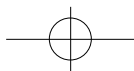
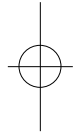
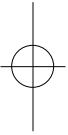
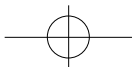
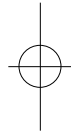
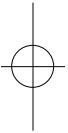


Gendered Justice





Gendered Justice

Addressing Female Offenders

Edited by
Barbara E. Bloom

Carolina Academic Press
Durham, North Carolina

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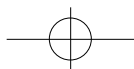
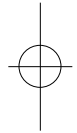
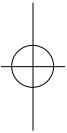
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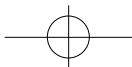
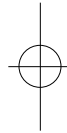
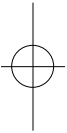
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This book is dedicated with gratitude and affection to Peter Graham Cohn who has devoted his life to the struggle for justice and who has inspired me to do likewise.





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Foreword

The Gender and Justice series responds to two of the most profound changes in criminal justice over the last quarter-century, one well-known, the other almost unrecognized.

The well-known change is the introduction of gender into the study of crime and its consequences. In the early 1970s, scholars and practitioners began to realize that gender—the social effects of being men and women—has an enormous impact on both the kinds of crimes men and women commit and the ways in which social systems respond to those offenses. Studying the effects of gender is necessarily an ongoing project, partly because gender roles themselves are in a constant state of flux, partly because scholars are constantly uncovering new facets of gendered existence—new historical meanings of gender and previously overlooked variations in gender by age, ethnicity and nationality, sexuality, and social class. To explore the ramifications of gender in the arena of crime and justice is, then, one goal of this series.

A second, barely recognized though equally profound change in criminal justice over the last twenty-five years lies in ways of conceptualizing *justice*. Citizens of democracies like to think that the concept of justice is unchangeable—that justice has always meant equal treatment under the law. But it is not so. Ideas of justice, like ideas of gender, change over time. In the 1970s, many criminal justice officials assumed that Black and Hispanic prisoners should be segregated and provided with fewer resources than white prisoners; similarly, nearly everyone assumed that women prisoners should be treated differently than their male counterparts. While differential treatment by race has been rejected, many people continue to advocate differential treatment by gender, at least during some stages of criminal justice process. If we aim at treating men and women the same, the reasoning goes, we in fact use a masculine model and draw on assumptions developed in reaction to men, who have always outnumbered women as offenders and convicts.

Figuring out whether justice should result in the same or different treatment is, then, another ongoing process. To explore the evolving meanings of justice as it relates to gender—to investigate ways in which people try to

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achieve gender equity in an unfair world—is, then, a second objective of this series.

Barbara Bloom's *Gendered Justice: Addressing Female Offenders* confronts these debates in the context of corrections, an arena in which the meaning of justice is currently hotly contested. Thirty years ago, few questioned the assumption that women offenders were less important than male offenders and that their institutions should be funded last. By the 1980s, however, advocates were demanding equal treatment, which many defined as identical treatment of men and women offenders. Jurisdictions throughout the Western world embraced that ideal, and policy-makers and practitioners today try to achieve it. Yet, for reasons explained in *Gendered Justice*, the goal is now starting to seem ill-advised as well as perhaps impossible to achieve. Bloom's book exposes the flaws of the justice-as-equality ideal, providing a trenchant and wide-ranging critique. As Bloom shows, today there is a new consensus emerging on the need to respond differently to male and female offenders, a consensus accompanied by renewed interest in correctional treatment and rehabilitation.

The burgeoning interest in gender-specific treatment of offenders is the topic of Bloom's book. Chapters by leading authorities analyze innovative efforts to develop gender-sensitive correctional programs in the United States and Canada. Addressing major theoretical as well as practical concerns, this book provides an international overview and evaluation of cutting-edge strategies for achieving gendered justice.

Nicole Hahn Rafter
Gender and Justice Series Editor
Northeastern University

About the Authors

Joanne Belknap, Ph.D. received a Ph.D. in Criminal Justice and Criminology from Michigan State University in 1986. She is currently a Professor in Sociology at the University of Colorado. Dr. Belknap has numerous scholarly publications, most of which involve violence against women and female offenders. She has also served on state advisory boards for female offenders and women in prison. She is currently working on research projects assessing the court processing of woman battering cases, on delinquent girls, and a second edition of her book *The Invisible Woman: Gender, Crime, and Justice*. Dr. Belknap is the recipient of the 1997 national award “Distinguished Scholar of the Division on Women and Crime” of the American Society of Criminology and the University of Colorado teaching award for 2001.

