rates of offending is indeed due to increased numbers of females committing these offences. The change may instead be due to increased numbers of males being recorded in the female statistics on the basis of their self-declared gender identity. We simply cannot tell, and there is no way to arrive at an accurate picture of what is ‘really’ going on by appeal to the data. The data have been permanently rendered unreliable.

An example of an apparent and dramatic increase in female offending was reported by the BBC in January 2021. The BBC asked 45 regional police forces in the United Kingdom for data on reported cases of female-perpetrated child sexual abuse from 2015 to 2019. The data received indicated that between 2015 and 2019 there was an increase of 84%. This is a marked increase, which deserves more in depth analysis. However, the FOIA requests submitted by Fair Play for Women revealed that at least some police forces record self-declared gender identity, not sex. What this means is that we do not know to what extent this large increase of 84% is due to more women being reported for child sexual offences, or more males who are reported for child sexual offences being recorded in the female statistics on the basis of self-declared gender identity.

https://www.bbc.co.uk/news/uk-55338745

We also know that convictions may not be recorded by sex. Thus on the basis of gender identity, male crime may be recorded in the female statistics as having been committed by a woman. An example is that of Claire/Christopher Darbyshire who was convicted of murder in 2016 at the Old Bailey. The record for this conviction records the name as Claire Ann Lin Darbyshire and gender as female. (Note that there is no separate ‘sex’ data field.) This can be identified as a male conviction recorded as female on the basis of gender identity because the case was widely reported in the British press and, obfuscatory language notwithstanding, it was obvious that this individual was of the male sex. A second example is that of Lauren Jeska/Michael Jameson who was convicted of attempted murder (and other offences) at Birmingham Crown Court in 2017. The record of this conviction shows recorded name as Lauren Jeska and gender as female. Again, it is only possible to ascertain that this is a conviction for a person the male sex because the case was reported in the press.

https://www.keep-prisons-single-sex.org.uk/lauren-jeska-and-claire-darbyshire

The impact of these two convictions on the female statistics is not inconsiderable. In the case of Darbyshire, recording this conviction as female falsely elevated the number of females convicted of murder in that year by 5%. When we look at Jeska/Jameson, the number of females convicted of attempted murder was falsely elevated by around 20%. This clearly demonstrates that for offence categories which women rarely commit, even the addition of one or two males can have a significant impact on the numbers.

Thus it is now impossible to ascertain the true number of convictions for females. Even appeal to the records on a case by case basis will not reveal the actual sex of the individual convicted: Darbyshire and Jeska/Jameson could only be identified as being of the male sex due to media reports. However the majority of crimes and convictions, even serious ones, do not reach the press. The *reductio ad absurdum* is that it is impossible to truthfully state for any individual recorded conviction whether this relates to a male or a female.

**Conclusions & recommendations:**

Sex is acknowledged as an important variable in the analysis of data on crime and offending. Unless these data are collected on the basis of the sex of offenders, proper analysis of these data is impossible and a proportionate response in terms of service development and equitable resource allocation remains unachievable. This is in no one’s interests.

We believe that there is good argument to record transgender status alongside side, both for offender and victim. This will enable collection of data on offending patterns according to gender identity, as distinct from sex. In all cases, more specificity and clarity is needed, not less.

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