

Gender Matters: Bringing Gender-Responsive Strategies to Women in Drug Courts

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Abstract

A substantial body of scholarship has demonstrated gender differences in the context and development of women's substance use and criminal behavior. In response, the correctional field has increasingly recognized that a "one-size-fits-all" approach is insufficient to address women's unique needs in treatment. At the same time, research evidence shows that women graduate from drug courts at rates far lower than men, highlighting an opportunity to adopt well-established, empirically supported gender-responsive principles in drug court settings. These guiding principles are designed to acknowledge the gendered context of women's lives and how this context influences their pathways in and out of the criminal justice system. Although gender-responsive services have been shown to effectively reduce women's rates of recidivism and future substance use across multiple criminal justice settings, most drug court treatment programs continue to provide the same treatment to men and women regardless of gender. Here, we provide recommendations for how drug court programs can implement gender-responsive principles in order to improve treatment outcomes among system-impacted women.

Keywords: gender, gender-responsive, equity, women

Over the past 40 years, there has been an alarming increase in women’s criminal justice involvement in the United States (U.S.). From 1981 to 2021, the number of women incarcerated in U.S. state and federal prisons rose by approximately 600 percent, outpacing the rate of men’s incarceration during this same time period by more than twofold (Minor-Harper, 1982; Carson, 2020). The rapid growth in women’s justice involvement has been largely driven by drug laws and sentencing procedures associated with the “War on Drugs” (Golder et al., 2014; Owen et al., 2017). These changes have disproportionately impacted women, particularly women of color, who are significantly more likely than men to be incarcerated as a result of substance-related crimes (Carson, 2020).

Substance misuse is a central factor for women’s initiation and maintenance in the criminal justice system. An estimated 51% of recently incarcerated women meet the criteria for a substance use disorder (SUD; Fazel et al., 2017), and more than 60% of women incarcerated in state facilities met criteria for having a drug dependence or abuse problem during the year prior to their incarceration (Mumola & Karberg, 2006). Moreover, evidence suggests that relative to men, women’s criminal behavior is more likely to occur within the context of substance use. For example, imprisoned women are significantly more likely than men to report using substances in the 30 days prior to arrest and at the time of their offense (Maruschak & Bronson, 2021). Women who meet the SUD criteria are also more likely than those without an SUD to be sentenced for nonviolent drug or property crimes, suggesting that their criminal behavior may, in part, be motivated by efforts to obtain or use substances (Kopak & Smith-Ruiz, 2014).

The etiology of substance use varies significantly across gender. We have known for quite some time that women’s drug use, abstinence, and relapse are more closely tied with intimate relationships than men’s (Hser, Anglin, & Booth, 1987a; b; Sun, 2007). For example, women are oftentimes introduced to drugs by dominant male figures in their social networks, including family members, friends, or lovers (Center for Substance Abuse Treatment, 2009; Henderson, Boyd, & Whitmarsh, 1995; Henderson, Boyd, & Mieczkowski, 1994; Sun, 2007; Van Wormer, 2002). Substance using network members have also been shown to have a strong influence on women’s recovery outcomes and can be an important precipitant of relapse (Brown et al., 2015; Tracy et al., 2016; Warren et al, 2007; Wenzel et al., 2010) and criminal recidivism (Mannerfelt & Håkansson, 2018).

Additionally, system-involved women are much more likely than men to have histories of sexual or physical abuse, co-occurring mental disorders, low self-esteem, and more acute substance use histories (Giarratano et al., 2020; Evans & Sullivan, 2015; Komarovskava et al., 2011; Langan & Pelissier, 2001; Mannerfelt & Håkansson, 2018; Messina, Burdon, & Prendergast, 2003). The severity of substance misuse and addiction has also been shown to be a stronger predictor of antisocial behavior for women than for men (Andrews et al., 2012; Dowden & Brown, 2002; McClellan et al., 1997). In sum, because the etiology of substance use and misuse varies across gender, treatment strategies for addiction are similarly quite different for women than they are for men. Programs that recognize these distinctions among women show more promise in reducing their future substance use (Meyer et al., 2019; Orwin et al., 2001; Ashley et al., 2003).

Since their inception in 1989, drug courts have emerged as an alternative to incarceration for individuals who are charged with or convicted of a substance-related crime (U.S. Department of Justice, 2021). There are currently over 3,500 drug courts operating in the U.S., and women comprise an estimated one-third (32%) of participants (Marlowe et al., 2016). Although the components of individual courts vary, most include risk and needs assessments, graduated rewards and sanctions, judicial interaction, monitoring and supervision, and services designed to address substance misuse. Individuals who graduate are frequently rewarded with a reduction or dismissal of their charges (U.S. Department of Justice, 2021).

