

Chapter 16

Gendered Consequences of Incarceration and Criminal Convictions, Particularly for Parents, Their Children, and Families

Elizabeth Hendren, JD

Claire Mocha, MPH

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I. Summary

Incarceration can have lifelong adverse consequences for incarcerated parents, their children, their loved ones, and their children’s caregivers. This is true even for short periods of incarceration, and this is true even if the incarceration ends without a conviction. Strict timelines, along with barriers to obtaining court documents, responding to them, and appearing in court during incarceration can lead to permanent termination of parental rights, particularly the parental rights of mothers. They can also lead to negative consequences for incarcerated parents in family law cases, especially for mothers.

These consequences have a harsher impact on mothers because incarcerated mothers are significantly more likely than incarcerated fathers to be primary caregivers. They are also significantly less likely than incarcerated fathers to have another parent or family member available to step in to care for their children during detention. Consequently, the children of incarcerated mothers are more likely to be declared “dependent” on the state, which triggers further dependency and termination proceedings.

In addition, health and wellbeing consequences of incarceration can also fall more harshly on women, including mothers, and on other vulnerable populations. Some incarcerated individuals face overcrowding and poor sanitation; limited access to or disruption in behavioral health treatment; limited access to quality healthcare; and violence, harassment and trauma (not necessarily from within the institution). Pregnant and parenting incarcerated people face additional health and wellbeing challenges. Even after release, formerly incarcerated people continue to suffer from such health effects of incarceration.

Further, removing a parent from the family and community causes broader emotional, financial, and health impacts. Parental incarceration has been identified as an Adverse Childhood Experience that can produce serious, lifelong, health, educational, employment, and social consequences for the children of incarcerated parents. Families with incarcerated loved ones shoulder an enormous financial burden when supporting a loved one through the legal process, and during and after incarceration – a burden disproportionately carried by women, especially

Black, Hispanic/Latinx, and Indigenous women.¹ As one astute commentator noted, “Women are the informal reentry system of this country.”² And both children and families of incarcerated persons and the communities disproportionately impacted by mass incarceration suffer poor health and cumulative consequences.

Criminal convictions and incarceration also lead to adverse consequences after release. Such convictions produce formal legal collateral consequences, such as legal financial obligations (LFOs),³ barriers to accessing positions requiring occupational licensing, and inability to participate fully in civic life. Such convictions also produce an array of broader and less formal consequences, such as diminished job and housing opportunities. These formal and informal consequences can make it especially hard for formerly incarcerated parents to participate fully in their children’s lives.

For example, people with a history of arrest, conviction and/or incarceration experience disproportionately high rates of trauma, poverty, housing insecurity, deportation, and food insecurity. These problems affect not only the formerly incarcerated person, but also their families and loved ones. These problems also tend to have a disproportionately adverse impact based on gender, race, ethnicity, and other demographics. For example, incarcerated women are more likely to have been homeless before incarceration than incarcerated men, and incarcerated Black women more likely to have been homeless before incarceration than incarcerated white women. Individuals experiencing homelessness before incarceration are unlikely to be able to return to a stable home after release. Obtaining housing is a critical component of not only successful reentry but also family reunification after prison.

In sum, whole communities – especially children – suffer during and after the incarceration of the parent. Some of those consequences are intentional, and are part of the legal process. But

¹ The 2021 Gender Justice Study uses the race and ethnicity terms used in the underlying sources when citing data in order to ensure we are presenting the data accurately and in alignment with the how the individuals self-identified. When talking more broadly about the body of literature we strive to use the most respectful terms. See Section V of the full report (“2021 Gender Justice Study Terminology, Methods, and Limitations”) for a more detailed explanation of terminology used throughout the report.

² GINA CLAYTON ET AL., BECAUSE SHE’S POWERFUL: THE POLITICAL ISOLATION AND RESISTANCE OF WOMEN WITH INCARCERATED LOVED ONES 54 (2018), https://www.becauseshespowerful.org/wp-content/uploads/2018/05/Essie-Justice-Group_Because-Shes-Powerful-Report.pdf.

³ See “Chapter 15: The Gendered Impact of Legal Financial Obligations.”

others are likely unintentional, and even the intentional consequences may have impacts on health, employability, housing, parenting, and family life that are far more devastating than was ever intended.

II. Introduction

The American Bar Association defines collateral consequences as “legal penalties that take away rights, access to programs or services, or that impose another type of disadvantage that may not be part of a person’s sentence.”⁴ However, advocates, researchers, and those with lived experience of criminal legal system involvement have highlighted an additional array of consequences and extremely high barriers that go far beyond the formal legal penalties found in statutes.⁵ These barriers perpetuate disproportionately high rates of trauma, poverty, and housing and food insecurity among people with a history of arrest, conviction, and/or incarceration, and affect their families and communities as well.

More familiar consequences include legal financial obligations (LFOs) and barriers to employment, housing, education, public benefits and political participation. Incarceration also impacts health and wellbeing, during and after incarceration, and has broader impacts on families, loved ones and communities. For incarcerated parents – especially mothers – lesser-known consequences are related to their parental rights. These consequences are implicated any time a parent becomes incarcerated, regardless of whether or not they are also criminally convicted. This chapter highlights disproportionate impacts by gender, race, ethnicity, and other demographics. For more information on the increase in incarceration rates for women, see “Chapter 11: Incarcerated Women in Washington.”

⁴ *Reducing the Impact of Collateral Consequences of Convictions*, AM. BAR ASS’N(Dec. 11, 2020), https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/criminal_justice_system_improvements/reducing-the-impact-of-collateral-consequences-of-convictions/.

⁵ David S. Kirk & Sara Wakefield, *Collateral Consequences of Punishment: A Critical Review and Path Forward*, 1 ANN. REV. CRIMINOLOGY 171 (2018). Kirk and Wakefield define collateral consequences as “not only (a) the (formal) legal and regulatory sanctions that the convicted bear beyond the sentence imposed by a criminal court but also (b) the (informal) impacts of criminal justice contact on families, communities, and democracy.” *Id.* at 172.

As explained further below, many of the consequences have a disparate impact on mothers. Mothers often suffer the harshest consequences of incarceration, even short-term incarceration or detention, because incarcerated mothers are significantly more likely than incarcerated fathers to be primary caregivers. Incarcerated mothers are also significantly *less* likely than incarcerated fathers to have another parent or family member step in to care for their children upon the mother’s arrest or detention, potentially triggering events leading to permanent separation from their children. Unfortunately, much of the existing data on incarcerated mothers, particularly Washington data, is not disaggregated to show the intersection of gender with race and ethnicity. However, our findings in other chapters and in our pilot project on incarceration of women in Washington State support the inference that, here too, it is Black, Indigenous, and mothers of color who are most impacted.⁶

III. Direct Impacts for Incarcerated Parents, Particularly Mothers

A. Parental rights: Dependency and termination proceedings have the harshest impact on incarcerated mothers, most likely Black, Indigenous, and mothers of color

As one mother, Kimberly Mays, MPA, shared:

Being an incarcerated parent while simultaneously trying to navigate an open dependency or family law case regarding the legal rights of your children is a pipeline to termination. Lack of visitation with their children and no access to court-ordered services that are needed to reunite with their children are two of the biggest barriers incarcerated parents face.

Even though my son was placed in Tacoma 30 minutes from Purdy, I only received one visit with my newborn son whom I had given birth to while in prison. I didn’t

⁶ See “Chapter 11: Incarcerated Women in Washington,” “Chapter 13: Prosecutorial Discretion and Gendered Impacts,” and “Chapter 14: Sentencing Changes and Their Direct and Indirect Impact on Women.” See also pilot project in Appendix C of the full report: TATIANA MASTERS ET AL., INCARCERATION OF WOMEN IN WASHINGTON STATE: MULTI-YEAR ANALYSIS OF FELONY DATA (2020)

hear from the Department⁷ whether my son was dead or alive for about two months after he was born, and I didn't see him until he was three months old.

When I was incarcerated, I desperately needed to communicate with my attorney and my Department social worker who were the very people who could make a difference in my case regarding my legal rights to my son. I had no money to make phone calls or buy JPay⁸ stamps, and no way to email parties to my case.⁹ I could call my attorney collect, but by the time I would get to a phone he would never be there, and if I left a message he couldn't call me back at the [prison] payphone.¹⁰ It was just a lack of communication, and then it's a circus trying to schedule calls through your CCO¹¹ because you have got to wait for a meeting with the CCO, then the CCO has to get ahold of the parties you are trying to reach, then schedule an appointment, then get back with you- if they'll do it at all. Sometimes like in my case they'll say they couldn't reach anyone, because they've got too much to do to worry about helping you engage in your case.

Therefore, I was not able to co-create a case plan with the Department, or utilize my Department social worker to help me remedy the barriers to complying with the case plan that was developed for me and not with me. Not having a voice in case planning about my son, and rarely getting communication about how my son was doing, was very discouraging...

None of my court-ordered services were offered in the prison, except substance abuse treatment, but there was a long waiting list and I never got into inpatient treatment while incarcerated, before I was released. So I focused on engaging in every positive program and class available to me within the prison, including a college course in office administration. All of those things significantly helped me

⁷ Wash. State Dep't of Children, Youth & Families.

⁸ JPay is a vendor with Department of Corrections which provides privatized messaging services between incarcerated individuals and others. Each message requires an electronic "stamp" to be sent, which must be purchased by the incarcerated individual or someone who prepays for their stamps.

⁹ Incarcerated individuals do not have access to email.

¹⁰ Prison pay phones can dial out but cannot accept incoming phone calls.

¹¹ Community Corrections Officers (CCOs) supervise incarcerated individuals.

to make improvements in my values, my beliefs, and my thinking, which in turn changed my behaviors. But then I found out from the Department that all of the positive things I was doing in prison did not count towards me making progress and being in compliance in my dependency case... I was literally powerless to do anything towards getting my son back, yet the federal time clock towards the termination of my parental rights just kept ticking away until my parental rights for my son were finally terminated.¹²

1. Dependency proceedings

When parents are in jail or prison, in most cases their children cannot live with them.¹³ If the incarcerated parent was the primary caretaker prior to incarceration, arrest and incarceration can prompt the state to file a dependency action, which is a legal proceeding initiated by the state against the parents when a child is “dependent” on the state.¹⁴

A parent’s incarceration can trigger a state dependency proceeding in several ways. A child may be declared dependent following a parent or parents’ arrest if no one else is available to care for them. Additionally, a parent’s criminal conduct may trigger a dependency proceeding to examine their fitness to parent. Finally, neglect after a primary parent goes to prison can also trigger an investigation into a child’s home life.¹⁵

¹² WASHINGTON STATE SUPREME COURT SYMPOSIUM, BEHIND BARS: THE INCREASED INCARCERATION OF WOMEN AND GIRLS OF COLOR (June 2, 2021), <https://www.tvw.org/watch/?eventID=2021061001>.

¹³ Washington Corrections Center for Women allows, in very limited circumstances, for babies born to incarcerated mothers to reside with them inside the prison. This is the only circumstance in which children and incarcerated parents in Washington are permitted to live together. *Residential Parenting Program Fact Sheet*, WASH. STATE DEP’T OF CORR., 1 (May 2017), <https://www.doc.wa.gov/docs/publications/fact-sheets/400-FS003.pdf>. ; WASH. STATE DEP’T CORR. POLICY DOC 590.320: RESIDENTIAL PARENTING PROGRAM (2020), <https://www.doc.wa.gov/information/policies/showFile.aspx?name=590320>.

¹⁴ "Dependent child" means any child who:

- (a) Has been abandoned;
- (b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;
- (c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or
- (d) Is receiving extended foster care services, as authorized by RCW 74.13.031. RCW 13.34.030(6).

¹⁵ RCW 13.34.050; WAC 110-30-0030; WAC 110-30-0110; NELL BERNSTEIN ALL ALONE IN THE WORLD: CHILDREN OF THE INCARCERATED (2007).

A 2010 Bureau of Justice Statistics Special Report found that incarcerated mothers were five times more likely than incarcerated fathers to report that their children were in foster care (11% vs. 2%).¹⁶ The same report found that incarcerated mothers were three times more likely than incarcerated fathers to report that they had provided most of the daily care for their children prior to their incarceration (77% vs. 26%).¹⁷ In addition, 42% of incarcerated mothers in state prisons reported living in a single-parent household with their children in the month preceding their arrest, compared to 14% of incarcerated mothers who reported living in a two-parent household with their children in the month preceding arrest.¹⁸ Notably, 88% of incarcerated fathers reported that at least one of their children was in the care of the child's mother, whereas only 37% of incarcerated mothers reported their children's father as the current caregiver of the children.¹⁹ Mothers in prison most commonly cited their children's grandmother as their children's caregiver (42% of incarcerated mothers), and 23% of incarcerated mothers identified other relatives as the current caregiver of their children.²⁰

What emerges from these numbers is a picture of many incarcerated mothers caring for their children on their own, in single-parent households prior to incarceration. Upon a mother's arrest and incarceration, it can be gleaned from the Bureau of Justice Statistics data that there is frequently not another parent who will step in and care for the children of incarcerated mothers in the same way that mothers continue care for the children of incarcerated fathers. It is also worth noting the role grandmothers play in caring for the children of incarcerated mothers. Women disproportionately care for the children of incarcerated parents regardless of the gender of the incarcerated parent.

The lack of childcare responsibilities shared by fathers before or during a mother's incarceration also helps to explain why incarcerated mothers are so much more likely to have children in foster care than incarcerated fathers. The high numbers of incarcerated mothers who report caring for children in single-parent households prior to incarceration indicate the full weight of childcare is

¹⁶ LAUREN GLAZE & LAURA MARUSCHAK, PARENTS IN PRISON AND THEIR MINOR CHILDREN, U.S. DEP'T OF JUST., BUREAU OF JUST. STAT., 5(rev. March 30, 2010), <https://www.bjs.gov/content/pub/pdf/pptmc.pdf>.

¹⁷ *Id.*

¹⁸ *Id.*¹⁹ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

often carried by single mothers, and often the other parent still does not care for the children upon the mother's incarceration. This leaves the children of many incarcerated mothers to the care of either grandmothers, other family members, or foster care. In Washington, if a child is in foster care, the child is by definition a dependent child.

Stakeholders and parents who have navigated the child welfare system report that once a parent comes under the watchful eye of the child welfare system, it is very difficult for them, incarcerated or otherwise, to satisfy that system's demands. This is amplified for parents charged with crimes. Ellen Barry, Founding Director of Legal Services for Prisoners with Children in California, writes:

Given the stringent legal requirements of the existing foster care laws and regulations, it is virtually impossible for incarcerated mothers to comply with the time requirements for reunification with their children. Even if mothers are on parole or probation, the obstacles for reunification are still enormous. Formerly incarcerated women have great difficulty getting jobs with adequate wages, obtaining housing, getting job training, arranging for daycare, and meeting the requirements of the juvenile court reunification agreement. They face enormous discrimination based on their status as former prisoners, and women of color face even more difficulties as a result of both personal and institutionalized racism.²¹

Criminal justice system involvement may also play a role in various discretionary decisions in dependency, termination, and family proceedings, both explicitly in assessing a parent's ability to care for their children and implicitly in assessing the credibility of the parent's testimony. As part of Washington dependency proceedings, Washington State Department of Children, Youth & Families (DCYF) social workers submit detailed reports to the courts about the parents of the children of the proceedings. These reports include detailed information about the parents' living situations, perceived ability to care for their children, and any concerns DCYF social workers have about the parents' ability to care for their children. Stakeholders report that pending criminal

²¹ Ellen Barry, *Parents in Prison, Children in Crisis*, in *OUTSIDERS WITHIN: WRITING ON TRANSACTIONAL ADOPTION* 65-66 (Jane Jeong Trenka & Julia Chinyere Oparah eds., 2021).

charges or conviction history of the parents are included in these reports. While not all pending charges or criminal convictions will speak to a parent’s ability to care for their children, they are generally deemed relevant to the court’s inquiry. Parents’ attorneys and formerly incarcerated parents report increased skepticism in such proceedings towards a parent’s credibility and ability to make good choices for their child when there is criminal legal system involvement of the parent.

