

Gendered Justice: Women in the Criminal Justice System

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in

Gendered Justice: Addressing Female Offenders

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Introduction

In recent decades, the number of women under criminal justice supervision has increased dramatically. In 1990, there were approximately 600,000 women in prisons or jails, on probation, or on parole in the United States; in 2000, the figure had risen to more than one million women. Although the rate of incarceration for women continues to be far lower than the rate for men (58 of 100,000 women versus 896 of 100,000 men), the number of women imprisoned in the United States since 1980 has increased at a rate nearly double the rate for men. Nationally, the number of women in state and federal prisons increased nearly eightfold between 1980 and 2001, from 12,300 to 93,031 (Bureau of Justice Statistics, 2002; National Institute of Justice, 1998).

Despite these figures, there does not appear to be a corresponding increase in women's criminality. In 1998, nearly two-thirds of women in state prisons were serving sentences for nonviolent offenses (Bureau of Justice Statistics, 1999). Women are arrested and incarcerated primarily for property and drug offenses, with drug offenses representing the largest source of the increase (36%) in the number of women prisoners in 1998. Interestingly, the proportion of women imprisoned for violent crimes has continued to decrease. The rate at which women commit murder has been declining since 1980, and the per capita rate of murders committed by women in 1998 was the lowest recorded since 1976. Of the women in state prisons in 1998, 28 percent had been incarcerated for a violent offense (Bureau of Justice Statistics, 1999). Many of the violent crimes committed by women are against a spouse, ex-spouse, or partner, and the women committing such crimes are likely to report having been physically and/or sexually abused, often by the person they assaulted.

The increased incarceration of women appears to be the outcome of larger forces that have shaped U.S. crime policy. These include the war on drugs; the shift in legal and academic realms toward a view of lawbreaking as individual pathology, ignoring the

structural and social causes of crime; government policies that prescribe simplistic, punitive enforcement responses to complex social problems; federal and state mandatory sentencing laws; and the public's fear of crime even though crime in the United States has been declining for nearly a decade.

Although there is agreement among criminal justice professionals that few women pose a risk to public safety, current sentencing models assume that everyone charged with or convicted of a crime poses such a risk. Current sentencing laws are based on male characteristics and male crime and thus fail to take into account the reality of women's lives, characteristics, responsibilities, and roles in crime.

Until recently, criminological theory and research focused on explaining male criminality, with males seen as the normal subjects of criminology. Historically, theories of female criminality have ranged from biological to psychological and from economic to social. Two approaches may be observed in the literature. In the first, theorists have attempted to explain female criminality individually, without recourse to theories of male criminality. Unfortunately, many such theorists employ assumptions about the female psyche that are blatantly sexist and without empirical support.

The second approach applies traditional theories, developed to explain male criminality, to women. This creates the "generalizability problem" (see Daly and Chesney-Lind, 1988). In addressing this problem, criminologists have tested theories derived from all-male samples to see whether these also apply to girls and women (Cernkovich & Giordano, 1979; Datesman & Scarpitti, 1980; Warren, 1981; Zietz, 1981). Others have borrowed from existing theories (e.g., Moyer, 1985, on conflict theory) or have recast the logic of a theory altogether (e.g., Schur, 1984, on labeling).

Many feminists have described the extent to which science has been tainted by characteristically male approaches to social reality. As Cain (1990) explains, "[W]omen and girls exist as other: that is to say, they exist only in their difference from the male, the normal." The results of such critiques are increased attention to women and girls in criminological theory and research, and a re-analysis of basic assumptions, research interests, and theoretical frameworks. This re-analysis goes beyond just "adding women and stirring" in the empirical study of law and legal institutions, and it is not simply a matter of focusing on "women's issues." The re-analysis is a far more encompassing enterprise that raises questions about gender and about the disciplines of criminology and sociolegal studies. Recent research has contributed to our understanding of women's lives in ways that constitute far more than simple contrasts between the lives of women and men.

Is Equal Treatment Fair Treatment?

Numerous feminist writers have demonstrated and documented the patriarchal nature of our society and the variety of ways in which the patriarchal values serve masculine needs (de Beauvoir, 1968; Friedan, 1963; Millett, 1970). In creating appropriate services for women in the criminal justice system, it is critical that we first acknowledge and

understand the importance of gender differences, as well as the gender-related dynamics inherent in any society: “Despite claims to the contrary, masculinist epistemologies are built upon values that promote masculine needs and desires, making all others invisible” (Kaschak, 1992, p. 11). Women are often invisible in the many facets of the correctional system, and this invisibility can act as a form of oppression.

Where sexism is prevalent, one of the gender dynamics frequently found is that something declared genderless or gender neutral is, in fact, male oriented. The same phenomenon occurs in terms of race in a racist society, where the term “race neutral” generally means white (Kivel, 1992). The stark realities of race and gender disparity touch the lives of all women and appear throughout the criminal justice process (Bloom, 1996).

Racial disparity is a factor in the arrests, pretrial treatment, and sentencing of female offenders. Women of color, especially African-Americans, are disproportionately incarcerated in the United States. In 1999, African-American women were nearly eight times more likely to be incarcerated than white women (Bureau of Justice Statistics, 2000a). The rising number of incarcerated women of color is a key factor in the population explosion in women’s prisons.

