Women and Girls in the Justice System

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Both the juvenile-justice and adult-criminal-justice systems were developed with men and boys in mind. While girls and women are a smaller percentage of the justice system population, they have different histories and needs that must be addressed.

Even though girls account for almost 30 percent of the juvenile-justice population, most state juvenile-justice systems were designed with boys in mind. The concern about the increasing number of girls in the juvenile-justice system and a lack of adequate programming is nothing new. Policymakers have been advocating for attention to these issues for decades. Beginning in the late 1990s, experts noticed an increase in the number of girls in the juvenile-justice system. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) reports that in 1992 girls "accounted for 16 percent of all juvenile arrests for aggravated assault and 24 percent of all juvenile arrests for simple assault. By 2012, these proportions had increased to 26 percent and 37 percent, respectively" (Office of Juvenile Justice and Delinquency Prevention, n.d.). Recent research on brain development and trauma, more data on girls in the juvenile system, and concerns over human trafficking are making questions about how girls enter the system even more critical. In 2002 the late Robert E. Shepherd, Jr., pointed to studies from the 1990s showing that girls were more often arrested for status offenses, such as running away; had greater mental-health needs, including suicide attempts and prior psychiatric hospitalizations; and a history of trauma and abuse. He also noted that girls of color were overrepresented in the system (Shepherd, 2002-03).

In 2015 a report from the Georgetown Center on Law and Poverty noted that many of these same problems persist today. High rates of sexual abuse and overrepresentation of girls of color continue to be the norm in juvenile-justice systems nationally. Additionally, girls are often victimized at a younger age and are the victims of multiple acts of abuse (Saar et al., 2015). The Georgetown report describes this as the "sexual abuse to prison pipeline," taking the name from the "school-to-prison pipeline," a term that has been used for decades. While the school-to-prison pipeline has typically been thought of as affecting black boys, a recent report found that in the 13 southern states that had 55 percent of suspensions and 50 percent of expulsions nationally, black girls were suspended and expelled at higher rates than boys (Smith and Harper, 2015).

Girls' and boys' brains do not mature in the same way. Abigail Baird looks at juvenile development through the lens of neuroscience. She found that boys and girls do not react to stimuli in the same way because of biological differences. According to Baird, boys tend to be less afraid of punishment or risk and girls tend to be better at relationship building based on differences in brain development. Girls are very sensitive to punishment and in extreme cases may become suicidal when their relationships are threatened ("Brain Sciences," 2011). So not only does punishing someone who is not afraid of risks prove ineffective, but punishing someone who is very sensitive to punishment can have detrimental effects.

The OJJDP Beyond Detention Series provides several reports on a longitudinal study of detained youth and looks at differences in abuse patterns between boys and girls. Girls are more likely to have been sexually abused, and boys are more likely to have been physically abused. Girls represented 35.9 percent of the participants and had a mortality rate nearly eight times that of the general population. Girls in the system are more likely to have a history of physical and sexual abuse and have a high rate of psychiatric disorders (as many as three-quarters). Intimate-partner violence is of concern for these girls (Teplin et al., 2015). Some studies have found that girls are twice as likely as boys to suffer from PTSD when exposed to a traumatic event (Abram et al., 2013a). Suicidal ideation and attempts are a particular problem for incarcerated youth, but especially for girls. The study found that Hispanic girls had the highest rates of suicidal thoughts (Abram et al., 2014). A study of youths who were examined three years after release found significantly more girls had impairment in the domains of moods, emotions, and self-harm (Abram et al., 2013b).

These findings are not surprising based on the neuroscience that shows girls' brains develop in a way that makes them more sensitive to punishment. The special needs of these victims of trauma are often not being addressed in the juvenile system, which may re-traumatize them. Girls are more likely to be arrested for less serious offenses but are more likely to have serious problems, including a history of physical and sexual abuse, psychiatric disorders, family violence, and suicidal ideation. Childhood trauma and abuse can disrupt the brain development of these youth. It is not surprising that behaviors such as running away or fighting with peers and family follows. Unfortunately, this is often the entryway for girls into the juvenile-justice system (Watson and Edelman, 2012). Detention is still disproportionately used for girls charged with status offenses; for example, in 2011 girls represented 53 percent of petitions for running away (Hockenberry and Puzzanchera, 2014).

The same history of trauma and abuse, poverty, mental health, or substance abuse and overrepresentation of minorities applies to the women in the criminal-justice system. The Adverse Childhood Experiences (ACE) Study shows a connection between abuse and later mental-health issues, just as studies on development of the brain indicate that trauma and abuse affect the actual architecture of the brain (Anda, 2006). The number of women in local jails has grown astronomically and like the girls in the system, these women are disproportionately women of color and victims of trauma or abuse. In 1970 there were fewer than 8,000 women in jails. By 2014 there were almost 110,000 women in local jails, and almost 80 percent of them are mothers, typically single mothers. Almost one-third of the women in jails have a serious mental illness (over double the rate for men in jail), and an estimated 82 percent had a substance-abuse problem at some point in their lives. Additionally, most of these women are in jail for nonviolent offenses or for parole violations (82 percent). Approximately 5 percent of women in jails are pregnant, and accessing health care is more difficult in small local jails where much of the growth in incarceration of women has occurred. The dangerous practice of shackling pregnant women is still permitted in most states (Swavola, Riley, and Subramanian, 2016).

When women are released either pretrial or with a community-service sentence, they are faced with the difficulty of reunification with their children. Single mothers who must comply with community-service requirements, treatment provisions, childcare, child welfare, work, public assistance, and poverty are set up for failure as they try to comply with multiple agencies and conflicting requirements (Swavola, Riley, and Subramanian, 2016). It is not only jails that are seeing an increase in the number of women. Overall incarceration rates for women are growing more rapidly than those for men. According to the Brennan Center, there are 1.2 million women in the criminal-justice system (jail, prison, probation, and parole), which is a 730 percent increase since 1980. Sixty percent of women in prison are mothers of minor children, and most were the main caretaker before their incarceration (Chettiar and Camhi, 2017).

Gender-neutral risk-assessment tools are validated predominantly on men in the criminal-justice system and so may not consider that even high-risk women are less likely to be a public-safety risk (Chettiar and Camhi, 2017: 13). Because women are more often the primary or sole child caregiver, treatment programs that offer childcare, flexible appointments, or transportation have been found to be more effective. Women also have different stressors, including domestic violence, trauma, and mental health, that need to be addressed during treatment programs. Women and girls in the justice system have different needs than their male counterparts. These differences need to be accounted for when making decisions about arrest, incarceration, pretrial release, and sentencing.

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