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WOMEN IN THE AMERICAN WORLD OF JAILS: INMATES AND STAFF

KENNETH KERLE, PH.D. *

I. INTRODUCTION

A. The Difference Between Jails and Prisons

Some people do not recognize the difference between a jail and a prison because the media frequently uses the terms interchangeably. They are not the same. Prisons typically house inmates that have been convicted and are serving sentences longer than a year. A jail is where a person is brought upon arrest. People are arrested merely on “probable cause” of committing an offense. The arrestee is in a pretrial status and has not been convicted of anything. By 1999, more than half of the people (54 percent) in jail were in a pretrial status, up from 50 percent in 1993.¹

Even the courts have failed to draw a distinction between prisons and jails.² As a result, persons detained before trial are afforded no more protection from unreasonable corrections procedures than persons serving actual sentences in prisons. Under the law, corrections facilities may treat persons who have not been convicted of a crime as harsh as prisoners serving life sentences so long as the treatment is “reasonably related to legitimate penological objectives.”³ This gives jail administrators a wide discretion, as they may now

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1. James J. Stephan, *Census of Jails, 1999*, BUREAU OF JUSTICE STATISTICS, Aug. 2001, NCJ 186633, at 5, available at <http://www.ojp.usdoj.gov/bjs>.

2. See *Shain v. Ellison*, 273 F.3d 56, 72 (2001) (Cabranes, J., dissenting). Judge Cabranes noted the confusion in modern jurisprudence between jails and prisons. “It is more common to treat “jail” and “prison”—both of which are non-technical terms to everyone other than students of penology—as virtual synonyms.” *Id.* at 72 n.3. He pointed out that the Supreme Court’s holding in *Turner v. Safley*, 482 U.S. 78 (1987), has routinely been applied to jails and prisons equally. *Id.* (See also, *Mauro v. Arpaio*, 188 F.3d 1054, 1058-63 (9th Cir. 1999); *Friend v. Kolodziejczak*, 923 F.2d 126, 127-28 (9th Cir. 1991); *Siddiqi v. Leak*, 880 F.2d 904, 908-10 (7th Cir. 1989)).

3. See *Turner*, 482 U.S. at 90.

legally subject prisoners to anything reasonably related to the administrative goals of “deterrence of crime, rehabilitation of prisoners, and institutional security.”⁴

The length of the sentence usually determines whether a person serves time in a jail or a prison. Historically, jails housed inmates sentenced up to a year; others went into the state prison system. Due to crowding, many jails now hold sentenced inmates for a much longer time in part to relieve the congestion in the state prison systems. A number of jails also rent space to other county governments, to different state departments of corrections, the Federal Bureau of Prisons, and the Department of Immigration and Naturalization.

In the preface to my book *American Jails: Looking to the Future*, I quoted Mike O’Toole, former director of the National Institute of Corrections (NIC) Jail Center.⁵ He emphasized that although on any given day there more people in prison than in jail, jails handle many times more people.⁶ In his hypothetical comparison between a prison and jail, the admissions rate in one year in a prison with 1,000 inmates’ ADP (average daily population) would be 500 for a total of 1,500.⁷ In a 1,000-bed jail, a 1,000 inmate-ADP would experience admissions of 23,500 for a total of 24,500 inmates.⁸ Many people in jail, of course, get released on bond or on their own recognizance. O’Toole estimated five years ago that more than 11 million people a year are booked into the American jail system and another 11 million are released from jails—a figure close to the entire population of Ohio and Illinois.⁹ The number is surely higher today.

B. Gender, Race, and Ethnic Composition of the Jail Population

Jails, like many prisons, function with a mix of different races and nationalities at both the staff and inmate level. Women constitute a small part of the jail inmate population and women jail staff also find themselves in the minority. According to the Bureau of Justice Statistics Bulletin “Prison and Jail Inmates at Midyear 2000,” the nation’s jails supervised 687,033 persons; but 621,149 were actually

4. See *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348-49 (1987) (applying *Turner* and noting that “legitimate penological interests” include “deterrence of crime, rehabilitation of prisoners, and institutional security”).

5. KENNETH KERLE, *AMERICAN JAILS: LOOKING TO THE FUTURE* ix (1998).

6. *Id.*

7. *Id.*

8. *Id.*

9. See *Statistical Abstract of the U.S.* 1996. Washington, D. C. at 28.

confined.¹⁰ The remaining 65,884 offenders were in alternative programs outside the jail such as electronic monitoring, home detention, day reporting, community service, weekender programs, and other pretrial supervision or work programs.¹¹ About one in every eight persons under jail supervision is supervised outside the jail facility.¹² Unfortunately, the statistics do not list the number or percentage of women on supervised release from jail.

