

Offenders and Enforcers: Women in Criminal Justice

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ABSTRACT: *Women's representation in the U.S. criminal justice system can take many forms. Women are offenders and victims. Women are also present in all areas of law enforcement consisting of local police officers, deputies, various state law enforcement, Coast Guard, military personnel and federal officers. Women encompass all aspects of the court system ranging from defense attorneys to prosecutors, municipal court judges to county court judges, district court judges to federal judges, as well as the Supreme Court of the United States. Women also work in the prison system as correctional officers and wardens. The focus of this article is women as offenders as well as enforcers of the law.*

When most people in the United States think of criminal offenders, the first image that comes to mind is usually not a woman. Unless a case is sensationalized such as a female high school teacher sleeping with a student, most crimes committed by women go relatively unnoticed by the public. Despite the general lack of awareness, female offenders do exist and have been on the rise in the past few decades. From 1990 to 1999, for example, women's felony convictions increased at twice the rate of men's (Sandler & Freeman, 2011). In 2006 women in U.S. prisons had an incarceration rate of 123 per 100,000 of the female population. In 2007 women composed 12.9% of the jail population, an increase from 10.8% in 1996 (Weiss, Hawkins, & Despinos, 2010). However, despite the increase in overall convictions of female offenders, the gender gap in arrests and convictions for violent crimes and rape remained unchanged from 1980 to 2003, where 90% of all arrests were male (Sandler & Freeman, 2011).

Research over the past 30 years has found gender to be more influential in disposition and sentencing decisions than any other factor such as race, age, or ethnicity (Sandler & Freeman, 2011). "Consistently, these studies have shown that female offenders are less likely than male counterparts to be arrested and convicted of offences, and once convicted, female offenders receive a milder sentence than male offenders" (Sandler & Freeman, 2011, p. 62). A popular theory to explain why women receive differential treatment by the criminal justice system is paternalistic chivalry. According to this theory, men have a desire to protect women and as such, are unwilling to inflict harm upon them. "Traditional stereotypes portray women as passive, weak, childlike and fickle and,

therefore, less culpable than men and less responsible for their behavior" (Sandler & Freeman, 2011, p. 63). Several separate studies in the late 1980s found that female offenders were treated more harshly than male offenders only when their offences violated traditional gender role expectations such as fondling a child and child abduction (Sandler & Freeman, 2011). However, the most recent study conducted by Sandler and Freeman (2011) found that female sex offenders still receive more lenient sentences than male sex offenders. A possible explanation is that recent research has shown that female sex offenders have significantly lower recidivism rates than their male counterparts. Perhaps because judges and prosecutors intuitively grasp this finding, they may often treat female sex offenders as posing a lower risk to society and recommend or give more lenient sentences (Ahola, Christianson, & Hellström, 2009).

The type of woman usually sentenced to prison is of concern. The majority are young, minority, single, and unemployed. They have used drugs or alcohol regularly before their arrest and have histories of physical and sexual abuse (Weiss et al., 2010). A great deal of research on female offenders shows that childhood trauma is often the first important marker of both substance abuse and crime (Caputo, 2009). While childhood trauma is also a factor in male offenders, female offenders tend to suffer higher rates of abuse, especially sexual abuse. "Over half of all women prisoners have experienced some form of abuse; more than one-third experienced sexual abuse" (Shelden, Brown, Miller, & Fritzler, 2008, p. 383). In 1999 the Bureau of Justice estimated that child sexual abuse for female offenders was between 23–37%, while abuse among male

offenders ranged from 6–15%. According to G. A. Caputo (2009), a national study conducted in 2000 found that girls who used drugs more often reported histories of physical and sexual abuse more than other girls, suggesting drugs are used as a coping mechanism for the abused. A separate study found that female substance abusers were much more likely to have been emotionally, physically, and sexually abused than male substance abusers (Caputo, 2009). In addition to being abused as children, women who witnessed their mothers victimized by domestic violence were also found to have a higher risk of substance abuse. “Research has effectively made the case that trauma during childhood places girls at risk for delinquency, drug use, and criminality later in life. Women in crime have higher rates of trauma than do other women” (Caputo, 2009, p. 17). Childhood sexual abuse is a significant contributing factor among female sex workers. A study conducted in San Francisco in 1982 found that 61% of the female sex workers had experienced childhood sexual abuse (Caputo, 2009). Caputo (2009) compared the types of abuse for women convicted of sex work and those convicted of shoplifting. She found that although shoplifters and sex workers share some similarities in their early life experiences, such as living in homes with alcohol abuse, there were some major differences. Sex workers reported higher rates of co-occurring traumas, such as violence between caretakers, drug and alcohol abuse among caretakers, and childhood sexual abuse. Shoplifters experienced far less life trauma than sex workers. Another pathway into the criminal justice system for many women involves the men in their lives. The majority of women who commit murder kill someone they know intimately. Several studies have shown that anywhere from 40% to 78% of women convicted of murder had experienced abuse and fit the battered woman syndrome (Shelden et al., 2008). A relatively new and controversial concept, battered woman syndrome describes a woman who was the victim of multiple cycles of battering, experienced significant psychological abuse, was unable to place responsibility on anyone but herself, and eventually responds violently, perhaps in defense, at her former abuser or a would be abuser (Walker, 2006). Researchers coined the term “double victim” to describe women who have been victimized by their partners but then who are subject to the criminal justice system that excludes evidence of this past victimization, forcing juries to convict the woman (Liotta, 2011).