It is also important for us to understand the distinction between sex differences and gender differences. While sex differences are biologically determined, gender differences are socially constructed: they are assigned by society, and they relate to expected social roles. They are neither innate nor unchangeable. Gender is about the reality of women’s lives and the contexts in which women live (Covington, 2002).

Pollock (1994) asks whether women are receiving more equal treatment in the criminal justice system today than was the case in years past. If equal treatment means equal incarceration, the answer is a definite yes. Many more women offenders are likely to be incarcerated now than at any previous time in U.S. history, and the criminal justice system appears to be more willing to imprison women (Bloom & Chesney-Lind, 2000).

There is continuing debate about whether equality under the law is necessarily good for women (see Chesney-Lind & Pollock-Byrne, 1995; Chesney-Lind & Bloom, 1997). Some argue that the only way to eliminate the discriminatory treatment and oppression that women have experienced in the past is to push for continued equalization under the law -- that is, to champion equal rights amendments and to oppose any legislation that treats men and women differently. This group argues that, although equal treatment may hurt women in the short run, it is the only way to guarantee in the long run that women will ever be treated as equal partners in economic and social realms. MacKinnon (1987) states, “For women to affirm difference, when difference means dominance, as it does with gender, means to affirm the qualities and characteristics of powerlessness” (pp. 38-39). Even those who do not view the experience of women as one of oppression conclude that women are victimized by laws that were created from “concern and affection” and that were designed to protect them (Kirp, Yudof, & Franks, 1986).

The opposing argument maintains that because women are not the same as men, the use of a male standard to measure equality means that women will always lose. Recognition of the different or “special” needs of women is thus called for. This would mean that women and men would receive differential treatment, as long as such treatment did not put women in a more negative position than the absence of such a standard.

Yet another position points out that both the equal treatment and special needs approaches accept the domination of male definitions. For example, equality for women is defined as rights equal to those of males, and differential needs are defined as needs different from those of males. In this position, women are the “other” under the law; the bottom line is a male one (Smart, 1989). Eisenstein (1988) writes, “Difference in this instance is set up as a duality: woman is different from man, and this difference is seen as a deficiency because she is not man” (p. 8).

While these and other scholars are identifying the limitations in law of a model for equal treatment, that model is the basis for sentencing reforms throughout the United States. These “gender-neutral” sentencing reforms aim to reduce sentencing disparity by punishing like crimes in the same way. By emphasizing parity and then utilizing a male standard, we ensure that more women lose their freedom (Daly, 1994).

As a result of prisoners’ rights litigation based on the parity model (see Pollock-Byrne, 1990), women offenders are being swept up in a system that appears to be eager to treat women equally, which actually means *as if they were men*. Since this orientation does not change the role of gender in prison life or corrections, female prisoners receive the worst of both worlds.

For example, boot camps have become popular as alternatives to prison for juvenile and adult offenders. New York State operates a boot camp for women that is modeled on boot camps for men, including the use of uniforms, shorn hair, humiliation for disrespect of staff, and other militaristic approaches. Chain gangs for women have also become acceptable, as is the case in Maricopa County, Arizona (Atwood, 2000).

As mentioned, the current model of justice -- called the “equalization” approach -- emphasizes parity and then utilizes a male standard. Therefore, increased incarceration of women takes the place of alternatives to prison (Daly 1994). “Gender-blind” mandatory sentencing statutes, particularly for drug law violations, contribute to the rising numbers of women in prison. This is what Lahey (1985) calls “equality with a vengeance.” Under the male model of justice, the ideal may be fair treatment. However, as Heidensohn (1986) points out, equal treatment may not be fair treatment, since the social reality is that women may have different economic needs, may have been victimized, and may in other ways be in different situations than male defendants.

“Doing Time”: Women’s Experiences in the Criminal Justice System

Gender makes a difference in terms of the impact of standard correctional procedures.

There are numerous areas in which day-to-day practice in the criminal justice system ignores behavioral and situational differences between female and male offenders. The pages that follow present examples of women's gendered experience in the correctional system.

Bail

The original concept regarding bail was to provide public protection. Nevertheless, women who commit less serious crimes still have to post bail in order to stay out of jail. The task of making bail is different for men and women. Most female offenders are poor, undereducated, and unskilled, with sporadic employment histories. A survey of female jail inmates in the United States found that nearly two-thirds were unemployed when arrested, while fewer than one-third of male inmates were unemployed (Collins & Collins, 1996). Women become disadvantaged due to their overall lower socioeconomic status. Unlike men, few women have partners who might post bail for them.

In a study of female pretrial jail detainees, the majority of subjects were nonviolent offenders who had been jailed because they could not pay bail for misdemeanors (Teplin, Abram, & McClelland, 1996). Another study found that, of the women who had been employed before incarceration, many were on the lower rungs of the economic ladder, with only 37 percent working at a legitimate job. In addition, the U.S. Census Bureau reports that women in the U.S. earn 74 percent of what men earn for similar jobs. For African-American women, the figure is even lower, at 67 percent (U.S. Census Bureau, 1996). When bail is set equally for women and men, it is thus actually more difficult for women to make bail than it is for men.

Sentencing Policies

Mandatory minimum sentencing statutes for drug offenses have significantly increased the numbers of women in state and federal prisons. Women offenders who in past decades would have been given community sanctions are now being sentenced to prison. Between 1995 and 1996, female drug arrests increased by 95 percent, while male drug arrests increased by 55 percent. In 1979, approximately one in every ten women in U.S. prisons was serving a sentence for a drug conviction; in 1999, this figure was approximately one in three (Bureau of Justice Statistics, 2000a).

