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GIRLS IN THE JUVENILE JUSTICE SYSTEM

ROBERT E. SHEPHERD, JR.*

INTRODUCTION

Over the last few years, America has witnessed a rather remarkable and unexpected reduction in crime generally, and an even more significant dip in serious and violent crimes committed by young offenders.[1] However, while these general and substantial decreases were taking place across the board, the number of young women arrested for delinquent offenses was increasing rather dramatically. These increases have led to a great deal more attention being paid to the involvement of girls in delinquency, and in the development of gender-specific and effective programs for those young women.[2]

General Statistics: Involvement of Girls in Delinquent Behavior

In the year 2000 girls constituted twenty-eight percent of all juvenile arrests, as opposed to twenty-four percent just four years earlier in 1993 and only twenty-one percent in 1983.[3] More than

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1. JEFFREY BUTTS & JEREMY TRAVIS, THE URBAN INSTITUTE, THE RISE AND FALL OF AMERICAN YOUTH VIOLENCE: 1980 TO 2000 4 (2002), *available at* http://www.urban.org/UploadedPDF/410437.pdf. The authors report that between 1994 and 2000 arrests of persons ages 18-24 for violent index offenses dropped by eighteen percent and arrests for those over age 24 fell sixteen percent while arrests of persons under the age of 18 dropped by thirty-four percent. Similarly, arrests of juveniles for murder fell by sixty-eight percent during the same period while arrests of those 18-24 and over 24 dropped by thirty-nine and thirty-one percent respectively. The same document reported that juvenile arrests overall declined by 13 percent over the same period. *Id.* at 9. *See also* Alfred Blumstein, *Why Is Crime Falling - Or Is It?*, *in* PERSPECTIVES ON CRIME AND JUSTICE: 2000-2001 LECTURE SERIES 1 (Nat'l Inst. of Just., U.S. Dep't of Just.), *available at* http://www.ncjrs.org/pdffiles1/nij/187100.pdf; Howard N. Snyder, *Juvenile Arrests 1999*, OJJDP JUV. JUST. BULL. (U.S. Dep't of Just., Off. Of Juv. Just. & Delinq. Prevention), Dec. 2000, at 3, *available at* http://www.ncjrs.org/pdffiles1/ojjdp/185236.pdf.

2. *See generally* Meda Chesney-Lind, *Are Girls Closing the Gender Gap in Violence?*, CRIM. JUST. MAG., Spring 2001, at 18-19, *available at* http://www.abanet.org/crimjust/chesneylind.html.

3. EILEEN POE-YAMAGATA & JEFFREY A. BUTTS, FEMALE OFFENDERS IN THE JUVENILE JUSTICE SYSTEM: STATISTICS SUMMARY 1 (1996), *available at* http://www.ncjrs.org/pdffiles/femof.pdf; Snyder, *supra* note 1, at 4; Melissa Sickmund, *Profile of Females in the Juvenile Justice System* 2 (Paper presented at the American Society of Criminology Conference, Nov. 7, 2001).

730,000 girls were arrested in 1997 across America,[4] and although that figure dropped to 670,800 in 1999, it still represented a slightly higher percentage of juvenile crime.[5] Violent crime arrests of girls increased by twenty-five percent between 1992 and 1996 and the increase in arrests of girls for property crimes went up twenty-one percent, while arrests of male juveniles dropped four percent overall.[6] One prominent researcher has posited that some of the shifts in offending patterns may represent differences in organizational behavior by juvenile courts as much as they represent actual differences in behavior by girls;[7] an interesting theory but one difficult to document.

Gang Activity

Involvement by young women in gang behavior has also increased. Although one report shows that only about ten percent of gang members in 1995 were female, that was an increase from about six percent in a similar 1992 survey.[8] However, another gang survey from 1996 reports that in jurisdictions with the most recent onset of gang problems (1995-1996), the percentage of girls in gangs was fourteen percent, as opposed to ten percent in the jurisdictions with earlier gang activity experience.[9] Joan Moore and John Hagedorn have recently reviewed the research on the involvement of young women in gangs, and they concluded that although there may be some significant under-reporting of gang activity by girls, the literature describing these activities may be overly dramatic, especially in the popular characterization of girls in gangs as largely sexual objects for the boys.[10]

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4. HOWARD N. SNYDER & MELISSA SICKMUND, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 115 (1999), *available at* http://www.ncjrs.org/html/ojjdp/nationalreport99/chapter5.pdf.