Parents incarcerated for a year or more are at particular risk of having their rights permanently terminated regardless of their criminal offense, due to the termination timeline which mandates the court shall order DCYF to file a termination petition if a child has been in out-of-home care for 15 of the last 22 months.²² Due to the difficulties of complying with services ordered by the dependency court while incarcerated and navigating reentry upon release, stakeholders report that even parents with sentences of less than a year risk significant changes to their future relationship with their child as soon as a dependency is filed.

After a court determines that a child is dependent and orders that child removed from the home, a permanency plan must be developed within 60 days.²³ The permanency plan must include, among other things, “what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.”²⁴ The supervising agency must pay for remedial services²⁵ if the parent is unable to pay.²⁶

If a parent is incarcerated, by statute the permanency plan “must include treatment that reflects the resources available at the facility where the parent is confined.”²⁷ Failure to comply with court-ordered services can result in the termination of parental rights.²⁸

²² RCW 13.34.145(5).

²³ RCW 13.34.136(1).

²⁴ RCW 13.34.136 (2)(b)(i).

²⁵ Remedial services are time-limited family reunification services which can include “individual, group, and family counseling; substance abuse treatment services; mental health services; assistance to address domestic violence; services designed to provide temporary child care and therapeutic services for families; and transportation to or from any of the above services and activities.” RCW 13.34.025(2)(a).

²⁶ RCW 13.34.025(2)(b).

²⁷ RCW 13.34.136(2)(b)(i)(A).

²⁸ RCW 13.34.145.

It is worth noting that Washington’s child welfare system has found racial disparities in outcomes at three different points: Black, Indigenous, and children of color are more likely to be referred to Child Protective Services (CPS), more likely to be screened in for intake, and less likely to be placed within a year of intake.²⁹

Dependency courts order services that are often unavailable in jails and prisons or inaccessible to incarcerated parents. Incarcerated parents and stakeholders report programming availability differs wildly from prison to prison. Many classes and programs are operated by volunteers, so prisons closer to Seattle, Tacoma, and other densely populated areas can offer more opportunities than prisons in more rural areas. Stakeholders observe that jails tend to offer even less programming options due to the high turnover of jail populations.

Further, the Washington State Department of Corrections (DOC) has its own criteria for determining who can access programming, and those criteria are usually based on the nature of the person’s convictions.³⁰ Treatment ordered by a dependency or family court is not among those DOC criteria. As a result, parents are often ineligible for court-ordered treatment while incarcerated.³¹ This means that a dependency court can order an incarcerated parent into substance abuse treatment that is impossible for the parent to access. To be sure, a dependency court may note the severity of the parent’s addiction issues and order inpatient treatment, which DOC does provide to some incarcerated individuals. However, if DOC has not identified the parent as a priority for inpatient treatment, DOC may decide to not allow the parent to enroll in substance abuse treatment even if the parent requests to do so repeatedly, or may decide to not allow the parent to enroll on the timeline expected by the courts. In other words, DOC does not give priority to dependency or family law court orders for treatment. DOC should consider updating eligibility for treatment services to prioritize participation by these parents on a timeline that enables them to comply with court orders relating to their children. Better communication between DOC and the ordering court when a parent’s failure to participate in ordered treatment

²⁹ Christopher J. Graham, *2019 Washington State Child Welfare Racial Disparity Indices Report*, WASH. STATE DEP’T OF CHILD. YOUTH & FAMILIES 2020), <https://www.dcyf.wa.gov/sites/default/files/pdf/reports/CWRacialDisparityIndices2019.pdf>.

³⁰*Substance Abuse Treatment*, WASH. STATE. DEP’T OF CORR., , <https://www.doc.wa.gov/corrections/programs/substance-abuse-treatment.htm> (last visited August 13, 2021).

³¹ *Id.*

is due to a lack of Department resources, rather than a parent’s willingness to comply, would also help in these situations.

Parents are not always able to communicate these constraints effectively to their attorneys or to the court. Court appearances from prison are difficult to facilitate and it is not uncommon for parents to miss a court appearance through no fault of their own.

Additionally, stakeholders report communication between incarcerated parents and their attorneys is challenging. Not all attorneys will accept collect calls from prison, and not all incarcerated individuals have outside family members putting money on their accounts to make calls. Many attorneys do not know how to properly navigate the DOC process to set up free phone calls with their clients. Incarcerated parents can go months without speaking to their court-appointed attorney.³² Within this context, the ‘why’ of why an incarcerated parent has not engaged in court-ordered services can be lost, and instead all that remains in the court file is an order finding that an incarcerated parent has not complied with court-ordered services.

2. Adoption and Safe Families Act and the termination timeline

In 1997, the Adoption and Safe Families Act (ASFA) was passed in response to increased concern about children languishing for long periods of time in foster care. “Adoption was portrayed as better for children than reunification with their biological families.”³³ In fact, Congressional records and public discussions sent the clear message that reunification of children with their biological parents, for the sake of family preservation, endangered children.³⁴ Momentum gathered for the swifter termination of parental rights in order to “free” children for adoption.³⁵ In Washington State we still use the term “legally free” in reference to children whose parents’ rights have been terminated.

ASFA passed three years after Congress passed the Violent Crime Control and Law Enforcement Act of 1994³⁶ and one year after the Personal Responsibility and Work Opportunity Reconciliation

³² Interview with Kristina Peterson. May 19, 2021.

³³ DOROTHY ROBERT, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 113 (2001).

³⁴ *Id.* at 114.

³⁵ *Id.* at 113-121.

³⁶ Sometimes referred to as the Crime Bill.

Act of 1996³⁷ -- in a period steeped with racist and misogynist media and public narratives of the threat of Black men and of lazy and promiscuous Black women who could not properly care for their children.³⁸ As Dorothy Roberts observes, the strong support for adoption as the solution to the foster care crisis is at odds with the otherwise strong preference of biological parents; suddenly, adoptive families were being described as the “real” families.³⁹ Roberts suggests that “this preference for adoption over biology is reserved for the poor Black children who are the majority of ‘waiting’ foster children.”⁴⁰ She believes that “the main reason for preferring extinction of parental ties in foster care is society’s depreciation of the relationship of poor parents and their children, especially those who are Black.”⁴¹

While ASFA was not intended specifically for incarcerated parents, the impacts on incarcerated parents and, most particularly, on incarcerated mothers have been devastating. ASFA requires a mandatory timeline for the termination of parental rights. In Washington State, the federal mandate is implemented in chapter 13.34 RCW: In cases involving children who have been out of home for 15 of 22 months, the state must file a petition for termination of parental rights unless a good cause exception exists.⁴² The court may order DCYF to file a petition for termination of parental rights as early as six months after a dependency is filed, at the review hearing.⁴³

In 2013 legislation was passed to allow Washington courts to consider a parent’s incarceration as a good cause exception that would allow DCYF to not file a termination petition even if the children had been in out-of-home care for 15 of 22 months.⁴⁴ While a meaningful step forward, parents’ attorneys and attorneys with the Washington State Office of Public Defense and the Washington Defender Association report that incarcerated parents’ parental rights are still being terminated in alarming numbers. This is partly due to the fact that courts are only required to consider a parent’s incarceration, but no protections are guaranteed. Further, the Washington

³⁷ Sometimes referred to as the Welfare Reform Act.

³⁸ Robert, *supra* note 33, at 60-67.

³⁹ *Id.* at 117-118.

⁴⁰ *Id.* at 118.

⁴¹ *Id.* at 120.

⁴² RCW 13.34.145(5).

⁴³ RCW 13.34.138(2)(d).

⁴⁴ RCW 13.34.145(5)(a)(iv).

Supreme Court has found that the bill only applies when a parent is incarcerated at the time of the termination trial.⁴⁵

3. Need to break the cycle: Former foster care youth now having to navigate the dependency system as incarcerated parents

“How is the same Department that was responsible for raising me, now going to tell me that I don’t know how to parent? Everything I know, I learned under the Department’s care.”

Ashley Albert

State Raised Working Group

A needed area of research and policy improvements is related to the high rates of incarcerated individuals who are former foster care youth now navigating the dependency system as parents. More research is needed on the intergenerational and cyclical impacts that the rise in female incarceration⁴⁶ combined with federal termination timelines have had in fueling foster care caseloads, and how in turn the children of incarcerated parents who age out of those foster care caseloads become incarcerated parents themselves, facing the loss of their own children.

In Washington, several currently and formerly incarcerated individuals who are also former foster care youth have started the State Raised Working Group through the Black Prisoners’ Caucus at Monroe Correctional Complex.⁴⁷ Member Raymond Williams explains the intergenerational, cyclical nature between foster care and incarceration:

Failures of all kinds within the foster care system lead youth to grow up homeless, suffering from substance use and behavioral health disorders and ultimately lead to incarceration or death...There is no way to separate the relationship between mass incarceration and the state raised experience...the intergenerational harm of these systems (especially on the lives of marginalized communities) remains startling. The impact on society is broad. Many former foster youth have children.

⁴⁵ *In Matter of Dependency of D.L.B.*, 186 Wn.2d 103, 376 P.3d 1099 (2016).

⁴⁶ See “Chapter 11: Incarcerated Women in Washington.”

⁴⁷ The State Raised Working Group was started by men in prison (Monroe is a male prison) but they have been trying to coordinate with community members and women in prison. Both men and women are members of the group. Before the COVID-19 pandemic, the working group had meetings that could be attended by community members and formerly incarcerated individuals (with permission) at Monroe.

Children of foster youth often end up in the system themselves. The cycle continues.... It is extremely rare that a state raised youth who experienced group homes and cycles of incarceration through state care will grow up to be a functional father or parent.⁴⁸

Similarly, Ashley Albert, a formerly incarcerated mother and member of the State Raised Working Group, remembers looking her biological parents up in a phone book and desperately trying to find them as a young teenager in foster care so that she could feel whole again. She later had her own children removed from her care and agreed to the termination of her parental rights in exchange for an open adoption agreement. She now advocates for increased options for post-termination contact between biological parents and their adopted children.⁴⁹

4. Open adoption agreements

Incarcerated parents facing the termination of their parental rights are sometimes presented with an open adoption agreement, which allows for continued contact after the termination of parental rights.⁵⁰ There is no publicly available data on how many open adoption agreements have been entered into to date and court files are sealed by statute.⁵¹

Currently under Washington law, biological parents can only enter into an open adoption agreement prior to the termination of their parental rights.⁵² The agreements cannot be court ordered but must instead be agreed to.⁵³

What this means in practical terms, according to Washington State practitioners and the testimony of parents, is that parents are presented with the option of open adoption agreements shortly before their termination trial.⁵⁴ If they decide to take their termination case to trial and

⁴⁸ Jpay e-mail from Jill Malat to Elizabeth Hendren (June 29, 2021).

⁴⁹ Interview with Ashley Albert, July 7, 2021.

⁵⁰ 4320. *Open Adoption Agreements*, WASH. DEP'T OF CHILD., YOUTH & FAMILIES, www.dcyf.wa.gov/4300-case-planning/4320-open-adoption-agreements (last accessed August 13, 2021).

⁵¹ RCW 26.33.330.

⁵² RCW 26.33.295(2).

⁵³ *Id.*

⁵⁴ *Supporting Relationships Between Parents and Their Children: Hearings on HB 2733 Before the H. Comm. On Hum. Services & Early Learning*, 2020 Wash. Leg., 66th Sess.. (Feb. 20, 2020), <https://www.tvw.org/watch/?eventID=2020021258>.

fight to preserve their parental rights, they lose the option of an open adoption agreement because by statute the agreements cannot be entered into after the termination of parental rights.⁵⁵ Many biological parents report agreeing to open adoption agreements not because they want to relinquish their parental rights, but because they do not want to risk permanently losing their children without ever seeing them again. Biological parents also report not fully understanding the legal ramifications of signing these agreements and of being under the impression that this was a way to preserve their “rights” since they are given a court document that outlines contact with their children.

In reality, open adoption agreements are a written contract between the biological parents and adoptive parents. The biological parent loses their parental rights but has ongoing contact determined by the terms written into the open adoption agreements. There are no mandatory forms and no guidance in the statute on appropriate contact. Biological parents who have spoken publicly about the terms of their agreements generally report a few professionally supervised visits per year, some phone calls, and sometimes exchanges of photos and letters a few times per year.

There is currently very little legal recourse for biological parents who believe that adoptive parents are not following through with the terms determined in their open adoption agreements. RCW 26.33.295 allows for enforcement of these orders by “a civil action.” King County is one of the only counties to date that has developed a local form and process for enforcement.⁵⁶

The most that the biological parent can get from the enforcement process is attorney’s fees⁵⁷ and an enforcement order. Essentially this results in another court order for an adoptive parent who has already demonstrated that they do not follow court orders.⁵⁸ The next step might be to seek to compel enforcement, perhaps by motion for order to show cause why the noncompliant

⁵⁵ RCW 26.33.330.

⁵⁶ *How to Enforce the Terms of an Open Adoption Agreement*, KING COUNTY, <https://kingcounty.gov/~media/courts/superior-court/docs/family/family-law-instructions/15-01-how-to-enforce-the-terms-of-an-open-adoption-agreement-pdf.ashx?la=en> (last accessed August 13, 2021).

⁵⁷ Anecdotally, not many private attorneys take these cases, and the financial incentives are limited.

⁵⁸ Contempt orders may not be as effective in this context either. Unlike other family law orders, where contempt orders can eventually serve as a basis for changing the order, in this case, by statute, failure to comply shall not be grounds for setting aside an adoption decree. RCW 26.33.295.

parent should not be held in contempt; that option is usually impractical for the unrepresented biological parent.

B. Limited access to court and to representation can lead to negative consequences for incarcerated parents in family law cases, during and after incarceration, especially for mothers

1. Dependency and Termination Impacts on Family Law Proceedings Involving Incarcerated Parents

Even parents who manage to evade the termination of their parental rights still face consequences from dependency proceedings and the looming termination timeline. Dependency proceedings are resolved either through returning the children to their parents, entry of family law orders, or termination of parental rights. Even when a child is placed with another parent or family member (which DCYF must attempt to do, by statute, whenever possible), these placements are still considered out-of-home placements and the child is still considered dependent until the dependency action is dismissed. The dependency proceeding, however, will not be dismissed unless and until there is a family law order.

According to practitioners in Washington, often family law proceedings run concurrent with dependency proceedings until orders are entered in the family law proceedings. Therefore, the looming termination timeline creates a pressure to sign family law orders prior to filing of a termination petition. The concurrent family law trial can be scheduled for after the termination trial, which can happen in many Washington counties like King County which schedules family law trials for a date at least one year after filing. Many parents navigate these proceedings without the benefit of an attorney and may not know how to request an expedited family law trial date. This creates a risky scenario for parents: If they wait for their family law trial to contest the specifics of their visitation and contact with their children, they are forced to proceed with a termination trial in which they may have their fundamental parental rights permanently terminated. Within this context, incarcerated parents are heavily incentivized to agree to any proposed family law orders presented to them prior to their termination trial, even if those orders are unduly restrictive. Due to the lack of representation and legal services available to

incarcerated parents with regards to family law, often incarcerated parents sign family law orders without legal advice, let alone representation.

