



Give 'em a Fighting Chance: The Challenges for Women Offenders Trying to Succeed in the Community

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The discussion about women in the criminal justice system tends to focus primarily on prisons and, secondarily, on jails. However, more offenders are under community supervision than are incarcerated, and most prisoners will, at some point, return to the community. Therefore, it is critically important to consider the factors that relate to women's ability to succeed in the community.

Some parole and probation officers say that it is harder to work with women than with men. But why? Men represent a greater risk to public safety than do women. So what is the particular challenge that women present? I have a theory based on my experience as executive director of the oldest social services agency in the country serving women offenders and their families. Perhaps it is that, with a woman, we see clearly that though the criminal justice system may determine whether she is incarcerated or free, many other systems actually have more to do with her prospects for successful living in the community.

Who Are We Talking About?

Women in the criminal justice system have a multiplicity of problems. They are overwhelmingly poor and substance abusers. They are also victims of abuse and violence. Many are depressed and suffer from various forms of mental illness. They experience a high rate of HIV infection, other sexually transmitted diseases, tuberculosis, and untreated chronic diseases. A high percentage are homeless or marginally housed. Typically, they are under-educated, unemployed, and have minimal legitimate work histories. On average, 75 to 80 percent of them are mothers, statistically, of 2.4 children.

If women are to live healthy, sober, law-abiding lives in the community, all of these issues must be addressed in some manner. And, further, to take on the well-being of the woman means, by extension, taking on some responsibility for the well-being of her children and, often, of several other adults in her constellation. The children have been hurt by their mother's drug use. They were traumatized by her arrest and the resulting separation from her. They suffer a wide range of psychological problems including trauma, anxiety, guilt, shame, and fear. These problems frequently manifest themselves in behavior problems, poor academic achievement, truancy or dropping out of school, gang involvement, early pregnancy, drug abuse, and delinquency.

Community-based criminal justice interventions typically focus on monitoring and reporting, urinalysis, drug treatment, and referral to employment. However, these are not adequate strategies for dealing with most women offenders. To con-

struct a law-abiding life, a woman offender is likely to require the assistance of a large number of our public systems: public assistance, homelessness services, family court, child care, public education, drug treatment, and health and mental health care (thus managed care), to name a few. Her prospects will also be directly shaped by federal law and local practice on matters as diverse as employment, immigration, child welfare, and eligibility for student loans.

If we are to help women make it in the community, we must learn these other systems. We must coordinate their demands on a woman so that she has a chance of complying with all the competing demands on her. And, sometimes, we must advocate for changes in these systems. Criminal justice-involved women are a hidden part of the population for which they are already responsible. They must be encouraged to be more responsive to these women's needs.

The Public Assistance System

When considering the viability of any community-based intervention, we must ask how the woman will subsist. How will she provide herself with food and basic necessities? It is common for women to rely on welfare until they are able to enter the job market, first at entry-level positions (often supplemented by public assistance) and gradually working their way up to jobs that pay a livable wage and, we hope, provide health benefits. Unfortunately, welfare reform has made it more difficult for criminal justice-involved women to get started on a legitimate life style.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 permanently bars anyone with a drug-related felony conviction from receiving federal cash assistance and food stamps during her lifetime. The federal law gives states the opportunity to opt-out or to modify the drug felon bar through affirmative legislation stating specifically that drug felons are to be eligible for benefits. At last report, nine states had opted out of the ban and 18 had modified it—by, for example, exempting individuals with drug felony convictions who have undergone drug treatment. This means that the majority of women convicted of drug felonies in 23 states are ineligible for public assistance.

The federal welfare law also prohibits states from providing Temporary Assistance for Needy Families (TANF), Supplementary Security Income (SSI), housing, and food stamps to individuals who are “violating a condition of probation or parole.” Moreover, all TANF recipients are subject to a 5-year limit on the length of time they can receive benefits over the course of their lives.

There are significant delays between the time a woman applies and the time she is eligible to receive benefits. In New York City, the mandated waiting period is 45 days, and the actual wait is often even longer. What do we imagine the woman is doing to feed and clothe herself in this period?

Most localities impose workfare requirements on public assistance recipients. It can be very difficult to receive an exemption from workfare assignments to participate in drug treatment. A missed appointment can result in termination of benefits. Benefits may also be jeopardized if the woman has a child who is truant. Adequate childcare is often not available, creating yet another barrier to participation.