Inadvertently, the war on drugs became a war on women (Bloom, Chesney-Lind, & Owen, 1994). Nationwide, the number of women incarcerated for drug offenses rose by 888 percent between 1986 and 1996 (Mauer, Potler, & Wolf, 1999). From 1986 to 1995, drug offenses accounted for 91 percent of the increase in the number of women sentenced to prison in New York State, 55 percent in California, and 26 percent in Minnesota. Although the war on drugs has significantly affected the incarceration of all women, African-American women have experienced the greatest increase in the percentage of offenders incarcerated for drug offenses. According to the Sentencing Project, between 1986 and 1991 the population in state prisons for drug offenses increased by 828 percent for African-American women, 328 percent for Latinas, and 241 percent for white women (Mauer & Huling, 1995).

The passage of harsh mandatory minimums for federal crimes, coupled with new sentencing guidelines intended to reduce racial, economic, and other disparities in the sentencing of men, have distinctly disadvantaged women. Twenty years ago, nearly two-thirds of the women convicted of federal felonies were granted probation; in 1991, only 28 percent of women were given straight probation (Raeder, 1993). Female drug couriers can receive federal mandatory sentences ranging from fifteen years to life for their first felony arrests. These gender-neutral sentencing laws fail to recognize the distinction between major players in drug organizations and minor or ancillary players. In sentencing, women are indeed experiencing equal opportunities to their detriment (Merlo & Pollock, 1995).

Studies show that in state prisons, 40 percent of women versus 32 percent of men report drug use at the time of their offenses, while alcohol use was higher among the male inmates (Bureau of Justice Statistics, 1999). Women in prisons used more drugs than men did and used them more frequently (National Institute of Justice, 1998). Women are more likely than men to have committed crimes in order to obtain money to purchase drugs. Although it is commonly assumed that female addicts will most likely engage in prostitution to support their drug habits, it is even more common for these women to be involved in property crimes.

Classification

Valid and equitable classification is critical for women because it impacts decisions regarding programming, housing, work, and the perceptions of staff. The current “gender-neutral” classification systems, based on security and custody, incorrectly label and house women at higher levels than is necessary (Nesbitt, 1994). Actuarial tools are used to classify prisoners in terms of security risks as well as in terms of criminogenic needs. There is confusion both in the literature and in practice between needs and risks. Hannah-Moffat (2000) argues that:

The blending of risk and need creates an interesting paradox. It combines two quite different elements: traditional security concerns, which are generally associated with danger and the prevention of harm to others, and a more recent emphasis on need, which by contrast implies that a prisoner is lacking something and entitled to resources (p. 36). (For further discussion, see Chapter 3 Hannah-Moffat & Shaw in this volume.)

In a national survey of women’s programs in the criminal justice system conducted by Morash and Bynum (1999), respondents mentioned classification, screening, and assessment as critical management problems, noting that these did not provide needed information, were not adapted to women, and were not useful in matching women’s needs for programming. Van Voorhis and Presser (2001) found that gender differences were often ignored:

Although many respondents discussed differences between men and women offenders in terms of needs and risks to institutional and public safety, few states have incorporated these differences in objective classification instruments (p. vi).

Needs often become relabeled risks. Criminogenic needs are defined as problems that influence the chances of recidivism (Hannah-Moffat & Shaw, 2001). Several other factors could replace risk assessment as the organizing principle of inmate classification -- for example, safety, treatment, consistency, fairness, least-restrictive custody, rehabilitation, or reintegration needs. Medical and hospital classification systems provide an alternative model that is focused on acuity and service needs and, that at the same time, is highly concerned with the overall "safety" of the patient (Brennan, 1998).

Programming

Because of the historical lack of services for women, both the U.S. Congress and the courts have mandated that female offenders be given access to services of the same quality and quantity as those provided for males (Collins & Collins, 1996). Litigation involving what are known as "parity cases" has increasingly exposed the lower quality of services available to female offenders. However, parity and fairness do not mean simply providing women with copies of men's programs.

Historically, correctional programming for female offenders has been based on profiles of male criminality or pathways to crime. The research literature on "what works" in terms of correctional treatment tends to continue this male-oriented focus. Programs, policies, and services that focus on the overwhelming number of men in the criminal justice system often fail to identify options that are gender-responsive and culturally responsive in terms of women's needs.

For example, one aspect of the "what works" literature is the focus on cognitive theory and behaviorism. Gendreau, Andrews, Bonta and others in the "Ottawa School" have developed a theory they call the "psychology of criminal conduct" (Andrews, Bonta, and Hoge, 1990). However, an important shift has been taking place in the theory of human psychology. In recent years, there has been a move from cognitive, behaviorist, humanistic, and psychoanalytic psychology, which postulate the individual as primary, to relational psychology (Stacey, 1999). Relational psychology focuses on connections, interdependence, changing patterns, and the understanding that individuals cannot develop outside a web of relationships (Covington, 1998a). In designing programs for women, the core theoretical approach ought not to be the cognitive and rational-emotive approach, as this makes artificial divisions in women's experiences (Kaschak, 1992). This approach also ignores the complexity of human experience and its interrelatedness. (For further discussion, see Chapter 4, Kendall & Pollack).