2. Limited family law legal services for incarcerated parents

As incarcerated parents transition to family law proceedings from dependency proceedings, indigent parents are usually unrepresented in their family law matters⁵⁹ even while being represented in their dependency proceedings concerning the same children. While RCW 13.34.090(2) requires appointment of counsel for indigent parents in all stages of dependency proceedings where a child is alleged to be dependent, there is no right to counsel in family law proceedings between private parties, even if a parents' future contact with their children is at stake⁶⁰ and even if the family law proceeding stemmed from a dependency proceeding.⁶¹

Further, federal restrictions on legal aid prohibit organizations that receive federal Legal Services Corporation funding from representing incarcerated litigants in court proceedings.⁶² In Washington, Northwest Justice Project, the largest statewide legal aid provider in Washington, receives federal Legal Services Corporation funding and is therefore prohibited from providing court representation to incarcerated litigants. Other statewide legal aid providers rely on other sources of funding in order to be able to serve incarcerated individuals, but those providers do not represent parents in family law matters. As a result, incarcerated indigent parents in Washington usually must represent themselves pro se from prison.

DOC does not permit incarcerated litigants to access the internet. While this policy stems from important safety concerns, it severely hampers the ability of pro se litigants to access the mandatory family law forms located on the courts' website or free pro se assistance resources like WashingtonLawHelp. Some DOC prisons have law libraries, but even with this resource the needed information is inaccessible to many litigants. Law libraries provide access to governing

⁵⁹OFF. OF CIV. LEGAL AID, 2015 WASHINGTON CIVIL LEGAL NEEDS STUDY UPDATE (2015), https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf.

. See also "Chapter 7: Gender Impact in Family Law Proceedings" for further discussion of gender disparities in family law proceedings.

⁶⁰ *In re Marriage of King*, 162 Wn.2d 378, 174 P.3d 659 (Wash. 2007).

⁶¹ *In re Dependency of E.H.*, 158 Wn. App. 757, 243 P.3d 160 (2010).

⁶² 45 C.F.R. § 1637.

statutes and caselaw, but not pro se materials designed for people without a law degree. Kristina Peterson, a formerly incarcerated mother, explained her experience trying to do research on a computer in prison:

It's confusing. If you don't know what you're looking at, it just completely overwhelms you, and you lose hope. It's not actually thought out at all like, "if you have a divorce, click here." There's nothing like that. It's just a bunch of 'Person v. the state' - just cases where people went to bat with the state. Different scenarios. You're lucky if reading that caselaw you can try to pull out some RCWs.⁶³

Further, not all DOC prisons in Washington have law libraries. Four prisons do not have law libraries. DOC policy allows for transfers to prisons with law libraries for certain cases, but prioritizes use of the law library for incarcerated individuals challenging their criminal sentence and/or confinement, civil rights, or dependencies.⁶⁴ Individuals wishing to use the law library for family law matters must wait behind individuals with what DOC has deemed more urgent matters, a process that in some circumstances can take weeks.⁶⁵

3. Family law consequences of limited court access for incarcerated parents

An incarcerated parent responding to a family law action must do so within 20 days after they are served.⁶⁶ After 20 days, in most family law actions the petitioner can seek a default order if no response is filed, meaning that the petitioner can get a final order without input from the responding party.⁶⁷ Due to this short time period, even parents awaiting trial in jail who have not been criminally convicted can have their time and contact with their children dramatically altered if they are unable to access the forms and information needed to respond in a timely manner, and doing so within an incarcerated setting is very challenging.

Within this context, many incarcerated parents are unable to respond to their family law matters in time. As a result, stakeholders and incarcerated parents report that many final orders are

⁶³ Interview with Kristina Peterson, May 19, 2021.

⁶⁴ WASH. STATE DEP'T CORR. POLICY DOC 590.500: LEGAL ACCESS FOR INCARCERATED INDIVIDUALS (2021), <https://www.doc.wa.gov/information/policies/showFile.aspx?name=590500>.

⁶⁵ Interview with Kristina Peterson, May 19, 2021.

⁶⁶ WASH. RULE CIV. P. 12(a)(1).

⁶⁷ WASH. RULE CIV. P. 55.

entered by default, because incarcerated litigants are unable to respond. Without the incarcerated parent's response, the court lacks information about the facts surrounding a parent's incarceration, their role prior to incarceration in their child's life, and the options to remain engaged in their child's life while incarcerated. This can result in dramatically less contact between a child and incarcerated parent than the full facts of the situation and best interests of the child require, not only for the period in which they are incarcerated but long after their release as well.

4. Family law proceedings after incarceration and conviction

Limited court access during incarceration can have family law ramifications long after a parent is released. The previous section highlighted final orders, which may be detrimental to incarcerated parents, being entered through the default process. While Washington law allows for the modification of a final family law order, the modification standard may further disadvantage the formerly incarcerated parent. Unless the parties agree, the court must retain the current residential schedule except when the child's present environment is detrimental to the child's health.⁶⁸ A parent's release from incarceration is not sufficient, in and of itself, to justify a modification of the parenting plan that would return the child to the formerly incarcerated parent. This legal reality can be particularly devastating for formerly incarcerated mothers who were the primary caretakers of their children prior to incarceration. The current modification standard makes it difficult for their children to be returned to them upon release, regardless of what their relationship and duties were prior to incarceration, or how much rehabilitation they can demonstrate.

Further, the modification process requires a new petition and summons. Changing a final parenting plan can be an overwhelming process to pro se litigants, and within the reentry context this creates one more lengthy and complicated task in an already challenging time. In most counties, if the petition for modification is contested, trial may not occur for a full year. In the meantime, the parent will be expected to meet litigation deadlines.

⁶⁸ RCW 26.09.260(2).

For parents who do not want to wait a year to potentially see their children again after trial, temporary family law orders are an option. However, the temporary orders process does not allow significant explanation for incarceration or criminal records when an opposing party raises that history. Across the state, these motions have strict page limits and are accompanied by hearings where each party is given roughly five minutes to present their case and respond to accusations from the other party.⁶⁹ Within this context, evidence of past incarceration or criminal records can further exacerbate existing issues of credibility and bias, particularly for Black, Indigenous, and mothers of color.⁷⁰

5. The role of intimate partner violence in women’s incarceration and subsequent family law proceedings

Intimate partner violence histories among women in prison are well-documented,⁷¹ as is the need for family law services for survivors of domestic violence.⁷² There is very little research or scholarship about the specific ways that intimate partner violence, the family law legal system, and limited court access from jails and prisons interact. The story of one formerly incarcerated Washington mother paints a disturbing picture about the likely result – that is, disconnecting parent from child:

⁶⁹ See SUP. CT. R. FOR KING COUNTY, FAM. L. R. 6(e)(5) (LFLR) (family law declarations and supporting exhibits limited to 25 pages); SUP. CT. R. FOR KING COUNTY, FAM. L. R. 6(f)(1) (each party generally given five minutes for argument); SUP. CT. R. PIERCE COUNTY, LOC. SPECIAL PROC. R. 94.04(c)(5)(A) (PCLSPR)(entirety of declarations and affidavits generally limited to 20 pages); SUP. CT. R. PIERCE COUNTY, LOC. SPECIAL PROC. R. 94.04 (c)(9) (the court may set strict limits on the time for argument); SUP. CT. R. YAKIMA COUNTY, FAM. L. R. 94.04W(A)(2)(a)(iv) (LFLR)(the entirety of all declarations and affidavits generally limited to 20 pages); SUP. CT. R. YAKIMA COUNTY, FAM. L. R. 94.04W(A)(2)(f)(iv) (arguments generally limited to five minutes per side); SUP. CT. R. CLARK COUNTY, LOC. CIV. R. 4.1(d) (LCR) (“All temporary hearings shall be heard only on affidavit unless otherwise ordered by the court” and supporting affidavits generally limited to four per party; affidavits from parties shall not exceed six pages).

⁷⁰ See Jesse Krohn & Jamie Gullen, *Mothers in the Margins: Addressing the Consequences of Criminal Records for Young Mothers of Color*, 46 U. BALT. L. REV. 237, 257 – 272 (2017).

⁷¹ See TRACY L. SNELL & DANIELLE C. MORTON, U.S. DEP’T OF JUST., BUREAU OF JUST. STAT., SURVEY OF STATE PRISON INMATES, 1991: WOMEN IN PRISON 5-6 (1994), <https://bjs.ojp.gov/content/pub/pdf/WOPRIS.PDF>; See also NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN, ABUSE HISTORY AMONG INCARCERATED WOMEN (2011), http://www.ncdsv.org/images/NCDBW_AbuseHistoryAmongIncarceratedWomen_updated_5-20-2011.pdf (reviewing additional studies); See “Chapter 11: Incarcerated Women in Washington” and “Chapter 12: Department of Corrections Gender-Responsive and Trauma-Informed Policies, Practices, and Programs,” for more information on the trauma-to-prison pipeline; and “Chapter 8: Consequences of Gender-Based Violence: Domestic Violence and Sexual Assault” for information on gender-based violence in prisons and gender-based violence prior to incarceration.

⁷² Off. of Civ. Legal Aid, *supra* note 59.

M. suffered years of physical violence, sexual abuse, and coercive control with the father of her children. She eventually sought help when she learned he was also sexually abusing her children. She called Child Protective Services and sought assistance from a domestic violence program. Unfortunately, she was unable to prove the abuse of the children. Without proof of abuse, she was unable to get a court order that permitted her to take away the children with her, so she returned to the household. The abuse intensified and, feeling helpless, M. turned to the drugs her husband left around to numb her pain. She began to spiral into addiction. Her husband sought and obtained a Domestic Violence Protection Order against her to keep her from their home, but allowed her to return and see their children on condition that she have sex with him.

M. eventually hit a low point and sought recovery services. Three days into her sobriety, while she was still experiencing withdrawal symptoms, she reached a breaking point. She returned to the home and found her husband on the couch with their children, unclothed. Suspecting he had just sexually abused their children again, she grabbed a knife and stabbed him in the neck. She pleaded to assault with a domestic violence enhancement. No evidence of her prior efforts to seek help from domestic violence agencies or Child Protective Services were ever entered into the criminal court record.

M. received no visitation with her children of her marriage while she was incarcerated. She had an older child from a previous relationship who went into CPS custody and was part of a dependency, whom she did get to visit with while incarcerated in prison. She did not see or get to talk to her younger children at all while she was in prison.

While incarcerated, M. attempted to file for divorce so that she could enter a parenting plan to get visitation with her children. She was unable to serve her husband from prison. Upon release she tried again but by then her husband had left the state with her children. She sought legal advice from a free volunteer legal clinic and was told the only way she could proceed with a divorce in Washington

was if she served her husband by publication, which would cost her \$200 that she did not have. She was eventually able to seek legal assistance from legal aid, which assisted in tracking down and serving her husband in another state, but by that time Washington had lost jurisdiction over the children and she was unable to enter a parenting plan as part of her divorce.

Six years after her arrest, CPS in another state removed her children from her husband's care. It was only then, with the cooperation from legal aid from two different states and three years of active litigation, that M. was able to finally enter a parenting plan which placed her children back in her care while making a finding of sexual abuse against her ex-husband. Throughout the litigation, her ex-husband attempted to mischaracterize the legal proceedings in the other courts, raised M.'s criminal history and former drug addiction, sought frivolous orders, and solicited his family members to call Child Protective Services after the courts returned her children to her care. In all, the entire process took nine years from her arrest to entry of a final Washington family law order placing her children with her. M.'s children, six and four at the time of her arrest, were teenagers when they returned to her care.⁷³

Advocates argue that many, if not all, incarcerated people - men, women, and non-binary individuals - have histories of trauma and violence. What makes the experiences of many incarcerated women, particularly mothers, unique is the possibility of continued intimate partner abuse throughout their incarceration and reentry and family reunification efforts.

In 2020, the Washington State Legislature recognized the use of abusive litigation as a form of intimate partner violence, and chapter 26.51 RCW became effective on January 1, 2021. RCW 26.51.010 describes the intent behind the statute:

The legislature recognizes that individuals who abuse their intimate partners often misuse court proceedings in order to control, harass, intimidate, coerce, and/or impoverish the abused partner. Court proceedings can provide a means for an

⁷³ Elizabeth Hendren interview with M., formerly incarcerated mother, May 13, 2021, (notes on file with author).

abuser to exert and reestablish power and control over a domestic violence survivor long after a relationship has ended. The legal system unwittingly becomes another avenue that abusers exploit to cause psychological, emotional, and financial devastation... Abusive litigation against domestic violence survivors arises in a variety of contexts. Family law cases such as dissolutions, legal separations, parenting plan actions or modifications, and protection order proceedings are particularly common forums for abusive litigation...

Opportunities for abusive litigation are intensified when a survivor is incarcerated and unable to meaningfully respond to the allegations made against them. Further, as previously noted, credibility may be implicitly undermined when a woman is incarcerated or has a criminal record. This legislation was an important first step in recognizing the many forms of abuse beyond physical violence, but it is too soon to tell to what extent the new abusive litigation chapter will protect survivors from abusive litigation, and whether it will protect survivors with criminal records.

To curb abusive litigation against survivors with criminal records, courts can play an active role in evaluating whether the protective relief sought against parents with criminal records is reasonable in light of the incarcerated parent's crime. This is consistent with RCW 26.09.191, which delineates restrictions in temporary or permanent parenting plans. For example, a parent with a history of serious drug abuse and resulting criminal behavior may require supervised visitation for a limited amount of time while the parent is demonstrating sobriety. A request for no contact with children and visitation only at the complete discretion of the other parent is possibly not appropriate given the circumstances, and creates a situation ripe for coercion and control around visitation if there is a history of intimate partner violence. See "Chapter 7: Gender Impact in Family Law Proceedings" for more on abusive litigation in family law cases.

6. The cost of court-ordered services and professional supervision in family law proceedings

Finally, the cost of professionally supervised visitation and other court-ordered services remains prohibitively expensive for indigent parents in family law proceedings, and adds yet another reentry fee for parents exiting incarceration. For parents engaged in dependency proceedings,

the state is obligated by statute to pay for any court-ordered supervision or services. There is no such obligation under family law proceedings which do not involve a dependent child. Yet many currently and formerly incarcerated parents in family law proceedings face similar challenges to parents in dependency proceedings, including histories of substance abuse and other issues. Often the protective residential parents reasonably want professional supervision to ensure safe visits for the children, as well as sobriety and domestic violence services. Unfortunately, there are very few providers of these services for indigent parents and those that offer fee waivers or sliding scale fees are in great demand.⁷⁴ As a result, the cost of these services becomes a barrier to reunification with children after incarceration while parents are also struggling with employment, housing, access to benefits, and many other reentry issues.

C. Employment barriers

Formerly incarcerated individuals face extremely high barriers to reentry. Barriers in access to employment are among the key factors contributing to disproportionately high rates of trauma, poverty, housing insecurity, deportation, and food insecurity affecting not only formerly incarcerated and other people with criminal records but also their families and loved ones. Many of these high reentry barriers have a disproportionate impact by gender, race, ethnicity, and more. Further, they increase the barriers to family reunification after prison.

Washington State has legal protections for individuals with criminal records seeking employment. The 2018 Fair Chance Act made it illegal for most employers to request information regarding an applicant's criminal record before determining that the applicant is qualified; to categorically exclude individuals with criminal records; and to advertise positions in such a way as to discourage people with criminal records.⁷⁵ However, there are exceptions to the law. Private

⁷⁴ See *Supervised Visitation*, KING COUNTY FAMILY LAW CASA, <https://www.familylawcasa.org/helpful-resources/supervised-visitation/> (last visited Sept. 11, 2021).