In 2000, the average number of female inmates was 70,414—almost double the 37,198 held in 1990.¹³ In 1993 men comprised 90.4 percent of the jail population, and women 9.6 percent. By 2000, male jail inmates declined to 88.8 percent and female inmates had increased to 11.4 percent.¹⁴

C. Women's Jails

Unlike prisons, which routinely segregate men or women by institutions, jails historically have operated as coed.¹⁵ In 1992, only 18 of the 3,300 jails in the United States exclusively held women inmates.¹⁶ Large “megajails” such as the Los Angeles County Sheriff’s Department, the New York City Department of Correction, or the Cook County Sheriff’s Department, have separate buildings housing only female prisoners. However, it is more common that women are housed in separate cellblocks within the same building. This is also true of the smaller “Mom and Pop” jails able to hold less than 50 inmates. In 1998 there were 1,340 such facilities.¹⁷

The mass media presents a distorted picture of jails to the American public. Generally, Hollywood and television movies portray jails and prisons in a negative light and tends to give the police and

10 Allen J. Beck and Jennifer C. Karberg, 2001. *Prison and Jail Inmates at Midyear 2000*, BUREAU OF JUSTICE STATISTICS BULLETIN, Mar. 2001, NCJ 185989, at 6.

11. *Id.*

12. Stephan *supra*, note 1 at 5.

13. Beck & Karberg, *supra* note 10, at 7.

14. *Id.*

15. Rosemary Herbert, *Women's Prisons: An Equal Protection Evaluation*, 94 YALE L.J. 1182, 1183 (1985). “County jails, on the other hand, most often segregate women in a unit within the confines of a larger facility. Such units function autonomously, with little or no mixing of the male and female populations.” *Id.*

16. Mary K. Stohr, *Female Staff in United States Jails*, AMERICAN JAILS, Mar./Apr. 1993, at 27.

17. AMERICAN JAILS ASSOCIATION, WHO’S WHO IN JAIL MANAGEMENT 611 (3rd ed. 1999). The fourth edition of WHO’S WHO IN JAIL MANAGEMENT will be published next year and my prediction is that the number of small jails will continue to vanish. Principally for economic reasons small jails get replaced by regional jails.

courts a good image.¹⁸ One scholar assigned her students to view a number of Grade B movies about incarcerated women. Tabloid titles like "Girl on a Chain Gang" to "Bad Mama Jama Busts Out" give one the flavor.¹⁹ Films like these rely on exaggerated and inaccurate stereotypes about inmates, correctional staff, and conditions in jails and prisons that some viewers may accept as true to life.²⁰

II. SHORTCOMINGS OF SERVICES FOR WOMEN IN JAIL

Corrections experts recognize that sometimes women's program needs get short shrift. A survey conducted by the National Institute of Justice in 1993 noted that jails often failed to screen female inmates for their needs related to children, spousal abuse, and childhood sexual abuse. The study found that 50 of the 54 jails surveyed rarely used classification and assessment to match women to appropriate services or programs.²¹

A. Jail Classification of Women—A Low Priority

Jails classify men to determine an appropriate supervision level, program requirements, treatment needs, and work assignments.²² Historically, women have been only a small minority in jails, so their classification was not considered necessary.²³ However recent trends indicate a greater need for classification of women upon entry into jail. A 1993 study found that the proportion of women in jail on drug charges was greater than the proportion of men jailed on drug

18. Robert M. Freeman, *Correctional Staff as the Villain and the Inmate as Hero: The Problem is Bigger than Hollywood*, AMERICAN JAILS, Jul./Aug. 1996, at 11-12.

19. GIRL ON A CHAIN GANG (Jerry Gross Productions 1965); BAD MAMA JAMA BUSTS OUT (1989).

20. Linda L. Zupan, *Reel Women Behind Bars?*, AMERICAN JAILS, Sep./Oct. 1996, at 22, 27.

21. *Items of Interest: Excerpts from Women Offenders: Programming Needs and Promising Approaches*, AMERICAN JAILS, November/December 1998, at 96.

22. N. E. Schafer & Amy Dellinger, *Jail Classification: Is it Time to Classify Women?(Part I)*, AMERICAN JAILS, Sep./Oct. 1993, at 31; N. E. Schafer & Amy Dellinger, *Jail Classification: Is it Time to Classify Women?(Part II)*, AMERICAN JAILS, Nov./Dec. 1993, at 38.

23. See generally N. E. Schafer & Amy Dellinger, *Jail Classification: Is it Time to Classify Women?(Part I)*, AMERICAN JAILS, Sep./Oct. 1993, at 31; N. E. Schafer & Amy Dellinger, *Jail Classification: Is it Time to Classify Women?(Part II)*, AMERICAN JAILS, Nov./Dec. 1993, at 38.

charges.²⁴ Women inmates also had a higher percentage of medical and mental health problems than men.²⁵ The study found that women inmates spent more time in their cells than men and had fewer activities outside of their housing units.²⁶

Slowly, jails are starting to classify women. On a visit in 1997, I learned that the Frederick County (Maryland) Adult Detention Center had begun to classify women.²⁷ It is surely one of the few jails of its size (rated capacity 264) to classify all inmates.²⁸

The Courts have recognized that inmates have a constitutionally protected liberty interest in their security classification.²⁹ The correctional institution must provide due process when establishing or changing an inmate's classification. However, courts have held that correctional institutions do not violate this due process requirement by any "deviat[ion] from its own established procedures."³⁰ The inmate must show that the deprivation "exceeds the prisoner's sentence in an unexpected manner" or "imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life."³¹

It is generally accepted that women are less prone to violence than men. This is especially true in institutional settings. Nonetheless, I believe jails today are booking more violent women. In 1994, I took a group of nine criminal justice students on a tour of the Cook County jail system in Chicago, Illinois—the third largest jail system in the

24. See generally N. E. Schafer & Amy Dellinger, *Jail Classification: Is it Time to Classify Women? (Part I)*, AMERICAN JAILS, Sep./Oct. 1993, at 31; N. E. Schafer & Amy Dellinger, *Jail Classification: Is it Time to Classify Women? (Part II)*, AMERICAN JAILS, Nov./Dec. 1993, at 38. "From 1986 to 1996, females imprisoned for drug offenses rose almost tenfold, from 2,400 to 23,700; as of 1998, nearly 34% of women offenders in jail committed a drug felony. Most of these women are minor offenders." Herman Schwartz, *A Prohibition That Frustrates the People's Will*, L.A. TIMES, May 20, 2001, at M2.

