

*BEHIND BARS:*  
THE INCREASED INCARCERATION OF WOMEN  
AND GIRLS OF COLOR



WEDNESDAY, JUNE 2ND, 2021  
8:30 A.M.—1:00 P.M.

# “Behind Bars”: The Increased Incarceration of Women and Girls of Color

June 2<sup>nd</sup>, 2021, 8:30 a.m. – 1:00 p.m.

<https://www.tvw.org/watch/?eventID=2021061001>

- I. **8:30-8:50 a.m. (20 min.): Introduction** from Justice Mary Yu, Co-chair of the *Minority and Justice Commission*, and Justice Sheryl Gordon-McCloud, Co-chair of the *Gender and Justice Commission*.
- II. **8:50 – 9:35 (45 min.): The Status & Numbers of Incarcerated Women and Girls in Washington, Hosted by Judge Maureen McKee and Dalia Pedro Trujillo.** Detailing the scope and scale of racial inequality for women’s and girls’ incarceration in Washington State. The panel will also explore the uniquely disparate experiences of LGBTQIA persons in Washington women’s incarceration facilities.

**Panelists:** Dr. Tatiana Masters; Dr. Amanda Gilman; Riley Hewko; Danny Waxwing; and Renee Permenter.

**BREAK: 9:35 – 9:40 (5 minutes)**

- III. **9:40 – 10:40 (60 min.): Pathways to Incarceration: Trauma, Structural Inequity, Policies and Policing, Hosted by Chanel Rhymes and Jaime Hawk.** Exploring the causal forces of racial disproportionality in women’s incarceration. This panel will detail structural, cultural, and legal forces that contribute to overrepresentation of women and girls of color in Washington incarceration facilities.

**Panelists:** Andrea James; Dr. Stephanie Covington; and Dr. Andrew Peterson.

**BREAK: 10:40 – 10:50 (10 minutes)**

- IV. **10:50 – 11:50 (60 min.): Conditions and Consequences of Conviction, Hosted by Elizabeth Hendren and Marla Zink and Moderated by Dr. Gilda Sheppard.** A roundtable discussion on the conditions of confinement faced in Washington women’s incarceration facilities, and the collateral consequences of incarceration. This panel will detail the presence and absence of productive programming and trauma-informed procedures inside facilities, and the effects felt by families, communities, and local economies when women and girls are increasingly incarcerated. The panel will also detail the challenges women must navigate upon reentry.

**Panelists:** Kimberly Mays; Sabrina Kendall; Cheryl Lidel; Renee Permenter; Kristina Peterson; and Theresa Power-Drutis.

**BREAK: 11:50 – 12:00 (10 minutes)**

- V. **12:00 – 1:00 p.m. (60 min.) Keynote Address:** Dr. Angela Y. Davis on the Increased Incarceration of Women and Girls of Color.



# 2021 Supreme Court Symposium Table of Resources:

## The Status and Numbers of Incarcerated Women and Girls in Washington State (Page 1)

### Washington Adult and Juvenile Detention Disproportionality

#### *Included in Book:*

- I. Report, WA State Gender & Justice Comm'n, Incarcerated Women in Washington State: Multi-Year Analysis of Felony Data, (Oct. 2020), (pp. 2-34).
- II. Center for Children & Youth Justice, Gender Responsive Juvenile Justice: A Girls Court Literature Review Update (June 2018), <https://www.ccyj.org/wp-content/uploads/2019/01/CCYJ.GirlsCourt.LitReview.6-30-18.pdf>, (Excerpted Findings pp. 35-37).
- III. Report, WA State Minority & Justice Comm'n, Girls of Color in Juvenile Detention in Washington State (Dec. 2020), <https://www.courts.wa.gov/subsite/mjc/docs/MJC%20Special%20Detention%20Report%202020.pdf>, (Attached Report).

#### *Additional Resources:*

- IV. Washington State Center for Court Research, Washington State Juvenile Detention: A Snapshot of the Use of Detention During the COVID-19 Crisis (2020), [https://www.courts.wa.gov/subsite/wscrc/docs/WA%20State%20Juvenile%20Detention%20COVID\\_19%20Snapshot.pdf](https://www.courts.wa.gov/subsite/wscrc/docs/WA%20State%20Juvenile%20Detention%20COVID_19%20Snapshot.pdf).
- V. Prison Policy Initiative, Women's Mass Incarceration: The Whole Pie 2019 (Oct. 29, 2019), <https://www.prisonpolicy.org/reports/pie2019women.html>.
- VI. Vera Institute, Overlooked: Women and Jails in an Era of Reform (2016), <https://www.vera.org/downloads/publications/overlooked-women-and-jails-report-updated.pdf>.

### Sexual Orientation, Gender Identity, and Trans

#### *Included in Book:*

- VII. Survey, WA State Office of the Corrections Ombuds, Women Incarcerated in the Washington Department of Corrections (Feb. 23, 2020), [https://oco.wa.gov/sites/default/files/Women%20Survey%20with%20DOC%20Response%20Final\\_0.pdf#:~:text=The%20survey%20undertaken%20by%20the%20Office%20of%20the,and%20create%20a%20dialogue%20for%20development%20of%20solutions](https://oco.wa.gov/sites/default/files/Women%20Survey%20with%20DOC%20Response%20Final_0.pdf#:~:text=The%20survey%20undertaken%20by%20the%20Office%20of%20the,and%20create%20a%20dialogue%20for%20development%20of%20solutions), (Excerpted Summary Findings pp. 38-49).
- VIII. Report, Black & Pink, Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey (Oct. 2015), <https://www.issuelab.org/resources/23129/23129.pdf>, (Excerpted Summary Recommendations pp. 50-59).

#### *Additional Resources:*

- IX. Report, Ctr. for Am. Progress & Movement Advancement Project, Unjust: How the Broken Criminal Justice System Fails LGBT People of Color (Aug. 2016), [https://www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf?source=post\\_page-----](https://www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf?source=post_page-----).



## Pathways to Incarceration: Trauma, Inequality, Policies, and Policing (Page 60)

### Trauma: Historical, Cultural, and Legal

#### Included in Book:

- I. Thanos Karatzias, et al., *Multiple Traumatic Experiences, Post-Traumatic Stress Disorder and Offending Behaviour in Female Prisoners*, CRIMINAL BEHAVIOR AND MENTAL HEALTH 1 (2017), <https://www.napier.ac.uk/~media/worktribe/output-852002/multiple-traumatic-experiences-posttraumatic-stress-disorder-ptsd-and-offending.pdf>, (Excerpted Results Summary pp. 61-62).
- II. Nina Portia Messina & Mitchell Schepps, *Opening the Proverbial Can of Worms on Trauma-Specific Treatment in Prison: The Association of Adverse Childhood Experiences to Treatment Outcomes*, CLIN. PSYCHOL. PSYCHOTHER. 1 (Feb. 2021), [https://www.stephaniecovington.com/site/assets/files/1790/final\\_paper\\_can\\_of\\_worms\\_2021.pdf](https://www.stephaniecovington.com/site/assets/files/1790/final_paper_can_of_worms_2021.pdf), (Excerpted Abstract p. 63).
- III. Georgetown Law Center on Poverty and Inequality, *The Sexual Abuse to Prison Pipeline: The Girls' Story* (2015), <https://www.legalbluebook.com/bluebook/v21/quick-style-guide>, (Excerpted Summary pp. 64-67).
- IV. Stephanie Covington, *The Relational Theory of Women's Psychological Development: Implications for Criminal Justice* in FEMALE OFFENDERS: CRITICAL PERSPECTIVES AND EFFECTIVE INTERVENTIONS (2d. ed. 2007), <https://www.centerforgenderandjustice.org/assets/files/FinalTheRelationalTheorychapter2007.pdf>, (pp. 68-92).
- V. Dorothy E. Roberts, *Democratizing Criminal Law as an Abolitionist Project*, 111 NW. U. L. REV. 1597 (2017), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1300&context=nulr>, (pp. 93-103).

#### Additional Resources:

- VI. Nat'l Online Res. Ctr. On Violence Against Women, *Women's Experiences of Abuse as a Risk Factor for Incarceration: A Research Update* (July 2015), [https://vawnet.org/sites/default/files/materials/files/2016-09/AR\\_IncarcerationUpdate.pdf](https://vawnet.org/sites/default/files/materials/files/2016-09/AR_IncarcerationUpdate.pdf).
- VII. Beth Richie, *Black Women, Male Violence, and the Buildup of a Prison Nation* in ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION 99 (2012).
- VIII. Emma Russell and Bree Carlton, *Pathways, Race and Gender Responsive Reform: Through an Abolitionist Lens*, 17 THEORETICAL CRIMINOLOGY 474 (2013).

### Policies and Policing: Bias and Adulthood

#### Included in Book:

- IX. Savanna Jones, *Ending Cash Bail is a Women's Rights Issue*, 22 GEO. J. GENDER & L. (2020), [https://www.law.georgetown.edu/gender-journal/wp-content/uploads/sites/20/2020/11/Final\\_Savanna-Jones\\_Cash-Bail\\_Issue-1.pdf](https://www.law.georgetown.edu/gender-journal/wp-content/uploads/sites/20/2020/11/Final_Savanna-Jones_Cash-Bail_Issue-1.pdf), (pp. 104-110).

#### Additional Resources:

- X. Prison Policy Initiative, *Policing Women: Race and Gender Disparities in Police Stops, Searches, and Use of Force* (May 14, 2019), <https://www.prisonpolicy.org/blog/2019/05/14/policingwomen/>.





## Conditions and Consequences of Incarceration (Page 111)

### Challenges of Confinement

#### Included in Book:

- I. Briefing Report, 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>, (Excerpted Summary Findings (pp. 112-128).
- II. Dean Spade, *The Only Way to End Radicalized Gender Violence in Prisons is to End Prisons*, 3 CAL. L.R. CIRCUIT 184 (2012), <http://www.californialawreview.org/wp-content/uploads/2014/10/The-Only-Way-to-End-Racialized-Gender-Violence-in-Prisons-is-to-E.pdf>, (pp. 129-141).

#### Additional Resources:

- III. Andrea James, *Ending the Incarceration of Women and Girls*, 128 YALE L.J. FORUM 772 (2019), <https://www.yalelawjournal.org/forum/ending-the-incarceration-of-women-and-girls>.
- IV. Gabriel Arkles, *Prison Rape Elimination Act Litigation and the Perpetuation of Sexual Harm*, 17 NYU J. OF LEG. AND PUB. POL. 801 (2014), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2599544](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2599544).
- V. Beth Richie, *The Problem of Male Violence Against Black Women* in ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION 23 (2012).
- VI. Wendy S. Heipt, *Girl's Court: A Gender Responsive Juvenile Court Alternative*, 13 SEATTLE J. SOC. JUST. 803 (2014), <https://digitalcommons.law.seattleu.edu/sjsj/vol13/iss3/10/>.
- VII. Cassandra Shaylor, *Neither Kind nor Gentle: The Perils of Gender Responsive Justice* in THE VIOLENCE OF INCARCERATION 145 (Phil Scraton and Jude McCulloch, eds., 2009), [https://www.researchgate.net/publication/283716121\\_The\\_Violence\\_of\\_Incarceration](https://www.researchgate.net/publication/283716121_The_Violence_of_Incarceration).

### Effects on Family Unit, Community, and Economy

#### Included in Book:

- VIII. Survey, Bureau of Justice Statistics, *Parents in Prison and their Minor Children*, (2016), <https://www.bjs.gov/content/pub/pdf/pptmcspi16st.pdf>, (Excerpted Highlights pp. 142-143).

#### Additional Resources:

- IX. Report, Bureau of Justice Statistics, *Parents in Prison and their Minor Children*, (Mar. 2010), <https://www.bjs.gov/content/pub/pdf/pptmc.pdf>.
- X. Andrea James, *2 Years in Prison Inspired Me to Fight for Justice Reform*, TIME (Sept. 22, 2017), <https://time.com/4948746/prison-sentence-justice-reform/>.
- XI. Cynthia Beatty Seymour, *Outsiders Within: Writing on Transracial Adoption* in PARENTS IN PRISON: CHILDREN IN CRISIS: AN ISSUE BRIEF (1997).

### Reentry

#### Included in Book:

- XII. Topeka K. Sam, *It's Time to Overhaul America's Broken Probation and Parole Systems*, VOICES (2017), <https://www.opensocietyfoundations.org/voices/it-s-time-overhaul-america-s-broken-probation-and-parole-systems>, (pp. 144-146).

#### Additional Resources:

- XIII. Jacqueline B. Helfgott & Elaine Gunnison, *Gender-Responsive Reentry Services for Women Leaving Prison: The IF Project's Seattle Women's Reentry Initiative*, CORRECTIONS POL., PRACT. AND RES. (2020), [https://static1.squarespace.com/static/5f63989af47e751ee6b288d3/t/60415b990e0f38002c954684/1614896026518/Helfgott+and+Gunnison+2020\\_Gender+Responsive+Reentry+Services+for+Women+Leaving+Prison.pdf](https://static1.squarespace.com/static/5f63989af47e751ee6b288d3/t/60415b990e0f38002c954684/1614896026518/Helfgott+and+Gunnison+2020_Gender+Responsive+Reentry+Services+for+Women+Leaving+Prison.pdf).

## ***2021 Supreme Court Symposium Panelist Biographies:***

### **Tatiana Masters, PhD, MSW, *UW School of Social Work***

Dr. Tatiana Masters is a social scientist who uses her quantitative and qualitative data analysis skills to produce research that influences decisions and makes an impact. Her current work with Evaluation Specialists supports projects including Washington State's CDC-funded Rape Prevention Education program. Her 15+ years of research experience spans fields of gender, sexual and reproductive health and rights, and the intersection of gender equity and health, particularly gender-based and sexual violence prevention.

### **Amanda Gilman, PhD, MSW, *Washington State Center for Court Research***

Dr. Amanda Gilman is a Senior Research Associate with the Washington State Center for Court Research (WSCCR) at the Administrative Office of the Courts (AOC). Dr. Gilman's research interests include juvenile incarceration and re-entry, status offenders in the juvenile justice system, and evidencebased programming. She previously worked as a Senior Research Associate at the National Gang Center and a Pre-Doctoral Research Associate at the University of Washington Social Development Research Group. Her community practice experience includes working as a Project Assistant at the San Bernardino, California Mayor's Office focusing on juvenile justice reform and community gang prevention. Dr. Gilman received her PhD in Social Welfare from the University of Washington, and holds a BA in Sociology and a Masters in Social Work.

### **Riley Hewko, *Transgender Law Center***

Riley Hewko (they/them) is a nonbinary, transqueer, Latinx lawyer and activist. In 2019, they helped launch a prison oversight agency at the Washington State Governor's Office of the Corrections Ombuds as the Gender Equity and Vulnerable Populations Specialist, supporting transgender, gendernonconforming (TGNC), and intersex individuals and those who identify as LGBTQ (Lesbian, Gay, Bisexual, Queer) in Washington State prisons. They previously founded the Incarcerated Parents Project at the Washington Defenders Association in Seattle, WA and served as an Equal Justice Works fellow at Legal Voice, an If/When/How fellow at the National Women's Health Network, and a California Changelawyers fellow at the Transgender Law Center. They are currently Senior Legal Counsel at MoveOn and on the board of Beyond Binary Legal. They are a 2011 Graduate of the University of Washington School of Law and Gates Public Law Scholar.

### **Danny Waxwing, *Disability Rights Washington***

Danny Waxwing (he/him) is an attorney at Disability Rights Washington, where he leads the Trans in Prison (TIP) Justice Project. A graduate of the University of Washington School of Law, he was a Gates Public Service Law Scholar and focused his studies at the intersections of disability, gender, and racial justice. He entered legal advocacy with over a decade of experience in community projects working for reproductive justice, queer and trans liberation, and

transformative justice, and he continues to work closely with community organizations that focus on building collective wellness and relationship-based responses to harm.

**Renee Permenter, *Advocate for the Incarcerated***

Renee Permenter is a trans female contract consultant for DRW-TIPP, warehouse supervisor, graduate of business management, Member of Toastmasters International, and lover of all things positive. She loves to try new things and focuses on communication. She released from prison on July 7th after serving 10 years 10 months on a 10 year 6 month sentence. She desires nothing more than to help others transition in life, whether from prison to the free world or from one lifestyle to another. She believes all things can be understood if one simply takes the time to communicate.

**Andrea James, JD, *National Council for Incarcerated and Formerly Incarcerated Women and Girls***

Andrea James, JD, is the Founder and Executive Director of The National Council for Incarcerated and Formerly Incarcerated Women and Girls, Founder of Families for Justice as Healing, author of *Upper Bunkies Unite: And Other Thoughts on the Politics of Mass Incarceration*, a 2015 Soros Justice Fellow and. Recipient of the 2016 Robert F. Kennedy Human Rights Award. As a former criminal defense attorney and a formerly incarcerated woman, Andrea shares her personal and professional experiences to raise awareness of the effects of incarcerating women on themselves, their children and communities. Her work is focused on ending incarceration of women and girls and contributing to the shift from a criminal legal system focused on police and prisons, to a system led by directly affected people from within their neighborhoods and based on individual and community accountability.

**Stephanie Covington, PhD, *Center for Gender and Justice***

Stephanie S. Covington, Ph.D., LCSW, is an internationally recognized clinician, author, lecturer, and organizational consultant. With over thirty-five years of experience, she is noted for her pioneering work in the design and implementation of gender-responsive and trauma-informed treatment services in public, private, and institutional settings. She is the author of numerous books, as well as ten research-based, manualized treatment curricula, including: *Beyond Trauma: A Healing Journey for Women*, *Helping Women Recover: A Program for Treating Addiction*, and *Voices: A Program for Girls*. She is the co-author of *Helping Men Recover*. For the past twenty-five years, Dr. Covington has worked to help institutions and programs in the criminal justice system develop effective gender-responsive and trauma-informed services. She has provided training and consulting services to the United Nations Office on Drugs and Crime; the Ministries of Justice in England, Scotland, and Switzerland; the Correctional Service of Canada; and, in the U.S., the Federal Bureau of Prisons, the National Institute of Corrections, and many state and local jurisdictions. She has conducted seminars for behavioral health professionals, community organizations, criminal justice professionals, and

recovery groups in the United States, Canada, the United Kingdom, Mexico, Europe, Africa, Iceland, Brazil, and New Zealand. In addition, she helped to design women's services at the Betty Ford Center and was the featured therapist on the Oprah Winfrey Network (OWN) TV show entitled *Breaking Down the Bars*. Educated at Columbia University and the Union Institute, she is the co-director of the Institute for Relational Development and the Center for Gender & Justice located in La Jolla, California.

**Andrew Peterson, PhD, MS, *Washington State Center for Court Research***

Andrew Peterson has a B.A. from the University of Michigan, a M.S. in Criminal Justice Administration from San Diego State University, and a PhD. in Criminology, Law & Society from the University of California, Irvine. He has been a Senior Research Associate for the Washington State Center for Court Research for the past six years, working on issues of recidivism, racial/ethnic disproportionality, and pretrial reform. Prior to coming to the AOC, he worked as a Research Associate for the United States Sentencing Commission where he was involved in a variety of research projects, including: crack cocaine offender recidivism, child pornography offending and sentencing, and supervision revocations and modifications. Andrew has also published his own research on case studies of white collar crime.

**Gilda Sheppard, PhD, MSW, *Evergreen State College***

Gilda Sheppard is a Professor of Sociology, Cultural and Media studies at The Evergreen State College Tacoma Campus.

Sheppard is an award-winning filmmaker who has screened her documentaries throughout the United States, and internationally in Ghana, West Africa, and at the Festival Afrique 360 Cannes, France, and in Germany at the International Black Film Festival in Berlin. Sheppard is a 2017 Hedgebrook Fellow for documentary film and a 2019 recipient of an Artist Trust Fellowship. Sheppard currently completed her documentary *Since I Been Down* on education, organizing, transformative justice, and healing developed and led by incarcerated women and men in Washington State's prisons. *Since I Been Down* has been accepted at over 13 film festivals in USA and Canada and won the Gold Prize at the Social Justice Film Festival and recognized among "Best of the Fest" at DOC NYC.