⁷⁵ RCW 49.94.010. Policies such as this are known around the country as “ban the box,” as they eliminated the formerly common practice of requiring job applicants to disclose their criminal record by checking a box on the job application. While ban the box policies were widely supported in the hopes of improving employment outcomes for individuals with criminal justice involvement, researchers have found evidence of some unintended consequences in other states—namely, deeper Black-white disparities in hiring after the policy was implemented. Researchers theorize that in the absence of information on criminal history, employers may rely more on spot judgment and unconscious biases associating Black applicants with criminality. See Amanda Y. Agan & Sonja B.

employers may initially discriminate on the basis of criminal records when advertising positions that involve unsupervised childcare or vulnerable persons. As the ACLU notes—to the extent that many in these caretaking positions are Black, Indigenous, and women of color—women of color with criminal records may be shut out of these job opportunities.⁷⁶

Despite legal protections in Washington, individuals with criminal records still face numerous barriers to employment. Employers in Washington can still review an applicant’s criminal record in later stages of the hiring process. Individuals can also be barred from employment in certain areas because of licensing restrictions. Nearly a third of U.S. workers need occupational licenses.⁷⁷ Professional licensing boards and state licensing agencies can require a background check as part of a license application. State agencies have discretion to deny a license on the basis of a criminal record. The records subject to review are broad: the Washington State massage therapist license application, for example, asks “Have you ever been convicted, entered a plea of guilty, no contest, or a similar plea, or had prosecution or a sentence deferred or suspended as an adult or juvenile in any state or jurisdiction?”⁷⁸ In 2019, the Washington Supreme Court held that a state agency violated an applicant’s rights to due process by not assessing the individual circumstances of that applicant’s felony conviction when the agency denied her application for a childcare license.⁷⁹ However, the court’s ruling was limited to the case of the individual applicant, not to all applicants. There is reason to believe that licensing requirements and criminal record disclosures may disproportionately impact women, as three of the five most common occupations for women in the U.S. (nurse, teacher, and nursing aid) all require licenses.⁸⁰

Starr, *Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment* (Univ. of Mich. Law & Econ. Research Paper No. 16-021, 2016), <https://ssrn.com/abstract=2795795>.

⁷⁶ *Employment Discrimination Against Women with Criminal Convictions*, ACLU, <https://www.aclu.org/other/employment-discrimination-against-women-criminal-convictions> (last visited Sept. 11, 2021).

⁷⁷ U.S. COMM’N ON CIVIL RIGHTS, *COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION AND THE EFFECTS ON COMMUNITIES* (June 2019), <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf>.

⁷⁸ Wash. State Dep’t of Health, *MASSAGE THERAPIST LICENSE APPLICATION PACKET*, <https://www.doh.wa.gov/portals/1/Documents/Pubs/676094.pdf> (last visited Sept. 11, 2021) ((emphasis in original).

⁷⁹ *WA Lifetime Ban on Childcare Work Held Unconstitutional*, COLLATERAL CONSEQUENCES RESOURCE CENTER (March 4, 2019), <https://ccresourcecenter.org/2019/03/04/wa-lifetime-ban-on-childcare-work-held-unconstitutional/>.

⁸⁰ Joni Hersch & Erin E. Meyers, *The Gendered Burdens of Conviction and Collateral Consequences on Employment*, 45 J. LEGIS. 171 (2018).

Criminal histories have also impacted, as part of moral character and fitness inquiry, the ability to join the Washington State Bar. However, in 2018, the Washington Supreme Court decided *Bar Application of Simmons*, which involved the Washington State Bar denying Tarra Simmons admission due to her criminal record.⁸¹ As the Court wrote, “a moral character inquiry is determined on an individualized basis and that there is no categorical exclusion of an applicant who has a criminal or substance abuse history.”⁸² This ruling is significant because of the correlation between criminal history and surviving gender-based violence, like sexual assault. In fact, the Court described Ms. Simmons’ experience with gender-based violence as an obstacle that she overcame with treatment.⁸³ The Court noted positively her attention to treating her trauma as a factor in favor of admitting her to the Washington State Bar.⁸⁴

In addition to formal barriers to employment, incarcerated people may face challenges acquiring job skills and education. Education and job training opportunities during incarceration are important to help incarcerated people prepare for reentry. Washington DOC provides a range of education and job training programs in all state prisons, and analysis suggests that participation in these programs has a positive effect on recidivism.⁸⁵ It is unclear, however, if these opportunities are equally available in women’s and men’s prisons, and to all prisoners within each facility. For example, the Office of Corrections Ombuds reports concerns that lack of access to interpreters may limit access to programs for individuals who are Deaf, Hard of Hearing, or DeafBlind and people with limited English proficiency.⁸⁶

⁸¹ *Bar Application of Simmons*, 190 Wn.2d 374, 378, 414 P.3d 1111 (2018).

⁸² *Id.* at 378.

⁸³ *Id.* at 378-9.

⁸⁴ *Id.* at 379-80.

⁸⁵ MICHAEL EVANS & SUSAN KOENIG, DOES PARTICIPATION IN WASHINGTON’S CORRECTIONAL INDUSTRIES INCREASE EMPLOYMENT AND REDUCE RECIDIVISM?, WASH. STATE DEP’T OF CORR. (October 2011), <https://www.doc.wa.gov/docs/publications/reports/200-SR003.pdf>. In *Washington Water Jet Workers Ass’n v. Yarbrough*, 151 Wn.2d 470, 90 P.3d 42 (2004), the Washington Supreme Court found that the specific Class I Free Venture Industries programs then operating violated the Washington Constitution. The Court acknowledged the important public policy goals behind correctional industries and stressed that “there are other opportunities, in the form of state-run inmate labor programs, which would not run afoul of article II, section 29”. *Id.* at 474; see also “Chapter 12: Availability of Gender Responsive Programming and Use of Trauma Informed Care in Washington State Department of Corrections” for more information on evidence-based programming.

⁸⁶ ELIZABETH KINGSBURY, SYSTEMIC ISSUES REPORT ON DISABILITIES, OFF. OF THE CORR. OMBUDS, (Nov. 22, 2019), <https://oco.wa.gov/sites/default/files/ADA%20report%20with%20DOC%20responses%20FINAL.pdf>.

It's unknown how frequently applicants are excluded from employment or denied professional licenses in Washington on the basis of criminal justice involvement, and whether there are disparities by gender, race, ethnicity, or other factors. However, the employment outcomes for formerly incarcerated people in the U.S. suggest that formal and informal employment barriers are substantial. The evidence shows that formerly incarcerated people have lower employment rates and lower wages than their peers, and that the effect is particularly strong for Black, Indigenous, and people of color.⁸⁷ Individuals with criminal records get fewer callbacks for jobs than individuals without criminal records, regardless of the applicant's level of education or the severity of their sentence. College-educated men with criminal records are half as likely as college-educated men without criminal records to get a callback from a job application,⁸⁸ and applicants with a misdemeanor drug conviction and those with a felony drug conviction are equally less likely to get a callback compared to applicants with no criminal record.⁸⁹ In Michigan, individuals on parole have an employment rate of only 28%.⁹⁰ National data shows that during the first year after release from prison, only 55% of formerly incarcerated people report any earnings to the Internal Revenue Service (IRS); and those that do, have a median annual income of \$10,090.⁹¹ These low earnings may reflect the fact that formerly incarcerated individuals tend to be concentrated in low-wage, temporary, or part-time jobs, which is particularly true of Black and Hispanic formerly incarcerated women, and of women overall compared to men.⁹²

⁸⁷ Robert Apel & Kathleen Powell, *Level of Criminal Justice Contact and Early Adult Wage Inequality*, 5 RSF: THE RUSSELL SAGE FOUND. J. OF THE SOC. SCIENCES 198 (2019).

⁸⁸ Michael Cerda-Jara, Aminah Elster & David J Harding, *Criminal Record Stigma in the College-Educated Labor Market*, POLICY BRIEF: U.C. BERKELEY, INSTITUTE FOR RESEARCH ON LABOR AND EMPLOYMENT (2020) (Black and Latino male applicants with a criminal record and a bachelor's degree got fewer callbacks than White men in a California audit study).

⁸⁹ Peter Leasure, *Misdemeanor Records and Employment Outcomes: An Experimental Study*, 65 CRIME & DELINQUENCY 1850 (2019) (experimental audit study in Columbus, Ohio found that applicants with commonly male names who had misdemeanor convictions were 13 percentage points less likely to get a callback and there was not a statistically significant difference in callback rates between applicants with misdemeanor and felony convictions).

⁹⁰ Josh Seim & David J. Harding, *Parolefare: Post-prison Supervision and Low-Wage Work*, 6 RSF: THE RUSSELL SAGE FOUND. J. OF THE SOC. SCIENCES 173 (2020).

⁹¹ Adam Looney & Nicholas Turner, *Work and Opportunity Before and After Incarceration*, THE BROOKINGS INSTITUTION (March 2018) <https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/>.

⁹² LUCIUS COULOUTE & DANIEL KOPF, OUT OF PRISON & OUT OF WORK: UNEMPLOYMENT AMONG FORMERLY INCARCERATED PEOPLE (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html>; Joe LaBriola, *Post-prison Employment Quality and Future Criminal Justice Contact*, 6 RSF: THE RUSSELL SAGE FOUND. J. OF THE SOC. SCIENCES 154 (2020) (examination of

Washington State's work release program allows incarcerated individuals to spend the last six months of their incarceration sentence living in a DOC facility in the community while working, studying, or participating in job training.⁹³ The program was created in 1967 and includes case management, job search support and referrals, release planning, access to community-based services, and intense monitoring and supervision. As of 2019, DOC managed 12 work release facilities for over 700 individuals. In 2019 the Washington State Legislature provided funding support to expand the program, adding 200 beds to counties which previously had no facilities. The new sites were meant to be operational by early 2021, although it's unclear if and how COVID-19 may have disrupted the expansion plan.⁹⁴ Transfers to work release were paused in 2020, and some individuals were even returned to prison from work release after testing positive for COVID-19.⁹⁵

Work release seems to be a popular program and a positive way for qualifying incarcerated people to develop skills and supports for post-incarceration. While it would seem intuitive that work release would improve employment outcomes post-release, there is not currently any evidence to support this. The DOC does not currently public demographic details on participants, so it's unknown whether work release participants reflect the makeup of the incarcerated population as a whole, or whether incarcerated women participate at rates proportionate to their share of the incarcerated population.

D. Housing barriers

Obtaining housing is a critical component of not only successful reentry⁹⁶ but also family reunification after prison. Yet people with convictions encounter significant barriers to finding housing, both on the private market as well as through government subsidized housing. Housing

longitudinal data on formerly incarcerated individuals in Michigan found that females were underrepresented in the group of formerly incarcerated individuals employed in "high quality" (stable, well-paying) employment).

⁹³ WASH. STATE DEP'T OF CORR., WORK RELEASE EXPANSION PLAN - 2019 REPORT TO THE LEGISLATURE (2019), https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=DOC%20WR%20Expansion%20Report%202019_ec827832-d277-450e-b02d-2c5a097043e9.pdf.

⁹⁴ *Id.*

⁹⁵ Lilly Fowler, *WA inmates say they're retaliated against for getting COVID-19*, CROSSCUT (December 9, 2020), <https://crosscut.com/news/2020/12/wa-inmates-say-theyre-retaliated-against-getting-covid-19>.

⁹⁶ See WASH. STATE DEP'T CORR., POLICY DOC 350.200: TRANSITION AND RELEASE POLICY(2020), <https://www.doc.wa.gov/information/policies/files/350200.pdf>.

instability is closely correlated to incarceration. According to the National Resource Center on Justice Involved Women, around 50% of incarcerated women were unhoused during the month prior to their incarceration.⁹⁷ The Prison Policy Initiative also highlights that incarcerated women are more likely to be unhoused than incarcerated men and incarcerated Black women more than incarcerated white women.⁹⁸ Individuals experiencing homelessness before incarceration are unlikely to be able to return to a stable home with family after release, and will have to secure their own housing.

Public housing agencies have had residency restrictions for criminal history almost since their inception, but perhaps the most severe was the One Strike Rule adopted by the U.S. Department of Housing and Urban Development (HUD) under President Clinton.⁹⁹ The One Strike Rule gave local public housing authorities “a wide range of discretion” to deny housing or evict residents over criminal activity, particularly drug activity. Under president Obama, HUD reversed direction and urged local agencies to do the same, emphasizing the importance of housing stability to reentry and reintegration of formerly incarcerated residents.¹⁰⁰ However, local public housing authorities continue to exercise broad discretion in deciding how to use criminal records in housing admissions, affecting not just individuals returning from incarceration, but also their families.¹⁰¹ Individuals with criminal records can be banned from joining their families already in public housing, and even banned from visiting.¹⁰² The Seattle Housing Authority, for example, conducts a criminal history screening covering the previous two years and retains the right to deny housing to anyone with a history of “drug-related or violent criminal activity,” as well as to

⁹⁷ Aastha Uprety & Kate Scott, *Domestic Violence Is A Fair Housing Issue: How Criminal Records Screening Policies Can Harm Survivors Of Domestic Violence*, EQUAL RIGHTS CENTER (October 31, 2018), <https://equalrightcenter.org/domestic-violence-criminal-records/>, citing *Working with Justice Involved Women*, NATIONAL RESOURCE CENTER ON JUSTICE INVOLVED WOMEN (2016), <https://cjinvolvedwomen.org/wp-content/uploads/2016/01/Infographic-Final-2-pager.pdf>.

⁹⁸ Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POL. INITIATIVE (August 2018), <https://www.prisonpolicy.org/reports/housing.html>.

⁹⁹ Madeleine Hamlin, *Second Chances in the Second City: Public Housing and Prisoner Reentry in Chicago*, 38 ENVIRON. PLAN. D. 587 (2020).

¹⁰⁰ *Id.*

¹⁰¹ ANNIE E. CASEY FOUNDATION, *A SHARED SENTENCE: THE DEVASTATING TOLL OF PARENTAL INCARCERATION ON KIDS, FAMILIES, AND COMMUNITIES* (2016), www.aecf.org/sharedsentence.

¹⁰² Hamlin, *supra* note 99.

people with a history of substance use disorder.¹⁰³ The Seattle Housing Authority notes that “policies which automatically ban persons with a criminal history is a social justice issue, poses a barrier to family reunification and access to affordable housing, and can contribute to systemic homelessness.”¹⁰⁴ It is unknown whether the Seattle Housing Authority or other local public housing agencies collect data on the amount and demographics of applicants denied housing on the basis of a criminal record.

Private landlords can screen for criminal history up to seven years and deny residency to tenants on that basis.¹⁰⁵ Evidence from other jurisdictions suggests that landlords do routinely use criminal history, including misdemeanor convictions, when accepting tenants.¹⁰⁶ Local ordinances, like Seattle’s Fair Chance Housing Ordinance, provide greater protections to potential tenants with criminal histories. Under Seattle Municipal Code 14.09, landlords may not deny housing in most cases to prospective tenants solely based on their criminal history. Seattle’s ordinance has been upheld as a model ordinance for supporting incarcerated people.¹⁰⁷ And at the state level, the Washington Law Against Discrimination provides some protection for formerly incarcerated renters. In 2017, the Washington State Office of the Attorney General (AGO) fined five landlords for violating the Washington Law Against Discrimination and Fair Housing Act. The AGO claimed that landlords could not impose blanket bans on people with criminal histories because “certain groups of people, such as African-Americans, have higher statistical rates of arrests and convictions.”¹⁰⁸ As a result, the AGO contended that these bans

¹⁰³ SEATTLE HOUSING AUTH., ADMISSIONS AND CONTINUED OCCUPANCY POLICY (May 2019), <https://www.seattlehousing.org/admissions-and-continued-occupancy-policy>.