25. *Id.* Recently, inmates at Bucks County Prison in Pennsylvania filed a lawsuit, in part because female inmates with mental illnesses were not separated from the general populations. The inmates charge that the lack of adequate classification presents "dangerous and tense conditions behind bars." Hal Marcovitz, *Bucks to Comply with Task Force*, THE MORNING CALL (Allentown, PA), February 13, 2002, at B1.

26. Schafer, N.E., and A. B. Dellinger. 1993. "Jail Classification: Is It Time to Women?" *American Jails*, Sep./Oct. (Part I) at 31; and Nov./Dec. (Part II), at 38.

27. Visit to Frederick County Adult Detention Center, Frederick,, Maryland (May 15, 1997).

28. Visit to Frederick County Adult Detention Center, Frederick,, Maryland (May 15, 1997).

29. *Shelton v. Angelone*, 183 F.Supp.2d 830, 837 (2002) (citing *Sandin v. Conner*, 515 U.S. 472 (1995)).

30. *Brandon v. District of Columbia Bd. of Parole*, 823 F.2d 644, 649 (D.C.Cir. 1987).

31. *Shelton*, 183 F. Supp. 2d at 838 (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)).

United States. A sergeant with 19 years experience acted as tour guide. Going through a connecting tunnel to the courthouse complex, we observed 25 women chained together at the wrists marching over to the courthouse. The officer observed that when he first began work in the jail these women would have been predominantly shoplifters and prostitutes. He mentioned to the students that five of the chained prisoners had been charged with murder. Some of the murders were allegedly committed as part of a gang initiation.³²

Corrections experts know that wise classification staff will separate violent inmates from the nonviolent. However, jail staff usually assume that only men need to be classified. In today's world jail policy and procedure should make this standard applicable to women inmates as well. Nonviolent inmates of either gender do not want to be preyed upon by their violent counterparts. People should never assume that women inmates are nonviolent due to their gender. Crimes of violence explain why some of them find themselves behind bars.

B. Screening and Assessment

There is no constitutional obligation in the United States that all individuals be treated alike.³³ The constitution only requires that "similarly situated" individuals be treated alike.³⁴ Courts have held that incarcerated men and women are not "similarly situated."³⁵ The government may treat dissimilar groups differently provided the government can show that unequal treatment is related to a legitimate interest of the state.³⁶ In *Turner v. Safley*, the Supreme Court held that in the corrections context the proper inquiry for prisoners' claims of constitutional violations is "whether a prison regulation that burdens fundamental rights is reasonably related to legitimate penological

32. Visit to Cook County Jail System, Chicago, Illinois, Apr. 15, 1994.

33. Roslyn Muraskin, *Disparate Treatment in Jails: Development of a Measurement Instrument*, AMERICAN JAILS, Jul./Aug. 1997, at 27, 28. See *Rinaldi v. Yeager*, 384 U.S. 305, 309 (1966). "The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes To be sure, the constitutional demand is not a demand that a statute necessarily apply equally to all persons." *Id.*

34. See *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985).

35. See *Women Prisoners v. District of Columbia*, 93 F.3d 910 (D.C. Cir. 1996); *Keevan v. Smith*, 100 F.3d 644 (8th Cir. 1996); *Klinger v. Department of Corrections*, 31 F.3d 727 (8th Cir. 1994).

36. Muraskin, *supra* note 33, at 27. (quoting HARRIET POLLACK & ALEXANDER B. SMITH, CIVIL LIBERTIES AND CIVIL RIGHTS IN THE UNITED STATES 206 (1978)).

objectives.”³⁷ For example, female correctional facilities have not received funding comparable to male correctional facilities based on correctional administrators’ claim that the small number of female offenders made the programs too expensive. The bottom line for one scholar is that “women have differed from males in the economic, social, political spheres of life. In the legal realm, more specifically in the imprisonment of the female, women have been forced into the status of being less than equal.”³⁸

This is unfortunate, particularly since corrections experts have noted that women in jails often have multiple problems including health problems, parenting and child care difficulties, histories of violence and abuse, and high rates of substance abuse and mental illness.³⁹ The Michigan Women’s Commission discovered that 50 percent of female Michigan detainees had been victims of physical or sexual abuse at some point in their lives.⁴⁰ Sixteen percent of female jail detainees referred for drug treatment in Hillsborough County, Florida, reported physical abuse; 19 percent sexual abuse; and 24 percent emotional abuse.⁴¹ One study found that estimates of physical and sexual abuse may reach 80 percent in some local jails.⁴²

C. Impact of Traditional Jail Administration Practices on Women

Women prisoners who go to jail, coed status notwithstanding, find themselves in institutions in which the policies and procedures were developed based on the premise of the management and supervision of male inmates.⁴³ Thus, women inmates may be re-traumatized by such experiences as

- Removal of clothing (strip searches, suicide precautions, medical exams);

37. 482 U.S. 78, 87 (1987).