5. Snyder, *supra* note 1, at 4.

6. Kimberly J. Budnick & Ellen Shields-Fletcher, *What About Girls?*, OJJDP FACT SHEET, Nov. 1998, at 1-2, *available at* http://www.ncjrs.org/pdffiles/fs-9884.pdf.

7. Katherine Hunt Federle, *The Institutionalization of Female Delinquency*, 48 BUFFALO L. REV. 881 (2000).

8. SNYDER & SICKMUND, *supra* note 4, at 78.

9. James C. Howell et al., *Modern-Day Youth Gangs*, OJJDP JUV. JUST. BULL., June 2002, at 3, tbl. 4, *available at* http://www.ncjrs.org/pdffiles1/ojjdp/191524.pdf.

10. Joan Moore & John Hagedorn, *Female Gangs: A Focus on Research*, OJJDP JUV. JUST. BULL., Mar. 2001, at 2-4, *available at* http://www.ncjrs.org/pdffiles1/ojjdp/186159.pdf.

Delinquent Careers of Girls

A sophisticated study of juvenile court records in Maricopa County, Arizona, a heavily populated urban county with 2.5 million people, has contributed greatly to an understanding of the delinquent careers of youth who are brought to the attention of the juvenile court for delinquent activity.[11] In that study, about thirty-one percent of the youth charged with delinquency were females, but forty-six percent of the males referred for delinquency had at least one more referral while twenty-seven percent of the girls had a subsequent court referral.[12] Indeed, almost one in five boys, nineteen percent, had four or more court referrals as opposed to only five percent of the girls with such a recurrent history.[13] Also, only sixteen percent of the female careers included a serious crime, in contrast to forty-two percent of the male careers.[14] There was not as significant a disparity between the genders for the age at which delinquent activity began, since about twenty-eight percent of the boys and twenty-three percent of the females received their initial referrals to juvenile court before the age of fourteen.[15]

Status Offenses

There has not been a lot of change in the gender levels of involvement in traditional status offenses over the years, such as runaways, where arrests of girls tend to over-represent the true level of involvement in such behaviors. Even as late as 1999 girls represented fifty-nine percent of the arrests for running away and thirty percent of the arrests for curfew violations, demonstrating that there was still an over-representation of females in arrests for traditional status offenses.[16] Interestingly, about ten percent of all girls and ten percent of all boys report that they have run away from home at some point before they turned sixteen.[17] As the data show, though, girls are taken into police custody much more frequently than boys for these same behaviors.[18]

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11. SNYDER & SICKMUND, *supra* note 4, at 80.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. Snyder, *supra* note 1, at 1.
17. SNYDER & SICKMUND, *supra* note 4.
18. *Id.*

Detention Statistics

Although the data discussed previously addresses the gender of juveniles taken into custody and referred to juvenile court, statistics about placement in secure detention facilities are equally instructive. From 1987 to 1996, the number of juvenile cases involving detention increased by thirty-five percent among boys and by fifty-seven percent among girls, although even in the latter year, 1996, boys accounted for eighty-three percent of those detained.[19] Detention of girls increased by sixty-five percent from 1988 to 1997, and detention of African-American females increased by one hundred twenty-three percent during this period.[20] An important report on female delinquency released jointly in 2001 by the American Bar Association and the National Bar Association concludes that girls are more likely to be detained than boys for minor offenses, like public disorder, status, and traffic offenses, as well as significantly more frequently for probation and parole violations.[21]

SPECIAL CHARACTERISTICS OF FEMALE JUVENILE OFFENDERS

The typical juvenile female offender has been described as being about sixteen years old, living in a city in a single-parent home, as being a high school dropout with inadequate work and social skills, and with a victim history of physical or sexual abuse.[22] A later assessment by the same author modified the descriptive characteristics somewhat to being both under the age of fifteen and a woman of color.[23] Even more striking are the characteristics of those female offenders committed to secure juvenile facilities. A study of girls in detention in Philadelphia, in late-1999, showed that the typical girl held in detention in that city was African-American, had been found dependent prior to the first delinquency arrest, experienced five or more foster care transitions, had at least one

19. *Id.* at 153.