Most U.S. drug courts provide the same treatment to men and women regardless of gender. However, a national survey of U.S. drug courts found that women graduated at rates far lower than those of their male counterparts (Marlowe et al., 2016). Further, recent evidence suggests that Black women are nearly half as likely as White women to be successful graduates of such programs (Dannerbeck & Yu, 2021), indicating that this one-sized-fits-all approach is not effectively addressing the needs of women in the criminal justice system. Indeed, accumulating research has identified significant gender differences in men's and women's pathways to criminal offending, the nature of their criminal offenses, and their social and psychological needs (Brennan et al., 2012; Daly, 1992; DeHart, 2018; Salisbury & Van Voorhis, 2009; Wanamaker & Brown, 2021). Compared to men, women in the criminal justice system report higher levels of trauma and victimization (Fedock et al., 2013; Green et al., 2005; Messina & Grella, 2006), social and economic deprivation (Owen et al., 2017), mental illness (DeHart et al., 2014; Fedock et al., 2013; Lynch et al., 2014), and parenting-related stress (Bloom et al., 2003; Owen, 1995; Tuerk & Loper, 2006). These notable gender-based differences underline the importance of programs that acknowledge and attend to the unique needs of system-involved women.

In recent decades, empirical support has grown for the development of gender-responsive correctional services, which address women's unique needs in treatment and examine their law-breaking behavior within the context of their life experiences (Bloom et al., 2004; Covington & Bloom, 2007; Van Voorhis et al., 2010). Gender-responsive services are strengths-based, trauma-informed, culturally relevant, and grounded in theoretical models that recognize women's particular pathways into the criminal justice system (Bloom et al., 2004; Covington & Bloom, 2007). Encouragingly, research on gender-responsive correctional interventions has found that they are associated with decreased rates of recidivism (Gobeil et al., 2016) and improved substance use outcomes among system-involved women (Messina et al., 2012; Tripodi et al., 2011).

In fact, an experimental study in which women were randomly assigned to either gender-responsive drug court treatment or traditional drug court treatment demonstrated preliminary evidence that supports further implementation of a gender-responsive model (Messina et al., 2012). Using curricula developed by Stephanie Covington (*Helping Women Recover* [Covington, 2008] and *Beyond Trauma* [Covington, 2003]) the study found several positive behavioral trends for participants in gender-responsive treatment—specifically, better in-treatment performance, reductions in trauma symptomatology, and higher treatment satisfaction and engagement.

Gender-Responsive Strategies for Drug Courts

Guiding principles have been proposed for establishing gender-responsive services in the criminal justice system, which are outlined by the National Institute of Corrections (NIC) report, *Gender-Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders* (Bloom et al., 2003). Each strategy outlined in this report is designed to establish an environment that addresses the unique strengths and needs of women in criminal justice settings. However, the application of these principles within drug or recovery courts has lagged behind their adoption within other criminal justice settings. Consequently, it is imperative to consider how these strategies can be used to improve outcomes for women in drug court.

The NIC report outlines six strategies to improve treatment conditions for system-involved women. First, it must be acknowledged that gender matters—that the context and development of women’s criminal behavior is different from men’s, as is their response to criminal justice involvement and correctional programs. Realizing this principle in practice warrants the consistent use of correctional assessment instruments that measure the full spectrum of women’s criminogenic needs (e.g., unhealthy intimate relationships, symptoms of depression and anxiety, cumulative victimization and trauma, parental stress, unsafe housing) and strengths and helping staff to identify that what is often deemed “criminal” behavior with women is in actuality “survival” behavior.

To this end, the suite of Women’s Risk Needs Assessment (WRNA)¹ instruments are the only validated, peer-reviewed correctional assessment instruments designed specifically to measure the risks, needs, and strengths of system-involved women in an effort to reduce their recidivism (Van Voorhis et al., 2010). The WRNA has been implemented with success in over 50 correctional jurisdictions across the U.S., and in a number of international settings (i.e., England, Czech Republic, Namibia, and Singapore). Within a drug court program, these instruments could be used to more accurately assess women’s risk and needs while enhancing the development of more gender-responsive treatment and case plans.

Second, the judge, court and probation staff, and treatment providers must create an environment based on safety, respect, and dignity that does not reenact prior experiences of victimization. Approximately 77-90% of women report experiencing trauma prior to incarceration (Messina & Grella, 2006). As such, drug courts should strive to provide education and training to ensure that court staff and treatment providers provide care that is evidence-based delivered in a safe, trauma-informed manner. This translates into having women-only treatment groups that facilitate emotional safety between facilitators and clients, a practice endorsed in the *The Drug Court Judicial Benchbook* (Marlowe & Meyer, 2011). However, establishing an emotionally safe treatment environment extends far beyond providing women-only groups.

