


Forensic mental health issues for women in contact with the criminal justice system

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Abstract

Objective: This review demonstrates that women who encounter the Australian criminal justice system include some of the most disadvantaged and mentally unwell people in society, particularly Aboriginal women. Women in custody are a heterogeneous group and have different psychosocial needs when compared to male prisoners.

Conclusion: The approaches to female offending must address their significant psychosocial and mental health issues at every point of contact with the criminal justice system, be culturally informed and specifically address Indigenous overrepresentation.

Keywords: forensic, women, mental illness, incarceration

Despite falling crime rates, during 2010 to 2020, Australia's daily prison population increased by 40%, two-and-one-half times the rate of population growth. Pathways for women into the criminal justice system are characterised by extreme disadvantage: childhood trauma and abuse, significant mental illness, substance abuse, unhealthy relationships, disorganised family situations and victimisation.¹ There are one million females imprisoned at any time worldwide, with the Americas, Southeast Asia and Australia having higher rates than all other first and third world nations. The United States leads with 65 women in prison per 100,000 population. Besides American Samoa, Australia leads in Oceania at 30 women in prison per 100,000 population.²

The incarceration of women and systemic prejudice

Female incarceration rates in New South Wales (NSW) increased by 50% over the 2011–2017 period and police proceedings increased by almost one-fifth. Repeat female offenders appearing before a court increased by 162%, with significant increases in women being remanded to custody.³ In contrast, length of stay in custody remained stable. This is evidence that women are not committing more serious offences and are incarcerated for lower-level offences that are not indictable in men, with the main contributor for the decade-long increase in female incarceration being prior offending history and bail refusal.⁴

This suggests a prejudicial system that can trap women into a cycle of incarceration.

Following 2021–22 justice reforms, Australian prisoner numbers decreased by 6% to 40,591. The incarceration rate also decreased by 6% to 201 prisoners per 100,000 adult population, with a 10% decrease in women. Today, there are around 2800 women in prisons in Australia, representing 9.7% of the total prisoner population.⁴

Mental illness in imprisoned women

Mental illness in women is higher than in men both in the general community and in the incarcerated population. In surveys of NSW prisoners between 2001 and 2015, there was a significant threefold increase of any mental health diagnosis over time.⁵ Women reported higher rates of psychiatric hospitalisation, prescribed medication, and self-harm, and in rates of nearly all diagnoses, including schizophrenia and ADHD, although the prevalence of these was higher in men. A greater proportion of women reported substance use disorders across all surveys, in contrast to the general population where men have more

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than twice the rate of substance use disorder than women.^{5,6}

In the 2015 study, more than three-quarters of women reported at least one lifetime mental health diagnosis with almost twice the rates of all mental illness when compared to the men. Depression was seen in 61% of women, anxiety 51% and suicidal ideation in more than two-thirds in the previous 12 months. Almost one-third of females had attempted suicide at least once and 25% reported having engaged in self-harm behaviours.⁷ These rates are 4–5 times greater than community peers: in 2017–18, 12% of Australian women reported depression, 13% anxiety and 1 in 6 women had suicidal ideation in the last 12 months.⁸

Violent female offenders

The most common offences leading to female incarceration are unlawful entry, theft, fraud and deception offences, drug offences and offences against justice procedures (such as a breach of curfew or non-association order), with violent offences a minority. Women convicted of violent offences have higher rates of adverse childhood experiences, parental mental illness and more severe substance use and mental illness than women convicted of non-violent offences. Most violent offending by women is within primary relationships – intimate partner violence or violent criminal activity with male partners. Three-quarters commit these offences with co-offenders, and fewer than 14% have a primary role in the offence. Women are usually once-only violent offenders with a small number engaging in repeat violent offending.⁹ These women report more trauma symptoms, are more likely to have witnessed or experienced maternal aggression and are hypothesised to be socialised to instrumental violence.¹⁰

Female homicide

Most female homicides involve intimate partners or family members and are characterised by interpersonal violence, substance abuse (alcohol misuse in particular) and mental illness. In a 2020 Australian study of 115 female intimate partner homicides, most relationships involved domestic violence with the homicide being a single spontaneous episode of violence following conflict where the male partner physically or sexually assaulted the woman immediately prior. Half of the women were unemployed, and 40% had a criminal history of assault. Half had a diagnosed mental illness, and almost 70% misused alcohol in the 24-h period leading up to the homicide. Forty percent were identified at sentencing as having alcohol misuse and illicit drug use issues, and one-third of their partners misused alcohol.¹¹

Maternal filicide

Maternal filicide is extremely rare, and these women are highly likely to have postpartum depression, psychosis,

prior mental health treatment, isolation and suicidal thoughts. Acts of filicide have been categorised as altruistic, psychotic, maltreatment-related and spousal revenge-related. These mothers are more likely to have cognitive impairment and be victims of abuse and domestic violence. Spousal revenge filicide is associated with impulsivity and personality disorders.¹² Despite puerperal disorders having unique psychiatric presentations, they are not included as separate entities in the DSM-V.¹³ This can leave acutely unwell new mothers vulnerable to an inadequate defence by refuting charges of homicide using a disorder recognised in law that may be an inaccurate description of the mental state at the time.¹⁴