¹⁰⁴ *Id.* at 64.

¹⁰⁵ RCW 59.18.257.

¹⁰⁶ Peter Leasure & Tara Martin, *Criminal Records and Housing: An Experimental Study*, 13 J. EXP. CRIMINOLOGY 527 (2017) (in Columbus, Ohio, audit study, calls to over 400 property managers found that inquiries from people with misdemeanor and felony drug convictions had a lower positive response rate compared to those with no criminal record).

¹⁰⁷ Charlotte West, *Seattle’s Fair Housing Law is the Most Progressive in the country. But Now, Landlords are Challenging It.*, NBC NEWS (May 19, 2019, 2:03 AM), <https://www.nbcnews.com/news/nbcblk/seattle-s-fair-housing-law-most-progressive-country-now-landlords-n1004321>.

¹⁰⁸ Press Release, Wash. State Off. of the Att’y Gen., AG Takes on Discriminatory Blanket Housing Bans on Renters With Criminal Histories (Jan. 23, 2017), https://www.atg.wa.gov/news/news-releases/ag-takes-discriminatory-blanket-housing-bans-renters-criminal-histories_

have a disparate impact upon these certain groups.¹⁰⁹ Instead, landlords must make individual inquiries into a person’s circumstances with respect to their criminal histories.¹¹⁰

The evidence suggests that criminal justice involvement has strong negative effects on housing. Having a felony conviction is associated with high rates of housing instability (multiple changes of residence in a short period of time),¹¹¹ and some evidence suggests that formerly incarcerated women are more likely to experience homelessness compared to their male peers.¹¹² Some elements of the criminal justice system may exacerbate this. For example, a study of housing instability among Michigan parolees found that many residential moves were “sanction-related moves,” for example moves to mandatory residential drug treatment programs or returns to prison for rule violations.¹¹³ The authors concluded, “the criminal justice system is a key player in generating residential instability: moves due to intermediate sanctions, to treatment or care, to prison, or to absconding status accounted for nearly 60 percent of all moves made by parolees in our sample.”¹¹⁴

Contextual factors have also impacted housing access for formerly incarcerated individuals. Many U.S. cities have seen rising housing costs and rents over the past few decades, while wages and investments in affordable housing have stagnated, and other semiformal housing options have disappeared; all of which have severely constrained the housing opportunities available for individuals exiting incarceration.¹¹⁵ For those who do not achieve stable housing, criminalization of nonviolent activities sometimes undertaken to survive, such as petty theft, sex work, or even camping in parks and public spaces creates a pipeline directly back to incarceration.¹¹⁶

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Brielle Eileen Bryan, *Criminal Justice, Self-Sufficiency, and the Life Course: Social and Economic Insecurity After Incarceration and Conviction*, (May 2018) (Ph. D. dissertation, Harvard University), <https://dash.harvard.edu/bitstream/handle/1/40050077/BRYAN-DISSERTATION-2018.pdf?sequence=4&isAllowed=y>.

¹¹² LASHONDA BRENSON & NICHOLAS BAIR, U.S. COMM’N ON CIVIL RIGHTS, *WOMEN IN PRISON: SEEKING JUSTICE BEHIND BARS* (Feb. 2020), <https://www.usccr.gov/pubs/2020/02-26-Women-in-Prison.pdf>.

¹¹³ Claire W. Herbert, Jeffrey D. Morenoff & David J. Harding, *Homelessness and Housing Insecurity Among Former Prisoners*, 1 RSF: THE RUSSELL SAGE FOUND. J. OF THE SOC. SCIENCES44 (2015).

¹¹⁴ *Id.*, at. 74.

¹¹⁵ *Id.*

¹¹⁶ *Id.*; See “Chapter 10: Commercial Sex and Exploitation” for detailed discussion.

DOC's transition and release process works with individuals who are nearing the end of their sentence to help them find post-release housing. DOC will not release an individual who has not identified a stable address for post-release residency¹¹⁷ until the last possible moment. For those individuals unable to move in with family or friends, or without the ability to secure their own housing, there are a number of transitional housing programs available. One option is the Earned Release Date Housing Voucher Program . The voucher program was created in 2009, as DOC recognized that it was increasingly holding people past their release date, sometimes for months beyond the date, because of their inability to identify appropriate housing.¹¹⁸ DOC gives approved individuals paid housing vouchers to cover up to three months of housing after release. The voucher cap is \$500 per month, so it seems reasonable to assume that most housing options available will be group housing. A 2015 evaluation found a slight reduction in recidivism over 18 months among Housing Voucher Program participants compared to a group of similarly-situated individuals released just prior to the program's start.¹¹⁹ This reduction in recidivism is notable, considering that those participants are likely subject to more supervision than individuals living with family or independently, and therefore more likely to have supervision violations observed and flagged.¹²⁰ The evaluation did not compare long-term housing outcomes for Housing Voucher Program participants to non-participants.¹²¹ DOC does not publish demographics of program participants, so it is unknown whether participation rates reflect the demographics of the incarcerated population, or whether outcomes differ by demographics. We also don't know what challenges such housing options place on parents, especially mothers who are primary care givers and trying to reunite with their children.

Transitional housing, also known as halfway housing, refers to facilities that house individuals released from prison during some portion of their community supervision. Unlike work release housing, however, halfway homes are run by private for-profit or nonprofit providers that

¹¹⁷ Zachary Hamilton, Alex Kigerl, & Zachary Hays, *Removing Release Impediments and Reducing Correctional Costs: Evaluation of Washington State's Housing Voucher Program*, 32 JUST. Q. 255 (2015).

¹¹⁸ *Id.* at 263 ("In 2008, over 1,200 Washington State inmates were held past their ERD (earned release date), totaling over 135,000 days (an average of 107 days per inmate)").

¹¹⁹ Hamilton, Kigerl, & Hays, *supra* note 117.

¹²⁰ *Id.*

¹²¹ *Id.*

contract with DOC.¹²² While some provide services or treatment on site, others provide only housing. Transitional housing facilities with no onsite services are not subject to any state licensing requirement, and investigative reporting has found evidence of overcrowding and unsafe living conditions at facilities run by one provider operating homes in King and Snohomish counties.¹²³ The lack of licensing and transparent oversight makes it difficult to know what conditions are like in DOC-contracted transitional housing providers. Additionally, there is a lack of information regarding the availability of group housing and transitional housing options that are gender-specific or safe and appropriate for LGBTQ+ individuals; survivors of sexual assault, domestic violence, or intimate partner violence; or parents, particularly mothers trying to reunite with their children.

E. Public benefits

In the 1990s, the federal Personal Responsibility and Work Opportunities Reconciliation Act banned states from giving certain public benefits to people with felony drug convictions, although Washington State since overturned the ban.¹²⁴ Currently, the Washington State Department of Social and Health Services (DSHS) may suspend state or federal benefits if it finds that a recipient is a “fleeing felon” or is violating conditions of probation or parole, or if the recipient has been found guilty of benefits fraud.¹²⁵ These benefits may include Temporary Assistance for Needy Families, Pregnant Women Assistance, and State Family Assistance, and Housing and Essential Needs Assistance.¹²⁶ It’s unknown how many people in Washington State are ineligible under these limits for cash assistance programs, and whether there are disparities by gender, race, ethnicity, or other demographic factors.

Certain other benefits, such as Medicaid, Medicare, and Social Security, are suspended during incarceration. Applying to get these benefits reinstated after incarceration can be difficult,

¹²² Sydney Brownstone, *A Seattle-Area Sober Housing Company Promised Respite from Homelessness. Tenants Found Chaos.*, THE SEATTLE TIMES, March 14, 2021, <https://www.seattletimes.com/seattle-news/homeless/a-seattle-area-sober-housing-company-promised-respite-from-homelessness-tenants-found-chaos/>.

¹²³ *Id.* (DOC cut funding to the subject of this reporting, Damascus Homes LLC, in October, 2020).

¹²⁴ Cynthia A. Golembeski, Ans Irfan & Kimberly R. Dong, *Food Insecurity and Collateral Consequences of Punishment Amidst the COVID-19 Pandemic*, 12 WORLD MED. & HEALTH POL. 357 (2020).

¹²⁵ WAC 388-442-0010(1).

¹²⁶ *Id.*

considering the other challenges and time constraints formerly incarcerated individuals face during reentry. The Washington State Office of Corrections Ombuds found that the re-establishment process post-incarceration could take several months, depriving individuals with disabilities of the resources they need during the precarious reentry period.¹²⁷ DOC is currently exploring models to partner with the Social Security Administration to ensure reinstatement of benefits at release.¹²⁸

F. Health consequences of incarceration are harsher for women, including mothers, and marginalized populations

Incarceration entails key challenges to an individual's health and wellbeing, both during and after incarceration. Some people incarcerated in prisons and jails face overcrowding and poor sanitation; limited access to or disruption in behavioral health treatment; barriers to accessing quality health care; and violence, harassment, and trauma.¹²⁹ Even after release, formerly incarcerated people continue to suffer from the health effects of incarceration. Pregnant and parenting incarcerated people face additional health and wellbeing challenges.

People in prison, and particularly women in prison, bear a disproportionately high burden of infectious disease, chronic disease, and behavioral health challenges. Despite the fact that incarcerated people have a constitutionally mandated right to health care, in general the conditions of incarceration have been shown to worsen many existing health conditions due to structural inequities caused by poverty and racism, as well as exposing incarcerated people to new health conditions. Poor quality care and low access to care during incarceration and poor linkages to care after release mean that even after release, formerly incarcerated people continue to face these burdens, often with few supports or resources beyond those informally offered by their loved ones and communities.

¹²⁷ Kingsbury, *supra* note 86.

¹²⁸ *Id.*

¹²⁹ See "Chapter 12: Availability of Gender Responsive Programming and Use of Trauma Informed Care in Washington State Department of Corrections" for more on the experiences of incarcerated individuals and "Chapter 8: Consequences of Gender-Based Violence: Domestic Violence and Sexual Assault" for more on sexual assault in prisons and jails.

The incarcerated population has higher rates of mental illness, substance use disorder, and chronic illnesses compared to the unincarcerated population; and within the incarcerated population, incarcerated women have higher rates of mental illness, substance use disorder, and chronic illness compared to incarcerated men.¹³⁰ More than two-thirds of U.S. incarcerated women were estimated to have substance use disorder from 2007-2009,¹³¹ and more than a fifth of incarcerated women met the threshold for “serious psychological distress” in 2011-2012.¹³² The higher rates of health problems in incarcerated women may be a result of a combination of known factors such as the “trauma to prison pipeline,” and the connection between poverty and incarceration for women, particularly Black, Indigenous and women of color and LGBTQ+ people (for more, see “Chapter 11: Incarcerated Women in Washington”). Women enter incarceration with varying and complex health needs. Prisons in Washington routinely screen for health conditions and disabilities that will require treatment or accommodations during incarceration, but the Office of the Corrections Ombuds noted in a 2020 report that “invisible” disabilities such as undiagnosed mental illness are often missed on screening, and therefore could continue unaddressed.¹³³ Meanwhile, local and county jails in Washington are not subject to any statewide

¹³⁰ JENNIFER BRONSON ET AL. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, DRUG USE, DEPENDENCE, AND ABUSE AMONG STATE PRISONERS AND JAIL INMATES, 2007-2009 (2017), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5966> (in data from 2007-2009, 58% of people incarcerated in state prison and 63% of those incarcerated in jails met the criteria for SUD, compared to 5% of the general population, and the rates for incarcerated females (69.2% in women in prison and 72.3% of women in jail) were higher than the rates in incarcerated males (56.9% of men in prison and 61.8% of men in jail)); JENNIFER BRONSON & MARCUS BERZOFSKY, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, INDICATORS OF MENTAL HEALTH PROBLEMS REPORTED BY PRISONERS AND JAIL INMATES, 2011-12 (2017), <https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf> (14% of people in state and federal prisons and 26% of people in jail met the threshold for "serious psychological distress" compared to an estimated 5% in the general population, and the rates in incarcerated females (20% in women in prison and 32% of women in jail) were higher than the rates in incarcerated males (14% in men in prison and 26% in men in jail)); LAURA M. MARUSCHAK, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, MEDICAL PROBLEMS OF STATE AND FEDERAL PRISONERS AND JAIL INMATES, 2011-12, 23 (rev. Oct. 4, 2016), <https://bjs.ojp.gov/content/pub/pdf/mpsfpji1112.pdf> (41% of people in state and federal prisons and 39.8% of people in jail reported a current chronic condition in 2011-2012, and a higher proportion of women in prisons and jails reported ever having a chronic condition than men in prisons and jails); Seth J. Prins, *Prevalence of Mental Illnesses in U.S. State Prisons: A Systematic Review*, 65 PSYCHIATRIC SERVICES 862 (2014) (review of 28 scientific articles confirmed a higher prevalence of mental illness in the incarcerated population compared to the general population).

¹³¹ Bronson et al., *supra* note 130.

¹³² Bronson & Berzofsky, *supra* note 130.

¹³³ OFF. OF THE CORR. OMBUDS, OFFICE OF THE CORRECTIONS OMBUDS SURVEY OF INCARCERATED WOMEN (2020), https://oco.wa.gov/sites/default/files/Women%20Survey%20with%20DOC%20Response%20Final_0.pdf. OCO distributed surveys in Washington's two female prisons as well as to those being held in Yakima County Jail under contract with DOC and received 772 in June 2019. It's unknown if the survey forms were translated into any

oversight. We are unaware of any comprehensive, public data on rates of physical or behavioral health needs in the incarcerated population in Washington, but from available data we assume they mirror national trends.¹³⁴

Incarcerated people have a constitutionally protected right to health care, unlike the general population.¹³⁵ Because of this, some research has found improved outcomes for certain health indicators under the conditions of incarceration. For example, births among incarcerated people show lower rates of pre-term birth compared to the general population.¹³⁶ Similarly, most incarcerated groups have lower mortality rates (adjusted for age) than their counterparts in the general population, an effect which is particularly strong among Black men.¹³⁷ However, the same research found that “Hispanic female prisoners were the only group not at a mortality advantage relative to the general population.”¹³⁸ Findings on mortality rate may be impacted by compassionate release policies. Although compassionate releases are hard to get, very ill incarcerated individuals may be released from prison to die in the community.¹³⁹ Additionally, studies that compare the health of people in prison with their similarly situated “peers” are comparing incarcerated people against communities and families outside of prison who, while not incarcerated themselves, have been deeply shaped by decades of mass incarceration and the resulting social upheaval, loss of income, and emotional toll. See below for evidence regarding the health impacts of incarceration on families and communities. Researchers note that for

languages besides English or made accessible to those with disabilities. Additionally, it’s unknown what the total number of female prisoners was at the time, and what response rate was achieved, or how representative the responses were of the whole population.

¹³⁴ In 2016, the Department of Social and Health Services (DSHS) examined DSHS and Health Care Authority (HCA) data and found that of Medicaid enrollees who had been booked into jail in 2013, 61% had SUD treatment needs, 58% had mental health treatment needs, and 40% had both SUD and mental health treatment needs, See PAULA DITTON HENZEL ET AL., BEHAVIORAL HEALTH NEEDS OF JAIL INMATES IN WASHINGTON STATE (2016), <https://www.dshs.wa.gov/sites/default/files/rda/reports/research-11-226a.pdf>.

¹³⁵ Note, however, that the right for healthcare does not mean a right for free healthcare. Health care for prisoners is “fee for service,” meaning state law requires DOC to charge incarcerated individuals small amounts for self-initiated health care services. For further discussion of health care access issues see part F.4. *infra*.