38. Muraskin, *supra* note 33, at 29 (quoting John P. Sargent, *The Evolution of a Stereotype: Paternalism and the Female Inmate*, PRISON JOURNAL, Spring/Summer 1984, at 64, 83).

39. See Bonita N. Veysey, Kate De Cou and Laura Prscott, *Effective Management of Female Jail Detainees with Histories of Physical and Sexual Abuse*, AMERICAN JAILS, May/June 1998, at 50.

40. *Id.* at 50.

41. *Id.*

42. *Id.*

43. See Megan O’Matz, *Doing Time Differently*, CHICAGO TRIBUNE, March 15, 2000, at

- Intimate touching of individuals' bodies (strip searches, medical exams);
- Threat or use of physical force (jail-wide, crisis response/special ops team, psychiatric response);
- Observing threats, assaults, or use of physical force (jail-wide);
- Isolation (administrative segregation, suicide precautions, psychiatric observation, medical isolation);
- Locked rooms or spaces (jail-wide); and use of handcuffs, shackles, or other restraint devices (transportation, special ops, psychiatric intervention).⁴⁴

Recent Improvement in Jail Procedures for Women

On the positive side, some jails have developed specific responses to the special needs of women prisoners—and the jails have done so with no relaxation of security. These responses include booking procedure (letting women know about strip searches and medical exams) as well as screening and assessment (done at booking) of the women's physical needs (recent injuries, drug or alcohol intoxication, STDs) and psychological needs (depression, anxiety disorders, and posttraumatic stress disorder).

Another gender-based response is crisis and de-escalation intervention screening. Crisis and de-escalation intervention screening involves asking female arrestees about the types of environments or personalities that increases stress or provokes violence. In practice, it helps to know how individual detainees can reduce agitation and, if necessary, how professional and security staff should manage or retrain them during a crisis. The use of female staff, including nurses and physicians, to perform strip searches at intake can reduce female detainees' stress during the invasive procedure.⁴⁵ Other areas requiring scrutiny are safety, privacy, general confinement conditions, and the use of administrative segregation.

44. Veysey et al., *supra* note 39, at 51.

45. *Id.* at 52. One female arrestee noted: "When the police strip search women, it's as though we've been raped. It strips us of our dignity and our self-esteem." Jim Herron Zamora, *Transgender Coalition Claims Cop Harassment*, SAN FRANCISCO EXAMINER, April 8, 1999, at A6.

Other recent innovations in treatment services and crisis response include: specialized staff; links to probation offices; release planning and referral to community services; group treatment (especially for women who do not function well in mixed gender treatment groups); domestic safety plans (for indigent women in abusive relationships); and behavioral management techniques (useful in managing difficult inmates).⁴⁶

III. THE AVAILABILITY OF PROGRAMS FOR WOMEN IN JAILS

The *Census of Jails 1999* listed four categories of jail policies and programs provided to inmates: education, counseling, health care, and mental health services.

Jail Jurisdictions with Programs		
Program or Policy	Number	Percent
<i>Education</i>		
Secondary	1,545	55%
Basic Adult	696	25%
Special	303	11%
Study Release	260	9%
Vocational	182	6%
College	94	3%
<i>Counseling</i>		
Religious/spiritual	1,960	70%
Alcohol	1,724	61%
Drug	1,528	54%
Psychological	1,306	47%
Life skills	601	21%
Domestic violence	488	17%
Pretrial services	468	17%
Job seeking	411	15%
<i>Health Care</i>		
Fee-for-service	1,101	39%
On-site staff	882	31%
Managed care	500	18%
Local government Physicians	338	12%

46. Veysey et al., *supra* note 39, at 53.

Jail Jurisdictions with Programs		
Program or Policy	Number	Percent
<i>Mental Health Services</i>		
Screening at intake	2,152	78%
Psychotropic Medication	1,832	66%
24-hour care	1,309	47%
Routine therapy	1,283	46%
Psychiatric evaluation	1,044	38%

The San Francisco County Jail's substance abuse program for women recently underwent a longitudinal evaluation.⁴⁷ Sheriff Hennessey invited faculty from the University of California at San Francisco conduct a two-year evaluation of the program.⁴⁸ The study also included a control group. The research showed that the women who participated in the program did better at staying out of jail compared to the control group.⁴⁹

Health education is also another effective program for women in jails. For example, the Prince George's County (Maryland) Correctional Center instituted a mandatory health education program on AIDS.⁵⁰ The program was designed to address both professional and personal issues.⁵¹ In 1989, the local health department's office on AIDS provided the jail with a 24-hour per week outreach worker.⁵² This enabled a jail educator to develop a health education module for 20 to 30 inmates.⁵³ Inmates took the six- to eight-week long course covering general health topics such as stress, smoking, exercise, nutrition and meditation; reproductive health topics such as abortion, contraception, prenatal drug use, fetal alcohol syndrome, and pregnancy and birth; and topics related to sexual relationships such as rape, homosexuality, intimacy and drug use, and battered wife

47. Michael Hennessey, *San Francisco Sheriff's SISTER Project*, AMERICAN JAILS, May/June 1997, at 40.

48. *Id.*

49. *Id.*

50. Della Donaldson, *Health Education for Staff and Inmates: Can We Afford Not To Teach It?* AMERICAN JAILS, March/April 1992, at 18.

