

ARTICLE

Violent Girls and the Youth Justice System: Why Current Systems are Failing this At-Risk Population

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Current youth justice systems appear to be failing a specific group of offenders: violent girls. This is a concern, since violent girls are a unique group of offenders who are both underestimated and feared by society. Furthermore, they bring complex histories and problems with them to the system. The New Zealand youth justice system works on the assumption that what works for boys must also work for girls, and so gender-specific provisions are not present in legislation. The same can be said about international instruments, which reference the “needs” of the individual but never differentiate between girls and boys. Concern about the current approach to dealing with violent girls is rising amongst those in the youth justice community. This article argues that more positive gender-specific initiatives are needed to effectively cater for violent girls in the youth justice system.

I Introduction

This article will evaluate the extent to which existing youth justice systems cater for violent girls. For the purpose of this article, the term *violent girls* will be used to refer to girls aged 14 to 16 years who are involved in violent offending. I will begin by identifying and critiquing the legal and societal issues relevant to the construction of violent girls. I will then examine how violent girls would be catered for in a welfare-based system and compare this with a justice-based system. Next, I will analyse the legislative and policy framework of New Zealand’s youth justice system, so far as it pertains to violent girls, and finally, will compare and contrast it to what international instruments have to say about violent girls. I will evaluate this research question using critiques from feminist theory. This article focuses mostly on violent girls aged 14 to 16 years as this age group falls under New Zealand Youth Court’s jurisdiction.

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II Legal and Societal Issues Relevant to the Construction of Violent Girls

The starting point for evaluating the construction of violent girls is the Children, Young Persons, and Their Families Act 1989, which outlines New Zealand's youth justice system. Under s 2(1) of the Act, a "young person" is a boy or a girl of or over the age of 14 years but under 17 years.¹ Girls and boys are lumped together under the single category of "young person" and are at no point throughout the Act differentiated from each other. While this aids simplicity, it implies that there are no significant differences between boys and girls. This in turn suggests that both boys and girls can be appropriately catered for under the overarching heading of "young person" and programmes designed for young people will work effectively for both girls and boys.

Males consistently outnumber females for violent offending, and boys typically outnumber girls (aged 14 to 16 years) three to one for violence apprehensions.² As a result, violent offending by girls is often perceived as insignificant in comparison to boys. This has also influenced the direction of research on youth offending, resulting in significantly less literature and resulting knowledge on violent girls than boys. In reality, a number of girls do engage in violent offending, yet this continues to be overshadowed by that of boys.

Gender stereotypes about how girls should act have prevented an accurate picture of girls' involvement in violence being drawn, with little consideration being given to what is actually occurring.³ Images of a catfight involving hair pulling and pinching are common when considering young female violence and are a wholly inaccurate picture of what is involved.⁴ Violence by girls is serious and has potentially far-reaching consequences, both in terms of harm to victims and apprehensions and legal action for offenders.

Violent girls are more likely than their male counterparts to have experienced a myriad of negative life experiences.⁵ A significant number have experienced both physical and sexual victimisation, and many come from dysfunctional family backgrounds. Violent girls often have substance abuse problems, and many suffer from a wide range of mental health issues including depression and post-traumatic stress disorder. Experiences of suicidal ideation and attempts are also common.⁶ Girls are also more likely than boys to have been previously referred to the department of Child, Youth and Family for care and protection.⁷ This has implications for the construction of violent girls, as it regards violent girls as an extremely vulnerable group in society,⁸ which is often at odds with society's reaction to their offending.

1 Children, Young Persons, and Their Families Act 1989, s 2(1).

2 Ron Crawford and Peter Kennedy *Improving Interventions to Reduce Violent Offending by Young People in New Zealand* (Ministry of Justice, August 2008) at 78; and Tony Zohrab, Rob Murrfitt and Paul Geoghegan "Girls offending" *Court in the Act* (New Zealand, February 2010) at 12.

3 Donna Swift *Girl Fighting: An investigation of young women's violent and anti-social behaviour* (Stopping Violence Services Nelson, 2011) at 28.

4 At 32.

5 Candice L Odgers and Marlene M Moretti "Aggressive and Antisocial Girls: Research Update and Challenges" (2002) 1 *International Journal of Forensic Mental Health* 103 at 109; and Zohrab, Murrfitt and Geoghegan, above n 2, at 12.

6 Odgers and Moretti, above n 5, at 109.

7 Gabrielle Maxwell and others "Differences in how girls and boys respond to family group conferences: preliminary research results" in Lode Walgrave (ed) *Repositioning Restorative Justice* (Routledge, Abingdon (Oxfordshire), 2011) 136 at 137.