¹³⁶ Carolyn Sufrin et al., *Pregnancy Outcomes in US Prisons, 2016–2017*, 109 AMER. J. PUB. HEALTH 799 (2019) (preterm birth rate in Washington prisons in 2016–2017 was 6%, compared to the general Washington preterm birth rate of 8.17% at in the same year).

¹³⁷ Christopher Wildeman et al., *Mortality Among White, Black, and Hispanic Male and Female State Prisoners, 2001–2009*, 2 SSM - POPULATION HEALTH 10 (2016).

¹³⁸ *Id.*

¹³⁹ Michael Massoglia & William Alex Pridemore, *Incarceration and Health*, 41 ANN. REV. SOCIO. 291 (2015).

disadvantaged communities, jails and prisons may in fact be a primary source of health care, “which reflects the withering health and social safety net that fails to advance equity in many of our communities.”¹⁴⁰ Therefore, any improved health outcomes during incarceration should not be taken to suggest that incarceration has a positive effect on health. In fact, the available research suggests that incarceration generally increases health risks and the burden of disease for the incarcerated population.¹⁴¹

1. Conditions and programs for individuals who are pregnant and parentings

Mass incarceration has forcefully interrupted the exercise of reproductive rights for thousands of American women, disproportionately impacting Black, Indigenous, and women of color. Nationally, mothers are removed from their children; their legal rights might be placed in peril; pregnant women may be subjected to humiliating and dangerous practices during childbirth; and control over their bodies and fertility is limited. In California prisons for example, the State Auditor found deficiencies in informed consent processes in the case of 39 of 144 incarcerated women who underwent sterilizations between 2005 and 2011.¹⁴²

Over time, through advocacy and legislation, conditions have improved for incarcerated parents in the U.S. and in Washington. For example, as a result of earlier collaboration between the Gender and Justice Commission and stakeholders, Washington State outlawed shackling of incarcerated individuals during childbirth in 2010.¹⁴³ DOC’s residential parenting program allows pregnant individuals who qualify to keep their infants with them in a special facility for families until their release.¹⁴⁴ This has the potential to decrease the trauma of separation and foster

¹⁴⁰ Cynthia A. Golembeski et al., *Improving Health Equity for Women Involved in the Criminal Legal System*, 30 *WOMEN’S HEALTH ISSUES* 313, 314 (2020).

¹⁴¹ JULIA ACKER ET AL., ROBERT WOOD JOHNSON FOUND., *MASS INCARCERATION THREATENS HEALTH EQUITY IN AMERICA* (2019), [HTTPS://WWW.RWJF.ORG/EN/LIBRARY/RESEARCH/2019/01/MASS-INCARCERATION-THREATENS-HEALTH-EQUITY-IN-AMERICA.HTML#:~:TEXT=MASS%20INCARCERATION%20DISPROPORTIONATELY%20IMPACTS%20LOWER-INCOME%20COMMUNITIES%2C%20COMMUNITIES%20OF,BOTH%20WHILE%20CONFINED%20AND%20LONG%20AFTER%20THEIR%20RELEASE..](https://www.rwjf.org/en/library/research/2019/01/mass-incarceration-threatens-health-equity-in-america.html#:~:text=Mass%20incarceration%20disproportionately%20impacts%20lower-income%20communities%2c%20communities%20of,both%20while%20confined%20and%20long%20after%20their%20release..)

¹⁴² See CAL. STATE AUDITOR, REPORT 2013-120, *STERILIZATION OF FEMALE INMATES 1* (June 2014), <https://www.auditor.ca.gov/pdfs/reports/2013-120.pdf>.

¹⁴³ RCW 72.09.651

¹⁴⁴ WASH. STATE DEP’T CORR. POLICY DOC 590.320: RESIDENTIAL PARENTING PROGRAM (2020), <https://www.doc.wa.gov/information/policies/showFile.aspx?name=590320>. Only women incarcerated while pregnant are eligible. A woman who is incarcerated a week or two after giving birth, for example, is not eligible to have her newborn join her.

healthy bonding, although not all incarcerated pregnant women qualify for the program.¹⁴⁵ As noted above, people incarcerated in prisons have more complex health needs than the general population, and imprisoned pregnant individuals have specific health needs. The relatively low rate of preterm birth in the prison population in Washington would seem to indicate that pregnant people's health needs are being met while in prison. There is a lack of data regarding women's satisfaction with OB-GYN and maternal health services in Washington prisons, or for pregnancy outcomes specifically for subgroups within the female prison population such as Black, Indigenous and women of color or LGBTQ+ individuals. And there is a lack of data regarding pregnancy outcomes for people incarcerated in jails in Washington State. Nationally, only about one third of jails report routinely screening for pregnancy at intake.¹⁴⁶ This practice could risk delaying important access to prenatal care or even endangering the pregnancy through dangerous restraint practices or forced withdrawal from opioids without medication.¹⁴⁷

More than half of women in prison in Washington are parents of minor children.¹⁴⁸ In many states, including Washington, a smaller number of imprisoned women means fewer prisons for women, which means women are more likely to be incarcerated far from home. Washington's prisons for women are both located near Puget Sound – in Gig Harbor and Belfair. This has implications for family visitation. Long distances make it difficult for children to visit their mothers in prison; in 2015, only 27% of female parents in Washington prisons said they'd had an in-person visit with their children in the past year.¹⁴⁹ Incarcerated mothers who have regular contact with their children have improved mental and physical health outcomes.¹⁵⁰ Washington State began

¹⁴⁵ Noelle E Fearn & Kelly Parker, *Washington State's Residential Parenting Program: An Integrated Public Health, Education, and Social Service Resource for Pregnant Inmates and Prison Mothers*, 2 CAL. J. OF HEALTH PROMOTION 15 (2004).

¹⁴⁶ C. M. Kelsey et al., *An Examination of Care Practices of Pregnant Women Incarcerated in Jail Facilities in the United States*, 21 MATERN CHILD HEALTH J 1260–1266 (2017).

¹⁴⁷ *Id.*, Mary Peeler et al., *Best Practices for Pregnant Incarcerated Women With Opioid Use Disorder*, 25 JOURNAL OF CORRECTIONAL HEALTH CARE 4–14 (2019).

¹⁴⁸ WASH. STATE DEP'T OF CORR., CHILDREN OF INCARCERATED PARENTS (2016), <https://www.doc.wa.gov/docs/publications/infographics/100-PO005.htm> (in a 2015 survey, 56.0% of incarcerated women and 45.2% of incarcerated men reported having at least one minor child).

¹⁴⁹ LEON DIGARD ET AL., VERA INST. OF JUST., A NEW ROLE FOR TECHNOLOGY? IMPLEMENTING VIDEO VISITATION IN PRISON (Feb. 2016).

¹⁵⁰ Timothy G. Edgemon, *Mental Health and Punishment: Exploring the Relationship Between Contact with the Criminal Justice System and Mental Health* (2020) (Ph. D. dissertation, University of Georgia); Ann E. Stanton & Susan J. Rose, *The Mental Health of Mothers Currently and Formerly Incarcerated in Jails and Prisons: An*

piloting video visitation for incarcerated people in 2013 and currently offers the service in every prison.¹⁵¹ Video visitation undoubtedly helps reduce distance barriers for families and loved ones of incarcerated people. However, users of Washington’s system note that it is far from perfect, having a high cost (about \$13 for half an hour) and suffering from frequent glitches.¹⁵² The system needs improvement, and DOC is working with the provider to address these problems. However, families and loved ones of incarcerated people also note that video visitation is a welcome supplement to, but not a replacement for, in-person visitation.¹⁵³ Just as many people have been unable to see their loved ones in person during the COVID-19 pandemic, those with a loved one incarcerated in Washington prisons have been impacted during COVID-19 as DOC cancelled in-person visitation.¹⁵⁴

There is a lack of data regarding the number of individuals in jails who are parents, however, it is likely to be similar to the rates of parents in prison. A survey of individuals incarcerated in jails in San Francisco and Alameda County found that 69% reported being the primary parent or caregiver to a child or young adult under the age of 25.¹⁵⁵ While parents in local jails may be incarcerated geographically closer to their children, families still face barriers to communication, including costs of phone calls and visits. Only 35% of respondents reported having a jail visit with their child, and the vast majority of visits that do occur take place through glass, with no opportunity to touch or hug.¹⁵⁶

Integrative Review on Mental Health, Mental Health Treatment, and Traumatic Experiences, 16 J. OF FORENSIC NURSING 224 (2020).

¹⁵¹ Digard et al., *supra* note 149; *Video Visits*, WASH. STATE DEP’T OF CORR. (2021), <https://www.doc.wa.gov/corrections/incarceration/visiting/video-visits.htm>.

¹⁵² Loretta Pedersen, *Punishing Relations - How WA DOC’s Collateral Damage and Hidden Costs Imprison Families*, WASH. CORRECTIONS WATCH (Jan. 2021), <https://washingtoncorrectionswatch.files.wordpress.com/2021/01/punishing-relations-e28093-how-wa-docs-hidden-costs-and-collateral-damage-imprison-families-2.pdf>.

¹⁵³ *Id.*

¹⁵⁴ *Prison Facility Alerts & Notices*, WASH. STATE DEP’T OF CORR., <https://www.doc.wa.gov/information/alerts.htm#prison-alerts> (last visited Aug. 13, 2021).

¹⁵⁵ Katie Kramer & Sharon McDonnell, *Children, Parents, and Incarceration: Descriptive Overview of Data from Alameda and San Francisco County Jails*, SF.GOV (March 2016), <https://sfgov.org/sfreentry/sites/default/files/Documents/CIP%20Jail%20Survey%20-%20Full%20Report%20FINAL%203%2015%2016.pdf>.

¹⁵⁶ *Id.*

2. Overcrowding, hygiene, and treatment access

While pregnant and parenting incarcerated people face specific challenges, incarceration impacts the health and wellbeing of all incarcerated people. Prison and jail overcrowding can be a barrier to accessing programming and treatment as funding for services fails to keep pace with rising rates of incarceration,¹⁵⁷ and overcrowding and shared use of hygiene facilities, combined with poor ventilation, increases the transmission of infectious diseases.¹⁵⁸ For obvious reasons, overcrowding and poor ventilation and hygiene have implications for vulnerable prisoners during the COVID-19 pandemic. See “Chapter 11: Incarcerated Women in Washington” for more on COVID-19 in prisons.

Limited findings provide a small window into the conditions in Washington’s jails. Ten of Washington’s 59 city, county, and tribal jails reported in 2019 an average daily population above design capacity.¹⁵⁹ A recent survey of incarcerated women under DOC supervision provided a window into living conditions in one county jail. In 2014, increases in the incarcerated female population exceeded the capacity of the state’s two female prisons, and so DOC contracted with Yakima County Jail to house up to 60 incarcerated women there.¹⁶⁰ Women incarcerated at Yakima County Jail responding to a statewide survey in 2019 reported significantly worse conditions than their counterparts in DOC prisons.¹⁶¹ They reported unmet hygiene and clothing needs, a complete lack of mental health access, poor food quality, and lack of access to programming. DOC cancelled the contract with Yakima County Jail and moved all prisoners back to DOC prisons in 2020 when COVID-19 releases mandated by Governor Inslee once again reduced prison populations.¹⁶² Similarly, a recent audit of King County’s two jails suggest that jail

¹⁵⁷ *Id.*; DAVID CLOUD, VERA INST. OF JUST., ON LIFE SUPPORT: PUBLIC HEALTH IN THE AGE OF MASS INCARCERATION (2014), https://storage.googleapis.com/vera-web-assets/downloads/Publications/on-life-support-public-health-in-the-age-of-mass-incarceration/legacy_downloads/on-life-support-public-health-mass-incarceration-report.pdf.

¹⁵⁸ Lauren Brinkley-Rubinstein, *Incarceration as a Catalyst for Worsening Health*, 1 HEALTH JUST. 3 (2013); Massoglia and Pridemore, *supra* note 139.

¹⁵⁹ *Historical Statistics, 2019*, WASH. ASSOC. OF SHERIFFS AND POLICE CHIEFS(2020), <https://www.waspc.org/cjis-statistics---reports>.

¹⁶⁰ Press Release, Wash. State Dep’t of Corr., anelle Guthrie, Corrections Cancels Contract to House Women at Yakima County Jail (June 17, 2020), <https://www.doc.wa.gov/news/2020/06172020p.htm>.

¹⁶¹ Off. of the Corr. Ombuds, *supra* note 133.

¹⁶² Guthrie, *supra* note 160.

crowding has significant and direct effects on the health and wellbeing of incarcerated individuals and staff.¹⁶³

Given the lack of statewide oversight over jails, it is difficult to assess conditions for people with disabilities in jails. A 2016 Disability Rights Washington surveys of jails in Washington State noted that individuals with cognitive disabilities and mental illnesses were often held in solitary confinement because of a lack of appropriate facilities.¹⁶⁴ The Office of Corrections Ombuds conducted a comprehensive review of concerns for individuals with disabilities in state prisons in 2019, after hearing concerns that people with disabilities were not receiving equal treatment or equal access to programs and services.¹⁶⁵ Some systemic issues were identified.¹⁶⁶ DOC received the report and communicated plans to address the identified issues, including better data collection to track programming and facilities access for people with disabilities to identify ongoing disparities.¹⁶⁷

The lack of mental health treatment is especially concerning given the higher rates of behavioral health needs among the jailed population compared to the incarcerated population in prison nationwide.¹⁶⁸ Despite the documented high needs for behavioral health treatment among incarcerated populations, treatment access varies by location and between prison systems and jails. In Washington State, DOC has a number of treatment options available for individuals diagnosed with Substance Use Disorders in prisons.¹⁶⁹ However, only 14 of 33 Washington jails surveyed in 2018 reported providing medication for treatment of Substance Use Disorders and

¹⁶³ GRANT DAILEY ET AL., ADULT JAILS NEED RISK-BASED APPROACH TO IMPROVE SAFETY, EQUITY, KING COUNTY AUDITOR'S OFFICE (April 6, 2021), <https://kingcounty.gov/~media/depts/auditor/new-web-docs/2021/jail-safety-2021/jail-safety-2021.ashx?la=en>.

¹⁶⁴ AVID Prison Project Disability Rights Wash., *County Jails, Statewide Problems: A Look at How Our Friends, Family and Neighbors with Disabilities are Treated in Washington's Jails* (April 2016), <https://www.disabilityrightswa.org/reports/county-jails-statewide-problems/>.

¹⁶⁵ Kingsbury, *supra* note 86 (report does not offer a breakdown or analysis by gender).

¹⁶⁶ *Id.* The screening process to identify individuals with disabilities on entry was found to miss certain types of disabilities, particularly "invisible" disabilities such as traumatic brain injury, intellectual and learning disabilities, and psychiatric disorders. Individuals with these conditions would then not be given access to needed accommodations. There were also problems identified with the accommodations request process and grievance process. Additionally, some programs, services and facilities were found to be inaccessible for some, including the law library, education, work, and other programming.

¹⁶⁷ *Id.*

¹⁶⁸ Bronson and Berzofsky, *supra* note 130; Bronson et al., *supra* note 130.