For over a decade Sheppard has taught sociology courses in Washington State prisons. She is a sponsor for the Black Prisoners' Caucus, and is a co-founder and faculty for FEPPS- Freedom Education for Puget Sound an organization offering college credited courses at Washington Correctional Center for Women.

Sheppard is the author of several publication's including *Culturally Relevant Arts Education for Social Justice: A Way Out of No Way* (2013)

**Kimberly Mays, MPA, *Washington Office of Public Defense***



Kimberly Mays is a Contracted Social Worker with the Washington State Office of Public Defense (OPD), Parents Representation Program. Prior to her joining OPD in 2014, she was responsible for creating and leading the King County Superior Court, Parents for Parents (P4P) program for 5 years. Before moving on to OPD, Kimberly was able to help create a P4P Jail Project, helping incarcerated parents with an open dependency case effectively engage in their dependency case and use their voice to advocate for the needs of their children, while incarcerated. Kimberly helped P4P to become a Promising Practice and become the State Model through a bill, passed into law by Gov. Inslee in 2015, and to be replicated across Washington State by 2021.

Ms. Mays is a parent who has been incarcerated over 40 times and has accumulated 23 felony and 4 misdemeanor convictions, and who has turned her personal experience in the criminal justice and child welfare systems, as well as her formal education, into a passionate mission to help improve policies and practices that impact children and families involved in our social systems. Over the years, she has served on numerous committees to help improve the outcomes for families in child welfare, mental health, substance abuse treatment, corrections and re-entry systems. She currently serves on the Casey Family Programs' Strategic Innovations Team, Birth Parent Advisory Committee, Birth and Foster Parent Partnership Committee, and as a member of the WA State Children of the Incarcerated Coalition, to name a few. Most recently she has become a Licensed Foster Parent in the State of WA.

Ms. Mays received a B.A. and a Master's in Public Administration from The Evergreen State College.

### **Sabrina Kendall, *Black Prisoners' Caucus***

Sabrina Kendall is a 46-year-old Black mother of four adult children. She grew up in Puyallup, Washington, which was not culturally diverse in the 80's making it intolerable for her, causing her to run away. After running away, she fell into a "street" lifestyle which led to her introduction to the criminal justice system at a very early age. Ms. Kendall is currently serving a 27-year sentence for a serious violent crime. During her incarceration, she has chosen to take advantage of educational opportunities, earning a certificate in Horticulture Science. She is currently working on obtaining an AA degree in liberal arts through Freedom Education Project Puget Sound. Ms. Kendall believes higher education is the pathway that led to her confidence, leading to her becoming a contributing member both inside and outside of the prison walls. Ms. Kendall sits on the executive board of the Black Prisoners Caucus, serving as the Sargent of Arms in the WCCW chapter. Ms. Kendall has achieved Competent Communicator status in Toastmasters International and plans on using the skills she's learned to one day work with at risk youth.

### **Cheryl Lidel, *Black Prisoners' Caucus***

Cheryl Lidel is the former Vice President of The Black Prisoners' Caucus, WCCW Sector. She has been a leader at WCCW for over a decade. Ms. Lidel is known to her peers as "Mamma Cheryl" because she mothers the women at WCCW in every way.

It has long been a passion of Ms. Lidel's to be an example to other women at WCCW in an effort to show them that they don't have to stay the same; that there is great hope in the willingness to change. When she approaches an individual to deal with her brokenness she is listened to and taken seriously because most everyone knows what she went through to become whole. It is clear to her peers because of the way she lives her life that a sound mind is available to everyone who is willing to do the work and make the sacrifices.

While Cheryl has achieved much during her stay at the institution, her calling is to preach, teach and minister the word of God. If you enter the WCCW Chapel, you will often find that Cheryl Lidel is the Preacher. There are many nights that she falls into bed exhausted because while the work Cheryl does full-time for Correctional Industries Textile is extensive, to her, the real job is to keep the women of Purdy encouraged, built up and filled with hopeful expectancy for a changed life.

Ms. Lidel is 62-years-old and has lived in Seattle Washington all of her life. Upon her release, it is her fondest hope to be able to retrieve kids from the clutches of drug abuse, crime and incarceration through her own tragic story and the hard-won victory that is now her life. Cheryl is confident that young people can be taught to fight the hardships of life in the right way before they get into the system.

Ms. Lidel is a certified pet care provider, a certified dog trainer; she is an artist who draws and paints and she has written a children's book designed to encourage children to eat their vegetables entitled "The Legend of Lagostley."

### **Theresa Power-Drutis, *New Connections***

Theresa began serving as executive director of New Connections in 2010. New Connections supports women taking steps toward a successful transition with safe housing in a welcoming community, advocacy, networking, and resource coaching. Theresa received her PhD in Leadership Studies from Gonzaga University, MA in Education from Eastern Washington University, and Certificate of Carpentry from the Samuel Gompers Technical School at Seattle Central Community College. She was a founding member of the G Street Community, an intentional community in Tacoma that includes two small shelters operated by New Connections. Irma's Place is a shelter for women recently released from correctional facilities. Annie's Cottage is a 2-bedroom shelter for women with minor children.

Theresa's current affiliations include the Tacoma Pierce County Coalition to End Homelessness, Steering Committee; Pierce County Safe Sites for All, Team Member; League of Women Voters Tacoma/Pierce, Board Member; St. Leo Homelessness Workgroup, Trainer/Community

Organizer; Hilltop Madrinas (Neighborhood “godmothers” strengthening the commons); and Race & Pedagogy Institute, University of Puget Sound, Community Partner.

Theresa lives and works in the G Street Community in Tacoma's Hilltop neighborhood.

**Kristina Peterson, *Community Reentry Advocate***

Kristina N. Peterson is a mixed cultural Ohio Native who has resided in Washington State since 2012. In 2018 she was sentenced for drug possession and delivery offenses to 72 months in the Department of Corrections. While in prison Ms. Peterson participated in numerous classes, conferences and workshops to not only gain knowledge and insight for her own higher learning but blaze a trail for women, men and families struggling with addiction, surviving childhood trauma and becoming caught in the forever revolving door of the criminal justice system. At Mission Creek Correction Center for Women, Kristina participated in the Red Willow Wellbriety Program, a 12-step program rooted in Native American Cultural Teachings. Kristina attended an Entrepreneur certificate program through Tacoma Community College, where she studied small business ownership and the import and export of goods and services. Kristina also obtained certificates in Accounting Office Assistant and Customer Service Management, while working towards an A.A Degree in Applied Science. While working hard on her recovery, Kristina maintained a 4.0 grade-point average.

Drawing on her experience fighting Child Protective Services to maintain rights to her two small children, Kristina felt a desire and passion to fight above and beyond state and federal guidelines for her rights as a parent and as a woman of cultural background. Kristina studied government policies and Washington laws surrounding child welfare and barriers within the system. Kristina worked to implement a legal research kiosk at Mission Creek and, when a Law Library became available in the Spring of 2019, Kristina utilized the skills and knowledge she had learned to assist fellow inmates. She helped three women achieve Power of Attorney (to a trusted individual), parenting plans (safe visiting/healthy planning), and reunification with family/friends.

Kristina also became lead facilitator for a subcommittee in the inmate-led Women’s Legacy Life Skills program. She facilitated multiple classes teaching women to communicate effectively while practicing conflict resolution skills, domestic violence awareness, and recovering from self-harm and suicidality. Kristina also passionately facilitated Parenting classes specifying the importance on parent/child bonds, family dynamics and using non-violent communication techniques.

Kristina successfully reentered the community through work release with support from her mentor Kimberly Mays. Kristina is also a mentor. She continues to blaze a positive trail for prison and child welfare reform, including working with policy makers in hopes to re-open

contact in cases where incarceration played a key factor in the termination of parental rights. Kristina Peterson is definitely a name you will hear in the future!

**Angela Y. Davis, PhD, MA, *University of California, Santa Cruz***

Through her activism and scholarship over many decades, Angela Davis has been deeply involved in movements for social justice around the world. Her work as an educator – both at the university level and in the larger public sphere – has always emphasized the importance of building communities of struggle for economic, racial, and gender justice.

Professor Davis' teaching career has taken her to San Francisco State University, Mills College, and UC Berkeley. She also has taught at UCLA, Vassar, Syracuse University the Claremont Colleges, and Stanford University. Most recently she spent fifteen years at the University of California Santa Cruz where she is now Distinguished Professor Emerita of History of Consciousness – an interdisciplinary Ph.D program – and of Feminist Studies.

Angela Davis is the author of ten books and has lectured throughout the United States as well as in Europe, Africa, Asia, Australia, and South America. In recent years a persistent theme of her work has been the range of social problems associated with incarceration and the generalized criminalization of those communities that are most affected by poverty and racial discrimination. She draws upon her own experiences in the early seventies as a person who spent eighteen months in jail and on trial, after being placed on the FBI's "Ten Most Wanted List." She also has conducted extensive research on numerous issues related to race, gender and imprisonment. Her recent books include *Abolition Democracy* and *Are Prisons Obsolete?* about the abolition of the prison industrial complex, a new edition of *Narrative of the Life of Frederick Douglass*, and a collection of essays entitled *The Meaning of Freedom*. Her most recent book of essays, called *Freedom Is a Constant Struggle: Ferguson, Palestine, and the Foundations of a Movement*, was published in February 2016.

Angela Davis is a founding member of Critical Resistance, a national organization dedicated to the dismantling of the prison industrial complex. Internationally, she is affiliated with Sisters Inside, an abolitionist organization based in Queensland, Australia that works in solidarity with women in prison.

Like many educators, Professor Davis is especially concerned with the general tendency to devote more resources and attention to the prison system than to educational institutions. Having helped to popularize the notion of a "prison industrial complex," she now urges her audiences to think seriously about the future possibility of a world without prisons and to help forge a 21st century abolitionist movement.

## **Minority and Justice Commission 2021 Symposium Planning Committee:**

### **Justice Mary I. Yu, *Co-chair, Washington State Minority and Justice Commission***

Mary Yu was appointed to the Washington Supreme Court on May 16, 2014, and subsequently elected in 2014 and 2016. Justice Yu joined the Supreme Court after more than 14 years as an accomplished trial court judge in King County Superior Court where she presided over a wide variety of criminal, civil, and juvenile cases, and presided over hundreds of adoptions and other family law matters.

Prior to becoming a judge, Justice Yu served as Deputy Chief of Staff to King County Prosecutor Norm Maleng and as a deputy in the Criminal and Civil Divisions. Before attending law school, Justice Yu worked in the Peace and Justice Office for the Archdiocese of Chicago first as staff and later as Director of that office following her appointment to the position by Cardinal Joseph Bernardin.

Justice Yu has an extensive record of service both on and off the bench, mentoring young attorneys, law clerks, and students; co-chairing the Court's Minority and Justice Commission; chairing the Board for Judicial Administration's Public Trust and Confidence Committee; teaching at Seattle University School of Law and serving as Jurist in Residence; and co-chairing the Washington State Bar Association/University of Washington Law School Leadership Institute. Justice Yu has served on the board of FareStart from 2009 - 2018, and the advisory board for the University of Washington School of Law's Gates Public Service Program from 2014 - 2018. She is personally devoted to the Seattle Girls' School Mock Trials, serving as their judge for the last 14 years. Justice Yu is a member of the American Law Institute.

Justice Yu was raised in Bridgeport, a South Side neighborhood in Chicago, by immigrant parents; her mother came from Mexico and her father from China. She is the first in her family to graduate from college. She received her B.A. from Dominican University, her M.A. in Religious Studies from Mundelein College of Loyola University in Chicago, and her J.D. from the University of Notre Dame Law School. Justice Yu is the first Asian, the first Latina, and the first member of the LGBTQ community to serve on the Washington State Supreme Court.

### **Judge Maureen McKee, *King County Superior Court***

Maureen McKee is a judge with the King County Superior Court. Prior to joining the bench in 2018, Judge McKee was a staff attorney and supervisor for almost sixteen years with The Defender Association, a division of the King County Department of Public Defense, working closely with juveniles and adults swept up into the criminal justice system. Throughout her career, even prior to becoming a public defender, Judge McKee has demonstrated a commitment to serving and to protecting vulnerable populations.

### **Chanel Rhymes, *Northwest Community Bail Fund***

Chanel Rhymes is the co-owner of Monarch Consulting LLC and the Director of Advocacy for the Northwest Community Bail Fund. Prior to joining the Northwest Community Bail fund, Chanel served as the Court Program Analyst for the Washington Supreme Court Minority and Justice Commission, executing the mission of ensuring that all courts in the state of Washington remain free of bias so that justice might be adjudicated in a neutral and fair manner. Previously, she was a Program Manager for the Freedom Education Project of Puget Sound where she developed and coordinated college courses for women seeking to attain their AA degrees while incarcerated at the Washington Correction Center for Women.

Chanel has worked with the Council of State Governments Justice Center, supporting their work on national criminal justice reform. She also has legislative experience as a Political Field Organizer and as a Legislative Liaison for the Washington Student Association, where she lobbied for the interests of students in higher education around issues of affordability, administration transparency, and accessibility. She completed internships with the Statewide Poverty Action Network and the Tacoma Pierce County Bar Association's Volunteer Legal Services clinic. She was raised in Tacoma, Washington, and received her BA from Evergreen State College with a focus in Law and Government Policy.

**Dalia Pedro Trujillo, *Gonzaga University School of Law***

Originally from Oaxaca, Mexico, Dalia Pedro Trujillo is a recent graduate from Gonzaga University School of Law in Spokane, Washington. As an undocumented immigrant, and a DACA recipient, she understands that the impacts of the law can be personal, and have an immense effect in people's lives. Her experience as an immigrant in the United States has taught her how to navigate two cultures that do not fully accept her as one. This has led to her existing in a quasi-status in this country that she now calls home. This is what drove her to pursue a law degree, and why she is passionate about immigration and criminal defense.

**Elizabeth Hendren, *Northwest Justice Project***

Elizabeth Hendren is a staff attorney at Northwest Justice Project. In 2012, she created the Reentry Initiated through Services and Education (RISE) Project, which provides comprehensive civil legal services to currently and formerly incarcerated mothers to facilitate family reunification. Elizabeth also serves on the Washington State Supreme Court Gender & Justice Commission, where she chairs the Incarceration, Gender & Justice Committee.

Prior to law school, Elizabeth spent seven years as a community organizer for increased funding for public education, increased access to affordable housing, prison education, and support for internally displaced Katrina survivors. Her passion for supporting families in crisis comes from her own lived experience growing up with a single mother who struggled with addiction, and her resulting experiences with housing and food insecurity as a high school student.

**Frank Thomas, *Washington State Minority and Justice Commission***



Frank Thomas is the Senior Court Program Analyst for the Washington State Minority and Justice Commission. He has a B.A. in Finance and Marketing from the University of Washington, and graduated in 2019 from the University of California, Irvine School of Law. Frank left private business to pursue a career advancing social justice, working on various public interest projects in law school including the Initiative to End Family Violence and the UCI Law International Human Rights Clinic.

Since joining the Commission staff, Frank has lead community forums in the wake of 2020's demonstrations against systemic racism, co-authored original research on Washington girls of color in detention, and represented the Commission in various stakeholder groups confronting numerous issues of minority equity and justice under law.

**Jaime Hawk, *ACLU of Washington***

Jaime Hawk is Legal Strategy Director for the American Civil Liberties Union of Washington's Campaign for Smart Justice, where she leads on a range of issues to reform the state's criminal legal system. She was previously an Assistant Federal Defender for seven years and a law clerk to a federal judge. She began her legal career as an attorney fellow on the U.S. Senate Judiciary Committee staff of Edward M. Kennedy in Washington, D.C.

Hawk is a member of the ABA House of Delegates and serves on the national Council of the ABA Criminal Justice Section and the executive committee of the WSBA Civil Rights Section. She has taught as an adjunct law professor at Gonzaga University, where she attended law school as a Thomas More Scholar. She has served in access-to-justice leadership efforts, including as a member of the Washington Task Force on Unaccompanied Children. She is a past recipient of the Washington Defender Association President's Award and Gonzaga Law School's Myra Bradwell Award for commitment to furthering women and children's rights through the law.

**Marla Zink, *Luminata, PLLC***

Marla Zink is an attorney whose practice focuses on criminal defense on appeal and in post-conviction matters. Marla practices at every level of our state and federal courts. In 2019, she partnered with Kathleen Shea to form Luminata, PLLC. Luminata serves private and public defense clients in their direct criminal appeals and all forms of post-conviction relief.

Prior to forming Luminata, Marla served clients in federal and state court at The Law Office of Marla Zink, PLLC, and previously spent eight years at the Washington Appellate Project, where she represented indigent clients in direct criminal appeals and post-conviction proceedings.

Marla has been practicing appellate law since she graduated *cum laude* from Georgetown University Law Center. She moved to Seattle to serve as a law clerk to the Honorable Robert R. Beezer on the United States Court of Appeals for the Ninth Circuit. After clerking, Marla worked in the Appellate, Constitutional and Governmental Law group at Preston, Gates and Ellis, which

became K&L Gates LLP. Marla is a member of the Washington Appellate Lawyers Association (WALA), the Washington Association of Criminal Defense Lawyers (WACDL), the Washington Defender Association (WDA), and a past executive committee member of the KCBA Appellate Practice Section. She is also Lead Author of the chapter on the incarceration of women in Washington in the Gender and Justice Commission's forthcoming report, scheduled for release in August 2021.



THE STATUS AND NUMBERS  
OF INCARCERATED WOMEN AND GIRLS  
IN WASHINGTON STATE

# **Incarceration of Women in Washington State: Multi-year analysis of felony data**

October 2020

## **Summary**

The number of women in prison in Washington has grown consistently in recent decades, yet our scientific knowledge about women in prison remains very limited. Both the total number of incarcerated people and the per capita incarceration rate have decreased for men in Washington over the past 10 years, but steadily increased for women. Information about the overall racial composition and sentences of people in our prisons is released annually, but because women are still a minority of people both sentenced and held in Washington prisons each year, any trends specific to women are drowned out by the data of men.

Washington State cannot begin to create policy and address the unique needs of women in prison without first understanding who we are incarcerating in women's prisons, and why we are incarcerating them. This study is a first look at those questions, using existing data collected by the Caseload Forecast Council (CFC), and analyzed for the first time in a gender-disaggregated way, to better understand the demographics and sentences of the women Washington is sending to prison. The study is preliminary and focuses on only one part of the larger criminal legal system. It provides a descriptive analysis of incarceration of women in Washington State, with a particular focus on racial disparities, to begin to close the information gap and as a foundation for future inquiry and research.

## **Data**

We analyzed CFC data from fiscal years 2019, 2010, and 2000, focusing on Washington's four largest counties. These data were a strong choice for this pilot project, but because they were not collected specifically to examine our research questions, they also have some limitations. The greatest of these is the way that CFC collects and codes information on race and ethnicity, most likely resulting in Hispanic/Latinx people being undercounted in CFC data. Because CFC race/ethnicity categories do not map perfectly onto those in the Census data we used comparatively, our comparisons provide only a first look at potential racial disproportionality in the conviction and sentencing of women in Washington.<sup>1</sup> Additionally, although gender is more complicated than a male-female binary, the data collected by CFC only has the two categories and does not distinguish within those two categories between trans and cisgender men and women. It is also important to note that because CFC data are collected at the time of sentencing, we are not able to identify the precise point(s) in the legal process (e.g., arrest, charging, conviction, sentencing) at which disproportionalities occurred.

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<sup>1</sup> We did not include Latinx/Hispanic people in these comparisons because of the major differences between data sources in how people are categorized as Latinx/Hispanic. While we did not conduct racial/ethnic disproportionality analyses for Latinx/Hispanic individuals because CFC data is not comparable to Census data for this population, we did provide statistics describing the total number and percentages of Latinx/Hispanic individuals in the dataset in Tables 1-13, with the understanding that these numbers are likely an undercount.