8 Odgers and Moretti, above n 5, at 108.

Between 1998 and 2007, apprehensions of girls aged 10 to 20 by police for violence rose by 67 per cent in New Zealand.⁹ In the United States, similar statistics have led to increasing concern over the state of girls and fears akin to moral panic.¹⁰ Although there has been an increase in apprehensions, victim self-reports show no increase in violence over this time, suggesting that girl violence has, in fact, been an ongoing problem beneath the surface.¹¹ Rather than an actual increase in violent offending by girls, zero-tolerance policies around bullying and get-tough approaches by police are likely the cause of this increase in apprehensions.¹² This implies that violence by girls is an ongoing problem which has so far failed to be dealt with.

These issues demonstrate the difficulties involved in the construction of violent girls. Violent girls are a unique group of offenders due to the risk they pose and the vulnerability they display, both of which have gone unrecognised. Violent girls have been overshadowed both by boys in the youth justice system *and* preexisting gender assumptions. As a result, little is known about them. This has serious practical implications, as without a consensus on how violent girls are to be understood and defined, it is near impossible to determine how to cater for them effectively.

III Violent Girls in Welfare-Based Systems and Justice-Focused Systems

A *Welfare-based systems*

A welfare-based system of youth justice is often referred to as “needs”-based.¹³ The focus is on understanding how the individual circumstances and needs of the young person led them to offend. Young offenders are seen as vulnerable, and their actions as a response to the unmet needs in their life.¹⁴ A welfare-based system works on the assumption that once the needs of the young person are met or their problems diagnosed and addressed, the offending will stop or at least diminish.¹⁵ Discretion in decision-making is a key feature, while punishment has little importance in a welfare-based system.¹⁶

Such a system would be advantageous in catering for violent girls as it would allow consideration of their histories in the decision-making process, including physical and sexual victimisation, dysfunctional family backgrounds and mental health issues, as well as any other personal circumstances. It would recognise that their pathway into such violent offending is often different to that of boys, and that, consequently, different responses may be necessary. Rather than treating these girls as violent criminals, they would be viewed as products of their life experience, and the focus would be on addressing these problems and finding the best possible outcome for them.

While a welfare-based system has the significant advantage of being able to consider violent girls’ special needs, this system alone may not be entirely successful in catering for

9 Zohrab, Murrfitt and Geoghegan, above n 2, at 12.

10 Sarah Goodkind “Gender-Specific Services in the Juvenile Justice System: A Critical Examination” (2005) 20 *Affilia* 52 at 57.

11 At 57.

12 At 57–58.

13 Judy Cashmore “Juvenile Justice: Australian Court Responses Situated in the International Context” in Rosemary Sheehan and Allan Borowski (eds) *Australia’s Children’s Courts Today and Tomorrow* (Springer, New York, 2013) 197 at 199.

14 Claire McDiarmid *Childhood and Crime* (Dundee University Press, Dundee, 2007) at 146.

15 At 146.

16 At 146.

violent girls. Focusing only on the needs of a violent girl and not on her actions denies her personal autonomy and agency in the offence.¹⁷ She is characterised solely as a victim who needs protecting. This marginalises violent girls and prevents them from taking control of their situation, and so is unlikely to lead to reduced offending. The considerable discretion allowed in a welfare-based system may also serve to marginalise violent girls as decisions are made for them, often without their input, on the basis that others are better equipped to decide what is best for them

B Justice-based systems

In contrast to a welfare-based system, a justice-based system focuses on the “deeds” of the young person. The emphasis is on the offence or behaviour of the young person and holding the young person responsible for their actions. This will almost certainly involve punishment. The outcome is largely dependent on the severity of the act as well as a desire to protect society from the young person and deter the young person from reoffending.¹⁸ Responses are ideally determinative, proportional to the offence and consistent with other offences. The young person is viewed as independent and autonomous.¹⁹ The needs of the young person are not ignored, but rather it is assumed that the justice system is not the appropriate context for dealing with them (families and schools are seen as better contexts).²⁰

In a justice-based system, violent girls would be treated much like any other violent individual. Their personal autonomy in offending would be recognised, and they would be punished in a consistent and determinative manner regarding the nature and severity of their actions. Their history and negative life experiences would not be given consideration as it would be assumed that these could be dealt with in other spheres of the girls’ lives.²¹ Unfortunately, this is not the reality for many violent girls, whose issues are not discovered and consequently addressed until they enter the youth justice system.²²

While a justice-based system will provide violent girls with a procedurally fair outcome, it is entirely unrealistic to assume that a successful outcome can be reached for both society and the violent girl without consideration of her needs and circumstances. Ignoring these will most likely serve to reinforce the systems that led her to offend, thus perpetuating the problem.²³ A violent girl in this system will effectively be punished for her victimisation and negative life experiences. If the underlying needs of violent girls are given no recognition by the justice system, any outcome will likely only resolve the problem on a superficial level and will be unsuccessful in ensuring the violent girl does not end up back in the system once again.