Barbara E. Bloom, Ph.D. is an Assistant Professor in the Department of Criminal Justice Administration at Sonoma State University. Her research and policy interests include women and girls under criminal justice supervision and gender-responsive interventions and services. Among her publications are several national studies: *Why Punish the Children? A Reappraisal of the Children of Incarcerated Mothers in America*, and a National Institute of Corrections sponsored study, *Female Offenders in the Community: An Analysis of Innovative Strategies and Programs*. She is the Project Director of the National Institute of Corrections’ *Gender-Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders* Project. She received an MSW from San Francisco State University in 1981 and a Ph.D. in Sociology from the University of California, Riverside in 1996. She is a past President of the Western Society of Criminology.

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Meda Chesney-Lind, Ph.D. is Professor of Women's Studies at the University of Hawaii at Manoa. She has served as Vice President of the American Society of Criminology and President of the Western Society of Criminology. Nationally recognized for her work on women and crime, her books include *Girls, Delinquency and Juvenile Justice*, *The Female Offender: Girls, Women and Crime*, and *Female Gangs in America*. Her most recent book is a co-edited volume that examines the social consequences of mass imprisonment entitled *Invisible Punishment*. She recently received the Bruce Smith, Sr. Award "for outstanding contributions to Criminal Justice" from the Academy of Criminal Justice Sciences in April, 2001. She was named a fellow of the American Society of Criminology in 1996.

Stephanie S. Covington, Ph.D. has over twenty years of experience in the design, development and implementation of treatment services for women. She is recognized for her work on gender-responsive services in both the public and private sectors. Her twelve years of experience in the criminal justice system include training, speaking, writing, and consulting with varied national, state and local corrections agencies in the U.S. and Canada. Dr. Covington has published extensively. She developed a comprehensive, integrated, gender-responsive treatment model for criminal justice settings entitled *Helping Women Recover: A Program for Treating Substance Abuse*, and she provides training and speaks regularly at national conferences. Dr. Covington is the lead consultant on the National Institute of Corrections' *Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders* Project. Dr. Covington holds a Masters degree in Social Work from Columbia University and a Ph.D. in Psychology from the Union Institute.

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Kathleen Kendall, Ph.D. is a sociologist in the School of Medicine at the University of Southampton, United Kingdom. She has lectured in both Canada and the United Kingdom. Kathleen has worked for the Correctional Service of Canada variously as a program evaluator, researcher and special advisor on female offenders. She has written extensively on issues related to female prisoners in Canada and was recently consulted by the Canadian Human Rights Commission with regard to her work on the mental health of female prisoners. Currently she is conducting research on human experimentation in Canadian prisons with Dorothy Proctor and is involved in a qualitative study of depression funded by the British Medical Research Council.

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Barbara Owen, Ph.D. is a Professor of Criminology at California State University, Fresno. Receiving an NIJ Graduate Research Fellowship in 1982, she earned her Ph.D. in Sociology from UC Berkeley in 1984. In 2002, she was awarded the Provost Award for Excellence in Research from her university. A former Senior Researcher with the Federal Bureau of Prisons, Barbara Owen is the author of over 12 articles and two books, including *In the Mix: Struggle and Survival in a Women's Prison* (SUNY Press, 1998). As an ethnographer, she continues to work in the areas of feminist criminology, substance abuse treatment and prison culture.

xiv ABOUT THE AUTHORS

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Christine E. Rasche, Ph.D. is Associate Professor of Criminal Justice and Sociology at the University of North Florida. In addition to university teaching and research, she consults with state and federal correctional departments and provides training for prison staff on the specialized supervision of female offenders. She is also active in women's affairs in her community, chairing the Mayor's Sexual Assault Advisory Council and serving on the Advisory Board of Hubbard House, the local battered women's refuge.