## Results

***Gender comparisons.*** Far more men than women were convicted of felonies and sentenced over the past 20 years in all counties and offense categories. These proportions were typically 80% men to 20% women, with a slight increase for women over time. Counties differed somewhat in the proportions of women and men convicted and sentenced overall, with King County in 2019 the lowest at 13% women and Benton-Franklin in 2000 the highest at 24% women. Proportions of women and men convicted and sentenced were substantially different across offense categories. In all years, women were convicted and sentenced in relatively higher proportions (typically 23 to 30%) in Drug, Property, and particularly Fraud categories.

***Disproportionate impact on Black and Native American women by county.*** We found statistically significant differences indicating racial disproportionality in Washington's conviction and sentencing of women in all the counties we examined, across all time points. Black and Native American women bore the brunt of the disproportionality we documented. Across counties, Black women were typically convicted and sentenced at two or three times the rate we would expect based on their proportion of each county's population. In some counties, in some fiscal years, they were convicted and sentenced at rates up to eight times higher. Native American women, across counties, often made up two to four times as large a proportion of the convicted and sentenced population as they did of the general population of each county.

***Disproportionate impact on Black and Native American women by offense category.*** We also found statistically significant differences indicating racial disproportionality in Washington's conviction and sentencing of women in most of the offense categories we examined, with one notable counter-example. In 2019 data in the drug offense category, Black women were convicted and sentenced in roughly the proportion we would expect based on their representation in the general population of the state. Across offense categories, Black women were typically convicted and sentenced at two or three times the rate we would expect based on their proportion of the state's population. This imbalance was especially pronounced in the violent offense category. Native American women, across offense categories, often made up two to four times as large a proportion of the convicted and sentenced population as they did of the general population of the state.

## Discussion and Recommendations

This preliminary study documented racial disproportionality in data on Washington's conviction and sentencing of women over the past 20 years. Encouragingly, this disparity did improve somewhat between 2000 and the present, indicating a small positive trend. However, the consequences of earlier years' high disproportionality are currently being felt by women who may still be in prison right now, and by their communities.

This study takes the first steps on a journey toward Washington State knowing what it needs to know to create policy that addresses the needs of incarcerated women. This pilot research also suggests some next steps, detailed in our recommendations regarding both improvements in data collection and additional analyses and research.

## Background

The United States has the highest incarceration rate of any country in the world. Only 5% of the world's female population lives in the US, but the US accounts for 30% of the world's incarcerated women.<sup>2, 3</sup> Women are the fastest-growing segment of the US incarcerated population; state prison populations for women have grown at more than twice the rate of men over the past 40 years.<sup>4</sup>

In Washington, both the total number of incarcerated people and the per capita incarceration rate have been decreasing for men over the past 10 years, but steadily increasing for women.<sup>5</sup> Washington State's women's prisons have been over capacity for years,<sup>6</sup> contributing to decreased access to programming and negatively affecting health, safety, and conditions of confinement.<sup>7</sup>

Black, Indigenous, and women of color are disproportionately affected by all aspects of the criminal legal system. The incarceration rate nationally is twice as high for Black women compared to white women, and Hispanic women are 1.2 times more likely to be incarcerated compared to white women.<sup>8</sup> While less data is available about the experiences of Indigenous women, the Lakota Law People's Project estimates that Native women are incarcerated at six times the rate of white women.<sup>9</sup>

In addition, prisons have historically been designed by men, with cis-male incarcerated populations in mind. Relatively little consideration has been given to designing incarceration systems for women, transgender, and gender non-binary people. This is often apparent in the living conditions, risk assessment systems, disciplinary practices, programming, physical and mental health care, and other aspects of women's carceral facilities. For example, investigations have found a lack of adequate staff for trauma treatment programs for women, and insufficient training on the needs of pregnant individuals and access to feminine hygiene products.<sup>10</sup>

Very little is known about what has driven the dramatic rise in the incarceration of women in Washington prisons in recent years. Further, very little research has been done in Washington to

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<sup>2</sup> <https://www.prisonpolicy.org/global/women/2018.html>

<sup>3</sup> Note on gender language: A proportion of the people incarcerated in women's facilities do not identify as women, e.g., they may be non-binary or transgender. In this report, in the interest of brevity, we use the terms "female" and "women" interchangeably to refer to people incarcerated in facilities designated for female individuals.

<sup>4</sup> [https://www.prisonpolicy.org/reports/women\\_overtime.html](https://www.prisonpolicy.org/reports/women_overtime.html)

<sup>5</sup> Bureau of Justice Statistics, National Prisoner Statistics Program, 2018

<sup>6</sup> Early releases and home monitoring options due to COVID-19 have recently put both women's prisons within capacity levels. The most current capacity numbers are a departure from the trends of the last ten years and it is unknown if current numbers will continue.

<https://www.doc.wa.gov/docs/publications/reports/400-RE002.pdf>

<sup>7</sup> Office of the Corrections Ombuds (OCO) Survey of Incarcerated Women, Olympia, WA: Office of Corrections Ombuds, February 2020

[https://oco.wa.gov/sites/default/files/Women%20Survey%20with%20DOC%20Response%20Final\\_0.pdf](https://oco.wa.gov/sites/default/files/Women%20Survey%20with%20DOC%20Response%20Final_0.pdf)

<sup>8</sup> <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>

<sup>9</sup> <https://www.lakotalaw.org/resources/native-lives-matter>

<sup>10</sup> "Women in Prison: Seeking Justice Behind Bars," United States Commission on Civil Rights, February 2020, <https://www.usccr.gov/pubs/2020/02-26-Women-in-Prison.pdf>



examine who demographically is in our women’s prisons and what crimes they are being sent to prison for. Existing data reports tabulate the number of women sent to prison each year<sup>11</sup> and in prison at any given time.<sup>12</sup> No existing analysis, however, details the racial breakdown of women in prison or specifics about their sentences, even though both the courts and Department of Corrections collect these data. While information about the overall racial composition and sentences of people in our prisons is released each year, because women still comprise a minority of people both sentenced and held in Washington prisons each year – roughly 20%<sup>13</sup> and 7%<sup>14</sup> respectively – any trends specific to women are drowned out by the data of men. Existing analyses of overall trends in our prisons that appear gender neutral and that fail to address different populations of women (e.g., Black, Native, Latinx) thus instead report on trends in the majority of the prison population, which is overwhelmingly people in male prisons.

As a state, Washington cannot begin to create policy and address the unique needs of women in prison without first understanding who we are incarcerating in women’s prisons, and why we are incarcerating them. This study is a first look at those questions, using existing data collected by Caseload Forecast Council analyzed for the first time in a gender-disaggregated way to better understand the demographics and sentences of the women Washington is sending to prison.

## Research Questions

The purpose of this research project was to provide a preliminary descriptive analysis of incarceration of women in Washington State, with a particular focus on racial disparities, to begin to close the information gap and as a foundation for future and inquiry and research. It addresses five research questions.

1. How many women, compared to men, and from what race-ethnicities, were convicted of felonies<sup>15</sup> and sentenced in Washington State in fiscal years 2019, 2010, and 2000? (Table 1)
2. How many women, from what race-ethnicities, were convicted of felonies and sentenced in each of the four largest counties (King, Pierce, Snohomish, and Spokane), and in two additional areas of focus<sup>16</sup> (Yakima County and the Benton-Franklin county dyad)? How does this compare to men? (Tables 2-4)

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<sup>11</sup> “Adult Felony Sentencing Data,” Washington State Caseload Forecast Council, [https://www.cfc.wa.gov/CriminalJustice\\_ADU\\_SEN.htm](https://www.cfc.wa.gov/CriminalJustice_ADU_SEN.htm)

<sup>12</sup> “Fact Card,” Department of Corrections Washington State, <https://www.doc.wa.gov/information/data/analytics.htm>

<sup>13</sup> “Adult Felony Sentencing Data,” Washington State Caseload Forecast Council, [https://www.cfc.wa.gov/CriminalJustice\\_ADU\\_SEN.htm](https://www.cfc.wa.gov/CriminalJustice_ADU_SEN.htm)

<sup>14</sup> “Fact Card,” Department of Corrections Washington State, <https://www.doc.wa.gov/information/data/analytics.htm>

<sup>15</sup> Note on the term “convicted and sentenced”: This pilot study used existing data collected on individuals who had been charged with, convicted of, and sentenced on felonies. Details on the data appear later in the report.

<sup>16</sup> Yakima and Benton-Franklin are areas of focus because when we initially crafted these research questions, we wanted to include counties with substantial Latinx populations so that we could examine disproportionality

3. How many women, from what race-ethnicities, were convicted and sentenced in each felony offense category? How does this compare to men? (Tables 5-7)
4. Were Black, Indigenous, and women of color convicted and sentenced disproportionately in each county and each fiscal year examined? (Tables 8-13)
5. Were Black, Indigenous, and women of color convicted and sentenced disproportionately within each offense category and in each fiscal year examined? (Tables 14-16)

## Data

Very little is known scientifically about incarcerated women in Washington State. Reports describing incarcerated people overall are available (e.g., the Caseload Forecast Council's annual *Statistical Summary of Adult Felony Sentencing*), but no analyses that look at the intersection of gender and race and use Washington-specific data currently exist. A study of incarcerated women is therefore needed as the first step in understanding and responding to factors contributing to the growth of this population in our state.

## Strengths and Limitations of Caseload Forecast Council Data

This pilot project used existing data from the Washington State Caseload Forecast Council (CFC) as a first step toward understanding the demographic breakdown of women convicted of felonies and sentenced in our state, and what they are incarcerated for, as well as identifying any potential racial/ethnic disparities. These CFC data have many strengths that influenced us to use them for this work. First, they are a frugal choice for a pilot project, being collected and cleaned by the agency, which makes them freely available to researchers. Second, they provide continuity over time, having been collected in a usable format each fiscal year since 2000. Third, they include much useful information, such as which felonies individuals were convicted of, the county they were convicted and sentenced in, and their demographics, including gender and race/ethnicity. Fourth, they include all individuals convicted of felonies and sentenced, whether they are incarcerated in jail or in prison.

However, CFC data were not collected specifically to examine the project's research questions. Five limitations of these data are that (1) cases represent individuals at the time they are sentenced, so do not provide details on their experiences during arrest, charging, conviction, or incarceration; (2) cases represent individuals sentenced to felonies, so cannot shed light on those serving time only for misdemeanors; and (3) information about cases' gender (male/men and female/women) is based on the gender reported in CFC data, and likely includes a proportion of individuals whose gender identity does not align with that of the facility where they are incarcerated (e.g., a transgender man who is incarcerated in a women's prison or jail). Finally, (4) it is not clear whether information on race and ethnicity is self-reported by defendants or reported by other parties (e.g., prosecuting attorneys) based on their perceptions, and (5)

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based on ethnicity. Unfortunately, due to the limitations of the dataset (detailed in the Data section) that we discovered after analyses were underway, we were ultimately not able to do so.

information on race and ethnicity is provided by the CFC in only six categories, with race and ethnicity merged into one variable with some inconsistencies in coding.

### **Race and Ethnicity in CFC Data**

This categorization of race and ethnicity deserves special attention, since understanding who is grouped where is critical context for understanding the results that follow, including their limitations. The datasets CFC provides to researchers categorize individuals as Asian American, Black or African American, Hispanic, Native American, white, and unknown (a very small group). After the project was underway, Dr. Masters and Sierra Rotakhina, MPH, Gender Justice Study Project Manager, were able to investigate the CFC's data sources and processes in conversations with their staff, and learned of several key challenges, detailed below.

The first key challenge is that sentencing data comes to the CFC in different forms from different counties. The Washington State Supreme Court approves pattern Felony Judgement and Sentencing (J&S) forms, which collect data on race (e.g., white, Black) and ethnicity (i.e., Hispanic/Latinx) separately and provide more racial categories than the six used by CFC (e.g., Pacific Islander, multiracial). But using the pattern J&S forms is not required, and many counties provide data using their own forms, each slightly different in how it obtains race information. Some of these forms apparently do not provide checkboxes, but require that race be written in, creating room for many inconsistencies. CFC reported trying to reconcile data on the J&S form with State Patrol and Administrative Office of the Courts data, but defaulting to the J&S form if there was a conflict between the datasets.

The second key challenge is that, because data provided to CFC comes in so many different forms, their staff does some re-categorizing of race to produce one dataset consistently over time. Three outcomes of this re-categorizing may affect group counts and proportions in CFC data. The first of these is ethnicity. Per CFC staff, most counties are leaving the ethnicity data field blank, so CFC recodes Hispanic as a race if it is marked. People are only coded as Hispanic if race is left blank, is marked as unknown, or if "Hispanic" or "Latino" is written in under race. If a form says "white" and "Hispanic," the person will be coded as white. If it says "Black" and "Hispanic," they will be coded as Black. If it is blank for race or "unknown" for race, and "Hispanic" for ethnicity, then the person will also be coded as Hispanic. This method clearly results in Hispanic/Latinx people being undercounted in CFC data, and in other race categories being slightly inflated, but not in a way that can be quantified.<sup>17</sup> It is perhaps the biggest limitation of using CFC data for this project.<sup>18</sup>

This report highlights the limitation of the data for Hispanic/Latinx individuals throughout. In addition, while the CFC dataset uses the term "Hispanic," it is not clear if every county uses

<sup>17</sup> This coding methodology likely compounds the existing limitations of Latinx data, as research indicates that there is a "data gap" for Latinx populations already as a result of the way the data is collected. This data gap for Latinx justice system-involved youth was recently highlighted in Sonja Diaz et al. The Latinx Data Gap in the Youth Justice System. (2020). Available at [lppi-thelatinxdatagap-2020.pdf](https://lppi-thelatinxdatagap-2020.pdf).

<sup>18</sup> Regarding the limitations of CFC data, please note two things. First, that Gender Justice Study staff and co-chairs continue their conversation with CFC staff and leadership about ways to remediate these problems. Second, that we make recommendations for future improvements in data collection and management in the Recommendations section of this report.

“Hispanic” on their forms or if other terms such as Latino, Latina, or Latinx are used to collect these data in some counties. These terms are all socially constructed and have their own limitations.<sup>19</sup> The term “Hispanic,” for example, is rooted in a history of Spanish “colonialism, slavery, [and] genocide... across the Americas.”<sup>20</sup> The term “Latinx” is used to “signify diversity in gender identity and expression [and] is used by a wide range of individuals and organizations,”<sup>21</sup> however a 2019 Pew Research Center survey found that only 3% of the survey respondents who identified as Hispanic or Latino reported using the term “Latinx” to describe themselves.<sup>22</sup> This Pew survey highlights a lack of consensus around the best term(s) to use. This also emphasizes the complexity and limitations of terms that have been used as identifiers for such varied meanings as shared Spanish colonial histories, fluency in the Spanish language, geographic ancestry, ethnicity and/or race.<sup>23</sup> This technical report uses the term “Hispanic/Latinx” throughout when referring to CFC data in an attempt to accurately represent the data as it is presented in the dataset, while also trying to use the broadest language possible to capture the various terms that may be used in the J&S forms across Washington.

Another outcome of re-categorizing is the potential loss of some groups, most notably people who identify as Native Hawaiian or Other Pacific Islander. CFC staff informed us that they very rarely get forms with this racial category marked, raising the possibility that this group is being lost at data collection. If people who mark “Native Hawaiian or Other Pacific Islander” are re-categorized into the Asian American group (as occurs in some other contexts), a slight inflation in this group is likely, or these people may then fall into the small “Unknown” race group. In any case, this type of loss or re-coding removes the possibility of examining differences in sentencing between Pacific Islanders and Asian Americans. Counts for Native American populations may also be an underestimate. This is because CFC data includes only offenses prosecuted and sentenced in state courts, and not offenses prosecuted and sentenced in Tribal courts. Without seeing numbers combined from Tribal and State courts it is impossible to see the full picture of the impact of incarceration on Tribal communities.

Finally, regarding race categories beyond Asian American, Black, Native American, and white, CFC staff report not seeing many forms with “multiracial” checked or with multiple race boxes checked (e.g. “Asian” and “white”). Though they see the “multiracial” box on some forms, such as the pattern J&S forms, according to their accounting to our research team to date, it has rarely been checked. When a form does identify an individual as multiracial, the CFC codes them as “unknown” due to the very small numbers. This seems inconsistent with Office of Financial Management estimates that 388,239 people identified as two or more races in 2020 in

<sup>19</sup> Carlos E. Santos. The History, Struggles, and Potential of the Term Latinx. National Latinx Psychological Association. VOL 4 – ISSUE 2. (2017).

<sup>20</sup> Robyn Schelenz and Nicole Freeling, University of California Newsroom. (2019). Available at <https://www.universityofcalifornia.edu/news/whats-in-a-name-how-concepts-hispanic-and-latino-identity-emerged>.

<sup>21</sup> Carlos E. Santos. The History, Struggles, and Potential of the Term Latinx. National Latinx Psychological Association. VOL 4 – ISSUE 2 at page 11. (2017).

<sup>22</sup> Luis Noe-Bustamante, Lauren Mora, and Mark Hugo Lopez. About One-in-Four U.S. Hispanics Have Heard of Latinx, but Just 3% Use It. Pew Research Center. (2020). Available at [Latinx Used by Just 3% of U.S. Hispanics. About One-in-Four Have Heard of It. | Pew Research Center](#).

<sup>23</sup> Carlos E. Santos. The History, Struggles, and Potential of the Term Latinx. National Latinx Psychological Association. VOL 4 – ISSUE 2 at page 11. (2017).

Washington State, higher than the estimated Black-identifying population of 317,832.<sup>24</sup> If very few forms are arriving at CFC with multiracial or multiple race boxes checked, this suggests a further problem at the point of data collection.

### **Census Data as Comparison**

The US Census occurs every ten years, so we used information from their smaller annual American Community Survey for 2019 comparisons, and Census data for 2010 and 2000 for those years. For this pilot project, we obtained proportions for Washington State overall and for included counties from censusviewer.com. Census racial categories are not a perfect match for CFC categories for all the reasons detailed above. Thus, our comparisons provide only a first look at potential racial disproportionality in the conviction and sentencing of women in Washington.

## **Analytic Approach**

### **Data Preparation**

After obtaining data from CFC, Dr. Masters prepared separate analysis files for women's and men's data, one file for each fiscal year. If cases were sentenced on more than one offense, she categorized them under the highest level offense to produce data files containing unique individual cases. She combined data from Benton and Franklin counties, using weighted averages when appropriate to account for the difference in these areas' populations.

To produce substantively meaningful and statistically comparable offense categories, members of the research team (Dr. William Vesneski, JD and Elizabeth Hendren, JD) created six categories based on offenses in the data. These categories (detailed in the report's appendix) were based on those used by Prison Policy Initiative for their "Whole Pie" reports on incarceration in the US, with some adjustments. For example, due to the significant number of women sentenced in fraud cases, they were broken out as a separate category. Dr. Masters then coded all cases into these categories and analyzed the data using SPSS software, standard in the social sciences.

### **Disproportionality Analyses**

Chi-square ( $\chi^2$ ) is a non-parametric test used to determine whether two distributions of a categorical variable differ from one another in a statistically significant way.

***Racial/ethnic disproportionality.*** We used chi-square to test the statistical significance of differences in the distribution of racial/ethnic groups between CFC data on women and Census data. Our rationale for this method arises from our theoretical stance on race, and is based on the assumption that people of any racial or ethnic group are equally likely to commit offenses as

<sup>24</sup> Office of Financial Management Estimates of April 1 population by age, sex, race and Hispanic origin: Age, sex, race and Hispanic origin data tables (state 2010-2019). Available at <https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/estimates-april-1-population-age-sex-race-and-hispanic-origin>.

people of any other. If this is so, and conviction is not racially disproportionate, we would expect to see proportions of convicted and sentenced women (CFC data) across racial groups that were similar to those we saw in the state population overall, or in a specific county (Census data).