Under these conditions there are few, if any, counselors to assist these women who lack education and work skills; thus, many women released from jail return to communities that are not able to address their needs. As the

women return to their communities, they are likely to return to activities that prompted their incarceration and thus are at an increased risk of returning to jail or prison (Weiss et al., 2010). The majority of women in prison are mothers with two or more children; about two thirds of women living with their children at the time of arrest were single parents. “Incarcerating a mother is significantly more likely to disrupt the children’s lives than the incarceration of a father. Children with incarcerated mothers, far more so than those with incarcerated fathers, are likely to be sent to live with another relative, to live alone, or to enter the foster system” (Liotta, 2011, p. 259). A focus group study of both men and women found that the most significant factors that facilitated or blocked successful reintegration into communities consisted of substance use, employment, and housing (Weiss et al., 2010). Due to the high cost of reincarceration, investigation into what works in preventing it among women is important. One such study found that state-sponsored support to address short term needs, such as housing, reduced the odds of recidivism by 83% (Weiss et al., 2010). Implementation of proven services that prevent recidivism is necessary to decrease the steady rise in incarceration rates among women.

Some researchers have argued that increased rates of female incarceration are not related to increases in criminality among women but the changes in various criminal justice policies. For example, Shelden, Brown, Miller, and Fritzler (2008) argue that a 713% increase in arrests from 1965 to 2005 comes from the war on drugs as well as police paying greater attention to domestic violence. Over the past several years the significant increase in the prosecution and incarceration of all people for using illegal drugs has significantly increased the number of women incarcerated. Shelden et al. (2008) argue further that the incarceration rate of women for assault and aggravated assault has increased because of the attention law enforcement has given to domestic violence; the very laws that were created to protect women are also being used to arrest, prosecute, and imprison women.

In law enforcement, the demographics of American police departments have changed dramatically over the past few decades in regard to race and gender. In the 1960s the vast majority of all police officers were white, working-class men. Although the majority of police officers today are still white men, more and more minorities and women are becoming police officers (Sklansky, 2006). After the 1972 amendment to the 1964 Civil Rights Act, discrimination based on race, color, sex, religion, and national origin in both public and private work places was no longer

allowed. The amendment allowed more and more women to enter policing. Their entry did not come without some resentment. The general agreement for denying women entry into policing was the belief that women possessed inherent physical and emotional weaknesses. "The greatest resistance came not from police administrators, but from the male street officer for whom the prospect of having a female partner was especially offensive" (Seklecki & Paynich, 2007, p. 19). The viewpoints held by many male police officers when women first started entering law enforcement have since changed dramatically. A recent national study by Seklecki & Paynich (2007) in the perceptions held by women police officers found that the majority of respondents felt they were treated equally compared to their male counterparts. However, 32% indicated they were treated worse than male officers when they first began their law enforcement career. The study also found that "the perception of working conditions has clearly improved as agencies have become more conscious of harassment, while remaining undeniably male influenced" (Seklecki & Paynich, 2007, p. 18). The respondents of the study confirmed the continued presence of traditional "male behaviors" such as sexually-based humor which is endemic to the profession of policing, yet the female respondents showed little to no offense to such conduct. The research suggests that female officers entered the profession of policing expecting to encounter these behaviors and consider them normal in the work setting (Seklecki & Paynich, 2007). From local police officers, sheriffs, federal law enforcement officers, and correctional officers, women function in various positions in the criminal justice system. In the past three decades, there have been dramatic increases in the number of female police officers, with tremendous variation between departments. Of women in policing, three categories of possible effects have been found to which women in the field have contributed. These include competency, community, and organizational effects. Competency effects are a distinctive set of skills and abilities that female officers bring to work which male officers often lack. Community effects are the relationships a female officer can bring to a portion of the community that was originally not represented by male counterparts. Organizational effects are the ways the addition of female officers change police in response to and treatment of the community they serve.

Advocates of increasing hiring and promotion of women claim that "women are, in fact, better officers in a range of respects: less prone to use excessive force, more skillful at defusing and de-escalating potentially violent confrontations, better at securing cooperation and trust,

and more effective in responding to incidents of domestic violence" (Sklansky, 2006, p. 1227). However, many of these arguments can be debated as quantitative evidence found that male and female officers behave in roughly similar ways (Sklansky, 2006). According to Sklansky (2006), several studies comparing performance found that female officers are slightly less proactive than male officers but substantially the same, while other studies have found no differences whatsoever. Some studies have found that female officers are less likely to use deadly or excessive force than their male counterparts, while others have found female officers may be more likely to use deadly force (Sklansky, 2006). When comparing all the research, it appears that women police officers are no better and also no worse than the male police officers; thus, the decision to hire a specific applicant should be based solely on the qualifications of the individual without taking sex into consideration. The research also indicates that the continued training of individual officers should be geared toward their specific needs. Some female officers are good at defusing potentially violent situations; others are not. Some female officers are not very capable of self-defense and appropriate levels of use of force; other female officers are exceptional at use of force and become excellent instructors to both male and female officers. Just like male officers, female officers should be scrutinized based on their individual level of expertise and not generalizations based on their sex.