Margaret Shaw, Ph.D. is Director of Analysis and Exchange at the International Centre for the Prevention of Crime (ICPC) in Montreal. She is a sociologist and criminologist who has worked as a research and policy analyst in the Home Office, England, and for the federal and provincial governments in Canada. She taught in the Department of Sociology & Anthropology at Concordia University, Montreal for the past ten years. She has a long-standing interest in prisons and prison reform, women's involvement in lawbreaking, crime prevention, treatment and program evaluation and restorative justice. Her recent published work includes a number of studies on women's imprisonment. With Kelly Hannah-Moffat she edited *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada* (Fernwood, 2000), and completed a study of the use of classification in women's prisons in Canada *Taking Risks: Incorporating Gender and Culture into the Classification & Assessment of Federally Sentenced Women in Canada* (Status of Women Canada, 2001).

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My deepest appreciation goes to the contributors to this volume. They are internationally recognized scholars in the study of gender and justice and it has been my honor to include their work in this book.

The initial impetus for this book came from my colleague and friend, Stephanie Covington, to whom I am most grateful. She said simply, but emphatically, "Barbara, you really need to do this book." And with her encouragement and support, I did.

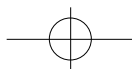
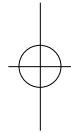
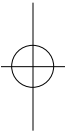
I am thankful to Nicky Rafter, Editor of the Carolina Academic Press Gender and Justice Series, who has inspired so many of us along the way, and who was instrumental in every stage of the development of the book. Her support and encouragement are greatly appreciated.

There have been many women who have inspired my work over the years, Joanne Belknap, Meda Chesney-Lind, Joy Pollock, and Nicky Rafter to name a few. Barbara Owen, my research partner with whom I have collaborated on a number of projects and publications, has remained steadfast in her dedication to enhancing research and scholarship on behalf of women and girls in the justice system. In the fifteen plus years that we have worked together, she has continued to be a supportive and reliable colleague and good friend.

The National Institute of Corrections has been a leader in terms of women offender initiatives, including the Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders Project (Bloom, Owen, & Covington, 2002). Phyllis Modley, Andie Moss, and Mary Scully Whitaker are to be applauded for their commitment to raising the visibility of gender issues in U.S. corrections.

Many thanks to my former student, Correne Testa, for her editing assistance, Linda Cepeda, for doing the final edits, and to Robin Button for her attention to detail in preparing the manuscript.

Finally, this book is dedicated to the girls and women who have experienced the justice system first-hand and whose voices and life stories have informed my research and advocacy. You have inspired me to continue my struggle for gender and justice.



Introduction

Barbara E. Bloom

A focus on gender and gender difference is not simply a focus on what some scholars term 'women's issues.' It is a far more encompassing enterprise, raising questions about how gender organizes the disciplines of criminology and sociolegal studies (Chesney-Lind & Bloom, 1997).

Many feminists now argue that women themselves must determine when difference is relevant so that they can be both the same and different across situations and individuals. The goal is not equality but equivalence, not sameness for individual men and women but parity for women as a sex or for groups of women in their specificity (Martin & Jurik, 1996).

This volume evolved from a panel entitled *Gendered Justice: Programming for Women in Correctional Settings* that I chaired at the American Society of Criminology Annual Meeting in San Francisco, November 2000. It was a provocative and lively session and, as is often the case, we did not have enough time to fully explore the content of the excellent papers that were presented. Subsequently, some of the panelists revised their papers into chapters contained in this book. This volume represents a rich diversity of contemporary research, theory and perspectives on gender-appropriate policy and programming from the U.S., Canada, and the United Kingdom. All of the authors included in this book are on the cutting edge of the research that is being conducted on gender and justice and they are widely acclaimed for their work.

This book should be of interest to a wide audience including criminal justice policy makers and practitioners, as well as researchers who are interested in looking at the ways in which gender influences correctional policy and practice. In addition, this book should be relevant to academics and students in sociology, psychology, criminology, criminal justice, and women's and gender studies. This volume should also be of value internationally to jurisdictions that are interested in re-examining their policies and practices regarding female offenders.

xviii INTRODUCTION

Female offenders¹ have experienced a history of neglect in the development and implementation of correctional programming targeted to their circumstances. Historically, programs for female offenders were based on male program models without consideration of their appropriateness for women and girls. Often by default, practices designed for male offenders were viewed as the norm. The significant increase in women and girls under correctional supervision has called attention to their status in the justice system and the particular circumstances they encounter within the system.