Over the past twenty years, much knowledge concerning women's services has been gained in the fields of mental health, substance abuse, and trauma treatment. However, this knowledge has yet to be applied in the majority of programs serving women in the criminal justice system. Further, few correctional administrators have a clear understanding of what elements of their current programs promote successful outcomes for women. Most criminal justice professionals who are not familiar with the criteria for female-responsive interventions do not understand the ways in which effective female-responsive services differ from effective services in general (Covington, 1999).

Correctional administrators and program providers need to have gender-responsive curricula and training programs that incorporate this knowledge.

Mother-Child Contact

The Bureau of Justice Statistics (2000b) reports that in 1997, 65 percent of the women in state prisons and 59 percent of the women in federal prisons had minor children. The number of children with a mother in prison nearly doubled between 1991 and 1999 (Bureau of Justice Statistics, 2000b); in 1999, an estimated 126,000 children in the U.S. had a mother in prison. In a 1995 study of female prisoners in California, 80 percent of the respondents were mothers (Owen & Bloom, 1995). The majority were single mothers with an average of two children; prior to their arrests, these women had been the custodial parents (Bloom & Steinhart, 1993; Bureau of Justice Statistics, 2000b).

Separation from children is considered to be among the most damaging aspects of imprisonment for women (Baunach, 1985; Bloom & Steinhart, 1993). The difficulties of separation are exacerbated by a lack of contact. In some cases, the forced separation between parent and child results in permanent termination of the parent-child relationship (Genty, 1995). The 1997 Adoption and Safe Families Act (ASFA) now mandates termination of parental rights once a child has been in foster care for fifteen or more of the preceding twenty-two months; incarcerated women serve an average of eighteen months (Jacobs, 2001).

In a 1993 study *Why Punish the Children? A Reappraisal of the Children of Incarcerated Mothers in America*, 54 percent of children were found to have *never* visited their incarcerated mothers (Bloom & Steinhart, 1993). According to the Bureau of Justice Statistics (2000b), 54 percent of mothers in state prisons reported not having had visits with their children since admission. Geographical distance from the prison and the prisoner's relationship with the child's caregiver are the reasons cited most often for infrequent visits.

Management Strategies

The standard procedures used in correctional settings (e.g., searches, restraints, and isolation) can have profound effects on women with histories of abuse, trauma and mental illness. Female inmates are more than three times as likely as male inmates to report having experienced physical or sexual abuse at some time in their lives. Standard correctional procedures often act as “triggers” to retraumatize women who have post-traumatic stress disorder (PTSD). According to a 1994 study of women in U.S. jails, approximately 22 percent of the women had been diagnosed with PTSD, and 14 percent of women in jails had been diagnosed with major depression. (Veysey, 1997).

Another study found that nearly 80 percent of women prisoners had experienced some form of abuse, either as children or as adults (Bloom, Chesney-Lind, & Owen, 1994). Pollock (1998) points out that female offenders have histories of sexual and/or physical abuse that appear to be “instigators of delinquency, addiction, and criminality.” The diagnosis of PTSD is evidence of an experience common to many women, especially those in correctional facilities -- that of repeated, severe, and/or long-term physical and

sexual abuse. These findings clearly have implications for service providers, corrections administrators, and staff.

Gender also plays a role in how disciplinary procedures are applied. McClellan (1994) examined disciplinary practices at two Texas prisons housing female inmates and compared these to practices found in a Texas prison for males. She found gender-related differences in treatment, in that women were cited more frequently for disciplinary infractions and punished more severely than male inmates. McClellan notes that the wardens of the women's prisons stated that they demand total compliance with every rule and punish violations using official mechanisms. McClellan also found a higher level of surveillance at the female institutions. This suggests that gender bias may influence the number of infractions for which women are cited, especially less serious infractions, such as “violation of a written or posted rule” or “refusing to obey an order” (p. 76).

Transition to the Community

Women who are returning to their communities from correctional facilities must often comply with conditions of probation or parole, achieve financial stability, access health care, locate housing, and try to reunite with their families. They must find employment (often with few skills and a sporadic work history), find safe and drug-free housing, and, in many cases, maintain recovery from addiction. However, many women find themselves either homeless or in environments that do not support sober living. Without strong support in the community to help them navigate the multiple systems and agencies, many women fall back into a life of substance abuse and criminal activity.

The majority of women in the correctional system are mothers, and a major consideration for them is reunification with their children. This adds what Brown, Melchior, and Huba (1999) refer to as an additional “level of burden,” as the requirements of these women for safe housing, economic support, medical services, and so on include the needs of their children.

There is little or no coordination among the systems a reentering woman must navigate in the community, and there are often conflicting expectations that increase the risk of relapse and recidivism (Covington, 2002).

Assisting Women Offenders: What Is the Work?

As noted, a major theme in the criminal justice literature is the question “What works?” However, because female offenders have been invisible in much of the research, we suggest that another question must be addressed first, and that is “What is the work?” (Covington & Bloom, 1999). The following is our proposed response to this question.

Prevention

We need to create a community response to the issues that impact women’s lives and increase their risk of incarceration. A series of focus groups were conducted with women in the criminal justice system for the National Institute of Corrections Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders Project

(Bloom, Owen & Covington, 2002). One of the questions was “How could things in your community have been different to help prevent you from being here?” The respondents identified a number of basic needs that, if unmet, put them at risk for criminal justice involvement. These needs were housing, physical and psychological safety, education, job training and opportunities, community-based substance-abuse treatment, economic support, positive female role models, and a community response to violence against women. These needs are the critical components of a gender-responsive prevention program.