20. Meghan C. Scahill, *Female Delinquency Cases, 1997*, OJJDP FACT SHEET, Nov. 2000, at 1, *available at* http://www.ncjrs.org/pdffiles1/ojjdp/fs200016.pdf.

21. AMERICAN BAR ASSOCIATION/NATIONAL BAR ASSOCIATION, JUSTICE BY GENDER: THE LACK OF APPROPRIATE PREVENTION, DIVERSION AND TREATMENT ALTERNATIVES FOR GIRLS IN THE JUSTICE SYSTEM 17-19 (2001), *available at* http://www.abanet.org/crimjust/juvjus/justicebygender.pdf.

22. Ilene Bergsmann, *The Forgotten Few: Juvenile Female Offenders*, 53 FED. PROBATION 73, 73-75 (1989).

23. REBECCA MANIGLIA, OJJDP, JUVENILE FEMALE OFFENDERS: A STATUS OF THE STATES REPORT, (Oct. 1998) (quoting Ilene Bergsmann), *available at* http://ojjdp.ncjrs.org/pubs/gender/oview-2.html.

substance-abusing parent, experienced some kind of trauma, abused drugs or alcohol, and had a history of running away.[24]

Mental Health Need

In 1994, the Policy Design Team released a report on the mental health needs of youth in juvenile detention facilities in Virginia, which revealed that such needs were more severe for girls than for boys.[25] Of the 591 young people evaluated in that study, about seventy-eight percent had some mental health needs and forty-eight percent had such needs requiring mental health services.[26] The girls evaluated had greater mental health services needs than the boys, as 43.1 percent had moderate mental health treatment needs requiring services compared with 38.7 percent of the boys, and 15.7 percent of the girls had severe or urgent needs, contrasted with 7.4 percent of the boys.[27] A later report from 1999, which describes the profiles of incarcerated adolescents in Virginia, indicates an increase in the history of use of psychotropic medication among girls from 30.4 percent of the females in the Department of Juvenile Justice in 1993 to 59.9 percent in 1998, and reports that girls have a significantly higher rate of use than the boys' 44.7 percent.[28] The historical perspective on use of antidepressants is even starker – the percentage that reported such use in the female group was 43.9 percent in 1998 compared with twelve percent in 1993; boys showed a rate of 24.3 percent in the later survey.[29] The history of suicide attempts resulting in hospitalization showed a jump among girls from 16.5 percent in 1993 to 30.5 percent in 1998; only seven percent of the boys in 1998 had such a history.[30] Self-reported suicide ideation rates topped off at 49.7 percent among girls in 1998, compared with 24.3 percent for boys.[31] Girls are also twice as likely to have a history of a prior psychiatric hospitalization than boys during the period, but the percentages have remained fairly constant over the six years

24. ANNE MARIE AMBROSE & SANDRA SIMPKINS, IMPROVING CONDITIONS FOR GIRLS IN THE JUSTICE SYSTEM: THE FEMALE DETENTION PROJECT (Marsha Levick ed., 2001), *available at* http://www.abanet.org/crimjust/juvjus/gji.html.

25. POLICY DESIGN TEAM, MENTAL HEALTH NEEDS OF YOUTH IN VIRGINIA'S JUVENILE DETENTION CENTERS (1994).

26. *Id.* at 14, tbl. 2.

27. *Id.* at 16, tbl. 3.

28. ELIZABETH LLOYD MCGARVEY & DENNIS WAITE, PROFILES OF INCARCERATED ADOLESCENTS IN VIRGINIA: 1993-1998 78 (1999).

29. *Id.* at 79.

30. *Id.* at 82.

31. *Id.* at 83.

studied.[32] The Philadelphia Female Detention Project reported that the typical girl detained in that city had been committed to a psychiatric hospital at least once, most likely for a suicide attempt, had exhibited violent behavior, most likely in a school setting, and had an Axis I diagnosis of "Oppositional Defiant Disorder."[33]

Two recent researchers have analyzed the part that adolescent depression may play in influencing delinquent behavior among girls.[34] Although research about the link is still in its early stages, the data show that in one diverse population in Chicago, forty percent of non-depressed girls engaged in property offenses while sixty-eight percent of mildly to moderately depressed girls did so.[35] Similarly, forty-two percent of non-depressed girls committed crimes against other persons contrasted with eighty-two percent of depressed girls, and fifty-seven percent of mildly to moderately depressed girls engaged in even higher levels of aggressive behavior as against only thirteen percent of those girls who were not depressed.[36] Doctors Obeidallah and Earls posit three hypotheses for why depressive feelings underlie antisocial behavior by girls: (1) such feelings may feed girls' indifference about their own personal safety; (2) depressed adolescents tend to be withdrawn, have limited interests, and suffer from low self-esteem that cause them to be rejected by prosocial peers; and (3) antisocial, depressed youth have weakened attachments to prosocial institutions.[37]