51. *Id.*

52. *Id.* at 19.

53. *Id.*

syndrome.⁵⁴ This innovative health education course was taught on a coed basis.⁵⁵

Anyone who works in an institution, as I have, knows that you never turn your back on inmates, particularly in a coed setting. Despite the difficulty of managing a coed inmate classroom, the Prince George's class was highly successful. For many of the students, it was the first time that they had ever discussed sexual issues in a nonsexual and non-threatening environment.⁵⁶ Often, these participants could express long-repressed feelings and opinions and get honest answers from the opposite sex.⁵⁷ The men were eager to learn about the women and the women were just as eager to tell them what they knew and felt. Once the women opened up, the men followed suit. Certain issues led to extended discussions and additional class sessions.⁵⁸ The instructor commented that at times, she functioned as a referee. With the assistance of the AIDS outreach worker, the program was expanded to cover STD's, behavioral change, and individual counseling.⁵⁹ The program eventually reached 200 to 300 people per week. Both men and women filled substantial waiting lists to enter the program.⁶⁰

A. Maryland's Community Justice Treatment Program

The State of Maryland, through its Department of Health and Mental Hygiene among other agencies, established the Maryland Community Criminal Justice Treatment Program (MCCJTP), a community diversion program.⁶¹ The mission of the MCCJTP is to organize a multiagency collaboration to provide shelter and treatment services to mentally ill offenders within their own communities. Frequently these mentally disturbed people also have alcohol or drug

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 19-20.

59. *Id.* at 20.

60. *Id.*

61. Madeline M. Ortiz, *Managing Special Populations*, CORRECTIONS TODAY, December 1, 2000; Catherine Conly, *Coordinating Community Services for Mentally Ill Offenders: Maryland's Community Criminal Justice Treatment Program*, AMERICAN JAILS, March/April 1999, at 10.

problems.⁶² The MCCJTP was designed to help keep persons with mental illnesses out of the criminal justice system.⁶³

The Substance Abuse and Mental Health Services Administration (SAMHSA) of the United States Department of Health and Human Services has granted demonstration dollars to supplement grants for pre-booking diversion programs.⁶⁴ This eventually resulted in the Phoenix Project in Maryland.⁶⁵ The Division of Special Populations collaborated with the Center for Mental Health Research Services (CMHRS) of the Department of Psychiatry of the University of Maryland at Baltimore and the Health Department of Wicomico County in the grant application.⁶⁶ Before writing the grant staff from the division and CMHRS conducted a focus group with five women in the Wicomico County, Maryland, Community Criminal Justice Treatment Program.⁶⁷ CMHRS will conduct research over a three-year period and compare a jail diversion program for women with co-occurring disorders with a jail-based mental health program in a neighboring county that is serving women with similar problems.

Phase I of the SAMHSA grant, a period of two years, requires the grantee to develop treatment services through an integration of service agencies.⁶⁸ A portion of the funds was designated to establish an evaluation protocol that would be implemented in Phase II.⁶⁹ The Division of Special Populations chose the name TAMAR for the project.⁷⁰ This relates back to the *Bible* to the incident of David's son Amnon raping his half-sister, Tamar.⁷¹ For the Tamars now, the word became the acronym for Trauma, Addictions, Mental health, and Recovery.⁷²

A Director of Trauma Services, a new position created by the division, was responsible for the development of an integrated

62. *Id.* at 10.

63. *See id.*

64. Betty G. Russell, *New Approaches to the Treatment of Women with Co-Occurring Disorders in Jail*, AMERICAN JAILS, Mar./Apr. 1999, at 22.

65. *Id.* Joan Gillece, *The Phoenix Project: Maryland's Jail Diversion Program for Women with Co-Occurring Disorders*, 2000 TOPICS IN COMMUNITY CORRECTIONS 23-25, available at <http://www.nicic.org/pubs/2000/period185.pdf>

66. *See* Russell, *supra* note 64, at 22.

67. *Id.*

68. Betty G. Russell, *The TAMAR Project: Addressing Trauma Issues of Offenders in Jails*, AMERICAN JAILS, May/June 2001, at 42-43.

69. *Id.* at 42.

70. *Id.*

71. *Id.*

72. *Id.*

system.⁷³ Because the program included three counties the first year was spent getting different agencies heads together.⁷⁴ Each local advisory board was asked to sign a memorandum of understanding to identify the services to be provided to inmates upon release into the community.⁷⁵ The Tamar project trained all officers and provided special training for officers who worked on the women's unit.⁷⁶ A trauma team met weekly to discuss women who were eligible for the project—women with mental illness and substance abuse disorders who had experienced trauma at any time during their lives.⁷⁷

From September 1, 1999 to May 30, 2000, the project served a total of 127 women. Dr. Betty Russell described their problems:

Of this number 42 percent had suffered physical abuse before the age of 13 and 44 percent had suffered sexual abuse before the age of 13. Many had also suffered abuse after the age of 13 such as rape. An astounding 77 percent of the women had been the victims of domestic violence. There were a total of 209 children parented by these women.⁷⁸

The Tamar project achieved some success. In one county, out of 48 women in the program following release only five, or 10.4 percent, were arrested again between September 1, 1999 and May 30, 2000.⁷⁹ In another county, only one woman was arrested again.⁸⁰ That county saw a recidivism rate of five percent.⁸¹ The program also reduced disciplinary incidents.⁸² Russell reports that wardens are enthusiastic that the program will increase the strength of their mental health and substance abuse programs to lower recidivism and to provide a safer environment in the jail.⁸³

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 43.