Girls in troubled home situations or in juvenile justice facilities are at risk of becoming women in the criminal justice system. We need to look at the specific needs of girls at risk in order to develop prevention strategies. A number of interconnected risk factors must be considered, including the following:

- family factors
- sexual and/or physical abuse
- school problems
- early sexual activity
- association with delinquent peers and gangs
- substance abuse

(Girls Incorporated, 1996)

Women in the U.S. correctional system are mostly young, poor, and undereducated women of color, with complex histories of trauma and substance abuse. Their greatest needs are for multifaceted drug abuse and trauma recovery treatment and for education and training in job and parenting skills (Bloom & Covington, 1998). It is critical that all of these factors be addressed if we are to reduce and prevent the continuing increase in female incarceration.

Do No Harm

We need to create alternatives to secure custody. A controlled environment such as a prison by its nature fosters dependence and powerlessness, which are two of the factors that lead women into the criminal justice system in the first place. Furthermore, rules and regulations based on those used in male prisons are often harmful to women. As Girshick (1999) notes:

The prison becomes the punitive parent, regulating the child through rules and sanctions. Keeping female prisoners in the status of dependent children makes them easier to control, and the women themselves feel infantilized (p. 78).

Most correctional officers are not provided with appropriate training in how to supervise and communicate with women offenders, and it is often stated that correctional officers and other staff members do not want to work with women offenders (Bloom, Owen, & Covington, 2002). We need to develop a culture within correctional settings that

promotes respectful attitudes, communication, and behavior on the part of correctional staff.

As stated previously, standard policies and procedures in correctional settings (e.g., searches, restraints, and isolation) can have far-reaching effects on women with histories of trauma and mental illness, and such practices often act as triggers to retraumatize women who have PTSD. These issues clearly have implications for service providers, correctional administrators, and staff.

Custodial misconduct has been documented in many forms, including verbal degradation, rape, sexual assault, unwarranted visual supervision, denial of goods and privileges, and the use or threat of force (Amnesty International USA, 1999; General Accounting Office, 1999; Human Rights Watch Women's Rights Project, 1996). For example, women prisoners are generally strip-searched after prison visits and at other times, and these searches can be used arbitrarily and punitively. A large percentage of incarcerated women have been sexually abused, making strip searches even more likely to be traumatic personal violations. Also, many state prisons require that pregnant women be shackled while being transported to hospitals to give birth. This procedure can be traumatic to a woman who is experiencing the pains of labor, and the risk of escape in such a situation is minimal.

Sexual misconduct by staff is a serious issue in women's prisons (for further discussion see Chapter 2, Owen, Chapter 6, Rasche, and Chapter 7, Raeder). Corrections departments should deem any abuse of women prisoners by staff unacceptable and culpable. Reviewing the situation of women incarcerated in five states -- California, Georgia, Michigan, Illinois, and New York -- and the District of Columbia, Human Rights Watch (1996) concluded:

Our findings indicate that being a woman prisoner in U.S. state prisons can be a terrifying experience. If you are sexually abused, you cannot escape from your abuser. Grievance or investigatory procedures, where they exist, are often ineffectual, and correctional employees continue to engage in abuse because they believe that they will rarely be held accountable, administratively or criminally. Few people outside the prison walls know what is going on or care if they do know. Fewer still do anything to address the problem (p.1).

In her study of imprisoned battered women who have killed their abusers, Elizabeth Leonard (2002) notes the overuse of psychotropic drugs such as tranquilizers, which she refers to as "chemical restraints," as a means of institutional social control. Leonard also states that many of her interviewees reported that psychotropic drugs directly interfered with their ability to participate in the preparation of their defense cases. The use of psychotropic drugs is ten times higher in women's prisons than in men's prisons (Culliver, 1993). (For further discussion see Chapter 5, Leonard).

Create Gender-Responsive Services

We need to provide women in the system with services that, in both context (structure and environment) and content, are comprehensive and relate to the realities of their lives. Programs need to take into consideration the larger social issues of poverty, abuse, race, and gender inequalities, as well as individual factors that impact women in the criminal justice system (Bloom, 1996). Services also need to be responsive to the cultural backgrounds of women (Bloom & Covington, 1998). Culture may be defined as a framework of values and beliefs and a means of organizing experience. Being culturally sensitive means being sensitive to differences in ethnicity -- including differences in language, customs, values, and beliefs -- in order to create a sense of inclusivity.

Context refers to everything in the environment: work, family, class, culture, race, obligations, the likelihood of experiencing violence and discrimination, access to health care and education, legal status, and so on (Tavris, 1992). Typically, women have less in terms of income, power, access to medical and legal treatment, and the like, while having more family and household obligations than men (Epstein, 1988). Only women experience pregnancy and childbirth, and the overwhelming majority of parental caretakers are women. Low-income women are often the sole caretakers of their children and of elderly family members. These contextual factors create the realities of women's lives and many of the differences in needs, behaviors, and experiences between women and men.

The consideration of context also means the environment in which the service is provided. The culture of corrections (i.e., the environment created by the criminal justice system) is often in conflict with the culture of treatment. As mentioned, the corrections culture is based on control and security. Treatment, however, is based on the concern for safety and on change (Covington, 1998b). Creating effective gender-responsive services must include creating an environment through site selection, staff selection, and program development that reflects an understanding of the realities of women's lives and addresses the specific issues of participants (Bloom & Covington, 2000).