We did not include Latinx/Hispanic people in these comparisons because of the major differences between data sources in how people are categorized as Latinx/Hispanic.<sup>25</sup> On Census surveys, race (e.g., Black or African American, white) and ethnicity (i.e., Hispanic/Latinx) are two separate categories, whereas in CFC data, race and ethnicity are combined into one category.

To prepare to conduct our chi-square tests, we followed these steps. First, we computed expected counts, if each race was proportionally represented, for each offense category or county. We did this by using that year's CFC count of people in each of the four included racial/ethnic groups in that offense category or county, then extrapolating a "Census count" that represented Census data proportions of these groups in a population of the CFC count's size. Next, we used these expected values for comparison to actual CFC values in chi-square tests for each county or offense category in each year's data.

This approach has several limitations as a test of racial disproportionality in women's sentencing. First, conducting multiple chi-square tests risks detecting statistical significance when it is not present, also known as Type I error. Second, people may have been mis-categorized in CFC race/ethnicity data, that is, included in a group that does not reflect their own identity or the social position that relevant others (e.g. police officers, court personnel) might perceive them as occupying. Finally, CFC and Census categories (as described above) are not perfectly comparable. However, this method for using existing data to examine the disproportionality question provides a first look. The picture it provides is not yet perfectly in focus, but is certainly an improvement over no picture, and can inform future research.

***Gender disproportionality.*** We did not conduct statistical disproportionality tests comparing the proportions of men and women convicted and sentenced to their proportions in the population. Good statistical practice does not support carrying out such a test without an empirical or theoretical rationale. Our racial disproportionality analyses are based on the assumption that people of any racial or ethnic group are equally likely to commit offenses as people of any other. Because this theoretical perspective does not translate to assuming that men and women are equally likely to commit offenses, we chose to carry out the descriptive and comparative analyses of men's and women's data we report here, but not test the statistical significance of the differences in proportions.

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<sup>25</sup> While we did not conduct racial/ethnic disproportionality analyses for Latinx/Hispanic individuals because CFC data is not comparable to Census data for this population, we did provide statistics describing the total number and percentages of Latinx/Hispanic individuals in the dataset in Tables 1-13. It is important to note that these numbers are likely an undercount as CFC data codes an individual as Latinx/Hispanic only if the J&S form indicates in the race field that the person is Latinx/Hispanic or if the form indicates in the ethnicity field that the person is Latinx/Hispanic AND their race is marked as unknown.



## Gender Comparison in Washington State Felony Conviction and Sentencing

### *Research questions answered by these results:*

1. *How many women, compared to men, and from what race-ethnicities, were convicted of felonies and sentenced in Washington State in fiscal years 2019, 2010, and 2000? (Table 1)*
2. *How many women, from what race-ethnicities, were convicted of felonies and sentenced in each of the four largest counties (King, Pierce, Snohomish, and Spokane) and in two additional areas of focus (Yakima County and the Benton-Franklin county dyad)? How does this compare to men? (Tables 2-4)*
3. *How many women, from what race-ethnicities, were convicted and sentenced in each felony offense category? How does this compare to men? (Tables 5-7)*

### Summary of Gender Comparison Results

Far more men than women were convicted of felonies and sentenced over the past 20 years in all counties and offense categories. These proportions were typically 80% men to 20% women, with a slight increase for women over time, from women making up 19% of sentences state-wide in 2000 and 2010 and 21% in 2019. Since men and women each make up approximately 50% of the population (both state-wide and by county), men clearly make up a disproportionately higher proportion of convicted and sentenced people than women do, relative to their proportion of the population.<sup>26</sup>

Counties differed somewhat in the proportions of women and men convicted and sentenced, with King County in 2019 the lowest at 13% women and Benton-Franklin in 2000 the highest at 24% women. Proportions of women and men convicted and sentenced were substantially different across offense categories. In all years, women were convicted and sentenced in relatively higher proportions in Drug, Property, and particularly Fraud categories. Women typically comprised 23 to 30% of people convicted and sentenced in these offense categories, with a high of 44% of those convicted and sentenced in Fraud in 2000. In contrast, women made up lower proportions of people convicted of Violent offenses (from 12 to 14%) and much lower proportions of those convicted of Sex offenses (never more than 3%).

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<sup>26</sup> This difference in proportions, between “men in the population” at 50% and “men sentenced in CFC data” at 80%, is large and would certainly be statistically significant if it were tested. However, good statistical practice does not support carrying out such a test without an empirical or theoretical rationale about whether men’s proportion of the population “should” be similar to their proportion of sentenced individuals.

**Table 1**

**Number of convicted and sentenced men and women by racial/ethnic group in Caseload Forecast Council (CFC) data for Washington State in fiscal years 2019, 2010, and 2000**

	2019		2010		2000	
	Men	Women	Men	Women	Men	Women
Asian American	613	136	507	87	475	95
Black	2,648	404	2,905	449	3,381	781
Hispanic/Latinx*	1,680	231	1,425	134	1,986	211
Native American	541	221	474	182	486	164
White	13,715	3,973	13,102	3,406	13,862	3,559
Unknown**	64	29	25	10	9	2
Total by gender	19,261	4,994	18,438	4,268	20,199	4,812
Total convicted and sentenced individuals	24,255		22,706		25,011	
Proportion of total convicted and sentenced individuals	79%	21%	81%	19%	81%	19%

\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.

\*\* The “unknown” race/ethnicity category rarely makes up more than a negligible proportion of sentenced individuals in CFC data.

## Tables 2-4

## Distribution of racial/ethnic groups (within gender and county) among convicted and sentenced men and women in CFC data for selected Washington State counties

Table 2: Fiscal Year 2019

	King		Pierce		Snohomish		Spokane		Yakima		Benton-Franklin*	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Asian American	7%	8%	7%	7%	3%	2%	2%	1.5%	>1%	2%	1%	1%
Black	34%	29%	28%	19%	9%	9%	11%	6%	6%	4%	7%	3%
Hispanic/Latinx**	2%	2%	7%	4%	3%	<1%	1%	1%	49%	31%	21%	10%
Native American	1%	4%	2%	4%	2%	1%	5%	7%	4%	8%	1%	1%
White	56%	57%	56%	65%	83%	88%	81%	84%	41%	55%	69%	80%
Unknown	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	1%	5%
Total count by gender	2,526	385	2,554	573	1,610	438	2,231	529	990	245	940	233
Total convicted and sentenced individuals by county	2,884		3,127		2,048		2,760		1,235		1,173	
Proportion of total convicted and sentenced individuals	87%	13%	82%	18%	79%	21%	81%	19%	80%	20%	80%	20%

\* In combining proportions across Benton and Franklin counties, we used weighted averages to account for the difference between the two counties' populations.

\*\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.

Table 3: Fiscal year 2010

	King		Pierce		Snohomish		Spokane		Yakima		Benton-Franklin*	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Asian American	6%	4%	5%	4%	3%	2%	1%	1%	<1%	0.5%	1%	1%
Black	36%	28%	29%	20%	12%	11%	11%	8%	5%	2%	5%	4%
Hispanic/Latinx**	1%	1%	2%	1%	2%	0%	1%	1%	46%	26%	17%	7%
Native American	1%	2%	3%	5%	2%	3%	3%	6%	6%	8.5%	<1%	3%
White	55%	65%	61%	70%	81%	84%	84%	84%	43%	63%	77%	84%
Unknown	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%
Total count by gender	3,043	454	3,098	823	1,150	265	1,685	396	1,009	220	844	208
Total convicted and sentenced individuals by county	3,497		3,921		1,415		2,081		1,229		1,052	
Proportion of total convicted and sentenced individuals	87%	13%	79%	21%	81%	19%	81%	19%	82%	18%	80%	20%

\* In combining proportions across Benton and Franklin counties, we used weighted averages to account for the difference between the two counties' populations.

\*\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.

Table 4: Fiscal year 2000

	King		Pierce		Snohomish		Spokane		Yakima		Benton-Franklin*	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Asian American	5%	4%	2%	2%	2%	1%	1%	1%	<1%	1%	<1%	1%
Black	37%	41%	23%	23%	10%	8%	15%	8%	3%	3%	6%	8%
Hispanic/Latinx**	7%	2%	5%	1%	4%	1%	2%	1%	45%	28%	22%	12%
Native American	2%	2%	2%	3%	2%	3%	3%	7%	6%	13%	<1%	2%
White	49%	51%	68%	71%	82%	87%	79%	83%	46%	55%	71%	77%
Unknown	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%
Total count by gender	4,742	988	3,568	944	1,315	310	1,229	230	990	227	807	254
Total convicted and sentenced individuals by county	5,730		4,512		1,625		1,459		1,217		1,061	
Proportion of total convicted and sentenced individuals	83%	17%	79%	21%	81%	19%	84%	16%	81%	19%	76%	24%

\* In combining proportions across Benton and Franklin counties, we used weighted averages to account for the difference between the two counties' populations.

\*\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.

**Tables 5-7**  
**Distribution of racial/ethnic groups (within gender and offense category), by category of offense, among convicted and sentenced men and women in Washington State CFC data**

**NOTE:** Because this pilot study focuses on women’s incarceration, we based these offense categories on the offenses women were currently (in 2019 data) being most commonly convicted of and sentenced on, then categorized men’s offenses in the same way to facilitate comparison. Doing so results in more men’s offenses – though still a small proportion – falling into the “other” category. The following proportions fell into the “other” category by year and gender:

- In 2019, 0.1% of women’s offenses and 2.5% of men’s
- In 2010, 1.8% of women’s offenses and 4.4% of men’s
- In 2000, 11.9% of women’s offenses and 20% of men’s

“Other” offenses are not included in these tables; more details are available on request.

Table 5: Fiscal year 2019

	Violent		Drug		Property		Fraud		Sex		Public Order	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Asian American	4%	3%	2%	2%	3%	3%	3%	4%	3%	6%	3%	4%
Black	19%	14%	10%	5%	13%	9%	12%	7%	13%	10%	18%	11%
Hispanic/Latinx*	11%	6%	10%	4%	7%	5%	7%	5%	9%	3%	10%	4%
Native American	3%	6%	2%	4%	3%	5%	2%	3%	3%	<1%	3%	5%
White	62%	70%	76%	85%	74%	78%	76%	81%	71%	78%	66%	76%
Unknown	<1%	1%	<1%	<1%	<1%	<1%	<1%	<1%	1%	3%	<1%	<1%
Total count by gender	2,838	468	4,513	1,680	5,204	1,575	1,785	714	1,038	32	3,394	520
Total convicted and sentenced individuals by county	3,306		6,193		6,779		2,499		1,070		3,914	
Proportion of total convicted and sentenced individuals	86%	14%	73%	27%	77%	23%	71%	29%	97%	3%	87%	13%

\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.

Table 6: Fiscal year 2010

	Violent		Drug		Property		Fraud		Sex		Public Order	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Asian American	3%	3%	2%	1%	3%	3%	3%	2%	2%	12%	3%	1%
Black	18%	18%	15%	8%	14%	10%	16%	11%	12%	12%	19%	13%
Hispanic/Latinx*	9%	3%	9%	3%	6%	3%	7%	4%	7%	0%	8%	3%
Native American	3%	6%	2%	4%	3%	5%	2%	3%	3%	0%	3%	6%
White	67%	70%	71%	84%	74%	79%	71%	80%	75%	73%	67%	77%
Unknown	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	3%	<1%	<1%
Total count by gender	2,819	358	4,293	1,329	5,308	1,472	1,562	678	981	34	2,671	319
Total convicted and sentenced individuals by county	3,177		5,622		6,780		2,240		1,015		2,990	
Proportion of total convicted and sentenced individuals	88%	12%	76%	24%	78%	22%	70%	30%	97%	3%	89%	11%

\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.



Table 7: Fiscal year 2000

	Violent		Drug		Property		Fraud		Sex		Public Order	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Asian American	4%	4%	2%	1%	2%	3%	4%	1%	1%	0%	2%	1%
Black	19%	27%	15%	13%	13%	14%	12%	17%	10%	0%	16%	14%
Hispanic/Latinx*	12%	3%	9%	3%	7%	6%	6%	4%	11%	0%	8%	5%
Native American	3%	6%	2%	3%	2%	4%	1%	2%	2%	11%	3%	3%
White	62%	60%	72%	80%	75%	73%	77%	76%	76%	88%	71%	77%
Unknown	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%
Total count by gender	2,303	295	4,866	1,620	4,896	1,205	1,057	814	379	9	2,595	294
Total convicted and sentenced individuals by county	2,598		6,486		6,101		1,871		388		2,889	
Proportion of total convicted and sentenced individuals	87%	13%	75%	25%	80%	20%	56%	44%	98%	2%	90%	10%

\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.

## Racial/Ethnic Distribution of Convicted and Sentenced Women by County

### *Research question:*

4. *Were Black, Indigenous, and women of color convicted and sentenced disproportionately in each county and each fiscal year examined? (Tables 8-13)*

### Summary of Disproportionality Results by County

We found statistically significant differences indicating racial disproportionality in Washington's conviction and sentencing of women in all of the six counties we examined, across all three time points. This was a robust finding in data from all years and locations except for the Benton-Franklin county area in 2019.

Black and Native American women bore the brunt of the disproportionality we documented. Across counties, Black women were typically convicted and sentenced at two or three times the rate we would expect based on their proportion of each county's population. In some counties, in some fiscal years, they were convicted and sentenced at rates up to eight times higher. Native American women, across counties, often made up two to four times as large a proportion of the convicted and sentenced population as they did of the general population of each county.

Across counties and time points, white women were typically convicted and sentenced in roughly the same or somewhat lower proportion as their representation in the general population. In general, a lower proportion of Asian American women were convicted and sentenced than in their representation in the general population.<sup>27</sup>

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<sup>27</sup> Due to the limitations of the data used in this pilot study (and detailed in the Data section of this report), findings on Asian Americans may mask disparities experienced by subpopulations (e.g., Native Hawaiians or Pacific Islanders) who have been aggregated into the Asian American category.

**Tables 8-13****Distribution of racial and ethnic groups among convicted and sentenced women in Caseload Forecast Council (CFC) data, compared to US Census data, for selected Washington counties**

NOTE: Due to the data limitations described in detail earlier in this report, we present data on Hispanic/Latinx women descriptively only in Tables 8-13. Census data is not directly comparable to CFC data for this group due to differences in coding, so we were not able to include this group in statistical difference testing for disproportionality.

**Table 8: King County**

	2019		2010		2000	
	Census	CFC (n = 385)	Census	CFC (n = 454)	Census	CFC (n = 988)
Asian American	19%	8%	15%	4%	11%	4%
Black	7%	29%	6%	28%	5%	41%
Hispanic/Latinx*	–	2%	–	1%	–	2%
Native American	1%	4%	0.8%	2%	0.9%	2%
White	66%	57%	69%	65%	76%	51%

Statistical significance of differences:

Proportions of women across racial categories were significantly different in King County CFC data than in county Census data in all three tested years. In 2019  $\chi^2 = 315$ , df 3,  $p < 0.001$ ; in 2010  $\chi^2 = 375$ , df 3,  $p < 0.001$ ; and in 2000  $\chi^2 = 2524$ , df 3,  $p < 0.001$ .

\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.

In King County in fiscal year (FY) 2019, the proportion of Black women convicted and sentenced was four times higher than their proportion in the general population according to Census data. The same was true of Native American women. White women were convicted and sentenced in roughly the same proportion as their representation in the general population, and a lower proportion of Asian American women were convicted and sentenced than in theirs.

In FY 2010 this disproportionality's scale was similar for Black women (6% of the King County general population compared to 28% of convicted and sentenced women). Disproportionality was present but less pronounced in 2010 for Native American women, who were convicted and sentenced at about twice the rate of their representation in the population (2% compared to 0.8%). White women were again convicted and sentenced in roughly the same

proportion as their representation in the general population, and a lower proportion of Asian American women were convicted and sentenced than in theirs.

Racial disproportionality in conviction and sentencing was even more pronounced in FY 2000, with a proportion of Black women convicted and sentenced that was eight times larger than their proportion of the county's population (41% compared to 5%). In this fiscal year, only about two-thirds as many white women were convicted sentenced as would be expected based on their Census proportions.

**Table 9: Pierce County**

	2019		2010		2000	
	Census	CFC (n = 573)	Census	CFC (n = 823)	Census	CFC (n = 944)
Asian American	7%	7%	6%	4%	5%	2%
Black	8%	19%	7%	20%	7%	23%
Hispanic/Latinx*	–	4%	–	1%	–	1%
Native American	1.8%	4%	1.4%	5%	1.4%	3%
White	75%	65%	74%	70%	78%	71%

Statistical significance of differences:  
Proportions of women across racial categories were significantly different in Pierce County CFC data than in county Census data in all three tested years. In 2019  $\chi^2 = 103$ , df 3,  $p < 0.001$ ; in 2010  $\chi^2 = 330$ , df 3,  $p < 0.001$ ; and in 2000  $\chi^2 = 2524$ , df 3,  $p < 0.001$ .

\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.

In Pierce County in FY 2019, the proportion of Black women convicted and sentenced was over twice as high as their proportion in the general population according to Census data. The same was true of Native American women. White women and Asian American were convicted and sentenced in roughly the same proportions as their representation in the general population.

In FY 2010 this disproportionality's scale was larger for Black women, who were convicted and sentenced at approximately three times the rate of their proportion of the county's population (20% compared to 7%). Disproportionality was also present in 2010 for Native American women, who were convicted and sentenced at about three times the rate of their representation in the population. White women were again convicted and sentenced in roughly the same proportion as their representation in the general population, and a very slightly lower proportion of Asian American women were convicted and sentenced than in theirs.

Patterns of racial disproportionality in conviction and sentencing were similar in FY 2000, with a proportion of Black women convicted and sentenced that was roughly three times larger than their proportion of the county's population (23% compared to 7%). Native American women were convicted and sentenced approximately twice the rate of their proportion of the county's population.

**Table 10: Snohomish County**

	2019		2010		2000	
	Census	CFC (n = 438)	Census	CFC (n = 265)	Census	CFC (n = 310)
Asian American	12%	2%	9%	2%	6%	1%
Black	4%	9%	3%	11%	2%	8%
Hispanic/Latinx*	–	<1%	–	0%	–	1%
Native American	1.6%	1%	1.4%	3%	1.4%	3%
White	78%	88%	78%	84%	86%	87%

Statistical significance of differences:  
 Proportions of women across racial categories were significantly different in Snohomish County CFC data than in county Census data in all three tested years. In 2019  $\chi^2 = 67$ , df 3,  $p < 0.001$ ; in 2010  $\chi^2 = 66$ , df 3,  $p < 0.001$ ; and in 2000  $\chi^2 = 62$ , df 3,  $p < 0.001$ .

\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.

In Snohomish County in FY 2019, the proportion of Black women convicted and sentenced was twice as large as their proportion in the general population according to Census data. For Native American women, no large scale disproportionality was evident in the data. White women were convicted and sentenced in a slightly lower proportion than their representation in the general population, and Asian American women in a much lower proportion (2% compared to 12%) than in theirs.

In FY 2010 this disproportionality's scale was greater for Black women, with a proportion convicted and sentenced nearly four times as large as their proportion of the general population. Disproportionality was also present in 2010 for Native American women, who were convicted and sentenced at about twice the rate of their representation in the population. White women were convicted and sentenced in roughly the same proportion as their representation in the general population, and a lower proportion of Asian American women were convicted and sentenced than in theirs.

Racial disproportionality in conviction and sentencing was similar in FY 2000, with a proportion of Black women convicted and sentenced that was four times larger than their

proportion of the county's population. Native American women were again convicted and sentenced at about twice the rate of their representation in the county's population. White women were convicted and sentenced in roughly the same proportion as their representation in the general population, and a lower proportion of Asian American women were convicted and sentenced than in theirs.