From the discussion above, it is clear that while both welfare- and justice-based systems have advantages when catering to violent girls, neither system implemented alone will cater effectively and be successful for violent girls. A system which is a combination of the two will have the greatest chance of success.

17 Goodkind, above n 10, at 63.

18 McDiarmid, above n 14, at 143.

19 Stewart Asquith “Justice, Retribution and Children” in John Muncie, Gordon Hughes and Eugene McLaughlin (eds) *Youth Justice: critical readings* (Sage Publications, London, 2002) 275 at 281.

20 At 279.

21 At 279.

22 Zohrab, Murrfitt and Geoghegan, above n 2, at 13.

23 Asquith, above n 19, at 282.

IV The Legislative and Policy Framework of New Zealand's Youth Justice System in Relation to Violent Girls

New Zealand's legislative framework for youth justice is the Children, Young Persons, and Their Families Act 1989. Under s 4(f) of the Act, one of the objectives is to ensure that where children or young people commit offences they are to be "held accountable, and encouraged to accept responsibility, for their behaviour" and also, that they are dealt with in a manner that "acknowledges their needs" and gives them an "opportunity to develop in responsible, beneficial and socially acceptable ways".²⁴ This reflects the combination of welfare- and justice-based approaches used in the New Zealand system, and the importance of addressing both the needs and deeds of the young person. The principles specific to youth justice are set out in s 208 of the Act.²⁵

Under s 245, proceedings are not to be instituted against a young person unless a youth justice co-ordinator is consulted and family group conference held.²⁶ The family group conference (FGC) is the key method of dealing with young people who offend in New Zealand, and for the most part is regarded as highly successful.²⁷ The FGC is used for both boys and girls who have committed any offence under Youth Court jurisdiction, and thus is the current way of dealing with violent girls.

There is evidence, however, that FGCs are not as successful for girls as for boys. While recidivism rates after an FGC are typically lower for girls than for boys, individual responses tell a less positive story.²⁸ In a retrospective study on family group conferences, Gabrielle Maxwell and others found that girls were less likely to feel that they could say what they wanted at the conference, with many feeling too intimidated to do so.²⁹ They were less likely than boys to report being treated fairly and were less likely to feel as though they would be able to put their offending behind them.³⁰ Finally, girls were half as likely as boys to report that having an FGC had helped them to stop or reduce their offending.³¹ These results suggest that FGCs may not be effectively catering to the needs of girls who offend.

Violent girls are a significant concern to youth justice officials and the police, and so effective measures for dealing with them need to be implemented.³² If a system like the FGC is not viewed as successful by girls who offend generally, it is unlikely to be successful for violent girls who, as discussed earlier, bring with them a range of personal issues to the youth justice system. The FGC as part of the Children, Young Persons, and their Families Act does not differentiate between boys and girls, and thus is unable to provide a response that caters specifically to their needs. This leaves participating girls feeling unsatisfied with the process and no more likely to stop their offending behaviour. If the FGC continues to be used as the only method of dealing with violent girls, without consideration of gender differences in the pathways of violence and necessary responses, it is unlikely that the current youth justice system will be catering to them effectively.

24 Children, Young Persons, and Their Families Act 1989, s 4(f).

25 Section 208.

26 Section 245.

27 Maxwell and others, above n 7, at 136.

28 At 144.

29 At 144.

30 At 145.

31 At 145.

32 Tim Hall and Linda McIver (eds) "Youth Justice professionals grow frustrated at a lack of programmes for violent young females" *Court in the Act* (New Zealand, May 2010) at 7.

There is a degree of frustration among youth justice professionals regarding a lack of gender-specific responses and programmes available for violent girls. New Zealand has multiple highly successful programmes for violent boys including “Youth to Men” and “Dove” programmes; the same cannot be said for violent girls.³³ As of 2010 there was only one programme, in Hastings, for violent girls who were victims of sexual abuse—this is not nearly enough.³⁴

While the Act provides that consideration of the young person’s needs is necessary, and where practicable, causes of offending should be addressed,³⁵ this is vague and does not guarantee that the special needs faced by violent girls will be addressed. In order for violent girls to be effectively catered for, legislation needs to make a move to provide more gender-specific initiatives.³⁶

V New Zealand’s Legislative and Policy Framework and International Instruments

The United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) provide guidance on standards to be applied in the administration of youth justice systems.³⁷ While both set out the importance of the child’s best interests and needs, neither of them specifically refer to the special needs of girls.