As of 2002, women comprised 12% of all sworn law enforcement positions in the United States (Archbold, Hassell, & Stichman, 2010). The amount of women in upper management in law enforcement is considerably less than the overall percentage of women in law enforcement. The National Center for Women and Policing reported that in large police agencies, women hold 7.3% of top command positions, such as chief, commanders, and captains; 9.6% of supervisory positions, such as lieutenants and sergeants; and 13.5% of line operation positions. Women also represent 1% of chief of police positions across the United States (Archbold et al., 2010). At first glance, it could appear that the lack of women in the top command or supervisory level within law enforcement positions is related to discrimination, but this does not take all the facts into account. Most municipal police agencies that have 100 or more officers fall under some form of civil service law. While civil service law varies from state to state, it determines the specific rules for hiring, firing, and promoting police personnel. In Texas, municipalities under civil service law are required to promote based on a promotional test only: those who score

the highest on the test are promoted; those who fail the test are not. This is arguably not the best way to promote an officer; however, it can be argued as being the most fair. Granted that the top police positions are by appointment from the mayor or city council, the lack of women in supervisory roles within police agencies can be attributed, at least in part, to the lack of aspiration among women to seek promotion. Archbold, Hassell, and Stichman (2010) examined the promotion aspirations of female police officers. Much of the research relates to tokenism, which is described as a group that represents less than 15% of an organization's population. Research into the effects of tokenism have found that those who represent less than 15% of an organization and are termed tokens have more negative workplace experiences than those who represent 85%. A few negative effects of tokenism include feelings of isolation and polarization from the rest of the group. A study found that issues related to tokenism did influence female police officers' decisions not to participate in the promotion process (Archbold et al., 2010). One of the main reasons found for female police officers not pursuing promotion was that they were actually strongly encouraged to seek promotion by their male supervisors. Some of the female officers felt that the encouragement by their male supervisors created a perception in the organization that a woman would be promoted regardless of her competency. "The idea that any female officer would get promoted just because she was a woman further highlighted the token status of women in the police agency and, as a result, many female police officers chose not to pursue promotion" (Archbold et al., 2010, p.289).

Due to the small number of women being promoted to upper level police supervisors, Archbold et al. (2010) conducted a study of the promotional aspirations among female and male police officers to identify differences, if any, to the perceptions held by female and male police officers to seek promotion. Both male and female officers reported their reasons to seek promotion as greater career opportunities, salary increase, reaching a personal goal, and wanting to be in a leadership role. The main reasons why women chose not to participate in the promotion process were because they were happy with their current assignment, fear of interference with child and family, bias by administration, lack of interest, and a potential salary reduction. The main reasons why male officers chose not to seek promotion were because they were happy with their current assignment, fear of interference with child and family activity, salary reduction, lack of interest, and few promotion openings. The main difference in factors was that only women cited administrative bias as a factor not

to participate in the promotion process. The overall findings of the study were that female officers were less likely to aspire to promote than men. The study also showed that the perception of the officers played a role in women's aspirations to seek promotion. The perception that women receive preferential treatment in the promotion process, and the attempts by some departments to promote female officers who may not be the best candidates, can cause women to choose not to seek promotion (Archbold et al., 2010).

With the aspiration of some female police officers to become police managers, research has been conducted into the differences, if any, between male and female police managers. Andreescu and Vito (2010) examined the ideal leadership behavior of American police managers, based on a survey of 126 police managers throughout 23 states in the United States. The participants of the survey felt that the ideal leaders should "primarily be able to reconcile conflicting demands and reduce disorder in the system. Leaders should be persuasive, convincing and able to set the vision for the organization" (Andreescu & Vito, 2010, p. 579). A comparison of the type of leadership style of female and male officers found little difference in their preferences for a predominantly task-centered and structured leadership. A major difference was that female officers favored more than male officers a transformational leadership style, a more democratic, worker-oriented leader who would allow subordinates freedom of action and would respond well to the followers' concerns (Andreescu & Vito, 2010).

There is not a single aspect of the criminal justice system in which women do not play a role. Women are the victims of crime and the perpetrators of crime. Women can be addicted to narcotics and involved in petty crime to pay for their addiction. Women can also be psychopathic killers or, more likely, abused spouses who feel they are forced to kill their partner. Women incorporate all forms of law enforcement officials: defense attorneys, prosecutors, and judges. Women also encompass roles in the prison system. This article gives a brief glimpse at a few of the roles women play in the criminal justice industrial complex. Much further study is necessary in order to gain a full appreciation of what women's complete role is as compared to what it was just a few short decades ago.

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