**Table 11: Spokane County**

	2019		2010		2000	
	Census	CFC (n = 529)	Census	CFC (n = 396)	Census	CFC (n = 230)
Asian American	2.4%	1.5%	2%	1%	2%	1%
Black	2%	6%	2%	8%	2%	8%
Hispanic/Latinx	–	1%	–	1%	–	1%
Native American	1.8%	7%	1.6%	6%	1.4%	7%
White	89%	84%	89%	84%	91%	83%

Statistical significance of differences:

Proportions of women across racial categories were significantly different in Spokane County CFC data than in county Census data in all three tested years. In 2019  $\chi^2 = 143$ , df 3,  $p < 0.001$ ; in 2010  $\chi^2 = 84$ , df 3,  $p < 0.001$ ; and in 2000  $\chi^2 = 2524$ , df 3,  $p < 0.001$ .

\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.

In Spokane County in FY 2019, the proportion of Black women convicted and sentenced was three times higher than their proportion in the general population according to Census data. Approximately the same was true of Native American women. White women were convicted and sentenced in roughly the same proportion as their representation in the general population, as were Asian American women.

Racial disproportionality in conviction and sentencing was even more pronounced in FY 2010, with a proportion of Black women convicted and sentenced that was four times larger than their proportion of the county's population. Native American women were again convicted and sentenced at about three times the rate of their representation in the population (6% compared to 1.6%). Similarly, white women were convicted and sentenced in roughly the same proportion as their representation in the general population, and a lower proportion of Asian American women were convicted and sentenced than in the general population.

In FY 2000, the proportion of Black women convicted and sentenced was again four times larger than their proportion of the county's population (8% compared to 2%). Disproportionate conviction and sentencing affected Native American women even more in 2000 as their

convicted and sentenced proportion (7%) was five times more than their proportion of the county (1.4%). In this fiscal year, slightly fewer white and Asian American women were convicted and sentenced than would be expected based on their Census proportions.

**Table 12: Yakima County**

	2019		2010		2000	
	Census	CFC (n = 245)	Census	CFC (n = 220)	Census	CFC (n = 227)
Asian American	1.6%	2%	1%	0.5%	1%	1%
Black	1.5%	4%	1%	2%	1%	3%
Hispanic/Latinx	–	31%	–	26%	–	28%
Native American	6.5%	8%	4.3%	8.5%	4.5%	13%
White	87%	55%	64%	63%	66%	55%

Statistical significance of differences:  
 Proportions of women across racial categories were significantly different in Yakima County CFC data than in county Census data in all three tested years. In 2019  $\chi^2 = 22$ , df 3,  $p < 0.001$ ; in 2010  $\chi^2 = 11$ , df 3,  $p < 0.05$ ; and in 2000  $\chi^2 = 47$ , df 3,  $p < 0.001$ .

\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.

In Yakima County in FY 2019, the proportion of Black women convicted sentenced was two and a half times higher than their proportion in the general population according to Census data. Native American women were convicted and sentenced at a slightly higher rate than would be expected based on their proportion of the county's population. White women were convicted and sentenced in a considerably lower proportion (55%) than their representation in the population (87%). Asian American women were convicted and sentenced in roughly the same proportion as their representation in the population.

Racial disproportionality in conviction and sentencing was also present in FY 2010, with proportions of Black and Native American women convicted and sentenced that were twice as large as their respective proportions of the county's population. White and Asian American women were convicted and sentenced in roughly the same proportions as their respective representation in the population.

In FY 2000, the proportion of Black women convicted and sentenced was three times larger than their proportion of the county's population. Disproportionate sentencing affected Native American women even more in 2000 as their convicted and sentenced proportion (13%) was nearly three times more than their proportion of the county (4.5%). In this fiscal year, about the

same proportions of white and Asian American women were convicted and sentenced as would be expected based on their Census proportions.

**Table 13: Benton and Franklin Counties combined**

	2019		2010		2000	
	Census	CFC (n = 233)	Census	CFC (n = 208)	Census	CFC (n = 254)
Asian American	3%	1%	2.4%	1%	2%	1%
Black	2%	3%	1.5%	4%	1.3%	8%
Hispanic/Latinx*	–	10%	–	7%	–	12%
Native American	1.4%	1%	0.8%	3%	0.8%	2%
White	90%	80%	76%	84%	80%	77%
Unknown**	–	5%	–	–	–	–

Statistical significance of differences:

Proportions of women across racial categories were significantly different in Benton and Franklin Counties combined CFC data than in these counties' Census data in two of three tested years. In 2019,  $\chi^2 = 4$ , df 3,  $p = 0.26$ , indicating no statistically significant difference. In 2010  $\chi^2 = 17$ , df 3,  $p < 0.01$ ; and in 2000  $\chi^2 = 75$ , df 3,  $p < 0.001$ .

Weighted averages:

In combining proportions across Benton and Franklin counties, we used weighted averages to account for the difference between the two counties' populations.

\* Hispanic/Latinx figures are likely an undercount due to CFC coding methodology and should be interpreted with caution.

\*\* The “unknown” category appears in CFC data from all counties, but only in Benton and Franklin counties in FY 2019 does it make up more than a negligible (i.e., > 0.5%) proportion of sentenced women.

In Benton and Franklin Counties combined in FY 2019, testing indicates no statistically significant racial disproportionality in conviction and sentencing. Proportions of people in each racial category are roughly similar in CFC data and in Census data.

In FY 2010, the proportion of Black women convicted and sentenced was two and a half times higher than their proportion in the general population according to Census data. Native American women were convicted and sentenced at three times the rate as would be expected based on their proportion of the county's population. Unusually, white women were convicted and sentenced in a proportion (84%) slightly larger than their proportion of the population



(76%). In this fiscal year, fewer Asian American women were convicted and sentenced than would be expected based on their Census proportions.

Racial disproportionality in conviction and sentencing was also present in FY 2000. Proportions of Black and Native American women convicted and sentenced were over four times as large, and twice as large, as their respective proportions of the county's population. Fewer white and Asian American women were convicted and sentenced than would be expected based on their Census proportions.

## **Racial/Ethnic Distribution of Convicted and Sentenced Women by Offense Category**

### ***Research question:***

5. ***Were Black, Indigenous, and women of color convicted and sentenced disproportionately within each offense category and in each fiscal year examined? (Tables 14-16)***

### **Summary of Disproportionality Results by Offense Category**

We found statistically significant differences indicating racial disproportionality in Washington's conviction and sentencing of women in most of the offense categories we examined. This was a robust finding with one notable counter-example. In 2019 data in the drug offense category, Black women were convicted and sentenced in roughly the proportion we would expect based on their representation in the general population of the state.

Black and Native American women bore the brunt of the disproportionality we documented. Across offense categories, Black women were typically convicted and sentenced at two or three times the rate we would expect based on their proportion of the state's population. This imbalance was especially pronounced in the violent offense category, where in 2000 nine times as many Black women were convicted and sentenced as their Census proportion would predict. Native American women, across offense categories, often made up two to four times as large a proportion of the convicted and sentenced population as they did of the general population of the state.

For violent offenses, white women were convicted and sentenced in a lower proportion than their representation in the general population across all three timepoints we examined. For drug offenses, they were convicted and sentenced in a higher proportion in two out of three years. A lower proportion of Asian American women were convicted and sentenced than their representation in the general population across nearly all offense categories.

**Table 14: Distribution of racial groups among convicted and sentenced women in Caseload Forecast Council (CFC) data, compared to Washington State Census data, for selected offense categories, FY 2019**

	Asian American		Black		Native American		White	
	Census	CFC	Census	CFC	Census	CFC	Census	CFC
Violent (n = 433)	9%	3%	4%	15%	2%	6%	79%	70%
Drug (n = 1607)	9%	2%	4%	5%	2%	4%	79%	85%
Property (n = 1484)	9%	3%	4%	9%	2%	5%	79%	78%
Fraud (n = 677)	9%	4%	4%	7%	2%	3%	79%	81%
Public Order (n = 498)	9%	4%	4%	11%	2%	5%	79%	76%
Statistical significance of differences: Proportions of women across racial categories were significantly different in CFC data than in Washington State Census data in all offense categories. Violent $\chi^2 = 190$ , df 3, $p < 0.001$ ; Drug $\chi^2 = 136$ , df 3, $p < 0.001$ ; Property $\chi^2 = 226$ , df 3, $p < 0.001$ ; Fraud $\chi^2 = 45$ , df 3, $p < 0.001$ ; and Public Order $\chi^2 = 106$ , df 3, $p < 0.001$ .								

The differences in proportions of women in each racial category in Census compared to CFC data varied depending on offense category in fiscal year (FY) 2019. In most offense categories, Black women made up a higher proportion of convicted and sentenced women than would be expected based on their proportion in the general population (e.g., approximately four times as many women in this group were convicted of violent offenses and sentenced [15%] as their Census proportion of 4%). Public order offenses were another category in which Black women were convicted and sentenced at particularly high rates (11%) compared to their representation in Census data. A notable exception to this pattern was drug offenses, where proportions were roughly similar (4% vs. 5%).

This disproportionality was also evident for Native American women, particularly in violent, property, and public order offenses. A lower proportion of Asian American women were convicted and sentenced than their representation in the general population across all offense categories. This was also true of white women for violent offenses. In the drug and fraud offense categories, white women were convicted and sentenced at slightly higher rates than would be expected based on their proportion of the general population, and in the property and public order offense categories, roughly similar rates to their representation in Census data.

**Table 15: Distribution of racial groups among convicted and sentenced women in Caseload Forecast Council (CFC) data, compared to Washington State Census data, for selected offense categories, FY 2010**

	Asian American		Black		Native American		White	
	Census	CFC	Census	CFC	Census	CFC	Census	CFC
Violent (n = 347)	7%	3%	4%	18%	1.5%	6%	77%	70%
Drug (n = 1291)	7%	1%	4%	8%	1.5%	4%	77%	84%
Property (n = 1420)	7%	3%	4%	10%	1.5%	5%	77%	79%
Fraud (n = 646)	7%	2%	4%	11%	1.5%	3%	77%	80%
Public Order (n = 309)	7%	1%	4%	13%	1.5%	6%	77%	77%
Statistical significance of differences: Proportions of women across racial categories were significantly different in CFC data than in Washington State Census data in all offense categories. Violent $\chi^2 = 230$ , df 3, $p < 0.001$ ; Drug $\chi^2 = 155$ , df 3, $p < 0.001$ ; Property $\chi^2 = 244$ , df 3, $p < 0.001$ ; Fraud $\chi^2 = 108$ , df 3, $p < 0.001$ ; and Public Order $\chi^2 = 104$ , df 3, $p < 0.001$ .								

Findings for FY 2010 were similar overall to those for FY 2019 with several notable exceptions. The differences in proportions of women in each racial category in Census compared to CFC data again varied depending on offense category. In most offense categories, Black women made up a higher proportion of convicted and sentenced women than would be expected based on their proportion in the general population (e.g., approximately five times as many women in this group were convicted of violent offenses and sentenced (18%) as their Census proportion of 4%). However, unlike in 2019, the drug offenses exception to this pattern was not apparent in 2010.

This disproportionality was also evident for Native American women, particularly in violent, property, and public order offenses. In the violent and public order offense categories, these women were convicted and sentenced in proportions four times greater (6% vs. 1.5%) than their proportions of Census data. Again, a lower proportion of Asian American women were convicted and sentenced than their representation in the general population across all offense categories. This was also true of white women for violent offenses. In the drug offense category, white women were convicted and sentenced at slightly higher rates than would be expected based on their proportion of the general population, and in the property, fraud, and public order offense categories, roughly similar rates to their representation in Census data.

**Table 16: Distribution of racial groups among convicted and sentenced women in Caseload Forecast Council (CFC) data, compared to Washington State Census data, for selected offense categories, FY 2000**

	Asian American		Black		Native American		White	
	Census	CFC	Census	CFC	Census	CFC	Census	CFC
Violent (n = 287)	5%	4%	3%	27%	1.6%	6%	82%	60%
Drug (n = 1573)	5%	1%	3%	13%	1.6%	3%	82%	80%
Property (n = 1138)	5%	3%	3%	14%	1.6%	4%	82%	73%
Fraud (n = 781)	5%	1%	3%	17%	1.6%	2%	82%	76%
Public Order (n = 280)	5%	1%	3%	14%	1.6%	3%	82%	77%
Statistical significance of differences: Proportions of women across racial categories were significantly different in CFC data than in Washington State Census data in all offense categories. Violent $\chi^2 = 546$ , df 3, $p < 0.001$ ; Drug $\chi^2 = 526$ , df 3, $p < 0.001$ ; Property $\chi^2 = 577$ , df 3, $p < 0.001$ ; Fraud $\chi^2 = 528$ , df 3, $p < 0.001$ ; and Public Order $\chi^2 = 143$ , df 3, $p < 0.001$ .								

Taken together, findings for FY 2000 were similar overall to those for FY 2010. The differences in proportions of women in each racial category in Census compared to CFC data again varied depending on offense category. In all offense categories, Black women made up a higher proportion of convicted and sentenced women than would be expected based on their proportion in the general population. This disproportionality was especially pronounced in the violent offense category, where nine times as many Black women were convicted and sentenced (27%) as their Census proportion of 3%. The drug offenses exception present in 2019 was not apparent in 2000, indeed, the proportion of Black women in CFC data (13%) was over four times larger than their proportion in the Census (3%).

This disproportionality was also evident for Native American women, particularly in violent and public order offenses, whereas their representation in the fraud offense category (2%) was approximately proportional to that in Census data (1.6%). A lower proportion of Asian American women were convicted and sentenced than their representation in the general population across all categories except violent offenses, where proportions were approximately equivalent. In the drug offense category, white women were present at roughly similar rates to their representation in Census data, but in all other categories, they were convicted and sentenced at slightly lower rates than would be expected based on their proportion of the general population.

## Discussion

This study began filling the gap in what is known about Washington State's incarcerated women using available data. Overall, women made up a lower proportion of people convicted of felonies and sentenced than men; this proportion increased from 19% in FY 2000 to 21% in 2019. Women were more likely to be convicted of Fraud, Property, and Drug offenses and sentenced than Violent, Public Order, or Sex offenses, but men made up the majority of people convicted and sentenced in all offense categories.

Focusing on women, we found statistically significant differences indicating racial disproportionality among women convicted and sentenced in Washington in all of the six regions we examined, and nearly all of the offense categories, across all three time points. Black and Native American women bore the brunt of this disproportionality. Racial disproportionality in conviction and sentencing did improve somewhat between 2000 and 2019. However, the consequences of earlier years' high disproportionality are currently being felt by women who may still be in prison right now, and by their communities.

It is important to note that because the data this study used was collected at the time of sentencing, we are not able to identify the point(s) in the legal process (e.g., arrest, charging, conviction, sentencing) at which these disproportionalities occurred. For example, Black women could have been arrested, charged with crimes, or convicted of them more often than white women in equivalent situations and produced similar results. Judges make sentencing decisions constrained by the crime charged, the crime of conviction, the standard sentence range for each crime, and the grounds for exceptional sentences above and below the range that the legislature and the courts have recognized. Thus, what this report summarizes is less "disproportionality in sentencing" and more "disproportionality at the time of sentencing."

The study's other major limitation is that the existing data we analyzed may mis-categorize some people in terms of race/ethnicity. The mis-categorized group represents a minority of all cases analyzed, but cannot be quantified further. This use of existing data to examine questions of disproportionality at the time of sentencing provides a picture that is not perfectly in focus. Nonetheless, this picture does show the overall shape of the conviction and sentencing disproportionality problem in Washington.

Ultimately, looking at which women are in prison requires looking at who is convicted and sentenced, as we did here, and also at other factors that affect how long people remain in prison. CFC data do not provide information about events during incarceration that may affect length of prison stay.

For Washington State to begin creating policy that addresses the needs of incarcerated women, we must understand who is in women's prisons and why we are incarcerating them. This study takes the first steps on that journey. This pilot research also indicates some next steps, detailed in our recommendations below.

## Recommendations

The study team has some recommendations and suggestions regarding both improvements in data collection and additional analyses and research.

### Data recommendations

- We recommend that the CFC begin using the race/ethnicity categories from the J&S forms, in a manner that allows for the use of multiple racial categories to specify the details of multiracial-identifying individuals' identities, and with race and Hispanic/Latinx ethnicity separated into two variables in their datasets.
- We suggest that all counties collaborate in efforts to standardize data collection on J&S forms across the state, including using best practices for data collection such as ensuring individuals are able to self-identify their race and ethnicity.
- We recommend that the courts and CFC explore the possibility of collecting data markers for socio-economic status (SES), such as the highest level of education of the individual's primary parent (an easy-to-collect piece of information that serves as a proxy for individuals' SES in adult life), or whether the person qualified for a public defender.
- We recommend that the courts and CFC explore data markers for genders that do not fit within the male or female binary so individuals are able to self-identify their gender.
- We recommend that the Department of Corrections support research aimed at understanding the intersection of gender and race. This could be done by streamlining researchers' access to data on incarcerated individuals that is broken out by both gender and race, or by doing analyses like this in their own publications.

### Additional analyses and suggested research directions

- We suggest identifying alternative data sources that could allow for disproportionality analyses, similar to those we did here, for Hispanic/Latinx people.
- We recommend additional research, including qualitative research using facts and circumstances if appropriate, to further examine:
  - the disproportionality for Black women with violent crimes.
  - causes of disproportionality in drug conviction and sentencing.
  - the nature and antecedents of the relatively high levels of fraud felony convictions among women.
- More research is needed specifically on Indigenous women, given the racial disproportionality and the almost complete lack of national research. This research should be led by Indigenous researchers.
- We suggest additional research using Department of Corrections data on factors that affect the length of time women spend in prison, for example:

- the extent that infractions increase length of stay in prison as well as at work release/community corrections.
- the extent that risk classification increases length of stay in prison.
- We recommend additional research on court-related factors related to length of time served, for example:
  - concurrent versus consecutive sentences.
  - the use of enhancements and their effects on length of sentences.
- We also suggest research to begin identifying the sources of the disparities found in this report. This work could examine:
  - Sentencing: by determining where within the standard range, or outside the standard range, judges are sentencing criminal defendants of different races/ethnicities/genders; and upon what factors the judges are basing those decisions.
  - Charging and plea offers: by determining how county prosecutors charge or offer pleas to defendants of different races/ethnicities/genders for similar conduct. We acknowledge the challenges involved in determining the facts for such research, but it would make a major contribution to understanding and addressing the disproportionalities identified here.

Our project team was:

Tatiana Masters, PhD, MSW (independent research consultant)

Elizabeth Hendren, JD (Northwest Justice Project)

Jennifer Bright, MPA (Freedom Education Project Puget Sound)

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Special thanks to Sierra Rotakhina, Chianaraekpere Ike, and Olivia Ortiz.

**For questions about the findings and  
data analysis in this report, please contact:**

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**Full Report:** <https://www.ccyj.org/wp-content/uploads/2019/01/CCYJ.GirlsCourt.LitReview.6-30-18.pdf>



***Gender Responsive Juvenile Justice: A Girls Court  
Literature Review Update***

By Leila Curtis, JD, MIT, Project Manager & Melanie Nadon, MPA,  
Project Coordinator

**June 2018**

## Project Background

CCYJ initiated work on gender-responsive justice in 2013. During this time, CCYJ conducted a thorough review of research on justice-involved girls' unique needs, risk factors, pathways, and experiences in the system, and on gender-responsive programming intended to respond directly and effectively to justice-involved girls. CCYJ's research culminated in a [literature review, titled \*Gender Responsive Juvenile Justice\*](#) and completed in 2015. The literature review concluded that girls are indeed different than boys, but despite these clear differences, the justice system has been largely unresponsive to girls' needs and often retriggers the trauma that pushed them into the system initially. The conclusions from this literature review set the stage for CCYJ's continued work on gender-responsive justice and contributed to CCYJ's momentum to initiate Washington's first *Girls Court*, a project aimed at building a more relationship-guided and juvenile justice system for girls. *Gender Responsive Juvenile Justice: A Girls Court Literature Review Update* builds on the original research CCYJ conducted in 2015 by examining early research and developments since 2015, including evidence, reforms, and practices that will help direct the model for the *Girls Court* pilot program.

