

Is Justice Gendered?

As an unending stream of women pour into correctional facilities, it is fitting that the criminal justice community should pay more attention to whether gender makes a difference in the crimes that women commit, the pathways that they take to criminality, the sentences they receive, and the impact that their sentences have on their children. These three books approach such issues quite differently, and provide essential reading not only for academics, but also for defense counsel, prosecutors, judges, child welfare workers, policy makers, and correctional officials among others. I will consider the contribution of each book separately.

Women and Girls in the Criminal Justice System: Policy Issues and Practice Strategies, Russ Immarigeon, Ed.

(Civic Research Institute 2006) 564 pp.; hardcover ISBN 1-887554-52-1, \$133.95; available online at www.civicrosearchinstitute.com/co25.html

Women and Girls is a compilation of 52 articles that originally appeared in the bimonthly publication *Women, Girls & Criminal Justice*. Russ Immarigeon, whose work in this field has been uniformly thoughtful and thought provoking, also edits that publication. Given the oft heard but questionable observation that only academics and feminists need be concerned about female offenders, I am delighted that he has created an invaluable one-volume reference text that can easily be accessed by a much wider criminal justice audience. The book is divided into six parts to facilitate its ease of use by those who are looking for specific topics, and provides a wealth of information and an excellent overview of the many diverse policy, legal, and moral issues that surround our present practices.

The section headings are entitled: Policy Matters; Juvenile Justice Issues and Programs; Mothers and Children; Gender-Specific Classification, Risk Assessments, and Programming; Drug Treatment, Health Care, and

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Mental Health Services; and Programs and Practices. Each section is preceded by an introduction that summarizes the issues presented in the individual chapters. Although it is to be expected that some overlap is inevitable in a book that includes articles written over a four-year time span by multiple authors, it is remarkable how little distraction this causes because the essays are so rich and varied in their content. Moreover, the articles are all relatively short, ranging from approximately five to 15 pages and are well written by a veritable who's who of authorities ranging from academics in a variety of disciplines, to lawyers, service providers, and advocates.

Those who are interested in gender-related criminal justice issues will immediately recognize what a treasure this compilation is, but the brief identification of each author gives the casual reader little hint of the stellar quality of the chapters within. Each article includes the date of its original publication, and one notes that it was updated for this publication. Ideally all of the chapters could have included a paragraph update, though I understand the difficulty that such a task would have created given a large multiauthored book. Ironically, this omission does not adversely impact the book because one of the depressing things about this field is that the issues that consumed us 30 years ago are still mainly the same, except made worse by the burgeoning female offender population, and the solutions first posed decades ago are mainly the same, albeit now crafted with more sophistication and backed by more research.

Despite my pessimism about the impact of punitive sentencing practices on women and their children, this book not only details the problems, but shines a welcome light on programs and policies that might prevent juvenile girls from entering the adult system, and hold women accountable at the same time as they are given the tools they need to become productive community members and reunite with their children. Moreover, I was reminded how recently the study of women offenders became a recognized field by a chapter summarizing a 1998 research conference held by the International Community Corrections Association that was considered innovative because it focused on females. Indeed, it was only in 1999 that the

Office of Justice Programs sponsored its first and only National Symposium on Women Offenders.

Rather than detail the content of 52 chapters, the following synopsis is my explanation of why the book is worth reading, regardless of which of the following group you fall into. In other words, if you ever prosecute, defend, or sentence a woman, you should be aware of the gender issues raised by this book.

Defense counsel: Too few lawyers representing females think creatively about defenses, sentencing options, and alternatives to incarceration when their clients fit the typical profiles of female offenders that reveal their high levels of abuse, drug and alcohol dependency, mental illness, and struggles to raise their children as single mothers. As Judge Gertner has noted in discussing departures for coercion under the federal sentencing guidelines: “[i]n my experience few lawyers even bother to examine the relationship between the woman offender and her male codefendants, much less litigate it.” (Hon. Nancy Gertner, *Women Offenders and the Sentencing Guidelines*, 14 YALE J.L. & FEMINISM 291, 303 (2002).) This book provides food for thought about finding placements, and constructing arguments based on empirical data to use in plea bargaining and sentencing. (See also Myrna S. Raeder, *Primer on Gender-Related Issues That Affect Female Offenders*, CRIM. JUST., Spring 2005, at 4.)

Prosecutors: Too often prosecutors think that women are simply asking for a gender break due to their family ties. The book explains the tragic collateral consequences leading to termination of parental rights facing women who are sentenced to a term of even two years. Also understanding more about female offenders will better inform decisions about whether an incarcerative sentence is needed, given the low public safety risk posed by most nonviolent female offenders, and their lower recidivism rates.

Judges: Too few judges pay attention to collateral consequences facing women concerning their children, or seem to care about what happens to women in the institutions to which the judges send them. I have argued elsewhere that correctional factors can be legitimate sentencing considerations. (Myrna S. Raeder, *Gender-Related Issues in a Post-Booker Federal Guidelines World*, MCGEORGE L. REV. (forthcoming 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=888820#PaperDownload). National Association of Women Judges has a long-standing Women in

Prison Project that created a curriculum to sensitize judges who sentence women, and also has championed the use of appropriate gender-specific programming for incarcerated females. This book also contains many of those insights.