This book addresses the complex questions that arise regarding female offenders and criminal justice policy. It raises serious questions about current criminal justice policy and practice which ignore gender as well as practices that have been widely accepted by mainstream criminologists, policy makers, and practitioners without regard for their implications for women and girls. This book discusses the special circumstances faced by female offenders and the “equal treatment” tradition that has guided criminal law and practice for the past century and has generated the phenomenon known as ‘vengeful equity’. It challenges mainstream policies of “gender neutrality” in terms of their implications for women and girls in conflict with the law. With the dramatic rise of women and girls in the criminal justice system, gender-based issues are now receiving attention in the U.S., Canada, the United Kingdom, and elsewhere.

There are a number of global themes that are addressed in this volume including the following:

Gender Matters

The central theme of this book is that crime is gendered and that gender matters significantly in shaping patterns of offending as well as the criminal justice system’s response to criminal offending and to offenders. Gendered differences in female pathways to crime and incarceration, their offense patterns, and their behavior and needs while incarcerated, all suggest a need for gender-responsive policies and practices. In order to sufficiently explain women and girls’ criminality, it is important to recognize the significance of gender in defining as well as prescribing behavior and how gender interacts with race and class. Race and class are important risk factors in being processed through the criminal justice system. Racial disparity is a factor in the arrests, pretrial treatment, and sentencing of female offenders. Women of color, especially

1. The term female offender is used to describe both women and girls under correctional supervision.

African-Americans, are disproportionately incarcerated in U.S. prisons and jails.

In her book, *Women and Punishment* (2002), Pat Carlen asks if gendered justice is viable? She states:

The notion of a 'gendered justice' persists because there is ample evidence that at operational levels it is indeed alive and well. Whether or not they should be, women are already punished differently to men because sentencing policies impact differently on different age, ethnic and gender groups (pp. 11-12).

Gender is also important in examining the differential effects of current policies. For example, in the U.S. much of the increase in criminal justice control rates for women is a result of the war on drugs. Inadvertently, the war on drugs became a war on women, particularly poor women and women of color (Bloom, Chesney-Lind, & Owen, 1994). The emphasis on punishment rather than treatment has brought many women and girls into the criminal justice system. Female offenders who in past decades would have been given community sanctions are now being sentenced to prison. Mandatory minimum sentences for drug offenses coupled with federal sentencing guidelines intended to reduce racial, economic, and other disparities in sentencing males, have distinctly disadvantaged females. These so-called "gender-neutral" sentencing laws fail to recognize the distinction between major players in drug organizations and minor ancillary players.

While most of the attention on the impact of the war on drugs has focused on the criminal justice system, policy changes in welfare reform, housing and other social policy arenas have combined to create a disparate and adverse impact on women who have been convicted of drug offenses and their families. Women are often the custodial parent with major responsibilities for their children. Frequently caught in the cross-fire of the war on drugs, women and their families pay an enormous price.

Is Equal Treatment, Fair Treatment?

There is an emerging awareness that women and girls who are involved in the correctional system present different issues than their male counterparts. However, an appropriate recognition of these differences fuels debate regarding concepts of 'justice-as-equality' or 'justice-as-parity'. In the 1980s, the equal

treatment model (which was translated as identical treatment) was embraced by justice systems around the globe and according to some scholars, this model led to “vengeful equity” (Bloom & Chesney-Lind, 2003).

Today, some criminal justice organizations are beginning to re-examine their policies and programs in terms of gender with an acknowledgment that ‘parity’ differs conceptually from equality and stress the importance of *equivalence* rather than *sameness*. For example, the American Correctional Association’s Policy Statement suggests that “correctional systems should be guided by the principle of parity. Female offenders must receive the equivalent range of services available to male offenders, including opportunities for individual programming and services that recognize the unique needs of this population” (ACA, 1995, p. 2).