## Overview

The literature review update summarizes articles, papers, research, and reports that analyze and describe girls involved in or at-risk for involvement in the juvenile justice system. Although the research primarily focuses on the United States, the update includes some international research as well. Literature reviewed includes pieces on the histories, service/treatment needs, risk factors, pathways to system involvement, intersectional system experiences, and resiliencies of justice-involved and at-risk girls, as well as on reforms and pilot programs/practices aimed at providing gender-responsive services to these girls. The update includes a brief section on key conclusions based on the research findings and a section with summaries of each piece of literature that was reviewed, sorted by general issue category.

## Key Conclusions

- 1) **Girls' involvement in the juvenile justice system is either increasing** while boys' involvement is decreasing **OR girls' involvement is decreasing at a slower rate** than boys', depending on the country, state, or county.
- 2) **Girls are more likely than boys to initially become justice-involved for lower level offenses**, such as status and misdemeanor offenses. Feminist literature argues that this historical and current trend tends to occur due to a paternalistic desire to protect girls and/or control girls' bodies, sexuality, and decision-making. Qualitative research indicates that LBQ girls are more marginalized than their heterosexual female counterparts in the juvenile correctional setting due to their non-conformity to traditional gender roles.
- 3) Although girls are more likely to be justice-involved for lower level offenses, **the number of girls being arrested for violent offenses has steadily increased** in many countries, states, and counties. Some researchers associate this increase with statutory and policy reforms, such as mandatory arrest laws for domestic violence. Others suggest that girls committing violent offenses act at the direction of significant others (typically, older males), traffickers, or gangs. A few researchers suggest that girls have historically been

engaged in ongoing violent behavior, which has been largely unreported in criminal history.

- 4) **Justice-involved girls have greater histories of trauma and other adverse childhood experiences** than justice-involved boys. Unlike boys, the prevalence of adversity is highly correlated with offending and other high-risk behaviors, including trafficking and gang/group involvement, for girls. Learning disabilities and adolescent parenthood among justice-involved girls are associated with higher risk for mental health challenges and substance use, and greater reliance on public assistance in the future.
- 5) **Family violence, parental divorce, and cumulative childhood risk factors, but not juvenile justice referrals, are significant predictors of adult arrest for women** whereas, for men, juvenile justice system involvement is a significant predictor of adult arrest and adult felony offending.
- 6) **Justice-involved girls commit a wide range of offenses, primarily low-level, at different points in time, initiate offending behavior early by the commission of less serious offenses, and do not conform to specific delinquency patterns, sequences, or pathways** into the juvenile justice system. Substance abuse plays a significant role in offending behavior for girls.
- 7) **Justice-involved girls are diverse, with varying histories, needs, risks, and identities.** A one-size fits all approach, response, or program will not be effective for all girls in need of gender-responsive services. Girls with lower needs and less prior systems involvement often respond poorly to intensive services. LGBTQIA+ girls, girls of color, girls with a history of child welfare involvement, and girls whose families are impoverished have unique service and program needs.
- 8) There is a general consensus by practitioners and researchers that gender-responsive reforms (policy, practice, and programs) are needed to respond to justice-involved girls' unique risk factors and needs. Despite this consensus, **gender-responsive reforms have often been limited and temporary, and comprehensive, rigorous evaluations of these reforms have also been limited.** For gender-responsive practices, programs, and policies that have been evaluated, quantitative outcomes are both limited and mixed, but qualitative assessments of youth and staff response are consistently positive.
- 9) **Adaptations of evidence-based programs, which include gender-responsive elements, have shown some promise with girls.** Multi-systemic Therapy (MST) and Multidimensional Treatment Foster Care (MTFC) have been the most frequently evaluated programs for girls.
- 10) In light of recognition of girls courts as individualized programs within the juvenile justice system that aim to fulfill the rehabilitative mandate of juvenile justice, **legal challenges to girls' courts based on equal protection are likely to survive even heightened levels of scrutiny by courts.**



STATE OF WASHINGTON

## OFFICE OF THE CORRECTIONS OMBUDS

*2700 Evergreen Parkway NW □ Olympia, Washington 98505 □ (360) 664-4749*

February 23, 2020

Steve Sinclair, Secretary  
Department of Corrections (DOC)

### **Office of the Corrections Ombuds (OCO) Survey of Incarcerated Women**

Thank you for the opportunity to survey all of the women incarcerated in the Washington Department of Corrections, to obtain their firsthand perspective regarding conditions of confinement. Our hope is that by conducting this survey and publishing the results, we will assist in identifying systemic issues for improvement.

Attached to this report is an Executive Summary of the survey findings, the DOC response and action, and the full report on the survey findings in detail. This report is the product of several meetings with DOC over the course of months to discuss the report's findings, and we appreciate the partnership with DOC in this work. We also appreciated the opportunity to participate in the kick-off meeting for the Gender Informed Practices Assessment (GIPA) work and look forward to its findings and results.

Any member of the public who wishes to report a concern to OCO is welcome to contact the office at (360) 664-4749 or at the address above. All concerns are logged into the OCO database and used as part of its overall reporting to policymakers and analysis of issues within DOC.

Sincerely,

A handwritten signature in black ink that reads "Joanna Carns". The signature is written in a cursive style with a large initial "J".

Joanna Carns  
Director

cc: Governor Inslee

## **Executive Summary and Findings**

Women are an often overlooked population within departments of corrections nationwide. Policies, procedures, and prisons in general are developed based on the male population and often do not take into account the specific needs and concerns of women. The survey undertaken by the Office of the Corrections Ombuds (OCO) was an attempt to lift up the voices of incarcerated women, identify issues, and create a dialogue for development of solutions.

Across all the surveys, a clear finding is that the women being held at Yakima County Jail are the least satisfied with their experience, have the least access to necessary programs and treatment, particularly with regard to health services, and have the poorest conditions of confinement.

The following is a summary of the survey findings by individual question:

- The vast majority of incarcerated women report feeling physically safe at their institution. However, they also report that staff are more reactive than proactive and that under-staffing leads to overwhelmed and less responsive staff. Facility layout, lack of cameras, and poor sanitation also contribute to low feelings of physical safety.
- Only slightly more than half of incarcerated women report feeling emotionally safe at their institution. LGBTQ prisoners, non-white prisoners, and immigrant prisoners experience various types of harassment and do not always feel emotionally safe.
- The majority of incarcerated women felt that their hygiene needs were met, with the exception of the women incarcerated at Yakima County Jail, where the majority felt that their needs were not met. However, the insufficiency of the indigent hygiene pack contents, denture supplies for elderly prisoners, and shower access were repeated concerns.
- Almost half of the respondents reported that their clothing needs were not met, with women at Yakima again the most dissatisfied. The top clothing concerns are that the allowance of six pairs of underwear is insufficient, particularly during menstrual periods, poor selection of shoe sizes, the need for an additional sweatshirt, and clothing colors that are unfeminine.
- Approximately half of respondents reported that their dental needs are not met, with the women at Yakima the most dissatisfied. The majority stated that dental staff will only pull teeth rather than try to save teeth through fillings or root canals and seem indifferent to individualized patient needs. There are reportedly few services offered for dentures.
- Approximately half of respondents reported that their medical health care needs are not met. The women reported feeling that their complaints were minimized or not believed,

even when the symptoms were serious, and there are difficulties obtaining glasses and hearing aids.

- Responses regarding mental health varied from relatively positive perceptions at Mission Creek, more negative at WCCW, and the most negative at Yakima, where mental health access is nonexistent. At the state facilities, the women generally liked the actual care provided, but reported it was difficult to access.
- The majority of incarcerated women reported that the food provided was not of acceptable quality, with the worst perception at Yakima. Respondents were concerned about food contamination or spoiled food, small portions for those in restrictive housing, and over-reliance on carbohydrate or soy heavy items.
- The majority of incarcerated women reported that they did not feel comfortable sharing their concerns with staff. The respondents reported feeling degraded by staff and that staff are trained to treat incarcerated women as though they are lying and manipulated. Positively, almost every respondent could name at least one staff with whom they would feel comfortable.
- The majority of incarcerated women reported feeling that prison staff did not respond appropriately to their concerns. Women reported having to contact staff multiple times, wait extended periods, or be pushed off to other staff. Women incarcerated at Yakima again reported the worst responses.
- The majority of incarcerated women reported that the grievance process is not fair. Women felt that it was slow, that the Grievance Coordinator was biased in favor of staff, or that they would face retaliation for using it.
- Generally, the majority of incarcerated women reported having access to adequate programming, with the exception again being the women at Yakima. Yakima Jail provides no programming or job opportunities outside of one hour of TC sessions per day and a limited quantity of TC jobs. Under-staffing causes delays or cancellation of scheduled programming at WCCW.

Issues at the root of many other concerns addressed in this summary:

- Understaffing, overcrowding, and excessive overtime burdens on staff negatively impact the health, safety, programming, and conditions of confinement for the incarcerated population.
- Need for staff training to better address the following:
  - Consistent, constructive protocols in conflict de-escalation;
  - Better modeling of pro-social behavior for prisoners, and in setting the tone of interactions with prisoners and fellow staff;

- Proactive, effective handling of the emotional and mental health needs of prisoners;
  - Clearer understanding of what kind of language, touching, and joking is considered sexual harassment, a PREA violation, or verbal abuse;
  - Understand their role in broader penological and public safety objectives so their interpretation and application of policy does not undermine pro-social rehabilitation efforts;
  - How to build constructive, responsive interactions with incarcerated individuals, rather than viewing them as manipulative and lying; and,
  - Sufficient CPR and medical emergency response training.
- Rehabilitation and reentry outcomes may be negatively impacted by the conditions of confinement that the women are subjected to:
    - Negative living unit dynamics that cause prisoners to suppress emotions and mental health issues that need to be dealt with and many fear this will cause them to come out emotionally hardened when they release
    - Poor quality of and access to medical, mental health, and dental care may result in the incarcerated being released sicker and in need of greater health services post-release.
    - Cosmetic issues such as dental staff pulling rather than fixing teeth and poor diet may impact personal appearance that negatively impacts employment opportunities.
- Repeat Yakima Jail transfers (and involuntary TC programming)
    - Cause a cloud of anxiety to hang over women who have experienced them or who might experience them
    - Disrupt pro-social, rehabilitative programming, including educational programs and vocational certifications that enhance women's chances of employment upon release
    - Restrict women's access to prison employment, rendering them indigent
    - Give women too much idle time to sit and feel agitated due to eliminating access to other programming

## DOC Response and Action



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
 P.O. Box 41100 • Olympia, Washington 98504-1110

February 18, 2020

Joanna Carns  
 Office of Corrections Ombuds  
 PO Box 43113  
 Olympia, WA 98504

Dear Ms. Carns:

The Washington Department of Corrections appreciates the opportunity to respond to the OCO Investigation Survey on the 'women incarcerated in the Washington Department of Corrections' completed by the Office of Corrections Ombuds.

Recommendation	Response
<i>Physical and Emotional Safety</i>	
Provide greater trauma-informed and gender-responsive training to staff.	Pathways and Perspectives training was the most recent class completed in October 2019, as well as a new Training for Trainers facilitation course for new instructors to be able to deliver material. Additionally, several staff from Mission Creek Corrections Center for Women (MCCCW), Washington Corrections Center for Women (WCCW) and Yakima County Jail successfully completed "Safety Matters: Managing relationships in women's facilities" – a training jointly created and delivered by the National Institute of Corrections and Moss Group. Approximately 15 of the class students were chosen to facilitate the class at the three facilities in the future to enhance gender responsive and trauma informed training to staff on a consistent and sustainable basis. Currently, WCCW and MCCCW leadership, in conjunction with the Deputy Prisons Director and Training & Development Unit (TDU) administrator, are working with those trained facilitators to plan for implementation and rollout at women's facilities.
<i>Physical Safety</i>	
Consider creating housing space for individuals experiencing safety issues that is	There is currently no capacity to create a dedicated protective custody living unit.





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<p>not segregation/IMU or close observation area, as well as a unit specifically for the over-55 population. Reopening W unit, although currently unfunded, could provide ADA-compliant space for an over-55 unit and may also allow for the return of the women at Yakima County Jail.</p>	<p>There is currently no funded capacity to create a dedicated assisted living unit for women. Per policy, there is nothing restricting elderly incarcerated individuals from housing with other elderly incarcerated individuals. There is a process for requesting a cell change that is reviewed on a case by case basis pending criteria being met for the request.</p>
<p>Ensure allegations of the roof caving in at MCCW in the Mission building and black mold growing in the showers at both MCCW and WCCW are addressed.</p>	<p>The department has verified that the roof is not caving in on the Mission Creek Mission Unit and it is safe for occupancy. There was water damage due to a leak last summer. The repair work was completed January 10, 2020. The texture and painting is estimated to be completed by February 1, 2020.</p> <p>From the annual Department of Health (DOH) inspection in November 2019, there was notation of non-toxic mold in the caulking of the living unit showers at Mission Creek. Following the inspection, the facility manager put into place an action plan to have the caulking removed and replaced and did increase the emphasis and training on proper cleaning processes with available cleaning chemicals to the unit porters.</p> <p>The Washington Corrections Center for Women is in the process of re-tiling all bathrooms in the facility. In February 2020, the DOH inspected the facility and noted the tiling replacement project throughout the facility. The facility is working with senior managers to ensure proper use of cleaning chemicals and regular inspections.</p>
<p>Add more cameras to WCCW to ensure greater safety and accountability.</p>	<p>There is a plan to add cameras to the Washington Corrections Center for Women facility pending updates to infrastructure.</p>
<p><i>Hygiene</i></p>	
<p>Ensure indigent incarcerated women have</p>	<p>Prisons leadership, including the security</p>



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<p>access to a hygiene kit that includes items that meet the needs of women of color.</p>	<p>chief, and Correctional Industries representatives have met and are having ongoing planning discussions on how to provide an expanded selection of hygiene items.</p> <p>Union Supply is in the process of expanding their choices from which individuals are able to choose.</p>
<p>Ensure that women who require additional undergarments due to menstruation are allowed to receive those items without undergoing a humiliating process.</p>	<p>Per the Prisons Division's verbal correspondence with incarcerated individuals and units, and written correspondence to staff disseminated on February 12, 2020, the issue has been remedied through reminders and coaching from the superintendents to custody staff. Additional undergarments are now provided to requesting individuals without processes of proof from the incarcerated women.</p>
<p>Increase the number of showers for women in segregation from three per week to five per week.</p>	<p>At this time, the budgeted staffing model and DOC policy does not allow for additional shower movements.</p>
<p><i>Clothing</i></p>	
<p>Ensure women receive a greater number of underwear, greater opportunity to change them out when needed, and explore purchasing/providing greater quality of underwear.</p>	<p>The underwear and sock property matrix is being updated to allow for seven pairs of underwear and socks for all incarcerated women. The frequency for clothing exchanges is not being adjusted at this time, but incarcerated individuals have the ability to request replacement clothing at any time to the unit staff. There have been reminders and coaching to staff regarding sensitivity of clothing exchanges. There is no visual confirmation of soiled articles of clothing required or encouraged per policy or procedural practice.</p>
<p>Ensure women are provided the correct size of clothing and shoes.</p>	<p>Clothing items are made onsite and therefore if an incarcerated individual is issued the wrong size, the article of clothing can be</p>





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	<p>immediately exchanged for the correct size. Correctional Industries does have a quality assurance program which is monitored by the incarcerated workers. A review of grievance data did not reflect a systemic issue regarding this topic.</p> <p>Based on analysis of grievances, the agency does not find grounds of a systemic issue or action plan related to inappropriate shoe sizing.</p>
Provide better quality bras, which are needed especially for large breasted women and women who have had mastectomies.	The security operations unit continues to work with vendors to locate a better quality bra for offering to incarcerated individuals.
Provide at least one additional sweatshirt to the female population.	The state issued clothing policy is currently under revision, and the agency has added an additional sweatshirt, pair of underwear, and socks allocation for all individuals incarcerated in the women's facilities. In the meantime, a policy exception request has been submitted to allow women at Mission Creek and Washington Corrections Center for Women to be allocated an additional sweatshirt.
<i>Health Services: Dental, Medical, and Mental Health Care</i>	
Ensure incarcerated women have access to adequate dental services, including those at Yakima County Jail who reportedly do not have adequate access.	The agency has created protocols around an incarcerated individual's ability to be transferred from the Washington Correction Center for Women (WCCW) to Yakima County Jail due to specific specialty care requirements. Patients who are scheduled to be housed at Yakima County Jail are pre-screened by a Department of Corrections' dentist to determine if they have any urgent dental needs that could be of concern during their 6-month time of incarceration in Yakima. If there is a dental concern identified, the patient is not transferred. While incarcerated at the Yakima County Jail, if an



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	<p>incarcerated individual develops an urgent dental need, the followed practice is that the jail will transport the individual to an off-site dental clinic for treatment.</p>
<p>Ensure incarcerated women have access to adequate medical services, including addressing slow medical appointment scheduling.</p>	<p>The Health Services Division is currently working to improve medical services for women and all incarcerated individuals throughout the system. There has been many policy and procedural changes as well as staff training for the schedulers in the facilities.</p> <p>The Care Coordination Work Group of the Health Services 2020 Initiative is currently working to accomplish the following:</p> <ul style="list-style-type: none"> <li>• Develop a sustainable system to identify inadequate or outdated scheduling practices and introduce process improvements.</li> <li>• Re-training the Patient Service Representatives (PSR's), nursing and provider staff.             <ul style="list-style-type: none"> <li>○ Patient Service Representative (PSR) re-training to occur in February and March 2020.</li> <li>○ Provider and nursing training to be scheduled</li> </ul> </li> <li>• Creation of standardized PSR processes, training and audit documents.</li> <li>• Creation of PSR supervisor audit and oversight processes.</li> <li>• Proposal to create patient navigator positions to act as a liaison between the scheduler, DOC provider and patient.</li> </ul>
<p>Ensure incarcerated women have access to adequate mental health services, particularly those at Yakima County Jail who reportedly do not have adequate access.</p>	<p>The agency has been in pursuit of adding the use of tele-psychiatric and tele-mental health services for the women housed at the Yakima County Jail. The agency has recently received clearance from the Attorney General, which</p>





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	was the last pending step that was needed to pursue this effort. Finalization of this effort is to be implemented in 2020.
<i>Food</i>	
Increase quality assurance by Correctional Industries' food services to ensure food delivered to women is free of rocks, bugs, and other foreign materials, and is safe for consumption.	The Food Service Administration is developing a consistent statewide quality assurance program, including documentation. The anticipated timeline for implementation of the program is Spring 2020.
Ensure adequate portion size and calories for incarcerated women	To gain compliance with the Dietary Guidelines for Americans (DGA), the portions of specific items have been adjusted slightly but the overall caloric intake and meal size has not been reduced. The Department has now gained DGA compliance and follows its recommendations.
Ensure dishes and utensils are properly cleaned and are sanitary for use in food consumption.	DOC adheres to the Department of Health cleanliness standards and have not received notification of improperly maintained kitchen equipment. The dishwashers in facilities are commercial grade dishwashers and are serviced once a year for maintenance. If service tickets for the dishwashers begin to show lack of cleanliness, the department will review its current service agreement for increased frequency.
Ensure all women who require a special diet and have a documented Health Service Request for one receive it.	A grievance analysis review was completed for calendar year 2019 and there was no information gathered that suggests that special diets were not being received in women's facilities.
<i>Staff and Agency Responsiveness</i>	
As stated above, all staff who interact with incarcerated women should receive greater trauma-informed and gender-responsive training.	Please refer to the above response to the first recommendation "Provide greater trauma-informed and gender-responsive training to staff."
<i>Grievance Procedure</i>	
Ensure women are able to access the grievance	Based on the work from the Grievance



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<p>procedure without retaliation, and that their concerns are meaningfully and confidentially considered and addressed.</p>	<p>Program Workgroup, the agency is implementing numerous changes to the grievance process systemically, to include the women's facilities. An action plan has been finalized and is being put into practice.</p>
<p><i>Programming Access</i></p>	
<p>Understanding DOC's focus on programming for those closer to reentry, ensure that women with less than a year and with greater than seven years still have adequate opportunities to participate in criminogenic programming.</p>	<p>Due to factors that include legislation and legal action outcomes, the department has placed time maximums on incarcerated individual's work assignments. The department prioritizes programming on a variety of factors, including release date and assessed needs. Those closest to release date will be prioritized to achieve greater success upon reentry. Policy does allow for exceptions to be made in specific cases. The Prisons and Reentry divisions have begun discussions surrounding continuous case management in relation to criminogenic needs that are individually based. These outcomes will be based upon recommendations from the Gender Informed Practices Assessment (GIPA) and work being done to update the needs assessment and custody classification systems. The GIPA process is scheduled to commence at the end of February 2020. The agency is focusing on how to change the focus from length of time being served to direct program and service needs.</p>
<p>Ensure women at Yakima County Jail receive adequate access to meaningful work and educational programming.</p>	<p>The substance abuse treatment program has been modified to shorten the length of stay in the Yakima facility. Those housed at the Yakima facility are engaged in intensive inpatient substance abuse treatment, which is considered to be their assigned programming until returned to either Mission Creek or Washington Corrections Center for Women. Through the intensive treatment programming, the women are better equipped to sustain and thrive in meaningful work programming post-transfer and post-release.</p>





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Ensure educational holds are honored so that women are not transferred and unable to complete already-started programming.	Individuals receiving education financial assistance with an education hold are no longer transferred until after completion of current educational programming.
<i>Access to DOC Policy, Law Library, and Legal System</i>	
Ensure women have adequate access to up-to-date DOC policies and operational memos, such as including them on the housing units.	Policies, and their attachments, as well as facility operational memos, are now available in the law libraries as well as the institutional state libraries.
Consider evaluating the legal research needs of the MCCCW population, such as through a survey, to determine whether the current legal research provisions are adequate.	Previously, the department did implement a legal kiosk at Mission Creek for increased access to family law. Based on data related to the lack of usage at the facility, the department discontinued the updating and maintenance of this kiosk. The department can evaluate the legal research needs and provisions of the Mission Creek population. Additionally, the facility's superintendent is working to have a correctional manager conduct information sharing and training on LexisNexis in the meantime.