Policy makers: Too few policy makers think about the fact that gender does make a difference in the criminal justice system, not only in sentencing, but also in collateral consequences that face women on reentry. If we are poised for a paradigm shift in correctional policy, as the eminent historian Professor Nicole Rafter suggests in her overview chapter, this book presents the data that support the development of improved evidence-based policy. For example, gender-specific classification instruments discussed in later chapters clearly give the lie to any rationale based on incarcerating nonviolent women for their risk to public safety. In fact, recent efforts in California have identified more than 4,000 incarcerated women who are eligible for community placements based on their risk factors.

Correctional officials: Too often correctional officials follow the mode of simply adding women into a male model. This gender blindness can be seen in issues ranging from providing women with zippered one piece jumpsuits, substance abuse programming that does not deal with the underlying trauma of domestic violence, or cross-gender supervision that inappropriately intrudes on privacy interests or can lead to staff sexual misconduct. This book explains why such a view disserves women, how gender-specific policies and classification tools can also foster institutional goals, and also details the legal ramifications of suits brought alleging sexual abuse. In addition, one of the longer chapters written by Barbara Bloom, Barbara Owen, and Stephanie Covington discussing gender responsive strategies is based on their groundbreaking report for the National Institute of Corrections, for which I had the pleasure of writing a legal appendix. The full report can be downloaded at <http://nicic.org/Library/018017>. Another chapter addresses how the shift from rehabilitation to retribution and risk management in the 1990s places strain on inmate and staff relations, and explains why the implementation of the newer policies are not uniform.

Service providers: Too few service providers have easy access to information about the variety of models for programming that exists in community corrections, jails, and prisons. This book serves as a ready checklist of what factors are important in creating appropriate services, and

includes 10 chapters detailing specific programs and practices that offer innovative approaches to ensure that women offenders succeed in the community. In addition, it contains a section devoted to drug treatment, health care, and mental health services.

Probation and parole officers: Too few supervisors of women recognize the stress that they face concerning their children. An entire section is devoted to mothers and children, and discusses the various collateral consequences of incarceration that impact them. Not only do such restrictions hinder them from obtaining employment, education, and housing, but often the combined effect of these disqualifications prevent women from reuniting with their children. For example, women fall into the catch-22 of needing a suitable apartment before they regain custody of their children, but are ineligible for the apartment or financial assistance due to their drug conviction. Similarly, the presence of children may impact their ability to satisfy their probation or parole obligations. Given that women who return to custody tend to have a high rate of technical violations, rather than new offenses, understanding the context of women offenders' lives is important for those supervising them. As one of the chapters points out, distance and limitations on visiting may result in released prisoners having fewer family support networks on release. It should come as no surprise that without such networks reentry becomes more difficult.

Academics: Too few of you have probably asked your librarian to obtain a copy of this book. More importantly, how many of you are including gender issues in your criminal justice courses? This book includes little-known facts that may spark discussion in your classes. For example, Professor Nicole Rafter's historic overview starts in 1820 when, contrary to the recent past, men were considered more reformable than women. How better to demonstrate how criminal justice policy is shaped by attitudes, not simply facts? Similarly, Marc Mauer, director of the Sentencing Project, analyzes the impact of the "drug war" on women comparing differences in three states and their effect on sentencing. Again, the results demonstrate that more women are arrested and charged due to changing policy, rather than based on changes in women's criminality.

Anyone interested in juvenile justice: Too few books focus specifically on girls. Therefore, it is significant that an entire section of this book is devoted to the key issues concerning females who

become subject to the juvenile justice system. Professor Francine Sherman, who directs the Juvenile Rights Advocacy Project at Boston College School of Law, writes the introductory chapter. She explains how girls enter the system often as runaways or truants, which for many stem from their victimization at home. While casual readers might think that the relatively low number of girls detained signals the absence of any problem, in fact, there is general agreement that not only are girls disproportionately represented as status offenders, but they become subject to juvenile court because status offenders are so easily bootstrapped into delinquents in many jurisdictions by violating court orders that require them to stay in school or not to run away, or by relabeling their incorrigibility as assaultive behavior. Girls are detained at higher rates than boys, often to provide them with services, and their stays are lengthy due to a lack of female programs. Professor Sherman discusses the numerous advocacy issues that lawyers can raise on behalf of this population.

Other chapters focus on the mismatch of delinquent girls in programs designed for boys, and suggest approaches for working with juvenile girls. Professor Meda Chesney-Lind is the coauthor of several of the chapters that focus on myths and realities of relational violence committed by girls, suggesting that some girls become mean or aggressive as a reflection of their powerlessness and marginalization. She posits 12 ways to prevent fighting by girls, and reminds the readers that most of girls' aggression is nonviolent. The only disappointment about this section is the absence of a chapter on girls and gangs, a topic that Professor Chesney-Lind has extensively addressed elsewhere, including in this magazine. (Meda Chesney-Lind, *Are Girls Closing the Gender Gap in Violence?*, CRIM. JUST. Spring 2001, at 18) (arguing that relabeling of assaults accounts for the spike in arrests of girls for violent crimes.)