Gender-Responsive Policy and Practice

While the Canadian “what works” literature² has provided a foundation for a renewed interest in correctional treatment and rehabilitation, the research in this volume raises critical issues regarding the applicability of the assumptions upon which it is based. The “what works” body of research continues a male-oriented focus and ignores gender and culturally responsive treatment. While this literature has had an enormous impact on correctional treatment in Canada, the U.S. and elsewhere, the question of whether or not findings, such as the importance of identifying criminogenic risks and needs, can be generalized to women and girls as well as persons of diverse racial and ethnic backgrounds is still unanswered. In a previous publication, I questioned whether women’s offending relates to criminogenic risks and needs or is but one factor in the complex interconnection of race, class, gender, abuse, trauma, addiction, or a combination (see, for example, Bloom, 2000, p. 122). Chapters 3 and 4 offer further insight into these issues.

In Chapter 1, *Gendered Justice: Women in the Criminal Justice System*, Stephanie Covington and I discuss the need to develop effective gender-responsive programming for women that is based on their life circumstances and pathways to crime. We discuss how gender makes a critical difference in terms of its impact on standard correctional procedures. We provide an

2. The “What Works” Literature refers to the work of Don Andrews, James Bonta, and Paul Gendreau. This work emphasizes criminogenic risks, needs, and responsibility as factors that should be considered in correctional treatment.

overview of contemporary issues relating to criminal justice practices impacting women, such as bail, sentencing, classification, programming, management strategies, and transition to the community. The chapter concludes with a framework for developing gender-responsive policy, procedures, and programs for women offenders that addresses four primary areas: prevention, harm reduction, gender-responsive services and community support.

In Chapter 2, *Differences with a Distinction: Women Offenders and Criminal Justice Practice*, Barbara Owen describes how few jurisdictions have developed appropriate policies on the management and supervision of female prisoners and parolees. As a result, female prisons are managed based on policies and procedures developed for the management of the male offender. These issues include classification, program development, training and operational procedures. Owen states that the gendered differences in women's pathways to incarceration, offense patterns, their behavior while imprisoned and their needs before, during, and after incarceration must be considered in planning for appropriate correctional policy.

Adding insight into the utility of risk assessment, Chapter 3, *The Meaning of Risk in Women's Prisons: A Critique*, by Kelly Hannah-Moffat and Margaret Shaw discusses the fact that, during the past ten years, correctional professionals have become increasingly concerned with the risk and needs assessment. This is particularly true of federal corrections in Canada and related government-based correctional research. The proliferation of risk assessment techniques is one of several characteristics of an increasingly technocratic and calculated system of penal governing. The desire or "need" for risk assessment in current correctional practice is pressing. However, there is often little consensus on the meaning or type of risk, such as the risk of re-offending or the risk of danger to the public, to be predicted and managed. This chapter summarizes the findings of a two-year study that examined some of the theoretical, methodological, and practical difficulties linked to current efforts to create gender and ethno-culturally sensitive risk assessment tools for Canadian federally sentenced women. Hannah-Moffat and Shaw argue that, while the methods used for male populations for assessing risk may also be of concern, especially in relation to ethno-cultural diversity, mental health and social disadvantage, they should not be generically incorporated into women's corrections. Furthermore, in spite of existing legislative criteria, it remains questionable as to whether or not a risk-based approach to the management of the female offender is the most suitable.

Building on the research described in the previous chapter, Chapter 4, *Cognitive Behavioralism in Women's Prisons: A Critical Analysis of Therapeutic Assumptions and Practices*, by Kathleen Kendall and Shoshana Pollack makes the case, that within corrections, cognitive behavioral approaches are gaining

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global currency. According to the authors, cognitive behavioralism is a term applied to a range of interventions derived from three psychological theories: behaviorism, cognitive theory and social learning theory. When applied to corrections, a cognitive behaviorist approach generally assumes that offenders have failed to develop particular cognitive skills and have learned inappropriate ways of behaving. Programs are designed to target “criminal thinking” and teach offenders new coping strategies and ways of controlling their behavior. The chapter discusses the efficacy of Dialectical Behavioral Therapy (DBT), a cognitive behaviorist approach used widely in Canadian women’s prisons. The authors conclude that all therapeutic services delivered within prison risk being co-opted and made integral to the prison system. Further, they suggest that mental health services to women are best delivered by community providers outside of, rather than inside of, prison.