Content includes the breadth of services that should be provided. These services should also be trauma informed, meaning that services provided for problems other than trauma should incorporate knowledge about violence against women and the impact of trauma, thereby increasing their effectiveness. Trauma-informed services need to do the following:

- (1) Take the trauma into account
- (2) Avoid triggering trauma reactions and/or traumatizing the individual
- (3) Adjust the behavior of counselors, other staff, and the organization to support the individual's coping capacity
- (4) Allow survivors to manage their trauma symptoms successfully so that they are able to access, retain, and benefit from the services (Harris and Falot, 2001)

Build Community Support

There is a critical need to develop a system of support within communities to provide assistance to women who are returning to their communities. Assistance is needed in the areas of housing, job training, employment, transportation, family reunification, child care, drug and alcohol treatment, peer support, and aftercare. Women transitioning from jail or prison to the community must navigate a myriad of systems that often provide fragmented services; this can be a barrier to successful reintegration. In addition, the planning process for reentry into the community must begin *as soon as the woman begins serving her sentence*, not conducted only in the final thirty to sixty days.

A further point is that female offenders are frequently good candidates for community-based corrections. Because women commit far fewer serious or violent offenses, they pose less risk to public safety than do male offenders. When deemed appropriate, the least restrictive alternative to incarceration should be considered for a female offender. Wraparound models and other integrated and holistic approaches can be very effective, because these address multiple goals and needs in a coordinated way and facilitate access to services (Reed & Leavitt, 1998). Wraparound models are based on the concept of “wrapping necessary resources into an individualized support plan” (Malysiak, 1997, p. 12). Both client-level and system-level linkages are stressed in the wraparound model. The need for wraparound services is highest for clients who have multiple complex needs that cannot be addressed by limited services from a few locations in the community.

Community-based wraparound services can be particularly useful for the following reasons:

- A higher percentage of female than male offenders are the primary caregivers of young children. These children have needs of their own and require other caregivers if their mothers are incarcerated. Support for parenting, safe housing, and a family wage level are crucial when the welfare of children is at stake.
- Women have been socialized to value relationships and connectedness and to approach life within interpersonal contexts (Covington, 1998a). Approaches to service delivery that are based on ongoing relationships, that make connections among different life areas, and that work within women’s existing support systems are especially congruent with female characteristics and needs.

Effective gender-responsive and culturally responsive programming must emphasize support. Service providers need to focus on women’s strengths, and they must recognize that a woman cannot be treated successfully in isolation from her social support network -- her relationships with her partner, children, family, and friends.

Coordinating systems that link substance abuse, criminal justice, public health, employment, housing, and child welfare will promote a continuity-of-care model. Such a comprehensive approach would provide sustained continuity of treatment, recovery, and

support services, with provision of all services beginning at the start of a jail or prison sentence and continuing throughout transition to the community.

Conclusion

As this chapter suggests, gender plays a critical role throughout the criminal justice process. A review of women's life circumstances and of the backgrounds of female offenders in the system makes clear that there are more effective ways to prevent and address women's criminality than are currently in use. Criminal justice practice could be improved by addressing women's pathways into the criminal justice system, their differences in offense patterns from the patterns of male offenders, their experiences in the criminal justice system, and their responses to programs.

It is important to reexamine the gendered effects of public policies that criminalize substance abuse, which often result in the overrepresentation of women in U.S. jails and prisons. Mandatory minimum-sentencing statutes for drug offenses have had a devastating effect on women and have unfairly punished them as well as their children.

Standard gender-neutral correctional procedures have also disadvantaged women in that such procedures do not take into account the histories of abuse of many female offenders. The criminal justice system must become trauma-informed in order to provide effective interventions and services for women.

At present, both the availability of programming for women offenders and the types of services offered fall short of what is needed. For example, because women in treatment find recovery complicated by trauma, child-care issues, inadequate social support systems, and lack of financial resources, programming for women must take these issues into account. Additionally, it is critical that programs provide appropriate screening and assessment of the needs (not risks) of individual clients, along with a range of services designed to meet those needs.

In creating appropriate services that truly take into account and respond to gender and cultural factors, we need first to reexamine our current criminal justice policies. We can then work to adjust those policies so that the response to women's offending is one that emphasizes human needs, specifically those that reflect the realities of women's lives. Rather than focusing solely on punitive sanctions, we can begin to systematically consider the least restrictive appropriate alternatives to incarceration. The savings to society from a reduction in women's imprisonment and from improved reintegration of female offenders into the community will benefit not only the women themselves, but also generations to come.

