

# ALTERNATIVES TO SECURE DETENTION FOR GIRLS

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IN WESTERN COUNTRIES, GIRLS AND WOMEN ARE CONSISTENTLY A minority of those apprehended, charged, convicted and sentenced to imprisonment for criminal offences (that is, rates range between 4 per cent and 20 per cent). Few adult or juvenile jurisdictions provide policies or programs which aim to assist females. Correctional administrators frequently explain this lack in terms of the smaller numbers of women and girls.

Since 1990, the NSW juvenile justice system has been the subject of three major reviews (Youth Justice Coalition 1990; NSW Parliament Legislative Council 1992; NSW Juvenile Justice Advisory Council 1993). All have identified the need for an increased effort by the responsible government departments, to develop policies and programs aimed at preventing girls entering the juvenile justice system, and providing real opportunities for the rehabilitation of those that do.

The most recent review resulted in the release in February 1993 of the Government's Green Paper, *Future Directions for Juvenile Justice*, prepared by the Juvenile Justice Advisory Council. Prior to the public release of the Green Paper the (then) Office of Juvenile Justice (OJJ) began to focus attention on the programs provided for girls in detention. This paper is intended to assist that process.

## Girls and Juvenile Justice

Research conducted in several juvenile jurisdictions in the early 1980s revealed that the incidence, nature and outcomes of charges faced by girls who encounter the juvenile justice system differ considerably from those of boys.

Chesney-Lind has summarised some of these findings (1988, p. 152):

- girls are more likely than boys to come before court for status offences rather than for criminal charges;

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- girls are more likely to be charged with shoplifting than for serious violent offences;
- self-report studies of male and female delinquency do not provide evidence of differences in misbehaviour which can explain the differences in the official statistics regarding status offences;
- girls are more likely to be subject to court intervention as a result of action initiated by parents and others who are not involved in law enforcement;
- girls involved in the juvenile justice system have more frequently been subjected to physical and/or sexual abuse than boys;
- girls are more likely to be detained by police and court authorities, despite their less serious offences and lower risk of recidivism.

The juvenile justice system is frequently used by carers, welfare authorities, police and magistrates for the purpose of "protecting" girls whose conduct is considered to justify enforced care.

## **New South Wales**

### *Diverting Girls At Risk*

Until 1988, children who came to the attention of authorities for welfare reasons appeared before the same court, and were subject to the same range of sanctions as those appearing for criminal matters. Legislative changes introduced in 1988

- established separate welfare and criminal legislation, courts and services, so that young people before court for welfare reasons could be diverted from the juvenile justice system;
- provided for juveniles to be dealt with under the new Summary Offences Act 1988; and
- provided for juvenile offenders who have attained adult status (18 years) when sentenced, to be subject to juvenile dispositions.

In 1985, administrative changes were introduced which pre-empted legislative change, and commenced the process of diverting young people considered to be "uncontrollable" from court and custody. As girls were more frequently subject to these provisions, it was not surprising that this reduced the actual numbers of girls, as well as their representation, in the detention centre population. The only girl-specific detention centre in operation at that time was closed for reasons of administrative and economic efficiency.

In 1985, research conducted by the NSW Womens' Coordination Unit (WCU 1986), involved interviews with 100 girls who had experienced statutory welfare services. The report predicted that the changes to juvenile

justice would have a greater impact on girls, and identified gaps in support services.

The proposal that girl-specific services be established is supported by other research into social services:

... a major reason given for not using refuges was that the women felt uncomfortable with the number of young men who used the facilities and the resultant male orientated atmosphere ... sexual harassment and intimidation are major considerations in young women's tendency to stay away from refuges and Crisis Centres (Aquarius 1982, p. 38).

... young women are less likely to use services than young men, in spite of the commitment of services to assist both young men and young women ... in spite of numbers of young women seeking accommodation, only a handful of youth housing services cater [sic] to the needs of young women exclusively ... This would suggest that positive discrimination to ensure that young women who are homeless and in crisis is justified (Chesterman 1988, p. 56).

Combined, the recommendations of these reports have called for services which can assist girls with resolving family conflict; disclosing and resolving incest/sexual abuse; dealing with violence; overcoming drug abuse; achieving adequate health; improving self-esteem; and obtaining accommodation, income support, education and employment.