77. *Id.*

78. *Id.* at 44.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* See Sheila M. Strauss & Gregory P. Falkin, *The First Week After Drug Treatment: The Influence of Treatment on Drug Use Among Women Offenders*, 27 AM. J. OF DRUG AND ALCOHOL ABUSE 241 (2001).

IV. THE NEED TO INCREASE FEMALE JAIL STAFF

A. Addressing Staff Shortage

Many jails in this country operate understaffed.⁸⁴ Unfortunately, this can undermine even the most promising programs, including the ones discussed above. This is especially true for women inmates in facilities lacking many female staff. Twenty years ago, staffing was cited as the number one concern of those who responded to a survey in *The State of Our Nation's Jails—1982*.⁸⁵ This is still a major problem today.

Too often politics determines how much staff a county government allocates to corrections facilities. The issue becomes, how much is the county willing to spend on corrections compared to the requests from other county agencies? Often it becomes a heated debate—the opinion of the jail administrator or sheriff versus the elected county board which controls the county budget. An officer post operating 24 hours a day, seven days a week would require five officers when sick leave, vacation, compensatory time, and military leave get factored into the equation. If an officer is absent and the post is not filled, the inmates in that cellblock or pod receive less monitoring by staff and sometimes find themselves in charge. Corrections staff consume 75 to 80 percent of a jail's budget. This partially explains why county officials are reluctant to increase staffing to correspond with any increase in inmate population.

I have personally observed the understaffing trend. As a senior auditor for the National Sheriffs' Association, my team and I conducted audits of several jails. We consistently discovered jails lacked sufficient staffing. As I examined more jails, I discovered that understaffing was more serious in the smaller jails where budgets didn't allow an officer to pull another shift as a replacement. In general, jails at all levels face staffing difficulties. However, there is a specific shortage of women correctional officers. The following is a table from a jail survey completed 20 years ago. Note that a large number of jails holding female inmates experienced periods when they did not have any female officers on duty.

84. See, e.g., Mike Gallagher, *Guards Face Abuse at Inmates Hands*, ALBUQUERQUE JOURNAL, January 15, 2001, at A8; Rachel Horton, *County Told About Guard Shortages*, DALLAS MORNING NEWS, September 7, 2000, at 1A.

85. KENNETH E. KERLE, & FRANCIS R. FORD, *THE STATE OF OUR NATION'S JAILS—1982* 156 (Washington, DC : The National Sheriffs' Association 1982) (1982).

Is a female officer always on duty when females are detained?⁸⁶			
	YES	NO	NO ANSWER
Overall (N=2,664)	62.8%	22.5%	14.7%
Size of Jail			
1-16 beds (N=640)	69.5%	23.1%	7.3%
17-30 beds (N=597)	59.3%	30.2%	10.6%
31-62 beds (N=603)	61.0%	29.4%	9.6%
> 63 beds (N=612)	78.6%	13.2%	8.2%

Historically, women who worked in jails were only permitted to supervise and manage the women inmates and the occasional juvenile.⁸⁷ Since the advent of the direct supervision jail over 30 years ago this has changed dramatically. In my own visits to 101 different jails, I found that women weren't always employed on all of the shifts. Some women who worked in the small jails reported that their job was to strip search the female prisoners following the booking process, see that they took showers, issue them jail clothing, and supervise them during their time in jail. In an Iowa small jail, I met a woman jail officer sitting in an office knitting a sweater. She explained she was not permitted to manage the male prisoners and had no duties to perform when females weren't incarcerated.⁸⁸

County elected boards should never put their sheriff or jail administrator in the position of having male officers supervise female inmates without the continual presence of female officers. If, in fact, this is still done in some jails, I would advise male jail officers to resign. Some women inmates would be tempted to file lawsuits alleging mistreatment at the hands of male jail officers. These kinds of lawsuits can happen and the deck is certainly stacked against male officers when inmates allege sexual harassment or worse. A female officer present at all times is the best defense against both allegations and actual abuse.

Fortunately, the percentage of female officers continues to increase. In 1988, females working as correctional officers in local jails stood at 22.6 percent.⁸⁹ By 1993, the figure increased to 24.2

86. *Id.* at 135-136.

87. See Rebecca Jurado, *The Essence of Her Womanhood: Defining the Privacy Rights of Women Prisoners and the Employment Rights of Women Guards*, 7 AM. U. J. GENDER SOC. POL'Y & L 1, 7, 20 (1999).

88. KERLE, *supra*, note 5, at 43.

89. Stephan, *supra* note 1, at 9.

percent.⁹⁰ By 1999 the percentage of female jail officers reached 28 percent.⁹¹ The slow, incremental growth continues.