The information provided by the OCO was useful to ensure the Department of Corrections is doing everything it can to ensure an incarcerated person's time in the agency's facilities is a fair and safe space for all incarcerated individuals.

We also appreciate your team's understanding of the unique processes across facilities and the addition of policies and procedures being put in place to address them. We are working towards proactivity and improving quality assurance processes throughout the department. Moving forward, Washington Department of Corrections will continue to collaborate with the Office of the Corrections Ombuds to implement additional policies, procedures, and security measures to continue to improve the facility operations.

Full Report: <https://www.issuelab.org/resources/23129/23129.pdf>

# COMING OUT OF CONCRETE CLOSETS

A REPORT ON BLACK & PINK'S NATIONAL LGBTQ PRISONER SURVEY

*To increase the power of prisoners we need greater access to the political process. We need real! access to real people in real power who will actively hear us and help us, not just give us lip service, come sit and talk with me, help me take my dreams and present them to the people who can turn them into a reality, I am not persona non grata, hear me, don't patronize me just to keep me quiet, understand that I'm very capable of helping in this fight. -Survey respondent*

**Jason Lydon**  
*with*  
**Kamaria Carrington**  
**Hana Low**  
**Reed Miller**  
**Mahsa Yazdy**



## EXECUTIVE SUMMARY

This report lifts up the voices of LGBTQ prisoners from across the United States so that they can inform, shape, and lead the movement for prisoner justice. These numbers, statistics, and stories represent the largest ever collection of information from LGBTQ prisoners. This collection of information is possible because of the time taken by 1,118 prisoners across the United States to handwrite responses to our 133-question survey, which was itself designed/drafted with prisoners themselves. Black & Pink's free world leadership extends the utmost thanks to prisoner members who took the time to help design and respond to the National LGBTQ Prisoner Survey and for sharing their deeply personal and valuable stories of harm and resilience. This report will be printed in the Black & Pink newspaper for all prisoner members to read. Along with the report, there will be space for responses and reflections that will be compiled into a supplementary report to be released in Spring/Summer of 2016.

LGBTQ people, particularly people of color and poor people, experience high levels of policing and criminalization, leading to arrest and incarceration. Once inside prison, LGBTQ people are subjected to constant violence by both prison staff and other prisoners. This report seeks to offer a tool for organizers, both inside and outside of prisons, to strengthen national campaigns and grassroots efforts to alleviate the immediate suffering of prisoners and bring an end to the prison industrial complex while centering the needs of LGBTQ prisoners.

## KEY FINDINGS

### Homelessness and Housing

- Nearly a fifth of respondents reported being homeless or transient prior to their incarceration, while 29% lived with family or a friend. Only 52% were living in a home of their own.

### Unemployment and Criminalized Economies

- Over a third of respondents reported being unemployed prior to their incarceration, nearly 7 times the 2014 national unemployment rate in 2014.
- 39% of respondents reported that they have traded sex for survival.
- Selling drugs is also a frequent means of survival: over half of respondents have sold drugs for money. Black respondents were nearly 20% more likely to have participated in the drug trade than white respondents (67% and 48% respectively). This over-representation of Black respondents in the drug trade highlights the racism of the War on Drugs, since white people are actually *more* likely to sell drugs.

### Arrest and Incarceration

- Close to two thirds (58%) of respondents' first arrest occurred when they were under the age of 18. Black and Latin@/Hispanic respondents were more likely to have their first arrest occur when they were under 18 compared to white respondents (66% versus 51%, respectively).
- For two thirds of respondents, the current sentence they are serving is not their first experience of incarceration. Frequency of incarceration varied, although Black, Latin@/Hispanic, and mixed-race respondents were more likely to have experienced multiple incarcerations than their white and Native American/American Indian counterparts.

### Education

- Ninety percent of respondents have completed high school or earned a GED. Closer scrutiny, however, reveals that *only* 29% of respondents completed high school outside of prison. This means that 71% of respondents dropped out of school, were expelled from school, or never attended school in the first place.

### **Children**

- Forty five percent of respondents report having children, although only 29% of these parents report having any kind of contact with their children.

### **Pretrial Detention**

- Nearly three quarters of respondents were held in jail prior to their conviction. Of those held in pretrial detention, more than half were detained for a year or more.

### **Sentencing**

- Respondents were twice serving life sentences at twice the rate of the general state and federal prison populations.
- The average time respondents have spent in prison on their current sentence was 10 years. According to research by Pew, prisoners released in 2009 served an average of 2.9 years in custody.

### **Prison Security Levels**

- While all respondents were over-represented in higher security facilities as compared with the national prison population, white respondents were held in minimum security prisons at nearly twice the rate of Black respondents.

### **Parole**

- Nearly a third of respondents have been granted parole on a previous sentence. Of those who have been granted parole, 65% have been returned to prison on a parole violation.

### **Sexual Identity and Gender Identity**

- 65% of respondents identified as LGBTQ prior to their incarceration.
- 70% of respondents experienced emotional pain from hiding their sexuality during incarceration/throughout their interactions with the criminal legal system.
- 78% of transgender, nonbinary gender, and Two-Spirit respondents experienced emotional pain from hiding their gender identity during incarceration/throughout their interactions with the criminal legal system.
- Of transgender, nonbinary gender, and Two-Spirit survey respondents, only 43% have been diagnosed with Gender Identity Disorder or Gender Dysphoria. 31% reported being denied these diagnoses upon seeking them during incarceration.
- More than a third of transgender, nonbinary gender, and Two-Spirit respondents took hormones prior to their incarceration. The majority of these respondents took street-based hormones that were not prescribed by a doctor.
- 23% of transgender, nonbinary gender, and Two-Spirit respondents are currently taking hormones in prison, while an overwhelming 44% report being denied access to hormones they requested.
- Only 21% of respondents are allowed access to underwear and cosmetic needs that match their gender.
- 15% of respondents have been barred from programs offered by the prison because they identify as LGBTQ.
- Only 20% of respondents have access to LGBTQ affirming books.

### **Sexual Activity**

- 70% of respondents have been sexually active in prison.
- Only 2% of respondents have access to condoms allowed by the prison, yet 22% have used a condom or another barrier to stop the transmission of sexually transmitted infections (STIs).
- 81% of respondents discussed safer sex with their sexual partner(s).
- Over a third of respondents have been disciplined for engaging in consensual sex, and of those, nearly two thirds have been placed in solitary confinement as punishment for consensual sexual activity.

### **Solitary Confinement**

- 85% of respondents have been in solitary confinement at some point during their sentence; approximately half have spent 2 or more years there. Altogether, respondents have spent a total of 5,110 years in solitary confinement.
- Black, Latin@/Hispanic, mixed-race, and Native American/American Indian respondents were twice as likely to have been in solitary confinement, at the time of the survey, than white respondents.
- Respondents with a mental illness diagnosis were more likely to be in solitary confinement at the time of the survey and more likely to have ever been in solitary confinement than survey respondents without such a diagnosis.

### **Experiences of Violence**

- Respondents were over 6 times more likely to be sexually assaulted than the general prison population.
- All survey respondents have experienced strip searches. In answer to the question regarding how many times they have been strip searched, answers ranged anywhere from 1 to 50, 250, 500, “millions,” “every day in 12 years,” and “too many to count.” One respondent wrote, “who the heck keeps track of all that?” This means that, despite the declared intentions of the Prison Rape Elimination Act (PREA), 100% of prisoners have experienced sexual violence by prison staff.
- Prisoners are over three times more likely to have committed sexual assaults on LGBTQ prisoners than prison staff. However, of those who report having been sexually assaulted by a prisoner, 76% also report that prison staff intentionally placed them in situations where they would be at high risk of sexually assault from another prisoner.
- The vast majority of respondents experienced discrimination and verbal harassment by prison staff and more than a third were physically assaulted by prison staff.

### **Healthcare**

- Seven percent of survey respondents are HIV positive.
- Black respondents were more than 2 times more likely to be HIV positive than white respondents.
- 81% of respondents reported having to pay a fee to see a doctor. Fees ranged from \$1 per visit to \$100 per year.
- Fees prevented 43% of respondents from seeking medical care they needed.
- 67% of respondents have been diagnosed with a mental illness; of these, 48% receive no therapy.

### **Relationships and Community**

- 68% of respondents have been in a romantic relationship with another prisoner while incarcerated.
- One third of respondents in romantic relationships experienced intimate partner abuse.
- 66% of respondents have monthly correspondence with someone outside of prison.

### **Prisoner Needs and Demands**

- The clearest mandate from respondents was that Black & Pink should continue its current projects: the newspaper, pen pal program, resource list, and prisoner advocacy (e.g., calling prisons to advocate for individual prisoners who are being abused). Respondents reported that both the newspaper and pen pal program help them deal with the stress of being incarcerated and feel accepted in their gender and sexuality.
- Respondents need more information about their rights, legal changes, and case law. Abuse and discrimination from prison staff is a major concern.
- Respondents want their voices and stories to reach both lawmakers and the general public in order to educate them about what prison conditions are actually like for LGBTQ people.

## RECOMMENDATIONS

As an abolitionist organization, Black & Pink makes the following recommendations in the spirit of what Ruth Wilson Gilmore calls “non-reformist reforms” or what are also called abolitionist reforms. While we remain committed to the abolition of prisons, we recognize that meeting the needs and ending the daily suffering of LGBTQ prisoners is also an urgent necessity. We are convinced that such reforms are not necessarily incompatible with an abolitionist politics, provided that they do not create new barriers or prisons that we will need to tear down in the future. Hence, our recommendations include policy proposals, advocacy areas, and grassroots organizing priorities that meet the immediate needs of LGBTQ prisoners and criminalized LGBTQ communities outside of prison which we believe will neither ideologically nor materially increase the power of any facet of the prison industrial complex.

The recommendations are divided into short-term, intermediate, and long-term efforts within specific advocacy areas. Each is informed by the findings of the report and/or comes directly from recommendations articulated by respondents themselves. Black & Pink wishes to emphasize that in moving forward with implementation, it is imperative that policymakers and community organizers remain vigilant against unwittingly introducing reforms that reinforce the power of the system they seek to change.

## POLICING AND CRIMINALIZATION OF LGBTQ PEOPLE

### Short-Term:

- **Eliminate the practice of Stop & Frisk/Search in every municipality.** Evidence shows that Stop & Frisk practices discriminate on the basis of race and also disproportionately target LGBTQ people. Ending these practices would slow the funneling of LGBTQ people of color into the courts and prison system.
- **Pass the End Racial Profiling Act (ERPA) (in its sexual orientation- and gender identity-inclusive version).** Advocates have long been trying to pass ERPA, a federal law that would prohibit racial profiling, collect data on racial profiling, provide police with re-training on racial profiling, and hold departments that continue to racially profile accountable, albeit without success. As of 2015, ERPA is now inclusive of sexual orientation and gender identity. Lambda Legal’s report, “Protected and Served? Survey of LGBT/HIV Contact with Police, Courts, Prisons, and Security,” showed that 25% of LGBT respondents who had interactions with police experienced misconduct and harassment. Passing an inclusive ERPA will ensure new tools are available for LGBTQ people to resist profiling.
- **End “Quality of Life” policing practices.** Our findings contribute to the wealth of research that shows LGBTQ people disproportionately experience homelessness, trade sex for survival needs, struggle with addiction, and live with mental illness, all of which are all criminalized under “Quality of Life” policies. “Quality of Life” policies do nothing to help those they criminalize and instead lead to increased incarceration, rather than provision of social services and public health measures for those who need them.
- **End all stings on internet and public spaces known to be used for purchasing and selling sex.** Ongoing police surveillance of these spaces forces those who trade sex into less public environments with fewer potential clients, forcing individuals to engage in transactions they otherwise would have rejected (e.g., sex without a condom). Given that many respondents have engaged in the sex trade prior to their incarceration, it is important to allow safer practices for trading sex.

**Intermediate:**

- **End the criminalization of the sex trade, for both purchasers and sellers of sex.** Decriminalizing sex trades will facilitate a safer economy and allow for greater resources and support systems to be developed by and for those engaged in the sex trade. As well, decriminalizing the sex trade will work to alleviate the discrimination in housing and employment faced by many with criminal records for sex trade participation.
- **End the practice of arresting people under the age of 18.** Youth are being introduced into the criminal legal system at increasingly earlier ages. Rather than addressing youth conflict with arrests, community-based teams should be created to stop the cycle of multiple incarcerations before it begins.
- **End the War on Drugs and decriminalize drug possession.** The majority of respondents report having sold drugs at some point in their lives. However, as has been thoroughly demonstrated, the War on Drugs has failed to reduce the use of drugs or increase safety. Criminalization of drugs does not decrease the harm caused by the drug trade, but rather gives police an additional tool to profile and arrest communities of color. Harm reduction strategies can teach people how to use drugs in safer ways, which saves lives and improves quality of life much more effectively than compulsory incarceration.
- **Create addiction treatment-on-demand programs and mental health treatment programs in non-carceral settings.** Rather than criminalize addiction and mental illness, or create more prison beds in the name of “drug treatment,” well-funded community-based addiction treatment programs and outpatient mental health care facilities would create authentic opportunities for healing and healthcare that can keep individuals and communities safer.
- **Utilize saved funds from decreased policing to create affordable and accessible housing for those most affected by homelessness and incarceration.** Nearly a fifth of respondents were homeless or transient prior to their incarceration. Establishing affordable and accessible housing will reduce reliance on criminalized economies to survive. Ending homelessness will also keep individuals out of constant surveillance by police, decreasing their likelihood of arrest and incarceration.

**Long-Term:**

- **Abolish the police.** Police forces’ direct ancestors are the slave patrols that targeted Black people for violence, arrest, and reenslavement. This institution has always created more harm than good for those society considers disposable, particularly people of color. Policing practices are inherently rooted in maintaining systemic oppression and as such the long term goal is to create a world free from the power of police.
- **Institute community-based solutions to harm and violence.** Abolishing the police will not bring an end to all forms of interpersonal harm and violence. Establishing alternative ways to address harm without punitive based systems will facilitate both healing for survivors and accountability for those who caused harm or stood by as harm occurred. These practices can be started well before the end of the police and organizations such as *Creative Interventions*, *Generation FIVE*, and *Philly Stands Up* have already begun such initiatives.

**COURTS / BAIL REFORM / SENTENCING****Short-Term:**

- **Train all court-appointed attorneys on LGBTQ issues re: appropriate client advocacy (e.g., using correct name and pronouns).** With effective trainings, attorneys will, ideally, be less likely to discriminate against their own LGBTQ clients. Training should be led by or undertaken in collaboration with currently or formerly court-involved LGBTQ people.

- **Train all judges on LGBTQ issues and appropriate address of defendants.** Judges are responsible for setting the tone in the courtroom, and the majority of respondents report feeling discriminated against by judges. It is important that judges are trained on appropriate modes of interaction with LGBTQ defendants to create a less hostile environment.
- **Increase financial support for public defender programs.** The enormous caseload saddling public defenders across the country indicates a significant need for these attorneys, who are unable to serve their clients effectively due to overwork. Increasing resources to public defender programs should lead to the hiring of more staff who are able to address the unique needs of all their clients, including LGBTQ defendants.
- **End the practice of incarcerating people on parole or probation for violations that are not new criminal charges.** Reincarceration for technical violations of parole or probation increases recidivism. Rather than choosing incarceration in these circumstances, parole and probation officers should be trained to effectively support individuals under their supervision to find housing, access an income, and receive other social services they need.
- **Repeal all three-strikes laws and create a process for releasing individuals serving time on a third strike.** These laws are simply placing more people in prison, producing overcrowding and creating more violent environments.

#### Intermediate:

- **Eliminate financial conditions for pretrial release and develop local pretrial service systems to support and assist defendants' appearance for court dates.** Nearly three quarters of survey respondents were held in jail prior to their conviction. However, multiple states across the country have instituted new pretrial services that do not require defendants to pay bail or bond in order to regain their freedom. These programs have proven effective at ensuring defendants' appearance in court without mandating incarceration beforehand.
- **End mandatory minimum sentences for all offenses.** Not only are our respondents doing long sentences, but the far majority also took plea deals. The threat of a mandatory minimum sentence pressures defendants into taking plea deals for fear of serving lengthy sentences if they are convicted at trial. Mandatory minimums also require people to spend longer time in prison without access to parole, eliminating them would expand opportunities for parole.
- **Abolish life sentences and the death penalty.** Rather than hold people accountable for harm they have caused, life sentences and the death penalty simply dispose of human beings. They inherently dehumanize people by presuming there is nothing of value left to them. More than 20% of survey respondents are serving life sentences. Taking away these sentences will require courts and society to engage in actual transformative justice processes with those who have caused harm rather than simply throw them away.