Other Medical Issues for Incarcerated Girls

Of the incarcerated girls in the Virginia study, 23.5 percent had a sexually transmitted disease in 1998, compared with 5.9 percent of the boys.[38] Finally, 9.8 percent of the females in 1998 used crack cocaine, compared with just 3.6 percent of the males.[39] This data, although perhaps somewhat dry, demonstrate the extent to which females need different services in the juvenile justice system than males.

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32. *Id.* at 85.

33. AMBROSE & SIMPKINS, *supra* note 24.

34. Dawn A. Obeidallah & Felton J. Earls, *Adolescent Girls: The Role of Depression in the Development of Delinquency*, NATIONAL INSTITUTE OF JUSTICE RESEARCH PREVIEW (U.S. Dep't of Just., Nat'l Inst. of Just.), July 1999, *available at* http://www.ncjrs.org/pdffiles1/fs000244.pdf.

35. *Id.* at 3.

36. *Id.*

37. *Id.* at 1-3.

38. MCGARVEY & WAITE, *supra* note 28, at 99.

39. *Id.* at 107.

FEDERAL ENCOURAGEMENT OF PROGRAMMING FOR JUVENILE FEMALE OFFENDERS

Despite these data, and an important 1992 amendment to the federal Juvenile Justice and Delinquency Prevention Act, states have been slow to develop gender-specific programming for juvenile female offenders. The 1992 amendment, which grew out of the reauthorization of the Act in that year, provides that states must include in their required annual plans to the Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice: "(i) an analysis of gender-specific services for the prevention and treatment of juvenile delinquency, including the types of such services available and the need for services for females; and (ii) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency."[40] The same reauthorization process also added a "challenge grant" component to the Act which includes money for states involved in

> developing and adopting policies to prohibit gender bias in placement and treatment and establishing programs to ensure that female youth have access to the full range of health and mental health services, treatment for physical or sexual assault and abuse, self-defense instruction, education in parenting, education in general, and other training and vocational services . . . .[41]

As of 1997, only about one half of the states had developed meaningful plans or established programs for female juvenile delinquents.[42] However, continuing progress has been made since that time in developing a greater variety of model programs that are more successful in addressing the unique needs of girls.

FOUR BASIC ASSUMPTIONS FOR PROGRAM DESIGN

There are four basic assumptions that underlie successful programs for juvenile female offenders, and lawyers and jurisdictions should use these criteria in judging the effectiveness of proposed programs.[43]

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40. Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5633(8)(B) (2002).
41. 42 U.S.C. § 5667(B)(2)(E) (2002).
42. MANIGLIA, *supra* note 23.
43. *Id.*

First, exemplary gender-specific programs should incorporate the characteristics of good programs in general. A weak program for juvenile offenders generally will not become an effective program for girls simply by adding a gender-specific component. The program should therefore be based on solid research predicated on current adolescent development theory, with a well-trained and competent staff, and an ongoing and demanding evaluation component.

Second, an effective gender-specific program must recognize that young women are quite different from their male counterparts, that they may have different patterns of offending, and that they therefore need tailored and innovative treatment modalities.

Third, equity in programming for girls does not mean that programmers should simply allow girls equal access to existing services designed for young men. Equality certainly should exist in access to resources, and to quality staff and facilities. However, as the Community Research Associates study directed by Rebecca Maniglia has pointed out, "in the particulars of treatment . . . equality must be redefined to mean providing opportunities that mean the same to each gender."[44]

Fourth, services for girls cannot be viewed in isolation. To effectively address the issues presented by juvenile female offenders, the juvenile justice system must connect services to the broader issues of girls and women in the larger society, including education, gender roles, parenting, and a variety of other concerns.[45] The American Association of University Women and National Education Association report articulates criteria for gender-fair curricula that are equally applicable to juvenile justice programming.[46] Programming should acknowledge and affirm differences and similarities among and within groups of people: it should be inclusive, be designed around verifiable statistical data and developmental research, acknowledge and value the worth of individuals, be representative in staff and approach, and emphasize staff training at all levels.[47] Above all, as one of the Minnesota pioneers for programming for girls has observed, it should be premised on the fact that "[d]evelopmentally, girls are a lot more like women than they are like boys or men."[48]

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44. *Id.*

45. *Id.*

46. AMERICAN ASSOCIATION OF UNIVERSITY WOMEN/NATIONAL EDUCATION ASSOCIATION, HOW SCHOOLS SHORTCHANGE GIRLS (1992).

47. *Id.* at 64.