¹⁷³ Golembeski et al., *supra* note 140.

withdrawal symptoms,¹⁷⁰ despite the fact that medication-assisted treatment is widely acknowledged to safely and effectively ease dangerous withdrawal symptoms and leads to improved treatment and recovery outcomes and decreased overdose deaths.¹⁷¹ Without access to medication-assisted treatment during their jail stay, and without the reentry planning and support that prisons usually provide, individuals leave jail with a higher risk of relapse and overdose.¹⁷²

3. Violence, harassment, and trauma

Individuals incarcerated in prisons and jails might endure harsh practices such as shackling, body searches, restraint, and seclusion in solitary confinement, all of which can exacerbate conditions for individuals suffering from Post-Traumatic Stress Disorder (PTSD), trauma, and mental health problems.¹⁷³ Nationally, there is evidence that although women are less likely than men to behave violently in prison, they are punished more frequently and more severely for minor offenses, such as cursing, being disruptive, disobeying orders, and being “insolent.”¹⁷⁴ Local evidence suggests that Black women face more frequent and severe discipline. The King County jail’s audit found that on intake, Black people were given higher risk scores which led to higher likelihood of restrictive housing; and that Black women in particular, received more frequent and harsh sanctions: “Black women received 70 percent more days in restrictive housing per infraction on average than other women, while White women receive 40 percent fewer days per infraction than other women.”¹⁷⁵ Nationally, women with mental health problems and Substance Use Disorders are also disciplined at disproportionately high rates.¹⁷⁶ Imprisoned people who are LGBTQ+, particularly transgender people, face abuse, stigmatization, and social isolation, and may be held more frequently in solitary confinement than with the general prison population.¹⁷⁷

¹⁷³ Golembeski et al., *supra* note 140.

¹⁷³ Golembeski et al., *supra* note 140.

¹⁷³ Golembeski et al., *supra* note 140.

¹⁷³ Golembeski et al., *supra* note 140.

¹⁷⁴ Brenson & Bair, *supra* note 112.

¹⁷⁵ Dailey et al., *supra* note 163, at 35 (reporting the race groups White, Black, AIAN and API but not noting ethnicity).

¹⁷⁶ Brenson & Bair, *supra* note 112.

¹⁷⁷ Brenson & Bair, *supra* note 112; Baćak, et al. (2018). Incarceration as a health determinant for sexual orientation and gender minority persons. *American Journal of Public Health*, 108(8), 994-999.

Among Washington’s female prison population, LGBTQ+ individuals; Black, Indigenous and women of color; and immigrants report experiencing harassment while incarcerated.¹⁷⁸

Adequate training, staffing, and preparation for corrections officers helps them respond to unpredictable behavior or threatening situations in ways that decrease the need for violence. DOC, in response to findings by the Office of Corrections Ombuds, has committed to delivering more trauma-informed and gender-responsive training to corrections staff.¹⁷⁹

4. Health and healthcare quality and access during incarceration, reentry and post incarceration

In Washington State, health care during incarceration in prison is provided directly by DOC where possible. Health care is “fee for service,” meaning state law requires DOC to charge incarcerated individuals small amounts for self-initiated health care services.¹⁸⁰ This is meant to “discourage unwarranted use of health care services caused by unnecessary visits to health care providers.”¹⁸¹ Under this system, no imprisoned individual can be denied healthcare due to a lack of funds; but if they don’t have any funds in their commissary account, a negative balance is added and debt accrues. When new funds are deposited into their account, either from work or by loved ones outside of prison, the medical debt has to be paid off before funds can be used for anything else.¹⁸² Essentially, people low on funds might have to choose between accessing health care, buying personal hygiene items from the commissary, and phone calls to loved ones outside.¹⁸³

It can be argued that this policy has a disproportionate impact on incarcerated women, as they enter prison with more health needs than men;¹⁸⁴ use healthcare services at a higher rate than

¹⁷⁸ Off. of the Corr. Ombuds, *supra* note 133 (report does not specify whether the harassment is from other incarcerated individuals, staff, or both). For more, see “Chapter 12: Availability of Gender Responsive Programming and Use of Trauma Informed Care in Washington State Department of Corrections.”

¹⁷⁹ *Id.*

¹⁸⁰ RCW 72.10

¹⁸¹ *Id.*

¹⁸² Holly M. Harner, Brian R. Wyant & Fernanda Da Silva, “Prison Ain’t Free Like Everyone Thinks”: *Financial Stressors Faced by Incarcerated Women*, 27 QUAL. HEALTH RES. 688 (2017).

¹⁸³ *Id.*

¹⁸⁴ Maruschak, *supra* note 130.

incarcerated men;¹⁸⁵ and enter incarceration poorer than incarcerated men.¹⁸⁶ While healthcare visit costs are usually just a couple of dollars, evidence from other states suggests that the fee for service model does result in incarcerated women delaying or avoiding health care, with one interviewed women noting, “\$5 is like \$500 for us.”¹⁸⁷ While there is a lack of data on if and how frequently incarcerated women in Washington State delay or avoid care over the cost, women in Washington State have expressed concern over the \$4 copay.¹⁸⁸ People report long waits for specialized treatment and mental health, as reported by Office of Corrections Ombuds:

It reportedly can take months to get a follow up appointment after an initial screening that costs a \$4 copay in which they are told, as 29 respondents shared, to take ibuprofen and drink more water as a generic remedy to all kinds of specialized medical problems... Many respondents lament that general population prisoners are only allowed three visits to Mental Health per year... and report waiting weeks to months to see a mental health provider.¹⁸⁹

Additionally, d/Deaf individuals report having challenges accessing health services because of inadequate access to interpreting services.¹⁹⁰

The period immediately following incarceration is notoriously dangerous. The death rate for formerly incarcerated individuals in Washington during the first two weeks after their release is more than three times higher than the death rate of the general population.¹⁹¹ This is particularly true of formerly incarcerated individuals with Substance Use Disorders, as substance use was found to be a contributing factor in nearly a third of deaths of people recently released from

¹⁸⁵ Harner, Wyant, and Da Silva, *supra* note 182.

¹⁸⁶ Bernadette Rabuy & Daniel Kopf, *Detaining the Poor: How Money Bail Perpetuates an Endless Cycle of Poverty and Jail Time*, PRISON POL. INITIATIVE (May 10, 2016).

¹⁸⁷ Harner, Wyant, and Da Silva, *supra* note 182 at 692.

¹⁸⁸ Off. of the Corr. Ombuds, *supra* note 133.

¹⁸⁹ *Id.*, at 32-35 (total of 772 completed surveys).

¹⁹⁰ Kingsbury, *supra* note 86.

¹⁹¹ Ingrid A. Binswanger et al., *Risk Factors for All-Cause, Overdose and Early Deaths After Release from Prison in Washington State*, 117 DRUG AND ALCOHOL DEPENDENCE 1 (2011) (these data predate the highest spikes in opioid overdose mortality).

Washington prisons.¹⁹² The infectious diseases responsible for the most fatalities were viral hepatitis, HIV and septicemia, suggesting a need for stronger linkages to care and harm-reduction policies.¹⁹³ Experiencing homelessness after release from prison was associated with an increased risk of death from all causes.¹⁹⁴ DOC's treatment arm provides education and opioid overdose prevention kits to individuals being released after short periods of incarceration, and reentry Medical Assistance Treatment referrals to individuals being released from a number of jails around the state.¹⁹⁵

In the longer term, formerly incarcerated people continue to face poor health outcomes. As noted above in the subsection on barriers to housing and employment, formerly incarcerated people have higher rates of housing instability and food insecurity.¹⁹⁶ Accessing healthcare and other services is challenging, confusing, and time consuming, so individuals may experience lapses in medication or other treatments.¹⁹⁷ For example, women who experienced incarceration during their pregnancy subsequently reported facing numerous barriers to accessing prenatal care, particularly lack of transportation and lack of childcare, and lack of time due to multiple other responsibilities mandated by the conditions of their release or conviction.¹⁹⁸ Individuals returning to rural areas will find fewer resources and may struggle to access transportation to access needed services.¹⁹⁹ Stress, fear, and anxiety accompany reentry, negatively impacting mental health especially for those with preexisting behavioral health problems.²⁰⁰ Additionally,

¹⁹² Ingrid A Binswanger, *Epidemiology of Infectious Disease— Related Death After Release from Prison, Washington State, United States, and Queensland, Australia: A Cohort Study*, 131 PUB. HEALTH REPORTS 9 (2016) (examining 76,208 men and women released from prison in Washington State 1999-2009, excluding compassionate release).

¹⁹³ *Id.*

¹⁹⁴ Binswanger et al., *supra* note 191, examining a sample of 1,972 deaths from the same dataset above.

¹⁹⁵ Substance Abuse Recovery Unit Brochure (wa.gov) (2020), <https://www.doc.wa.gov/docs/publications/500-BR002.pdf>.

¹⁹⁶ Binswanger et al., *supra* note 191; Alexander Testa & Dylan B. Jackson, *Food Insecurity Among Formerly Incarcerated Adults*, 46 CRIM.AL JUST. AND BEHAV. 1493 (2019).

¹⁹⁷ Binswanger et al., *supra* note 191; Cloud, *supra* note 157.

¹⁹⁸ Alexander Testa & Dylan B. Jackson, *Incarceration Exposure and Barriers to Prenatal Care in the United States: Findings from the Pregnancy Risk Assessment Monitoring System*, 17 IJERPH 7331 (2020) (examination of nationally representative longitudinal data of parents of infants born in the US from 2009-2016).

¹⁹⁹ Carrie Ann Langley, *Transitions from Jail in the Rural Community for Adults with Mental Illness* (2021) (Ph. D. dissertation, University of Arizona) , https://repository.arizona.edu/bitstream/handle/10150/656838/azu_etd_18577_sip1_m.pdf?sequence=1&isAllowed=y (qualitative study with adults living with mental illness and recent jail incarceration in Arizona (n=8)).

²⁰⁰ Binswanger et al., *supra* note 191.

incarceration is highly stigmatized. Stigmatization has a negative impact on health outcomes, as individuals who experience or anticipate discrimination may avoid accessing care. They are also more likely to engage in risky health behaviors.²⁰¹ Individuals leaving prison or jail may avoid social interactions and reconnecting with or asking for support from loved ones.²⁰² Stigma, disruption to social connections, and lack of resources may lead some to engage in survival sex, trading sex for access to resources, which is associated with a higher risk of sexually transmitted infection and HIV transmission.²⁰³ Each of these factors may be more or less relevant for those released from prison or jail. Jail stays are shorter, and so may not be as disruptive to family and social ties; prison stays are longer, but prisons often provide more support in release planning, and people are often released to community supervision, which may be a source of support as well.

IV. The Consequences of Incarceration for Families and Communities

Long before women became the fastest-growing incarcerated population, they were already entangled in the criminal legal system. They were the mothers, grandmothers, wives, aunts, sisters and daughters of the men and boys who make

²⁰¹ Gina Fedock & Sophia Sarantakos, *Physical and Mental Health Disparities for Young Women with Arrest Histories*, 42 HEALTH & SOC. WORK e102 (2017) (examination of self-reported health histories for 9,899 women aged 18-255 from a 2011 national survey); Mark L. Hatzenbuehler, Jo C. Phelan & Bruce G. Link, *Stigma as a Fundamental Cause of Population Health Inequalities*, 103 AM. J. PUB. HEALTH 813 (2013) (review of the literature linking stigma and health outcomes); Kelly E. Moore & June P. Tangney, *Managing the Concealable Stigma of Criminal Justice System Involvement: A Longitudinal Examination of Anticipated Stigma, Social Withdrawal, and Post-Release Adjustment: Managing the Concealable Stigma*, 73 J. OF SOC. ISSUES 322 (2017) (analysis of survey data from 197 men in jail 2008-2010); Nicole Redmond et al., *Perceived Discrimination Based on Criminal Record in Healthcare Settings and Self-Reported Health Status among Formerly Incarcerated Individuals*, 97 J URBAN HEALTH 105 (2020) (surveys with 743 individuals from a clinic network released from 2013-2015); Ann Elizabeth Stanton, *Overwhelmed: a Qualitative Study of the Mental Health Experiences of Mothers of Minor Children After Release from Jail and Prison* (May 2018) (Ph. D. dissertation, University of Wisconsin Milwaukee), <https://dc.uwm.edu/cgi/viewcontent.cgi?article=2930&context=etd> , (survey of formerly incarcerated females who were mothers of minor children in urban Wisconsin in 2017 (n=25)).

²⁰² Hatzenbuehler, Phelan, and Link, *supra* note 202.

²⁰³ Ingrid A. Binswanger et al., *Gender and Risk Behaviors for HIV and Sexually Transmitted Infections Among Recently Released Inmates: A Prospective Cohort Study*, 26 AIDS CARE 872 (2014) (study of 200 male and female individuals released from Washington prisons in 2010-2012); Andrea K. Knittel et al., *Incarceration and Number of Sexual Partners After Incarceration Among Vulnerable US Women, 2007–2017*, 110 AM. J. PUB. HEALTH S100 (2020) (data from 3,180 women in 9 US states from 2007-2017).

up the majority of the more than 2 million people incarcerated in the United States.

It is women who have held families together, paid bails, raised children, sent commissary money, and provided housing and reentry services when local, state and federal policies have ignored their needs. These women have intimate knowledge of how incarceration affects their communities. And yet in criminal justice debates, their experiences and expertise are too often ignored.²⁰⁴

-Andrea James, founder and executive director of the National Council for Incarcerated & Formerly Incarcerated Women and Girls

The removal of a person from their family and community has deep and long-lasting impacts on those they leave behind, with emotional, financial, and health impacts rippling beyond the immediate family and through the community. Families with incarcerated loved ones experience stigma, shame, and isolation. Families also shoulder an enormous financial burden when supporting a loved one through the legal process, and during and after incarceration. Women, especially Black, Hispanic/Latinx, and Indigenous women, are disproportionately impacted by these emotional and financial burdens. The cumulative impact on communities disproportionately impacted by mass incarceration contributes to the cyclical reproduction of poverty, and the mass removal and disenfranchisement in these communities lessens the formal political power and apportioning of resources.

A. The children of incarcerated parents

The consequences of parental incarceration extend far beyond the consequences to the parent. Parental incarceration has been identified as an Adverse Childhood Experience which can result in very serious, lifelong health, educational, employment, and social consequences for the children of incarcerated parents without proper support and mitigation of the trauma they endure.

²⁰⁴ Andrea James, *Women and girls must be at the center of reimagining safety*, WASH. POST, March 16, 2021, https://www.washingtonpost.com/opinions/2021/03/16/women-girls-must-be-center-reimagining-safety/?fbclid=IwAR1PwUmx8h5pPYD_GOTBqImLFLDAPPQw4AryRiE6FB9G-sq7S6-VGCbodE8.

An estimated five million U.S. children have been directly impacted by the incarceration of a parent.²⁰⁵ Incarceration of a parent has impacts on children including reduced material resources and resulting consequences like food and housing insecurity, and emotional disruption leading to mental health challenges and disruptions to cognitive and social-emotional development. When the primary caregiver for a child is incarcerated, they face the risk of having their parental rights terminated, which impacts the child as well as the parent.

For the most part, Washington is not even tracking the number of children of incarcerated parents in a comprehensive way, let alone providing them with the supports they need during this traumatic period of their childhoods. One way of mitigating the trauma of incarceration and building resiliency is to facilitate contact and visitation between incarcerated parents and their children, when appropriate. Unfortunately, even before the restrictions mandated by the COVID-19 pandemic, no county jails in Washington consistently provided for in-person visitation between incarcerated parents and their children. For over a year, as of this writing, no prisons or jails in Washington allow for the children of incarcerated parents to visit their parents in person due to COVID-19.

B. Financial consequences

Incarceration of parents, guardians, or others who provide household financial support creates a financial disruption that can deeply impact daily life. A study of family member incarceration from 14 U.S. states (including Washington) found that two in three families surveyed reported “difficulty meeting basic needs as a result of their loved one’s conviction and incarceration.”²⁰⁶ Mothers with incarcerated male partners may take on longer work hours or additional jobs to fill the income gap in their household.²⁰⁷ The reduction in household resources can lead to poverty, food insecurity, and housing instability for families and children.²⁰⁸ One study found that paternal

²⁰⁵ Annie E. Casey Found., *supra* note 101.