Article 37(c) of the UNCRC does not refer to violent girls specifically, but is still relevant when comparing New Zealand’s youth justice system and violent girls with international instruments. This states that children deprived of their liberty should be separated from adults unless it is considered in the child’s best interests not to do so.³⁸ Despite this, girl offenders in New Zealand are always detained in adult women’s prisons, as there are no female youth units.³⁹ This has been criticised by the United Nations Committee on the Rights of the Child and also the 2004 report of the Committee Against Torture.⁴⁰ This is a clear failing by New Zealand to cater to violent girls who have offended. The United Nations Committee on the Rights of the Child has stated that even where rates of female juvenile offending are low, it is essential that there are appropriate facilities in place.⁴¹

33 At 7.

34 At 7.

35 Children, Young Persons, and Their Families Act, s 208(fa).

36 Tracey Cormack and Tim Hall (eds) “NCJFCJ Conference, San Francisco, California July 22–25 2007: Ten Lessons Learned and Impressions Gained” *Court in the Act* (New Zealand, December 2007) at 2–3.

37 United Nations Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990) [UNCRC]; and *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)* GA Res 40/33, A/Res/40/33 (1985).

38 UNCRC, art 37(c).

39 AJ Becroft “Time to Teach the Old Dog New Tricks? What the Adult Courts Can Learn About Sentencing and Imprisonment From the Youth Court” in *Beyond Retribution: Advancing the Law and Order Debate — PFNZ National Conference 2006 Report* (Prison Fellowship of New Zealand, Upper Hutt, 2006) 77 at 81; and Nessa Lynch “Youth justice” in Julia Tolmie and Warren Brookbanks (eds) *Criminal Justice in New Zealand* (LexisNexis, Wellington, 2007) 359 at 376.

40 Lynch, above n 39, at 376.

41 Carolyn Hamilton *Guidance for Legislative Reform on Juvenile Justice* (UNICEF, May 2011) at 108.

In the General Comments on the UNCRC, the United Nations Committee on the Rights of the Child recognised that because girls only constitute a small proportion of offenders, they are at risk of being overlooked in youth justice systems. They made special note of the importance of giving attention to the special needs of girl offenders—for example, in relation to histories of abuse—in order to effectively provide for girls in youth justice systems.⁴²

In a UNICEF report on guidance for legislative reform in the area of youth justice, Carolyn Hamilton noted that systems need to recognise the particular needs of girls. Specific and separate provisions are required in legislation to ensure that their needs are met.⁴³ Also covered in the same report are the ways in which, in order to remedy long-standing discrimination, special measures may need to be taken to redress de facto discrimination, particularly in situations where girls are accused of offences.⁴⁴

New Zealand's practice of detaining girls with adult women offenders obviously does not measure up to the standards of the UNCRC. This is a clear example of the needs of girls who offend being overlooked. New Zealand needs to ensure that appropriate facilities are in place for girls who need to be detained in order to at least bring them to an equal status with boys.

Aside from this, when we turn to the wording of international instruments such as the UNCRC, it is hard to argue that New Zealand is failing to meet the standards on what is said about violent girls. This is not because of any great achievement by New Zealand, but rather reflects the fact that international instruments are also failing to provide for violent girls (and girls who offend in general). Very little, if any, distinction is made between boy and girl offenders. This has been criticised, and the problem is now coming to light. When New Zealand's legislative framework is compared with the expectations of the international community, reflected in committees and reports, it is clear that New Zealand needs to do more to meet the needs of violent girls. This has, however, been recognised by members of the New Zealand youth justice system.

Violent girls are a serious problem, both nationally and internationally. The risk they can pose to others, as well as the extreme vulnerability they often display, make them a unique group of offenders. In order to provide for them in youth justice systems more positive measures need to be implemented to recognise the special needs they possess. Explicit provisions and wording in international and domestic instruments, which go beyond mere reference to recognising needs of offenders, are required to ensure that the special needs of these girls are catered for.

VI Conclusion

Existing youth justice systems do not currently cater effectively to girls who violently offend. Violent girls are a group of offenders who are both a threat to the safety of society as well as in need of special measures for protection and care. Both elements of this dynamic have gone unrecognised for much time, though there is growing concern in the youth justice community about the inadequacies of New Zealand's legislation, programmes and responses in relation to violent girls. Similarly, there is increasing

42 Committee on the Rights of the Child *General Comment No. 10 (2007): Children's rights in juvenile justice* CRC/C/GC/10 (2007) at [40].

43 Hamilton, above n 41, at 108.

44 At 25–26.

attention about the fact that international instruments do not positively ensure the protection of girls in youth justice systems. Violent girls would benefit from elements of both welfare- and justice-based systems, which New Zealand has tried to provide. However, what is essential, and unfortunately missing, is specific regard to their position as females in society and how this position has contributed to their violent offending. Until changes are made in legislation and official programmes and responses, violent girls will continue to be dealt with ineffectively.