The number of women working as administrators in jails has also increased. The American Jail Association's first edition of *Who's Who in Jail Management* in 1991 listed 150 female jail administrators.⁹² The second edition in 1994 showed this number had risen to 300.⁹³ By 1999 the number rose to 480 women.⁹⁴ The increase in the number of female jail administrators is even more remarkable when one considers that the number of jails had declined from 3,353 to 3,216 over the same period.⁹⁵ This year the American Jail Association is compiling the information for the fourth edition and I predict the number of jails will have declined again in the small jail category and the number of women jail administrators will continue to rise.

B. Direct Supervision Jails and the Use of Female Jail Officers

The Federal Bureau of Prisons opened the three direct supervision jails in the 1970s (Chicago, New York City, San Diego) as Metropolitan Correctional Centers (MCC).⁹⁶ Ray Nelson, formerly of the Federal Bureau of Prisons, wrote an account for *American Jails* based on his experience of opening the Metropolitan Correctional Center in Chicago, Illinois, in 1975.⁹⁷ Under the direct supervision model adopted at MCC, one officer per shift is assigned to each housing unit.⁹⁸ Instead of the officer being stationed outside the unit,

90. *Id.*

91. *Id.*

92. See AMERICAN JAILS ASSOCIATION, WHO'S WHO IN JAIL MANAGEMENT (1st ed. 1991).

93. See AMERICAN JAILS ASSOCIATION, WHO'S WHO IN JAIL MANAGEMENT (2nd ed. 1994).

94. See AMERICAN JAILS ASSOCIATION, WHO'S WHO IN JAIL MANAGEMENT (3rd ed. 1999).

95. See AMERICAN JAILS ASSOCIATION, WHO'S WHO IN JAIL MANAGEMENT (1st ed. 1991). See AMERICAN JAILS ASSOCIATION, WHO'S WHO IN JAIL MANAGEMENT (3rd ed. 1999).

96. Raymond Nelson, *The Origins of the Podular Direct Supervision Concept: An Eyewitness Account*, AMERICAN JAILS, Spring 1988, at 8, 10.

97. *Id.*

98. *Id.*; Under the direct supervision model "[a] corrections officer is locked in with the inmates while they pass their daytime hours in a large common room. In traditional jails, officers are stationed in steel- and plexiglass-encased booths, leaving inmates alone, either in common areas or in their jail cells, for extended stretches of time to work out—or fight over—their living arrangements, everything from who controls the television to who protects the weak." *New Jails Breaking Down Old Habits*, N.Y. TIMES, January 8, 1992, at A16.

the officer found himself physically located inside with the inmates.⁹⁹ The direct supervision model gives staff closer contact with the inmates—more face-to-face interaction rather than through bars. Nelson was shocked he would have to employ female officers to manage the male inmates.¹⁰⁰ As he stated, it proved a bit unnerving:

My anxiety was further heightened by the news that, as a result of the passage of the Equal Employment Opportunity Act of 1974, we could expect that 20 percent of our new correctional officers would be women. Admittedly, this was a male chauvinist fear that may not be fully appreciated in 1988. But in 1975 we were pioneers. We were going to have to convince young female recruits that they could safely manage a housing unit of 44 male felons by themselves, not to mention convincing their male supervisors, all of whom were veterans of federal maximum security facilities.¹⁰¹

The Chicago MCC opened and the days, weeks and months went by without incident. When I visited there in 1983 I was told that there had not been an assault against staff in five years.¹⁰² I had wondered about the success of female officers managing males—something once considered taboo. Nelson explained:

The women officers, about whom I had been most fearful, excelled in managing the behavior of male inmates on their units. The women benefited from the cultural conditioning of the males in our society in their relationship to females. As a result male inmates on units supervised by female officers were observed to be more attentive to their personal appearance, to monitor their customary foul language, and to initiate the performance of work assignment in order to avoid having a woman “order them around”—to many a fate worse than the “hole.”¹⁰³

99. Raymond Nelson, *The Origins of the Podular Direct Supervision Concept: An Eyewitness Account*, AMERICAN JAILS, Spring 1988, at 8, 10.

100. *Id.*

101. *Id.*

102. Visit to the Chicago Metropolitan Correctional Centers, Chicago, IL (August 8, 1983).

103. Nelson, *supra* note 99, at 12.

The first direct supervision jail to open at the county level was in Contra Costa, California, in 1981.¹⁰⁴ Today more than 300 jails have adapted the direct supervision approach.¹⁰⁵ The principle is now firmly established that female officers can manage male inmates. This makes a corrections career more attractive to women since most of the promotional opportunities are based on the idea that officers can supervise male inmates.

V. THE CONTINUING PROBLEM OF SEXUAL ASSAULT AND SEXUAL HARASSMENT

Voluntary and coerced prison sex have been documented in a number of studies.¹⁰⁶ There has been almost nothing written about jails on the subject except what one might read in the media. Unlike prisons where sexual contact is more apt to be of the homosexual kind, most jails are coed institutions.

In my jail visits, I have been in a few jails where staff described sexual shenanigans between staff and inmates. In the jail where I worked as a consultant in 1975, the new sheriff and jail staff found that the easy access to the women's section had tempted some of the long-term employees.¹⁰⁷ Several had affairs with some women inmates.¹⁰⁸ Their affairs took place inside the women's block.¹⁰⁹ The new administration reprimanded the guilty staff, and forced their resignations.¹¹⁰ This scandal became the basis for a case study included in the National Sheriffs' Association's *Jail Officer's Training Manual*.¹¹¹

104. *New Jails Breaking Down Old Habits*, N.Y. TIMES, January 8, 1992, at A16.