²⁰⁶ SANETA DEVUONO-POWELL ET AL., ELLA BAKER CENTER FOR HUMAN RIGHTS, WHO PAYS? THE TRUE COST OF INCARCERATION ON FAMILIES (Sept. 2015), <https://www.ellabakercenter.org/sites/default/files/downloads/who-pays.pdf>.

²⁰⁷ Angela Bruns, *The Third Shift: Multiple Job Holding and the Incarceration of Women’s Partners*, 80 SOC. SCI. RSCH. 202 (2019) (examination of nationally representative data found that partner incarceration is associated with women working multiple jobs); Clayton et al., *supra* note 2.

²⁰⁸ Elizabeth J. Gifford, *How Incarceration Affects the Health of Communities and Families*, 80 N. C. MED. J. 372 (2019).

incarceration increased the odds of child homelessness by 95%, with a stronger effect for Black children than white and Latinx children.²⁰⁹ After incarceration, when the formerly incarcerated individual rejoins their family, lower employment rates and wages, and legal barriers to accessing public services, can impact the entire family.²¹⁰ Housing restrictions can prevent families from reuniting: for example, as discussed above, if one family member is barred from living in public housing due to a drug conviction, they may be unable to join the rest of their family living there and can even be barred from visiting.²¹¹ Families wanting to reunite and live together may experience the same barriers to access faced by their formerly incarcerated loved one.²¹²

There are additional financial burdens associated with the incarceration of a family member or loved one. Those burdens are often carried by female family members.²¹³ Families may contribute financially to finding legal representation or securing bail release from jail while awaiting trial.²¹⁴ They often send money to the incarcerated person for costs incurred in prison, like hygiene and food items from the commissary and healthcare costs.²¹⁵ Then there are costs associated with maintaining communication, such as sending mail and packages; making phone and video calls; obtaining transportation; and paying fees to cover background checks for prison visits.²¹⁶ As noted above, Washington DOC's video visitation system is a welcome tool to expand communication access for families and loved ones, but at a high price.²¹⁷ Washington State's Office of the Corrections Ombuds conducted a brief survey of families of incarcerated people and found that approximately half of respondents reported spending \$5,000 a year or more to

²⁰⁹ Christopher Wildeman, *Parental Incarceration, Child Homelessness, and the Invisible Consequences of Mass Imprisonment*, 651 ANN.OF THE AM. ACAD. OF POL. AND SOC. SCI. 74 (2014) (examination of nationally representative data, sample size n=3,774).

²¹⁰ Clayton et al., *supra* note 2.

²¹¹ Annie E. Casey Found., *supra* note 101.

²¹² *Id.*

²¹³ See "Chapter 15: The Gendered Impact of Legal Financial Obligations"

²¹⁴ Clayton et al., *supra* note 2.

²¹⁵ *Id.*; deVuono-Powell et al., *supra* note 206; *Survey of Families of Incarcerated Individuals*, OFF. OF THE CORR. OMBUDS (Nov. 20, 2019),

https://oco.wa.gov/sites/default/files/Results%20from%20Costs%20to%20Families%20Survey_0.pdf.

²¹⁶ DEVELOPMENT SERVICES GROUP, INC., OFF. OF JUV. JUST. AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUST., LITERATURE REVIEW: YOUTHS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES IN THE JUVENILE JUSTICE SYSTEM (2017),

<https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/intellectual-developmental-disabilities.pdf>; Digard et al., *supra* note 149; Off. of the Corr. Ombuds., *supra* note 215.

²¹⁷ Pedersen, *supra* note 152.

support their incarcerated loved one, and one in five respondents reported spending \$10,000 a year or more.²¹⁸ Top costs included video visitation, packages and mail, costs of travel to visit, commissary deposits, and phone calls.²¹⁹ Given that incarcerated people disproportionately come from families living in poverty, these expenses are particularly onerous. While the survey doesn't explicitly address the gendered impact of these costs, the many included quotes and stories from the 123 submitted responses clearly show that it is the wives, girlfriends, and mothers of the incarcerated individuals that are carrying this burden.²²⁰

From one multi-state survey, more than a third of families "reported going into debt to pay for phone calls or visitation."²²¹ And the expenses don't end when the sentence does. Many families know that their loved one will continue to rely on them for financial support after release from prison, and worry about their ability to provide it. Depending on the conditions of the person's release, their family may be called on to provide housing and basic needs, pay for required treatment programs, support with legal financial obligations, and more. As one family member of an incarcerated person in Washington State noted, "I believe that my participation in his life and my spending costs during his incarceration on basic necessities and gifts of love will positively impact his reentry. However, the more I spend now may mean less than [sic] I can spend to help him when he releases."²²² Anecdotally, community organizations and advocates note that women, particularly Black women, shoulder a disproportionate share of this burden: "Women are the informal re-entry system of this country."²²³

C. Health consequences

Children and family members of incarcerated loved ones experience emotional pain, trauma, and stress, which can result in poor physical and behavioral health outcomes. Children of incarcerated parents suffer not only the pain of separation but also the stigma and shame associated with

²¹⁸ Off.of the Corr. Ombuds, *supra* note 215.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ deVuono-Powell et al., *supra* note 206.

²²² Off.of the Corr. Ombuds, *supra* note 215.

²²³ Clayton et al., *supra* note 2, at 54. For more, see "Chapter 15: The Gendered Impact of Legal Financial Obligations."

incarceration.²²⁴ The resulting traumatic stress can lead to behavioral disturbances and disruptions to cognitive development, with long-term mental health problems.²²⁵ These, in turn, can lead to behaviors that are associated with poor physical health outcomes, such as risky health behaviors,²²⁶ as well as poor educational outcomes.²²⁷ When a child's primary parent or caregiver is incarcerated, children face more extreme disruption to their lives, including changing residence, changing schools, and even removal from the home into the child welfare system.²²⁸ Additionally, researchers have found evidence for what they call "intergenerational transmission" of criminal justice involvement. To be clear, this does not in any way suggest genetic transmission of behaviors leading to criminal justice involvement; rather, it posits that parental incarceration is so disruptive to children's development that the trauma may lead to coping behaviors that put them at risk of contact with the criminal justice system as they grow.²²⁹ There is a significant body of research assessing the consequences of mass incarceration of Black, Indigenous, and men of color, particularly Black men, on remaining female heads of household. Women with incarcerated male partners experience depression and anxiety from separation and increased burdens of childcare and financial obligations.²³⁰ They may feel stigmatized and isolated from social support.²³¹ Emotional and mental health challenges such as chronic toxic stress are associated with poor cardiovascular health and other physical health impacts.²³² And

²²⁴ Gifford, *supra* note 208.

²²⁵ Ashley Provencher & James M. Conway, *Health Effects of Family Member Incarceration in the United States: A Meta-Analysis and Cost Study*, 103 CHILD. AND YOUTH SERVICES REV. 87 (2019) (meta-analysis of the research concluded that children with an incarcerated family member have mental health or behavioral problems at rates twice as high and engage in risky health behavior at rates three times as high as their peers).

²²⁶ *Id.*; Tyson Whitten et al., *Parental Offending and Child Physical Health, Mental Health, and Drug Use Outcomes: A Systematic Literature Review*, 28 J. CHILD. FAM. STUD. 1155 (2019).

²²⁷ Christopher Wildeman, Alyssa W Goldman & Kristin Turney, *Parental Incarceration and Child Health in the United States*, 40 EPIDEMIOLOGIC REV. 146, 150 (2018) (systematic review of 62 studies finding "uniform evidence that paternal incarceration imperils children's educational experiences").

²²⁸ Kramer and McDonnell, *supra* note 155.

²²⁹ Sytske Besemer et al., *A Systematic Review and Meta-Analysis of the Intergenerational Transmission of Criminal Behavior*, 37 AGGRESSION AND VIOLENT BEHAV. 161(2017).

²³⁰ Terry-Ann Craigie, *Male Incarceration and Female Labor Market Outcomes*, FEMINIST ECON. (forthcoming 2021), <https://www.ssrn.com/abstract=3709551>; Evelyn J. Patterson, Ryan D. Talbert & Tony N. Brown, *Familial Incarceration, Social Role Combinations, and Mental Health Among African American Women*, 83 J. MARRIAGE FAM. 86 (2021).

²³¹ Clayton et al., *supra* note 2.

²³² *Id.*; Gifford, *supra* note 209; Hedwig Lee et al., *A Heavy Burden: The Cardiovascular Health Consequences of Having a Family Member Incarcerated*, 104 AM. J. PUB. HEALTH 421 (2014).

dealing with extreme stress may lead to coping behaviors that have negative physical health impacts, such as substance use.²³³ In short, family member incarceration “has profound effects on the health and well-being of the adult women left behind... (and) has almost certainly exacerbated racial health disparities in the United States.”²³⁴ The impact of female parental incarceration on children and families has found mixed evidence.

Because incarcerated women are more likely than their male counterparts to have been primary caregivers for their children prior to incarceration, children with incarcerated mothers are more likely to pass into the care of family members or enter the child welfare system. From a research standpoint, children with welfare system involvement are less likely to be represented in study sample pools, and so studies of children with incarcerated parents may not fully represent experiences of maternal incarceration.²³⁵ The 2010 Bureau of Justice Statistics Special Report found that more incarcerated mothers than incarcerated fathers reported a history of homelessness, abuse, and mental health problems prior to incarceration.²³⁶ Such conditions also impact children living with mothers under these circumstances.²³⁷

D. Community consequences

The accumulation and concentration of these consequences in already under-resourced Black, Indigenous, and communities of color has exacerbated existing racial population health disparities. As one systematic review noted, “disparities between African-American and white infant mortality rates would have been 10% lower in the absence of mass incarceration.”²³⁸ Racial

²³³ Angela Bruns & Hedwig Lee, *Partner Incarceration and Women’s Substance Use*, 82 J. MARRIAGE FAM. 1178 (2020) (analyzing nationally representative data and finding a significant association between partner incarceration and drug use for Black women); Hedwig Lee & Christopher Wildeman, *Things Fall Apart: Health Consequences of Mass Imprisonment for African American Women*, 40 REV. OF BLACK POL. ECON. 39 (2013) (chronic stress can prompt individuals to adopt risky health behaviors as a coping mechanism).

²³⁴ Christopher Wildeman, Alyssa W. Goldman & Hedwig Lee, *Health Consequences of Family Member Incarceration for Adults in the Household*, 134 PUB. HEALTH REP. 15S (2019).

²³⁵ David S. Kirk & Sara Wakefield, *supra* note 5 (many of the studies examining the impacts of parental incarceration on children use data from the Fragile Families and Child Wellbeing Study, a longitudinal study representative of US cities of children born to unmarried mothers, but children entering the foster system are lost to follow up by these studies and therefore often not represented in the findings).

²³⁶ Glaze & Maruschak, *supra* note 16.

²³⁷ Jessica Dahlgren, *Maternal Primary Caregiver Criminal Justice Involvement: The Importance of Understanding Child Outcomes* (Oct. 2, 2020) (Ph.D. dissertation, Oregon State University), https://ir.library.oregonstate.edu/concern/graduate_thesis_or_dissertations/c247f052w.

²³⁸ *Id.* at 152.

disparities in the rates of infectious diseases (such as HIV) and chronic diseases (such as cardiovascular disease) have also been exacerbated by mass incarceration.²³⁹ Even when controlling for factors like poverty, healthcare access, and more, researchers have found associations between high incarceration rates and high rates of poor health, disease, and disease leading to death in the community at the county level,²⁴⁰ and associations between high incarceration rates and high rates of mental health problems in the community at the state level.²⁴¹ Mass incarceration has changed how resources are allocated across the U.S.. People incarcerated in state prisons are classified as residents of their correctional facility rather than their pre-incarceration residence; since prisons are commonly located in rural areas, census counts overestimate the functional residency of rural, majority white areas at the expense of urban areas that are made up of majority Black, Indigenous, and communities of color. This deprives Black, Indigenous, and communities of color of federal money and political representation to which they would otherwise be entitled.²⁴² Finally, mass incarceration interrupts a community’s “collective efficacy” and social capital by disrupting social connections, removing resources, disengaging residents from the political system, and concentrating social and economic disadvantage.²⁴³

V. Recommendations

- The Washington State Legislature should, consistent with RCW 72.09.495, RCW 74.04.800, RCW 43.216.060, and RCW 43.63A.068, receive data from DOC, the DCYF, Department of Early Learning, Office of Superintendent of Public Instruction, and

²³⁹ Joëlla W. Adams et al., *Potential Drivers of HIV Acquisition in African-American Women Related to Mass Incarceration: An Agent-Based Modelling Study*, 18 BMC PUB. HEALTH 1387 (2018); Wildeman, Goldman, and Lee, *supra* note 239.

²⁴⁰ Robert R. Weidner & Jennifer Schultz, *Examining the Relationship Between U.S. Incarceration Rates and Population Health at the County Level*, 9 SSM - POPULATION HEALTH 100466 (2019).

²⁴¹ Edgemon, *supra* note 150.

²⁴² Acker *et al.*, *supra* note 141.

²⁴³ Gipsy Escobar & Sema Taheri, *Incarceration Weakens a Community’s Immune System: Mass Incarceration and COVID-19 Cases in Milwaukee*, PRISON POL. INITIATIVE (June 2, 2020), https://www.prisonpolicy.org/scans/measuresforjustice/Incarceration_Weakens_Community_Immune_System_Preliminary_Results.pdf.

Department of Commerce on how many children in Washington are impacted by parental or primary caregiver's incarceration, as well as data on available programs and resources to support the specific needs of the children of incarcerated parents, so that Washington has a comprehensive understanding of the needs, available support, and identified gaps in data collection and services.

- The Washington State Legislature may want to consider ways to equitably increase access to and eligibility for Parenting Sentencing Alternatives to prison confinement, so more parents can serve more of their sentences in the community with their children. Specific consideration should be given to any racial, ethnic, or gender disparities within the existing Family and Offender Sentencing Alternative (FOSA) and the Community Parenting Alternative (CPA) programs.
- Stakeholders, in consultation with experts on child psychology and on parent-child visitation in incarceration settings, should convene county jail leadership across Washington State to develop guidance on meaningful in-person visitation for parents and children in those settings.
- Stakeholders should study the causes of, and offer solutions for, the lengthy delays in establishing consistent phone calls and visits between dependency-involved parents serving DOC sentences and their children, so these families can maintain continuous, uninterrupted contact, even if parents are transferred to different facilities.
- Stakeholders should study ways to make it less expensive for incarcerated individuals to maintain contact with their families and support systems. Specifically, consider ways to: reduce or eliminate the cost of emails; reduce or eliminate the cost of video conferences; and, reduce or eliminate the cost of phone calls.
- To provide incarcerated parents with meaningful court access, stakeholders should determine: (1) whether to increase the response deadline beyond 20 days for incarcerated parents in family law matters, and (2) how to ensure that these parents can access mandatory family law forms and legal information.

- The Washington State Legislature, donors, and other funders should consider allocating funding to indigent incarcerated parents for access to legal services, including representation in their family law matters involving minor children.
- Incarcerated parents who are ordered into treatment by dependency and family law courts should have access to such treatment while incarcerated. DOC should update its eligibility requirements for such treatment services to prioritize participation by these parents within a timeline that allows them to comply with such civil court orders relating to their children. DOC should also tell the court when a parent’s failure to participate in ordered treatment is due to lack of DOC resources, rather than the parent’s unwillingness to comply.
- Judicial officers should be trained on the social and emotional needs of children of incarcerated parents. This would equip judicial officers hearing dependency and family law cases to craft visitation orders consistent with best practices for facilitating the resilience of children of incarcerated parents.