There are also many obstacles to attending school or a training program to get the skills needed to get a job with a livable wage. Among these is the Higher Education

Act of 1998, which suspends eligibility for any grant, loan, or work assistance for students convicted of drug-related offenses.

All of these exclusions and barriers raise the question, “How is a woman to subsist?” We must have a plausible answer, or we are unwittingly leaving women few options besides illegal activity (sex work, drug trade, theft) or dependence on others, who all too often are violent or abusive partners.

The Child Welfare System

The desire to reunify with her children can be the most powerful motivator for a woman's recovery from substance abuse. Denial of access to her children can be a powerful trigger for relapse and despair.

The Adoption and Safe Families Act of 1997 (ASFA) accelerates the termination of parental rights and bars individuals with certain convictions from being foster or adoptive parents. While the intention of the law was to create permanency for children, it has a potentially devastating effect on families when the mother is involved with the criminal justice system. Some states have enacted even more onerous versions of the federal legislation. Practitioners should be familiar with the law and practice in their jurisdiction.

ASFA requires states to seek termination of parental rights when a child has been in foster care 15 of the last 22 months. Fifteen months is a short period of time for a woman who is dealing with criminal charges and recovery from a drug problem, as well as with all the other barriers to stabilizing her life, including lack of housing and difficult relationships. There can be exceptions to this requirement if a relative is caring for the child or if there is a “compelling reason” for not moving to terminate parental rights. Many child welfare agencies do not realize they are able (and even obligated) to explore these exceptions before moving to termination.

Further, termination of parental rights does not necessarily mean a good outcome for the child. Adoption and permanency are not assured. Termination only means with certainty that the mother and child will not have access to each other. This is particularly wrenching for older children who have memories of their mother and who often prove more difficult to get adopted. We have to question whether we are actually improving the prospects for these children by moving so quickly to sever their relationships with their mothers. The pressures of ASFA make it imperative that we address family preservation issues at an early stage in working with a woman in the criminal justice system.

Women involved in the child welfare system may have additional requirements on them that contribute to the complexity of their service plan, such as family court dates, supervised visitation with children, mandated drug treatment, and parenting classes. Sometimes they even face child support demands for periods in which they were incarcerated or were not the custodial parent. These mandates may conflict with employment, parole or probation requirements, or welfare requirements.

Some jurisdictions are now removing children from households in which one partner is battering another. Officials allege that the victim is unable to protect the children. Instead of providing better protection for children, this practice may simply drive family violence farther underground. Given the prevalence of violence in their experience, women offenders should be encouraged—not discouraged—from seeking services.

Housing Assistance

The scarcity of safe, affordable housing is one of the biggest barriers to women's successful adjustment in the community. They end up going back to abusive and drug-using households because they don't have any other real options. They may not be able to return to a relative's home, if that relative is providing kinship foster care to the woman's child. Without acceptable housing, they cannot regain custody of children through family court.

People with drug convictions have been barred for some time from living in federally funded public housing. Some jurisdictions have also implemented criminal record checks for people applying for Section 8 certificates. Section 8 pays private landlords the difference between the fair market value of a unit and the rent that a tenant with limited income can pay. Policies barring those with drug convictions may preclude women offenders from the best tool available for securing affordable permanent housing. Although denials of eligibility can be appealed, this is a labor-intensive process. At a time when many other rental subsidies are also being eliminated, it is increasingly difficult for a poor population to acquire housing.

Health Care and Substance Abuse Treatment

Managed care has changed the way in which we all access health and mental health services. These changes are particularly dramatic for a population that has relied on emergency room care in lieu of preventive and regular health care. Further, it has become even more difficult to place women in treatment. Managed care gatekeepers typically elect drug treatment regimens that are shorter and less intensive than the requirements imposed by the court or parole.

Many traditional models of drug treatment do not work well for women. First, most models do not include children and therefore require a woman to choose between treatment and caring for her children. Further, their methods are typically confrontational, an approach that is not effective with women and can be very damaging for women with histories of abuse. Traditional treatment demands that she deal with issues sequentially: first treatment, then a job, then housing, then (much later) reunification with her children. Women are concerned with all of these things at once and will not participate—and will not succeed—in models that deny their realities and their concerns.