In Chapter 5, *Stages of Gendered Disadvantage in the Lives of Convicted Battered Women*, Elizabeth Leonard compellingly explores the gender-specific nature of violence against female partners which produces a series of criminalizing events for women seeking nothing more than safety for themselves and their children. When individual and/or institutional efforts fail to protect battered women from life-threatening danger, some women resort to lethal force to save their own lives and the lives of their children. When that occurs, these women face another sequence of profound gendered disadvantages as the criminal justice system aggressively responds to their actions. Drawn from interviews with 42 women, this chapter graphically describes a series of gendered difficulties encountered by battered women who kill abusive partners as their paths take them from victims to convicted survivors.

In Chapter 6, *Cross-Sex Supervision of Incarcerated Women and the Dynamics of Staff Sexual Misconduct*, Christine Rasche traces the historical demise of cross-sex supervision of female offenders in the late nineteenth and early twentieth centuries and the legal changes of the 1970s and 1980s which prompted its return. She describes the methodological difficulties of investigating this phenomenon which also help to explain why some cases of custodial sexual misconduct do not come to light until they explode into scandal. The focus of this chapter is on the forms and dynamics of staff sexual abuse of female inmates in cross-sex supervision situations and on remedies which correctional authorities may wish to consider to alleviate these exploitive practices.

In Chapter 7, *Gendered Implications of Sentencing and Correctional Practices: A Legal Perspective*, Myrna Raeder focuses on the innumerable ways in which there are gendered consequences of sentencing and correctional practices that are supposedly gender-neutral. She explores the legal ramifications of such issues which include a comprehensive overview of the current case law

as well as a sound legal framework to challenge practices that disadvantage female offenders. Individual topics include the effects of sentencing guidelines and mandatory minimums on women, child-related issues in custodial and community settings, access to programs, services and facilities, staff sexual misconduct, and privacy.

The next two chapters focus specifically on girls and delinquency. They raise important insight into juvenile justice professionals' assessment of pertinent issues regarding delinquent girls and trends in the treatment of girls. These chapters also provide descriptions of promising interventions with girls.

In Chapter 8, *Professionals' Assessments of the Needs of Delinquent Girls: The Results of a Focus Group Study*, Joanne Belknap, Erica Winter, and Bonnie Cady discuss the findings of focus groups with professionals who work with delinquent girls across the state of Colorado. In particular, the authors were interested in determining what these individuals believe to be the primary issues in responding appropriately to girls. The authors were interested in finding out how best to assess the unique needs of delinquent girls and to improve the ways in which the juvenile justice system responds to these needs. They also discuss the major, themes, challenges, and rewards of effectively working with delinquent girls.

In Chapter 9, *Gender Matters: Patterns in Girls' Delinquency and Gender Responsive Programming*, Meda Chesney-Lind and Scott Okamoto reveal that while girls in the juvenile justice system were once "dubbed" "the forgotten few" (Bergsmann, 1989), that construction of female delinquency has rapidly faded as increases in girls' arrests have dramatically outstripped those of boys for most of the last decade. Girls now account for one out of four arrests and attention is being called to the fact that their arrests for non-traditional offenses are among those showing the greatest increases. These shifts and changes bring into sharp focus the need to better understand the dynamics involved in female delinquency and the need to tailor responses to the unique circumstances of girls growing up in the new millennium.

In the concluding Chapter 10, *A New Vision: Gender-Responsive Principles, Policy, and Practice*, I propose a call to action for policy reform that considers the gendered differences in women and girls' lives and the need for approaches that are responsive to these differences. This chapter, which reflects research sponsored by the National Institute of Corrections (Bloom, Owen, & Covington, 2002) identifies guiding principles, general strategies and steps for implementation of a gender-responsive justice system.

The ultimate challenge is to carefully and critically examine our priorities. While creating a gender-responsive criminal justice system is an important goal, the ultimate goal should be reducing women and girls' incarceration,

halting the unnecessary expansion of correctional facilities for females, expanding the use of community alternatives, and preventing the pattern of continued imprisonment for generations to come.

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