48. SHEILA PETERS, OJJDP, GUIDING PRINCIPLES FOR PROMISING FEMALE PROGRAMMING: A INVENTORY OF BEST PRACTICES (1998) (quoting Mary Scully Whitaker), *available at* http://ojjdp.ncjrs.org/pubs/principles/ch2_3.html.

EFFECTIVE PROGRAMMING FOR GIRLS

The Florida Female Initiative helped to develop some basic principles for a continuum of care for young women involved, or at risk of being involved, in the juvenile justice system:

- Girls should be treated in the least restrictive programming environment consistent with a balance between their treatment needs and the public safety;
- Young women should be treated in programs close to their homes so as to maintain key family relationships and maximize effective transitional services;
- Treatment modalities in the continuum should be consistent with principles of female development;
- Programs at all stage of the continuum should address the particular needs of girls who are parents or are pregnant; and
- Programs, if possible, should be all female or if coeducational should maintain an equal balance between young women and young men.

This continuum should be reflected in all stages of the system from prevention services through early intervention and diversion services to post-adjudicatory juvenile justice intervention services.[49] Prevention services should include such features as prenatal care for pregnant girls, sexual and physical abuse intervention, early childhood programs for at-risk girls, health and sexuality information programs, strong educational attention to the learning processes of girls, and the like. Early intervention and diversion services should include gender-specific counseling, remedial and tutorial education consistent with young women's learning styles, specially trained intake and court personnel to deal with girls and their needs, family-based wraparound services, all-female group homes and probation groups, and shelter care and other residential services for young women who have run away from home or engaged in other status offense behavior as an alternative to handling in the formal juvenile system.[50]

Special attention needs to be paid to juvenile detention policies, as girls tend to be detained in many localities at a higher rate than

49. MANIGLIA, *supra* note 23.
50. *Id. See also* PETERS, *supra* note 48.

their contribution to delinquency arrests would seem to justify.[51] Girls entering the juvenile justice system also seem to have a higher level of mental health problems than their male counterparts, as noted above, and any treatment services should accommodate these special needs. Juvenile justice intervention services should include all-female group treatment homes and specialized group homes for pregnant or parenting girls, gender-specific secure facilities for those few young women who are serious offenders and yet still need a full range of treatment services, and aftercare and parole services that are designed specifically to help reintegrate juvenile female offenders back into the community with a reduced risk for re-offending.[52] Gender-specific probation services are an especially important component of the intervention because mothers tend to report probation violations by their daughters more frequently than by their sons. Girls also seem to have more difficulty in complying with some conditions of probation than boys, and thus have a higher level of revocation and detention.[53]

CONCLUSION

Considerably more research is needed into the particular and unique needs of juvenile female offenders, and the evaluation of programs that currently exist around the country. There also should be more sharing of information about those programs that do work and how they can be replicated elsewhere. Lawyers practicing in juvenile court need to know far more about this particular population of offenders and their specific characteristics. For example, attorneys representing girls in the juvenile justice system may have to spend more time developing trust in their clients, because these young women have so frequently been abused by adults that they view any adult, including their own lawyers, with understandable mistrust. Also, lawyers representing girls in court proceedings, and prosecutors handling cases involving female offenders, should examine the availability of gender-specific programs and activities, and should insist on the ability to access such programs so as to effectively prevent re-offending.

The past decade has seen a much greater focus on young women in the juvenile justice system and this increased focus should generate continued research into the needs of these youth and,

51. AMBROSE & SIMPKINS, *supra* note 24.

52. *Id.*

53. Francine Sherman, *Probation and the Delinquent Girl*, WOMEN, GIRLS & CRIM. JUST. NEWSL. 1 (2000).

hopefully, a wider range of fresh and innovative programs to change the lives of these young women in very positive ways.