References

- Amnesty International USA. (1999). *Not part of my sentence: Violations of the human rights watch in custody*. New York: Author.
- Andrews, D., Bonta, J., & Hoge, R. (1990). Classification for effective rehabilitation: Re-discovering psychology. *Criminal Justice and Behavior*, 17, 19-52.
- Atwood, J. (2000). *Too much time: Women in prison*. New York: Phaidon Press.
- Baunach, P. (1985). *Mothers in prison*. New York: Transaction Books/Rutgers University Press.
- Bloom, B. (1996). *Triple jeopardy: Race, class, and gender as factors in women's imprisonment*. Unpublished doctoral dissertation. University of California, Riverside.
- Bloom, B., & Chesney-Lind, M. (2000). Women in prison: Vengeful equity. In Roslyn Muraskin (Ed.), *It's a crime: Women and justice*. Upper Saddle River, NJ: Prentice Hall.
- Bloom, B., Chesney-Lind, M., & Owen, B. (1994). *Women in California prisons: Hidden victims of the war on drugs*. San Francisco: Center on Juvenile and Criminal Justice.
- Bloom, B., & Covington, S. (1998, November). *Gender-specific programming for female offenders: What is it and why is it important?* Paper presented at the 50th Annual Meeting of the American Society of Criminology, Washington, DC.
- Bloom, B., & Covington, S. (2000, November). *Gendered justice: Programming for women in correctional settings*. Paper presented at the 52nd Annual Meeting of the American Society of Criminology, San Francisco, CA.
- Bloom, B., Owen, B. & Covington, S. (2002). *Gender-responsive strategies: Research, practice, and guiding principles for women offenders*. Washington, DC: National Institute of Corrections.
- Bloom, B., & Steinhart, D. (1993). *Why punish the children? A reappraisal of the children of incarcerated mothers in America*. San Francisco: National Council on Crime and Delinquency.
- Brennan, T. (1998). Institutional classification of females: Problems and some proposals for reform. In R. Zaplin (Ed.), *Female offenders: Critical perspectives and effective interventions*. Gaithersburg, MD: Aspen Publishers.

- Brown, V., Melchior, L., & Huba, G. (1999). Level of burden among women diagnosed with several mental illness and substance abuse. *Journal of Psychoactive Drugs*, 31(1).
- Bureau of Justice Statistics (1999). *Women offenders*. Washington, DC: U.S. Department of Justice, Office of Justice Programs.
- Bureau of Justice Statistics (2000a). *Prisoners in 1999*. Washington, DC: U.S. Department of Justice, Office of Justice Programs.
- Bureau of Justice Statistics (2000b). *Incarcerated parents and their children*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs.
- Bureau of Justice Statistics (2001). *Prisoners in 2000*. Washington, DC: U.S. Department of Justice, Office of Justice Programs.
- Cain, M. (1990). Towards transgression: New directions in feminist criminology. *International Journal of the Sociology of Law*, 18 (1), 1-18.
- Cernkovich, S., & Giordano, P. (1979). Delinquency, opportunity and gender. *Journal of Criminal Law and Criminology*, 70, 141-151.
- Chesney-Lind, M., & Bloom, B. (1997). Feminist criminology: Thinking about women and crime. In B. MacLean & D. Milovanovic (Eds.), *Thinking critically about crime* (pp. 45-55). Vancouver, Canada: Collective Press.
- Chesney-Lind, M., & Pollock-Byrne, J. (1995). Women's prisons: Equality with a vengeance. In J. Pollock-Byrne & A. Merlo (Eds.), *Women, law and social control* (pp. 155-175). Boston: Allyn and Bacon.
- Collins, W., & Collins, A. (1996). *Women in jail: Legal issues*. Washington, DC: National Institute of Corrections.
- Covington, S. (1998a). The relational theory of women's psychological development: Implications for the criminal justice system. In Ruth T. Zaplin (Ed.), *Female offenders: Critical perspectives and effective interventions* (pp. 113-131). Gaithersburg, MD: Aspen Publishers.
- Covington, S. (1998b, September). *Creating gender-specific treatment for substance-abusing women and girls in community correctional settings*. Paper presented at the Annual Conference of the International Community Corrections Association, Arlington, VA.
- Covington, S. (1999). *Helping women recover: A program for treating substance abuse* (special edition for the criminal justice system). San Francisco: Jossey-Bass.

- Covington, S. (2002). *A woman's journey home: Challenges for female offenders*. Washington, DC: Urban Institute.
- Covington, S., & Bloom, B. (1999, November). *Gender-responsive programming and evaluation for females in the criminal justice system: A shift from what works? to what is the work?* Paper presented at the 51st Annual Meeting of the American Society of Criminology, Toronto, Canada.
- Culliver, C. (1993). Females behind prison bars. In C. Culliver (Ed.), *Female criminality: The state of the art*. New York: Garland.
- Daly, K. (1994). *Gender, crime and punishment*. New Haven, CT: Yale University Press.
- Daly, K. and Chesney-Lind, M. (1988). Feminism and criminology. *Justice Quarterly*, 5 (December), 497-538.
- Datesman, S., & Scarpitti, F. (1980). *Women, crime and justice*. New York: Basil Blackwell, Inc.
- de Beauvoir, S. (1968). *The second sex*. New York: Bantam.
- Eisenstein, Z. (1988). *The female body and the law*. Berkeley, CA: University of California Press.
- Epstein, C.F. (1988). *Deceptive distinctions: Sex, gender, and the social order*. New Haven, CT: Yale University Press.
- Friedan, B. (1963). *The feminine mystique*. New York: Norton.
- General Accounting Office. (1999). *Women in prison: Sexual misconduct by correctional staff*. United States General Accounting Office.
- Genty, P. (1995). Termination of parental rights among prisoners: A national perspective. In K. Gabel & D. Johnston (Eds.), *Children of incarcerated parents* (pp. 167-182). New York: Lexington Books.
- Girls Incorporated. (1996). *Prevention and parity: Girls in juvenile justice*. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Girshick, L. (1999). *No safe haven: Stories of women in prison*. Boston: Northeastern University Press.
- Hannah-Moffat, K. (2000). Reforming the prison, rethinking our ideals. In K. Hannah-Moffat & M. Shaw (Eds.), *An ideal prison? Critical essays on women's imprisonment in Canada*. Halifax, Nova Scotia: Fernwood Publishing.