Women as forensic inpatients

Forensic inpatients are a discrete cohort with high rates of specific mental illness, aggression, metabolic issues and backgrounds of adversity.¹⁵ A 2017 American study found female forensic inpatients, with the highest levels of aggression, had the highest rates of self-harming behaviour, attention deficit-hyperactivity disorder, childhood physical and sexual abuse, and youngest age of onset of psychiatric and behavioural symptoms. Almost all had an intellectual disability and had been placed in out-of-home care before the age of 11 years. Before admission, most had manifested severe aggression and emotional dysregulation, high levels of self-harm and suicide attempts.¹⁶

Imprisonment of indigenous women

Aboriginal and Torres Strait Islander female offenders are a particularly disadvantaged group who previously were the fastest growing prison cohort in Australia.¹⁷ Imprisonment rates have plateaued but remain 15 times that of non-Indigenous women with 472 Indigenous females per 100,000 Indigenous population.¹⁸ Aboriginal and Torres Strait Islander women in prison are disproportionately more likely than non-Indigenous women to have significant mental illness (92%), cognitive disability, substance abuse and homelessness and are incarcerated at greater rates for violent offending. The relationship between violent offending, victimisation and sexual assault, intergenerational trauma, alcohol abuse and family and domestic violence is likely to have a strong relationship to the violent offending by these women.¹⁹

Therapeutic pathways for mentally unwell women in contact with the criminal justice system

Services and programs caring for these women should acknowledge the high rates of trauma, mental illness and victimisation and have tailored and culturally appropriate approaches for different female offender groups at different stages of the custodial journey.

Mental health courts and court liaison diversionary services

Court diversion of female offenders into community mental health treatment services can lift women out of the cycle of incarceration. Many women have not previously engaged with these services, so this strategy has large potential benefits. There is a need for more longitudinal data to evaluate these services, not just on diversion rates but on the longer-term outcomes of engaging with treatment and reduction in recidivism.²⁰

The State-wide NSW Health Court Liaison Service identifies mentally ill offenders for diversion under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.²¹ Between 2008 and 2015, 60% of 8317 eligible individuals were subsequently diverted from custody. Those more likely to be diverted were women, older offenders and those with serious mental illness. As seen in other diversionary services, Aboriginal and Torres Strait Islander offenders were less likely to be diverted.²²

Queensland has the only Mental Health Court in Australia which decides on the soundness of mind of the alleged offender at the time of the offence, and their fitness to stand trial. This differs from the original (American) model of problem-solving courts with a dedicated assertive team who deliver the psychosocial care (mental healthcare, access to priority housing, access to education and employment), potentially more effective at improving mental health and quality of life outcomes, as well as recidivism.²³ A recent study confirmed that Mental Health Courts were effective at reducing recidivism, however direct access to housing services was needed as part of the model.²⁴

Drug courts and court-based D&A diversion services

Drug Courts are also an American model that have been established in four locations throughout NSW since 1999 to provide therapeutic and rehabilitation diversionary options for eligible offenders. There is also the MERIT court-based program which is found in more than 60 local courts across NSW and makes referrals to local rehabilitation providers. An evaluation in 2020 showed a modest (17%) reduction in recidivism rates for Drug Court participants as compared to non-participants, and a longer time taken to re-offend. There were no differences in outcomes between men and women. It is unclear whether there is a cost benefit given the expense in running such an intensive supervision program. There have been no head-to-head comparisons of outcomes between Drug Court and the more economical MERIT court-based model.²⁵

Custodial programs and services

The Forensic Hospital in NSW provides state of the art inpatient mental health and substance abuse treatments for female offenders who are not criminally responsible or unfit to be tried due to mental health impairment or

a cognitive impairment. The Austinmer female ward has specific programs for women, and Aboriginal Health workers available to support Aboriginal and Torres Strait Islander female patients. As the NSW gaol population continues to climb, psychiatry and other specialised services for women in female-only gaols are increasingly stretched. Corrective Services NSW provides psychological and social work services that target criminogenic behaviours to reduce reoffending, however they acknowledge that 'offenders have lifelong and intergenerational complex needs which depend on other agencies, including policing, health, housing, family support, education and employment'.²⁶

Post-release support

The immediate period after release from custody is high-risk for many women, with increased rates of drug overdose, suicide and accidental death.²⁷ The NSW Health Community Forensic Mental Health Service is comprised of mental health clinicians including psychiatrists, nurses and allied health staff. This service uses the consultation liaison model and works collaboratively with the custodial, court liaison and local health district mental health teams to provide continuity of mental healthcare in the community to prevent women falling through service gaps.²⁸

The NSW Health Connections Program provides a pre-release assessment and post-release integration into health and welfare related services for people with alcohol and/or drug related issues. Many women will commence opiate substitution treatments in custody (in NSW custody this is usually the long-acting depot injection buprenorphine), and continuity of this treatment supports social reintegration and stability of their mental health.²⁹

There are several non-government and charitable organisations who provide support to women leaving custody. For example, 'Sisters-Inside Inc' is a Queensland-based organisation working alongside criminalised Aboriginal women and girls. The programs include an in-reach sexual assault counselling and support service, an anti-violence education program, mental health and drug and alcohol support services, a supreme court bail service, a decarceration program for women on remand (providing access to legal support and housing) and post-release support for women with their parole conditions.³⁰

Conclusions

Women who encounter the Australian criminal justice system are some of the most disadvantaged and mentally unwell people in society. Women in custody are a heterogeneous group and have different psychosocial needs when compared to male prisoners. Approaches to female offending should address their significant psychosocial issues at every point of contact with the criminal justice system, be culturally informed and specifically address Indigenous overrepresentation.

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Ethical statement

Ethical approval

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