Recovery is a long process that can be usefully started during incarceration. However, treatment must continue in the community. Women must learn to live drug-free in the context of the stresses and pressures that they face in everyday living. Treatment is most effective when it is women-specific, is relational, and addresses trauma. Reaching sobriety is not enough. It must be followed by counseling for women who used alcohol and drugs to self-medicate in response to abuse.

Immigration as a Complicating Factor

During the period from 1988 to 1996, Congress amended the Immigration and Nationality Act seven times to increase the possible negative consequences of conviction for non-citizens accused of crimes. As a result, immigrants who are not U.S. citizens—even if they have been lawfully admitted to the United States for permanent residence—may now be subject not only to ineligibility for citizenship, but also to mandatory deportation and permanent inadmissibility to the U.S. An immigrant may suffer these consequences even if her criminal case occurred years or decades

ago, and even if her criminal case did not result in a conviction under criminal laws. This can be particularly wrenching when a mother is facing deportation and likely separation from children who were born in this country. A woman facing consequences of this magnitude may have difficulty participating productively in any course of treatment.

Human Services are Key

The U.S. has become incredibly punitive, especially toward drug offenders. Often the laws are harsher on drug felons than on murderers and rapists. The result is that it is very difficult for even the most-motivated women to get their lives together. They are relentlessly challenged. The overwhelming obstacles they face are a formula for relapse and recidivism. To help them, we must nurture them and develop their resilience. We must also make sure that the resources they need are available.

An agenda for this work was outlined in a recent publication by Amy Hirsch, Senior Soros Justice Fellow at the Center for Law and Social Policy (CLASP):

- Allow women access to subsistence benefits.
- Increase outreach, remove barriers, and improve access to treatment.
- Respond to violence against women and girls.
- Increase the supply of safe, affordable housing.
- Assist women in getting education and job skills.

I would add the importance of more effectively bridging the child welfare and criminal justice systems to ensure that children and families do not fall victim to our lack of attention.

What Can We Do?

Our strategies must address both social institutions and individuals. There are many institutional barriers to women getting their lives together. To work more effectively with the multiple systems involved in the lives of women offenders, we must:

- Learn what is driving the other systems involved in clients' lives.
- Teach practitioners in other systems what is driving the criminal justice system.
- Change our practices and policies to accommodate others when we can.
- Work with other systems to get them to recognize and be more responsive to the criminal justice populations hidden within their client populations.
- Advocate for policy and program changes that will make those systems more responsive. There are many examples: eliminate the exclusion of drug felons from public housing and eligibility for Section 8 certificates; make it easier for women to get public assistance and medical care in a timely manner; create access to needed drug treatment, mental health services, and even prescription drugs.

There are also some guidelines we can adopt for our work with women:

- We should seek to structure empowering environments in which people—clients and staff—are encouraged and supported in becoming more competent and self-sufficient. We need to distinguish helping/rescuing (in ways that foster depend-

ency) from interventions that aid clients in moving through an accelerated developmental process (in which they need to be able to make mistakes and learn from them). This is challenging and not easily achieved—it is not “tough love,” should not be overly parental, and has not been widely modeled in most criminal justice professionals' own experience. Further, it is extremely anxiety-provoking when the stakes are so high and any fall from grace so public.

- We must avoid overloading an offender with conditions and recognize that whatever is being required of an individual should be in some proportion to her offense. Our goal should be to help her succeed, not increase the likelihood that she will fail—whether as a function of technical violations or because of stress-related relapse or rearrest. Further, we should recognize that, the closer we look, the more likely we are to see technical violations. This suggests the importance of intermediate sanctions.
- We must incorporate into our interventions ways of regularly acknowledging accomplishment—our clients' and our own. Court officials, the public, and our staff need this re-focusing from failure to success as much as do clients.

In short, working with women in the criminal justice system requires that we find ways of working more effectively with the many other human service systems involved in their lives. We don't have to have all the answers. Instead, we must “hold the vision.” If purpose and values drive us, not form, we can embrace paradox and ambiguity, continually question and challenge ourselves and colleagues, beware of the “unanticipated or unintended consequences,” and be willing to continually evaluate, refine, modify—and sometimes even abandon our innovations.

To give women offenders a fighting chance requires significant changes in our strategies and public systems. Certainly we should expect as much of ourselves as we do of them!

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