The *Girls at Risk* (WCU 1986) report shows that the provision of girl-specific community-based preventive and supervisory services is essential if girls are to be provided with opportunities to resolve the problems that place them "at risk", and of being apprehended and placed in secure custody. Without these programs authorities might use other legislative provisions to gain girls' entry into the juvenile justice system for protective reasons.

### *Girls in Secure Custody*

Legislative and administrative reforms in NSW have both reduced the numbers of young people sentenced to detention and changed the profile of the inmate population. While no statistical research has been conducted, some changes are evident in the girls' population. Girls comprise a smaller proportion of the detention centre population than previously. Some girls are over 18 years, and may be mothers or expectant mothers. While offence labels often suggest that young female offenders present a threat to community safety, details of the facts and circumstances of offences sometimes indicate that authorities continue to use custody as a means to protect girls from risks associated with their lifestyle. For instance, when police apprehend a girl considered to be at risk of harm on the streets she is likely to be charged with a summary offence and refused bail. Another example occurs in situations involving conflict between a girl and her family or carers. Again, police intervention may result in a criminal charge being laid (for example, malicious damage or assault) and bail being refused. In 1990, girls, who represented 7 per cent of the total number of young people in custody in NSW, were reported by the Kids In Justice Project as being:

... among the most distressed and resentful of all our respondents. A higher proportion of girls than boys in our sample had serious drug problems, for which there was little or no treatment available. Of the six girls from one detention centre interviewed for the Project, two girls had mutilated themselves; one had been cutting her arm; the other girl had smashed a window and cut herself "for something to do" (NSW Youth Justice Coalition 1990, p. 314).

Since May 1990, six girls who had recently left a NSW detention centre died as a result of a lifestyle which involved drug abuse. It is apparent that girls admitted to detention can have extreme social, emotional and health problems.

The small number of girls in secure custody, means that an increase or decrease in the use of secure detention by police and magistrates has a significant impact on the total population, and on the ability of administrators to meet their needs. Table 1 shows the change that has occurred in the first six months of 1993. These unpredictable changes place demands on detention centre administrators to increase or decrease resources to meet temporary requirements.

*Table 1*

**Average Number of Girls Detained each Month, January to June 1993**

<i>Month in 1993 in Detention Centres</i>	<i>Average No. of Girls</i>
January	11
February	13
March	21
April	25
May	25
June	26

Source: Office of Juvenile Justice Return of Juveniles in Residence as at Midnight (submitted to Juvenile Transport Service each Monday).

Although there has also been a recent increase in the male detention centre population of NSW, detention centre staff attribute the recent increase in the female population to the death of Jasmine Lodge in February 1993, and the increased tendency of police and magistrates to use custody as a means to protect girls. Jasmine was killed after being released on bail, in circumstances which arose from risks associated with her drug use. Clearly, the lack of girl-specific support services that can effectively assist troubled girls, can place these authorities in a position of choosing one of two poor options: neglect or enforced containment.

### Girls' Programs¾ Australia and Overseas

In view of the strong evidence that girl-specific services are needed which can support the policies of diversion, and that special measures are needed to improve the care of girls in institutional care, the author has sought out programs conducted in other juvenile justice jurisdictions.

A 1988 survey of Australian State and Territory government departments responsible for administering juvenile justice programs which aim to identify services for girl offenders asked whether:

- any government-run community-based and custodial programs were provided specifically for girls;
- the programs excluded young people who came to the attention of the courts for welfare matters;
- the programs were conducted separately from those provided for boys.

*Table 2*

#### **Australian State Government Programs Specifically for Girl Offenders, February 1988**

<i>State or Territory</i>	<i>Community Welfare/ Criminal</i>	<i>Secure Custody Accommodation</i>	<i>Secure Custody Programs</i>
New South Wales	-	-	-
Northern Territory	-	-	-
Queensland	women foster carers welfare/criminal	-	-
South Australia	1 group home welfare/criminal	1 institution	-
Tasmania	-	-	1 institution
Victoria	1 group home welfare/criminal	1 institution	1 institution
Western Australia	-	1 institution	-

Note: No response was received from the Australian Capital Territory.

The findings summarised in Table 2 show that only four States provided community-based programs. These were all residential, and accepted girls who appeared before court for either criminal or welfare matters. Victoria was the only State which operated a custodial program for girls where both accommodation and programs were organised on a sex-segregated basis. This has subsequently been closed. In the three other States where special

measures were taken to meet the needs of girls in detention, they involved either separate accommodation or programs.