105. See NATIONAL INSTITUTE OF CORRECTIONS, 2001 DIRECTORY OF DIRECT SUPERVISION JAILS (2001), available at <http://www.nicic.org/pubs/2001/017416.pdf>.

106. See Christopher P. Krebs, *High-Risk HIV Transmission Behavior in Prison and the Prison Subculture*, THE PRISON JOURNAL, March, 2002, at 47-49; Elizabeth Layman, et al., *Sexual Misconduct in Corrections*, AMERICAN JAILS, Nov./Dec. 2000, at 23; Sharon A. Kennedy, *Sex Behind Bars: Court and Corrections*, Paper presented at the 1996 annual meeting of the Academy of Criminal Justice Sciences, March 14, 1996, Las Vegas, Nevada, at 33.

107. KERLE, *supra* note 5, at 41-42.

108. *Id.*

109. *Id.*

110. *Id.*

111. NATIONAL SHERIFFS' ASSOCIATION, JAIL OFFICER'S TRAINING MANUAL—1980 291-92 (1980).

In my experience, if a jail is properly staffed and well managed this activity is highly unlikely. Sexual assault of female inmates by male jail officers can occur but far more prevalent is sexual harassment.

During the past decade *American Jails* has published two articles on sexual harassment that focused only on jails.¹¹² One article suggested there are a plethora of reasons for sexual harassment. People who dismiss the issue argue that men have made suggestive, off-color comments to women since the beginning of time—a “boys will be boys” posture. Others counter that comments on woman’s appearance can lead to misinterpretation by women who may feel insecure about their position in the workplace. Rather than relate to women as occupational peers, these men relegate them to the role of sex object. One developed a strong sexual harassment policy accompanied by training. The jail had determined that the targeting and recruitment of female employees was in the best long-term interest of the institution. As a result the portion of female staff reached 51 percent.¹¹³ A study of 108 jail deputies from four different county jails and three adult detention centers found that male and female officers served identical duties. Nevertheless, women jail deputies found themselves in an occupational dilemma.

Many male jail officers harbor negative attitudes toward competent women coworkers because they feel threatened by women who can perform their jobs satisfactorily. As the researchers put it: “The better officers women become, the greater their threat to the male establishment.”¹¹⁴

Some may wonder what this has to do with women inmates. Plenty, in my opinion. If some male officers will violate jail policy and harass female, it is safe to assume that they will be tempted to do the same, or worse, to female inmates. This is why I recommend a gender-balanced jail staff on all shifts where officers manage and supervise inmates. Many hold the unproven assumption that large supply of muscle power to manage inmates in jail. The effectiveness of the direct supervision method shows the contrary—that one well-trained officer can successfully manage 40 or 50 inmates. Women officers, especially, can often defuse conflict more quickly and

112. See Roxanne Friend & Morton J. Leibowitz, *Sexual Harassment: An Issue for Women in Corrections*, *AMERICAN JAILS*, May/June 1993 at 14; Mark R. Pogrebin & Eric D. Poole, *The Sexualized Work Environment: A Look at Women Jail Officers*, *AMERICAN JAILS*, July/August 1997, at 9, 20.

113. See Friend & Leibowitz, *supra* note 112, at 14.

114. See Pogrebin & Poole, *supra* note 112, at 20.

effectively because inmates are often more compliant and respectful as a result of the American socialization process.

Female inmates, many with histories of physical and sexual abuse, may find themselves in precarious positions if dealing only with male officers. Please do not misunderstand. I do not personally trust inmates—male or female—in the correctional environment. More than anything, jails should require female officers to be present when male officers manage female inmates because the policy would prevent gender-based lawsuits where women inmates charge that they were molested or sexually harassed. In local corrections the principal duty of a jail officer is to keep the institution safe and secure for the staff, inmates, and the general public. The main goal of the institution must be to prevent assaults on the inside and escapes to the outside.

Jail programs as listed earlier have a significant part to play in the jail operation to keep the inmates productively occupied and hopefully steer them in another direction to deter them from future lawbreaking.

VI. CONCLUSION

A recent article in *American Jails* described the models of justice. Briefly, one crime control model emphasizes regulation of criminal conduct. The due process model stresses individual rights.¹¹⁵ Whenever you visit someone you know in jail ask yourself this question: How does the jail staff perceive me? Studies suggest that jail officers think incarceration is first and foremost about the punishment of the offender. Visitors generally take the opposite view and believe that the jail experience should assist inmates through education, training, counseling, and treatment programs. In practice, officers' attitudes can influence the success of programs for prisoners—from within they can help or hinder programs based on their opinions.

I believe that staff who resent or downplay programs for inmates can only undermine what the jail could accomplish—a beginning for people to break their criminal habits through emphasis on a different lifestyle. Punishment is important, but punishment should also help produce a law-abiding individual. To change the notion of incarceration from retribution to rehabilitation requires a better educated jail staff, a better educated community, and a

115. Judith Sturges, *What's the Relevance of Models of Justice? Differences in Perception*, AMERICAN JAILS, November/December 2000 at 14.

commitment effective inter-agency partnerships, such as the Maryland Community Criminal Justice Treatment Program.