- Hannah-Moffat, K., and Shaw, M. (2001). *Taking risks: Incorporating gender and culture into the classification and assessment of federally sentenced women in Canada*. Ottawa: Status of Women Canada, Policy Research Fund.
- Harris, M. and Fallot, R.D. (2001). *Using trauma theory to design service systems*. San Francisco: Jossey-Bass.
- Heidensohn, F.M. (1986). Models of justice: Portia or Persephone? Some thoughts on equality, fairness and gender in the field of criminal justice. *International Journal of the Sociology of Law*, 14, 287-298.
- Human Rights Watch. (1996). *All too familiar: Sexual abuse of women in U.S. state prisons*. New York: Human Rights Watch.
- Jacobs, A. (2001). Give'em a fighting chance: Women offenders reenter society. *Criminal Justice Magazine* 45 (Spring).
- Kaschak, E. (1992). *Engendered lives*. New York: Basic Books.
- Kirp, D., Yudof, M., & Franks, M. (1986). *Gender justice*. Chicago: University of Chicago Press.
- Kivel, P. (1992). *Men's work: Stopping the violence that tears our lives apart*. Center City, MN: Hazelden.
- Lahey, K. (1985). Until women themselves have told all they have to tell. *Osgoode Hall Law Journal*, 23(3), 519-541.
- Leonard, E. (2002). *Convicted survivors: The imprisonment of battered women who kill*. New York: State University of New York.
- MacKinnon, C. (1987). *Feminism unmodified: Discourse on life and law*. London: Harvard University Press.
- Malysiak, R. (1997). Exploring the theory and paradigm base for wraparound fidelity. *Journal of Child and Family Studies*, 7(1), 11-25.
- Mauer, M., & Huling, T. (1995). *Young black Americans and the criminal justice system: Five years later*. Washington, DC: The Sentencing Project.
- Mauer, M., Potler, C., & Wolf, R. (1999). *Gender and justice: Women, drugs, and sentencing policy*. Washington, DC: The Sentencing Project.
- McClellan, D. (1994). Disparity in the discipline of male and female inmates in Texas prisons. *Women and Criminal Justice*, 5(2), 71-97.

- Merlo, A., & Pollock, J. (1995). *Women, law, and social control*. Boston: Allyn and Bacon.
- Millett, K. (1970). *Sexual politics*. Garden City, NY: Doubleday.
- Morash, M. & Bynum, T. (1999). *The mental health supplement to the national study of innovative and promising programs for women offenders*. Washington, DC: National Institute of Justice.
- Moyer, I. L. (1985). *The changing role of women in the criminal justice system*. Prospect Heights, IL: Waveland Press.
- National Institute of Justice (1998, August). *Women offenders: Programming needs and promising approaches* (Research in Brief). Washington, DC: U.S. Department of Justice, Office of Justice Programs.
- Nesbitt, C. (1994). *The female offender in the 1990s is getting an overdose of parity*. Unpublished paper. Longmont, CO: National Institute of Corrections Information Center.
- Owen, B. & Bloom, B. (1995). Profiling women prisoners: Findings from national surveys and a national sample. *The Prison Journal*, 75(2), 165-185.
- Pollock, J. (1994). *The increasing incarceration rate of women offenders: Equality or justice?* Paper presented at the Prisons 2000 Conference, Leicester, England.
- Pollock, J. (1998). *Counseling women offenders*. Thousand Oaks, CA: Sage.
- Pollock-Byrne, J. (1990). *Women, prison and crime*. Pacific Grove, CA: Brooks/Cole.
- Raeder, M. (1993). Gender and sentencing: Single moms, battered women and other sex-based anomalies in the gender-free world of federal sentencing guidelines. *Pepperdine Law Review*, 20(3), 905-990.
- Reed, B.G., & Leavitt, M. (1998, September). *Modified wraparound and women offenders: A community corrections continuum*. Paper presented at the International Community Corrections Annual Research Conference, Arlington, VA.
- Schur, E. (1984). *Labeling women deviant: Gender, stigma, and social control*. New York: McGraw-Hill.
- Smart, C. (1989). *Feminism and the power of law*. London: Routledge and Kegan Paul.

- Stacey, R. (1999). Complexity: The problem with the notion of the autonomous individual. *Complexity and the group matrix*. Draft.
- Tavris, C. (1992). *The mismeasure of women: Why women are not the better sex, the inferior sex, or the opposite sex*. New York: Simon and Schuster.
- Teplin, L., Abram, K., & McClelland, G. (1996). Prevalence of psychiatric disorders among incarcerated women. *Archives of General Psychiatry*, 53, 505-512.
- U.S. Census Bureau (1996). www.now.org/nmt/05-98/wagegap.html
- Van Voorhis, P. & Presser, L. (2001). *Classification of women offenders: A national assessment of current practice*. Washington, DC: National Institute of Corrections.
- Veysey, B. (1997). *Specific needs of women diagnosed with mental illnesses in U.S. jails*. Del Mar, NY: The GAINS Center.
- Warren, M. (1981). *Comparing female and male offenders*. London: Sage.
- Zietz, D. (1981). *Women who embezzle or defraud: A study of convicted felons*. New York: Praeger.