In 1989 the author undertook a study tour to the United States of America, Canada, the United Kingdom and The Netherlands (Moore 1990). The research aimed to:

- locate programs which targeted girls encountering the juvenile justice system; and
- identify features of the programs specifically relevant to girls.

This local and overseas research yielded some examples of programs which could be used as alternatives to secure custody, and of different approaches to providing custody for girls. Some have the potential for implementation in NSW.

### **Alternatives To Custody**

Girl-specific programs which could divert girl offenders from court and/or custody fall within two broad categories:

- Day attendance centres

Girls participated on a voluntary basis or as part of a supervision order imposed by the court in sentencing. Staffed mostly by women, the program strategies included: individual and/or family counselling, group counselling and/or skills training, as well as support for professionals working with girls. Topics included in counselling or educational programs included: surviving sexual and physical abuse, drug rehabilitation, self-esteem and assertion skills, relationships, dealing with anger, sexuality, pre/post-natal care, child care, vocational skills and job-seeking.

- Short-term supportive accommodation

Girls experiencing a crisis, such as family conflict or physical or sexual assault, were assisted with temporary accommodation. Most also assisted them to seek support or counselling to resolve their immediate crisis, and make longer term plans for accommodation, income support and social involvement. A unique program was the Proctor Program which operated in Queensland, and provided accommodation with a full-time single female foster carer and role model. This differed from other programs which mostly provided accommodation in a group setting. In all programs residents were required to seek involvement in regular structured educational or vocational activities, and to participate in programs which aim to enhance independent living skills.

The *Kids in Justice* report (1990, p. 125) states that:

. . . representation (of girls) . . . decreases with higher involvement in the system.

This suggests that a larger proportion of girl offenders "grow out of crime" earlier in their criminal career than boys.

Programs should aim to minimise the numbers of girls that reach detention. The small numbers of girls provides a challenge to administrators to eliminate secure custody for girls altogether. This can be achieved through improving the relevance and effectiveness of community based programs.

### **Custodial Programs**

The low numbers of young women in secure detention, which led to the closure in the mid-1980s of the only girl-specific detention centre in NSW, and which results in girls being an afterthought in most juvenile justice administrations, is managed in several ways.

- Co-corrections

Most Australian juvenile justice administrators manage the low numbers of girls by accommodating them in secure custody institutions which have predominantly male inmate populations.

This policy of "co-corrections" was in vogue amongst administrators of adult prisons in the United States in the mid 1970s. It was based on claims that incarcerating men and women in a single institution would solve some of the management problems in the male institutions, provide women with access to a wider range of programs, enable them to be located in closer proximity to their families, and provide a normal heterosexual social environment.

When some Canadian provincial administrators began to introduce co-correctional policies into the adult prison system in the 1980s, the Canadian Association of Elizabeth Fry Societies (CAEFS 1986) opposed the move, and argued that it had many deficiencies which affect women, specifically:

- it provides the potential for sexual exploitation by male inmates and male guards;
- the program interests and needs of women, who are in the minority, are subordinated to those of men, with women being expected to participate in male-oriented programs or being denied access to programs;
- there is reduced effort in the development of programs which address the specific needs of women;
- the informality typical of a women's prison environment gives way to more rules and security;
- women may be isolated in the maximum security accommodation of male institutions;

- the location of prison places for women often fails to overcome dislocation from family/friends;
- a policy of co-corrections fails to provide an environment in which heterosexual relationships can be conducted in a non-exploitative manner, and thus can force women into negative stereotypical dependent roles.

The United Nations Standard Minimum Rules for the Treatment of Prisoners state that:

Men and women are to be held in separate facilities . . . (United Nations 1991, p. 53).

While the United Nations Rules for the Treatment of Juveniles Deprived of their Liberty (1991, pp. 90-103) are silent on issues affecting girls, the Standard Minimum Rules for the Administration of Juvenile Justice state that:

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders . . .

27.1 The Standard Minimum Rules for the Treatment of Prisoners . . . shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality (United Nations 1986, pp. 13-14).