Emotionally safe treatment environments reflect social interactions and communication strategies between staff and clients that intentionally hold space for women to emotionally regulate and promote their inherent resilience by giving them voice and choice within the

1 For more information please visit <https://socialwork.utah.edu/wrna>

confines of the program.² As a concrete example, communication about, and practices surrounding, supervised urine testing should be modified to ensure that they are not triggering to individuals who have experiences of sexual victimization—for example, by offering alternative methods of drug testing such as oral fluid tests to women with such histories.

Third, treatment programs should promote healthy connections to children, families, partners, and the community given the high value many women place on such relationships, which are more often motivators for their behavior change compared to men (Harm & Phillips, 2001; McIver et al., 2009; Stone, 2016). First and foremost, helping women develop healthy identity formations and relationships with *themselves* through relationally-based curricula (e.g., *Moving On*³) is paramount before rebuilding relationships with others (e.g., children, families). Gender norms and social forces often push women to give up their *selves*, their personal identities, in order to serve others. In contrast, men are socialized to give up others in order to serve their selves. Carol Gilligan, a world-renowned moral psychologist, says it best, “Masculinity often implies an ability to stand alone and forego relationships, whereas femininity connotes a willingness to compromise oneself for the sake of relationships” (Gilligan, 2002, p. 16). Indeed, the emotional pain, shame, and guilt surrounding their addiction’s harm to others is one of the hardest obstacles for women and mothers to overcome (Burton & Lynn, 2017). Consequently, women must reconcile and strengthen their self-concept before engaging in reconciliation with others.

Additionally, because the majority of system-impacted women are mothers to dependent children (Glaze & Maruschak, 2016), many struggle to maintain parenting responsibilities while under community supervision. To support these women, drug courts must provide access to child care, or allow for spaces to be inclusive of children, in order to facilitate women’s abilities to regularly attend programming and avoid sanctions incurred as a result of missed treatment sessions or court appearances. Notably, other correctional services, such as Family Treatment Courts (FTC), have made significant strides towards establishing multisystemic, collaborative treatment options that operate from a family-centered, relational approach. Research has shown that FTCs improve parental recovery outcomes while keeping families together (Brook et al., 2015; Powell et al., 2012). However, FTCs are intended for individuals who enter the child welfare system as a result of parental substance abuse. Consequently, system-impacted women without child welfare involvement may not be eligible for these services. Nevertheless, positive outcomes from studies examining FTCs provide empirical evidence for the value of providing similar supports to mothers in drug courts.

An important way in which drug courts can support pregnant and parenting women is by expanding access to medication-assisted treatments (MAT) such as buprenorphine or methadone. Rates of opioid use during pregnancy have increased five-fold throughout the past decade, indicating a critical need to ensure that effective interventions are available for pregnant and post-partum women with opioid use disorders (Patrick et al., 2015). Although MAT is an evidence-based practice that is currently recommended by the American College

2 To learn more about a communication model and strategy that promotes emotional regulation and resilience between correctional staff and justice-involved clients, see the curriculum *Creating Regulation and Resilience (CR/2)*, created by Alyssa Benedict and Marilyn Van Dieten. <https://www.orbispartners.com/cr2-criminal-justice-staff-training>

3 For more information about *Moving On*, see <https://www.orbispartners.com/interventions-women>

of Obstetricians and Gynecologists for this population (ACOG; 2017), it is offered by less than half of drug courts in the U.S. (Matusow et al., 2013). Nevertheless, utilization of MAT has been shown to improve maternal and child outcomes, as well as increase the odds of maintaining child custody among parents seeking reunification with their children (Hall et al., 2016).

Fourth, services and supervision should be provided that address substance misuse, trauma, and mental health holistically in a culturally relevant manner. To enact this strategy, drug courts must adopt an intersectionally-responsive approach that recognizes the interconnected and overlapping systems of oppression that shape women's pathways into the criminal justice system, as well as their law-breaking and substance misuse behaviors (Boppre, 2019).

Women of color are overrepresented in the criminal justice system and have been found to be arrested and incarcerated at higher levels than their White counterparts. In 2019, Black women and Hispanic/Latinx women were incarcerated at rates far exceeding those of White women (83 and 63 vs 48 per 100,000 women, respectively; Carson, 2020). Further, there is evidence that experiences of incarceration disproportionately harm women of color—findings that have troubling implications for the common practice of using jail time as a sanction within many drug court systems (Freudenberg, 2002).

Lesbian, gay, bisexual, questioning, transgender, and gender-nonconforming individuals are also overrepresented in the U.S. criminal justice system and experience a high prevalence of trauma, substance use, and negative health outcomes (Irvine-Baker et al., 2019; Sevelius & Jenness, 2017). Binary systems of gender classification can render this population invisible when transgender or gender-nonconforming individuals are categorized as women or men without considering their true gender identities (Sevelius & Jenness, 2017). It is therefore essential that gender-responsive services are also gender *affirming*, providing this population with the recognition and resources needed to support their recovery. Rather than pathologizing or blaming marginalized groups for their law-breaking behavior, drug courts should recognize and seek to remediate the concentrated disadvantages and unequal access to resources experienced by many system-impacted women (Owen et al., 2017).