Three United States' juvenile co-correctional institutions visited in 1989 complied with these standards by accommodating girls in entirely separate units, but including both girls and boys in the same educational and vocational programs. Girls were represented in sufficient numbers to comprise around half of the program participants, allowing them equal access and participation. The separation of accommodation units provided girls with a space in which they could participate in girl-only time and activities (for example, vocational training in areas not traditionally selected by women, and group counselling on surviving sexual abuse).

In NSW, as few as one or two girls are accommodated in one of six detention centres which hold 30 or more boys<sup>2</sup>. Alternatively, girls might be placed in a segregated accommodation wing of a detention centre with a predominantly male inmate population.

In response to some of the negative consequences that these practices had for girls, the *Girls at Risk* report recommended:

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<sup>2</sup>. Yasmarr detention centre has since been developed as a specialist institution for girls.

That the [then] Department of Youth and Community Services introduce and implement policy to ensure that young girls are never placed in care without at least one other girl, that girls have access to a female worker at all times, that girls are free from sexual harassment, that girls have a girl-only space provided in accommodation, and have incorporated into their programs specific times and activities in which girls can pursue their separate interests (WCU 1986, p. 18).

- Age mixing in prisons

In England and Wales, an extremely small number of girls is placed in Youth Custody establishments. This is a result of the extensive use of strategies which divert young people with welfare problems from the juvenile justice system to care services. To overcome the "numbers problem" authorities have accommodated girl offenders in prisons with adult women. Research findings have not supported the claim that women and girls benefit from this practice, and increased efforts have been made to ensure that no girl offenders are placed in prison. Authorities have also made commitments to extend the use of diversion strategies and community-based alternatives to custody to young adult offenders (aged 17-20 years), and to place young women under 21 years in separate secure custody institutions.

- Open custody

The Canadian Young Offenders Act 1982 provides for a range of custodial dispositions. At the time of sentencing, Youth Court judges can specify the nature of the custodial setting, the sentence length and the terms of release. The Act provides for a sentence to be served in an open or secure institution. Open settings include wilderness camps and group homes (Caputo & Bracken 1988, p. 128). This federal legislation is administered provincially. Some government bodies operate both secure and open custody institutions, and others provide funding to non-government agencies to operate open custody programs.

In Ontario, two local Elizabeth Fry Societies (non-government agencies which provide support to women in conflict with the law) are funded by the Ministry of Corrections to provide open custody programs for girls. The services accommodate a maximum of ten girls in a group home setting, located in suburban areas. The female staff provide educational, vocational and living skills programs within a structured daily routine. The services also provide individual case planning and counselling with an outside social worker. There is a strong emphasis on assisting girls to make the transition to independent living. The legislation provides for residents to be allowed a 12-hour temporary release from custody. This enables participants to utilise resources in the local community and to experience trust and achievement.

The legislation provides for the statutory body to place participants who have breached their conditions into a secure institution for up to 15 days. A longer period requires judicial review. The provision for judicial review in the course of a custodial sentence also enables staff of secure institutions to advocate for a young person's move from a secure to an open custody setting.

These provisions have successfully diverted some girls from secure custody and provided them with the opportunity to participate in a program targeted specifically to their needs, but have not removed completely the judicial demand for secure custody places.

## **Conclusion**

It is widely acknowledged that the last resort of secure custody may not assist young people to achieve a fulfilling and law abiding lifestyle. While physical containment temporarily protects them from risks associated with their lifestyle it exposes them to different risks associated with incarceration. Detention centres not only damage the positive social supports from which inmates are temporarily isolated, they also provide a network of experienced offenders with whom to associate and from whom to learn new offending behaviours. For those forced to live independently at an early age, institutions rarely provide the necessary living skills. The institutional regime itself can also provide new opportunities for inmates to be sentenced for misconduct.

Accommodation and programs for girls detained in secure custody are often of a lesser standard than those provided for boys, and efforts are seldom made to address their particular needs. Many of the deficiencies described by the Canadian Association of Elizabeth Fry Societies (1986) affecting adult women are also apparent in juvenile institutions which accommodate girls.

The smaller numbers of girls, and their typically less serious and less entrenched offending, makes them an ideal group with which to pilot untried alternatives to secure custody. It is vital that governments commit funds to preventive and supervisory programs which are community-based.

Measures must also be taken to ensure that provisions for girls in secure custody are not of a lesser standard than they are for boys. This can best be achieved by ensuring that girls are placed in sex-segregated accommodation in a detention centre, with predominantly female inmates and staff.

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