Fifth, women should be given opportunities to improve their socioeconomic conditions. In line with this strategy, drug courts should connect women with vocational and educational training, as well as assistance with applying to social services. Without these material supports, women who experience significant economic strain may be more likely to discontinue treatment (Bloom et al., 2003). Additionally, improving women's socioeconomic status is not simply about helping women get and maintain a job to provide for themselves and their children. It is also about assisting women to dream bigger about the kinds of vocations they might consider, through building their self-efficacy and social capital (Salisbury & Van Voorhis, 2009). This is especially critical for economically marginalized women of color embedded in structurally-oppressive systems who often struggle to have an imagination about the future, let alone the next day (Burton & Lynn, 2017). Building women's hope and sense of wonder about what meaningful work may come in their sobriety is a necessary first step to improving their economic independence.

Finally, drug courts must establish comprehensive, collaborative services (Bloom et al., 2003) with women in mind. Services should serve as a bridge for a coordinated range of community organizations addressing the diverse needs of system-involved women. One promising approach for promoting such wraparound services is the provision of case managers tasked with linking criminal justice systems with outside agencies. Research indicates that case managers improve service retention among justice-involved women in community programs and are associated with lower rates of new arrests (Fedock & Covington, 2017).

Additionally, recent evidence suggests that Community Health Specialists (CHS) working alongside gender-responsive probation officers can serve as significant system-navigation supports for justice-involved women on supervision (Belisle & Salisbury, 2021). CHSs were entry-level positions intended to provide health information, advocacy, social support, and assistance in using the health care system to women on probation in Multnomah County, Oregon. CHSs were particularly successful in addressing clients' various social determinants of health such as food insecurity and access to health insurance and transportation to medical and court appointments (i.e., specific responsivity needs). Distinct from peer mentors, CHSs held the dual-role of both supporting clients' individual needs and reporting escalating negative behaviors as an integrated part of the probation team. In this particular study, CHSs were not formerly justice-involved or in recovery (Belisle & Salisbury, 2021). Advanced CHSs were also uniquely positioned to assist with the distinct medical needs of opioid-dependent, pregnant and parenting people in drug courts, such as advocating on their behalf to maintain their MAT (Peeler et al., 2019). Addressing the various health and mental health needs of women is a critical factor in their success in drug treatment programming in comparison to similarly situated men (Liang & Long, 2013).

Conclusion

Drug courts are an important strategy for diverting substance-misusing individuals away from prison and into treatment. However, the specific needs of women in these courtrooms have long been overlooked. Stakeholders such as the National Institute of Corrections⁴, the American Probation and Parole Association⁵, the American Jail Association⁶, and the National Commission on Correctional Health Care⁷ are advocating and promoting gender equity principles, both among the correctional workforce and the treatment and supervision of justice-involved women.

Gender-responsive principles provide a roadmap that can be used to guide the implementation of effective correctional services for women in drug courts. However, future research is needed to support efforts to translate these principles into practice. Although prior studies have shown that gender-responsive services significantly reduce women's criminal behavior and substance use, it is possible that implementation of the gender-responsive principles

4 NIC's Justice-Involved Women Resources: <https://nicic.gov/projects/justice-involved-women>

5 APPA's Position Statement on Services for Justice-Involved Women and Girls: https://www.appa-net.org/eweb/Dynamicpage.aspx?&webcode=IB_PositionStatement&wps_key=1814d211-7220-48d9-bb07-2bfd8d6d44de

6 AJA President Elias Diggins Gender-Equity Initiative: <https://www.youtube.com/watch?v=yoaU8vStH7o>

7 NCCHC's recently revised Position Statements related to gender and transgender equity: <https://www.ncchc.org/ncchc-releases-four-revised-position-statements>

outlined here may be similarly beneficial for men (Day et al., 2015). Future studies are needed that examine whether gender-responsive risk assessments and interventions are effective for men as well as women (e.g., Trejbalová & Salisbury, 2021). Additionally, studies have increasingly emphasized the significant diversity between system-impacted women, suggesting the importance of person-centered approaches that tailor treatment services to address the specific needs of this population (Brennan et al., 2012; Taxman et al., 2015). More research is therefore needed to explore implement strategies such approaches within a gender-responsive framework.

In sum, the general correctional treatment field is steadily moving in a direction that recognizes that “same is not equal”—that adopting the same policies, procedures, and practices across gender, as we have done from the beginning, do not, in fact, produce equitable outcomes for women (Buell & Abbate, 2020). We recommend drug court professionals begin to consider what treatment might look like if we started with women in mind, and incorporate the well-established scientific research indicating that gender matters.

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