#### Long-Term:

- **Close the criminal court system.** The US criminal legal system is claimed by its proponents as the "best system in the world," yet the basis of the system is punishment of individual acts with little to no attention to transformation of social conditions that led to harm occurring or authentic healing for those who have experienced harm. Rather than rely on a system that is rooted in 17<sup>th</sup> Century Puritan values of punitive control, new systems are necessary that refuse to allow racial/gender/sexual identities and access to wealth to be the determinants of justice.
- **Institute community-based solutions to harm and violence.**

## PRISON CONDITIONS AND DECARCERATION

### Short-Term:

- **Eliminate solitary confinement.** A wealth of evidence shows the long-term detrimental effects of solitary confinement; it is considered a form of torture by the UN Special Rapporteur on Torture. Solitary confinement is also used as a tool of control over LGBTQ prisoners, especially transgender women and cisgender gay men. 85% of respondents have been held in solitary confinement at some point during their sentence.
- **End prisoner strip searches.** Our data indicates that queer prisoners are strip searched repeatedly. However, this bodily invasion is a form of sexual assault and should not be common practice among prison officials. The security benefits of strip searching do not outweigh the sexual trauma experienced by prisoners subjected to this practice.
- **Permit consensual sex between prisoners and provide access to a variety of safer sex options, including condoms and Pre-exposure Prophylaxis (PrEP).** 70% percent of respondents have engaged in consensual sex with other prisoners, but only 2% have access to condoms. Rather than disciplining prisoners for engaging in consensual sex, prisons should provide access to safer sex options to reduce the transmission of sexually transmitted infections (STIs).
- **Eliminate all fees for medical care in prison. Provide full care for people living with HIV and Hepatitis C, including the cure for Hepatitis C.** All prisoners have a right to medical care
- **Allow all prisoners access to the underwear, uniform, and canteen of their choice.** Not all prisoners who might want access to undergarments or other gendered canteen options identify as transgender, although it is essential that transgender and gender variant prisoners have access to undergarments and canteen options not provided at the prison they are assigned to. Quite simply, there is no need for any policy restricting gendered clothing or canteen options at any prison or for any prisoner. Any and all such restrictions should be eliminated.
- **Create clear policies that allow transgender prisoners easy access to gender affirming medical and mental health care, including: access to hormone replacement therapy, individual and group talk therapy, gender confirming surgeries, electrolysis, and any and all other treatments recommended by doctors and mental health clinicians.** The majority of transgender survey respondents have been denied access to requested health care. More than half are unaware of any policy that might allow transgender prisoners to access such services. The consistent denial of transgender health care is rooted in transphobia and it must end.
- **Establish the safest possible housing for LGBTQ prisoners.** Policies for housing transgender prisoners should be based on individualized assessments that presume housing is assigned according to gender identity (rather than legally assigned sex). However, in all cases, individual prisoners must also be allowed to specify their housing preference and have that preference respected, even if it seems to differ from their gender identity. LGBTQ prisoners should also have the option of being housed with other LGBTQ prisoners in their facility, although no resources should be spent on building additional bed space that would be used to incarcerate more individuals.
- **Ensure every prison has a library that all prisoners can access. Provide LGBTQ-affirming books in all prison libraries.** Access to books, especially LGBTQ-affirming books, can affirm stigmatized identities and provide a respite from prison life.
- **Permit prisoners to correspond with one another through letters and email.** Nearly one-third of respondents have no regular contact with anyone outside the prison where they are housed. Moreover, mail distribution is often conducted publicly, with prison staff calling out the names of prisoners who have received letters or packages. Prisoners whose names are never called are noticed by other prisoners and sometimes made a target for harassment or abuse, since it is presumed they do not have a network of



protection or support. Being able to correspond with other prisoners thus potentially protects prisoners, increases their relational connections with others, and reduces isolation.

- **Ensure all prisoners can make free and unrecorded calls to domestic violence, sexual assault, and drug abuse hotlines.** Nearly 40% of respondents report being sexually assaulted (either by prison staff or other prisoners) and it is essential to healing for survivors to have access to outside services.
- **End all prison/jail contracts with phone companies charging more than \$5.00 per 15-minute phone call.** The expense of phone calls creates significant barriers to communication, not only between prisoners, but also between prisoners and people on the outside.

#### Intermediate:

- **Institute a moratorium on all prison/jail/detention center development (including, but not limited to, state funded research on prison expansion projects, additional bed space added to existing prisons/jails/detention centers, and building new institutions).** The violence, abuse, and oppression detailed in this report show that prisons cause significant harm. There should be absolutely no expansion of the carceral system while these harms remain unaddressed.
- **Close all supermax prisons.** Survey respondents are disproportionately housed in supermax prisons, which have been decried by human rights organizations around the world for the harm caused by constant sensory deprivation.
- **Hold all prison staff accountable (including clear paths to termination) who harass or physically/sexually assault prisoners.** Expand policies that hold staff accountable who are on duty when prisoners sexually assault one another. Prison staff set the tone of the prison environment. As such they should be held accountable for the harm they perpetuate. Respondents have experienced many forms of harm by prison staff, and if there were greater accountability for those staff, the harm may decrease.
- **Establish presumptive parole guidelines that will facilitate the release of prisoners at their first parole eligibility date unless they are charged with a new criminal offense while serving their sentence.** Along with ending life sentences, the practice of presumptive parole will facilitate the quicker exit of more people from prison. Given that our respondents are serving such long sentences, the practice of presumptive parole would help decrease the amount of time they are forced to serve on their sentences.
- **End indefinite commitment for people convicted of sex offenses.** Develop effective programs that facilitate safe integration back into the community and provide sustainable housing and meaningful work opportunities. The practice of civil commitment is considered, by many advocates, to be unconstitutional. There is much evidence to show that there are adequate tools and treatment to reduce sexual harm without indefinite detention.
- **End the practice of disenfranchisement and reinstate voting rights to all prisoners during and following their incarceration.** When people are incarcerated they do not stop being affected by the political process. Rather than revoke an individual's right to vote when convicted of an offense, prisons should provide opportunities for prisoners to engage in the political process.
- **Increase financial compensation for prisoners who work during their incarceration, in accordance with state and federal minimum wage laws.** Prisoners are expected to pay for many of their own basic needs and are also often expected to work inside prison. In an effort to diminish prison labor exploitation, both private and public entities that utilize prison labor should compensate prisoner workers according to the minimum standards required by law.



**Long-Term:**

- **Close all prisons and jails.** Rather than respond to social problems by simply locking people up, new practices for accountability must be instituted that do not rely on incarceration or carceral practices (e.g. GPS tracking bracelets). Prisons and jails have become a fundamental tool of social control and by removing this tool we will be compelled to create new practices that can rely on transformation rather than punishment.
- **Institute community-based transformative justice practices to create healing from harm and violence and to prevent violence before it occurs.**




Art by Patrick H. F., incarcerated member



PATHWAYS TO INCARCERATION  
TRAUMA, STRUCTURAL INEQUALITY, POLICIES,  
AND POLICING


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# 5 Multiple traumatic experiences, 6 post-traumatic stress disorder and 7 offending behaviour in female 8 prisoners 9 10 11 12 13 14 15 16 17

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## 28 ABSTRACT

29 **Background** *Although it is well established that prisoners commonly have histories of*   
30 *childhood trauma, little is known about mediators between exposure to trauma and*  
31 *criminal behaviour.*

32 **Hypotheses** *We hypothesised that the experience of trauma in adulthood, post-*  
33 *traumatic stress disorder (PTSD) and emotional dysregulation would mediate the*  
34 *relationship between childhood traumatic events and later criminal behaviour.*

35 **Methods** *Eighty-nine female prisoners were interviewed using standardised scales, in a*  
36 *cross-sectional study design. History of traumatic events, DSM-5 PTSD and emotional*  
37 *regulation were assessed, along with offending and demographic information. A series of*  
38 *regression and mediation analyses were undertaken on the data.*

39 **Results** *Almost all (91%) of the 89 women reported both childhood and adulthood*  
40 *trauma. Over half (58%) met the criteria for DSM-5 PTSD. Multiple traumas were*  
41 *significantly associated with seriousness of offence, as indicated by sentence length.*  
42 *Adult experience of trauma was the only significant mediator between childhood trauma*  
43 *and subsequent offending.*

44 **Conclusions/implications for practice** *Women who have experienced multiple*  
45 *traumatic events may be more likely to commit serious offences, so it is very important*  
46 *to assess and meet their trauma-related needs. While prisons should never be used as*  
47



substitutes for healthcare facilities, when women or girls are sent to prison, the opportunity for constructive interventions must be seized. Copyright © 2017 John Wiley & Sons, Ltd. Q5

## Introduction

Research consistently shows that prisoners have extensive histories of psychological trauma prior to incarceration (Gibson et al., 1999), including childhood trauma (Weeks and Widom, 1998) and subsequent psychopathology (Driessen et al., 2006). A history of multiple trauma is common (Dudeck et al., 2011). Akyüz et al. (2007), in a sample of 101 prisoners, reported that about two-thirds had a lifetime diagnosis of post-traumatic stress disorder (PTSD), but figures on prevalence have been wide ranging. A diagnosis of PTSD according to DSM-III-R, DSM-IV or ICD-10 criteria among sentenced prisoners has been reported as affecting between 4% and 66% across studies (Goff et al., 2007; Akyüz et al., 2007; Dudeck et al., 2011). There is evidence to suggest that PTSD remains undiagnosed and untreated in prisoners (Wolff et al., 2009). Female prisoners present with higher rates of PTSD than do male prisoners and also report more complex histories of lifetime interpersonal sexual trauma (Komarovskaya et al., 2011). This is important in itself but also because PTSD may interfere with the ability to benefit from rehabilitative programmes, may have an impact on impulse control (Cauffman et al., 1998) and may be associated with higher recidivism rates (Kubiak, 2004). Q6  
Q7  
Q8

Although there is adequate evidence to suggest that psychological trauma is associated with criminal behaviour, the pathways leading to criminal behaviour after childhood psychological trauma have been less well investigated. Hammersley (2011), for example, suggested that substance misuse mediates the relationship between traumatic life events and criminal behaviour, while the persisting effects of childhood trauma predispose to substance misuse as a coping mechanism. Thus, a vicious cycle of substance misuse and offending behaviour may be established (Reckdenwald et al., 2014). It has also been proposed that PTSD may mediate the relationship between traumatic life events and criminal behaviour, as the behavioural sequelae of PTSD include aggressive, hostile and violent behaviour (Donley et al., 2012). It has also been shown, however, that aggression following childhood trauma is independently associated with increased criminal behaviour (Sarchiapone et al., 2009). Furthermore, there is evidence to suggest that maltreated, abused or neglected children experience numerous emotional regulation difficulties with regard to recognising, understanding and expressing their emotions (Toth et al., 2011). Finally, previous exposure to trauma has been shown to signal a greater risk of PTSD from subsequent trauma in adulthood (Breslau et al., 2014).

**Full Report:** [https://www.stephaniecovington.com/site/assets/files/1790/final\\_paper\\_can\\_of\\_worms\\_2021.pdf](https://www.stephaniecovington.com/site/assets/files/1790/final_paper_can_of_worms_2021.pdf)

# Opening the proverbial ‘can of worms’ on trauma-specific treatment in prison: The association of adverse childhood experiences to treatment outcomes

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## Abstract

A large body of research has shown that incarcerated populations have a high prevalence of adverse childhood experiences (ACEs), increasing their risk for associated mental health problems and violent and aggressive behaviours. Emerging research on treatment for trauma survivors shows evidence that incarcerated women and men, with the most complex histories of trauma and abuse, can be responsive to trauma-specific treatment. Current research assessing two gender-responsive and trauma-specific brief interventions (e.g., *Healing Trauma for Women and Exploring Trauma for Men*) have demonstrated feasibility, consistency and efficacy among incarcerated populations. The current study uses secondary data analysis to explore the relationship between cumulative ACEs and the impact of the *Healing Trauma and Exploring Trauma* on participant's (682 women and 624 men) mental health, aggression and anger outcomes. The mixed-method regression results show that the impact of ACEs on treatment outcomes is strong and cumulative (i.e., greater exposure to childhood traumatic events increased the likelihood of participant programme gain on all the mental health and aggression outcomes, ranging from .13 to 1.2 for women and .15 to .77 for the men). The lowest significant coefficient for both women and men was for verbal anger and the largest was for current trauma symptoms. The association of ACEs on anger outcomes varied between women and men (revealing more association among the men). The findings show a strong positive impact for the trauma-specific brief interventions, particularly for those with the highest levels of trauma, whom otherwise might not have been ineligible for any programme participation.

## KEYWORDS

adverse childhood experiences, corrections, gender, prison, trauma, treatment

## 1 | INTRODUCTION

A series of reports from the adverse childhood experiences (ACEs) study identified a significant link between childhood abuse and lifetime physical and mental health problems (Anda et al., 2002; Dube et al., 2003; Dube et al., 2005; Felitti et al., 1998). The ACE study

found a strong graded relationship between a cumulative number of events of child abuse and household dysfunction prior to the age of 18 (e.g., emotional, physical and sexual abuse; parental separation or divorce; domestic violence; family members with substance use and other psychiatric disorders; or histories of imprisonment) and multiple risk factors for the leading causes of death. The original ACE studies,

Full Report: [https://www.njjn.org/uploads/digital-library/GEORGETOWN-Sexual-Abuse-to-prison-pipeline\\_2015.pdf](https://www.njjn.org/uploads/digital-library/GEORGETOWN-Sexual-Abuse-to-prison-pipeline_2015.pdf)

# THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS' STORY

Human Rights Project for Girls  
Georgetown Law Center  
on Poverty and Inequality  
Ms. Foundation for Women



CENTER ON POVERTY and INEQUALITY  
GEORGETOWN LAW



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Violence against girls is a painfully American tale. It is a crisis of national proportions that cuts across every divide of race, class, and ethnicity. The facts are staggering: one in four American girls will experience some form of sexual violence by the age of 18. Fifteen percent of sexual assault and rape victims are under the age of 12;<sup>1</sup> nearly half of all female rape survivors were victimized before the age of 18.<sup>2</sup> And girls between the ages of 16 and 19 are four times more likely than the general population to be victims of rape, attempted rape, or sexual assault.<sup>3</sup>

And in a perverse twist of justice, many girls who experience sexual abuse are routed into the juvenile justice system *because of* their victimization. Indeed, sexual abuse is one of the primary predictors of girls' entry into the juvenile justice system.<sup>4</sup> A particularly glaring example is when girls who are victims of sex trafficking are arrested on prostitution charges — punished as perpetrators rather than served and supported as victims and survivors.

Once inside, girls encounter a system that is often ill-equipped to identify and treat the violence and trauma that lie at the root of victimized girls' arrests. More harmful still is the significant risk that the punitive environment will re-trigger girls' trauma and even subject them to new incidents of sexual victimization, which can exponentially compound the profound harms inflicted by the original abuse.

This is the girls' sexual abuse to prison pipeline.

This report exposes the ways in which we criminalize girls — especially girls of color — who have been sexually and physically abused, and it offers policy recommendations to dismantle the abuse to prison pipeline. It illustrates the pipeline with examples, including the detention of girls who are victims of sex trafficking, girls who run away or become truant because of abuse they experience, and girls who cross into juvenile justice from the child welfare system. By illuminating both the problem and potential solutions, we hope to make the first step toward ending the cycle of victimization-to-imprisonment for marginalized girls.



### **THE PROPORTION OF GIRLS — ESPECIALLY GIRLS OF COLOR — IN THE JUVENILE JUSTICE SYSTEM IS INCREASING.**

The rate of girls' involvement in juvenile justice is growing disproportionately at key determinative points in the criminal justice process, including the decision to arrest and detain girls.<sup>5</sup>

Girls of color are particularly affected by this trend.<sup>6</sup> Although rates of overrepresentation vary significantly by jurisdiction,<sup>7</sup> the national trends are revealing. African-American girls constitute 14 percent of the general population nationally but 33.2 percent of girls detained and committed.<sup>8</sup> Native American girls are also disproportionately involved in the juvenile justice system:<sup>9</sup> they are 1 percent of the general youth population but 3.5 percent of detained and committed girls.<sup>10</sup>

The disproportionate rates of confinement in residential placements for girls of color are most accurately revealed when viewed per capita: Native American girls are in residential placements at a rate of 179 per 100,000; African-American girls at a rate of 123 per 100,000; and Latinas at a rate of 47 per 100,000. By comparison, 37 per 100,000 of non-Hispanic white girls are confined.<sup>11</sup>

According to studies by the Girls Study Group of the US Department of Justice's Office of Juvenile Justice and Delinquency Prevention, among others, the increase in girls' rate of arrest and incarceration over the last two decades is not a result of their engaging in criminal activity at higher rates.<sup>14</sup> Nor are they increasingly violent.<sup>15</sup> Although the reason has not been definitively determined, evidence suggests that one cause is more aggressive enforcement of non-serious offenses that are rooted in the experience of abuse and trauma,<sup>16</sup> as illustrated by the recent increase in arrests of girls involved in family-based incidents.<sup>17</sup> In fact, the leading cause of arrest for girls are minor offenses such as misdemeanors, status offenses, outstanding warrants, and technical violations.<sup>18</sup> And the decision to arrest and detain girls in these cases has been shown often to be based in part on the percep-

tion of girls' having violated conventional norms and stereotypes of feminine behavior,<sup>19</sup> even when that behavior is caused by trauma.<sup>20</sup>

### **GIRLS IN THE JUVENILE JUSTICE SYSTEM ARE DISPROPORTIONATELY VICTIMS OF SEXUAL VIOLENCE.**

Research reveals that girls who are sent into the juvenile justice system have typically experienced overwhelmingly high rates of sexual violence.<sup>21</sup>

Further studies are urgently needed, as virtually no national data exists to illuminate incarcerated girls' histories of sexual violence. However, several local and regional studies paint an informative portrait of incarcerated girls' histories of abuse. In a 2006

7

#### **LGBT/GNC Girls**

**Youth who identify as lesbian, gay, bisexual, transgender, or gender non-conforming (LGBT/GNC) are overrepresented in the juvenile justice system. Although LGBT/GNC youth comprise only 5 to 7 percent of the general population, they represent 13 to 15 percent of youth who come into contact with the juvenile justice system.<sup>12</sup> Recent research by the National Council on Crime and Delinquency (NCCD) indicates that LGBT/GNC girls, in particular, are involved in the system at an even higher rate: a survey of 1,400 girls across seven jurisdictions found that 40 percent of girls in the juvenile justice system are LGBT/GNC (compared to 14 percent of boys).<sup>13</sup>**

study of girls involved in Oregon's juvenile justice system, for example, 93 percent had experienced sexual or physical abuse; 76 percent had experienced at least one incident of sexual abuse by the age of 13; and 63 percent had experienced both physical and sexual abuse.<sup>22</sup>

Similarly, in a 2009 study of delinquent girls in South Carolina, 81 percent reported a history of sexual violence, and 42 percent reported dating violence.<sup>23</sup>

# **The Relational Theory of Women’s Psychological Development: Implications for the Criminal Justice System**

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## **INTRODUCTION**

Some of the most neglected and misunderstood women and girls in our society are those in our jails, prisons, community and juvenile correctional facilities. Because women and girls’ rate of incarceration has increased dramatically in recent decades, rising nearly eightfold between 1980 and 2000, the criminal justice system has begun to acknowledge the need for a deeper understanding of gender issues (Bloom, Owen and Covington, 2003). The relational theory of women’s psychological development helps us understand what women and girls need from our criminal justice system.

The purpose of this chapter is to explain what relational theory is and how it applies to correctional settings. First, there is a brief profile of female offenders—their race, class, age, offenses, and experiences of trauma and addiction. It’s important to remember the population we are serving in order to determine how we can make a difference in their lives. Second, relational theory is discussed, as well as what constitutes a “growth-fostering relationship.” Third, relational theory is applied to the criminal justice system and begins to address the following questions: What are gender-specific services? What does relational theory tell us about the childhood and adult experiences of female offenders? The role of motherhood? The issues of re-entry? And, what does relational theory tell us about corrections on a systemic level? Fourth, because many female offenders have histories of addiction and trauma, theories of addiction and trauma are viewed in light of relational theory to see how best to treat women and girls with these issues. And finally, several specific treatment curricula are presented that are based on relational theory.

## **WOMEN AND GIRLS IN THE CRIMINAL JUSTICE SYSTEM: WHO ARE THEY?**

The rate of women's incarceration continues to grow at a faster rate than men's despite a decrease in violent crime committed by women. What accounts for this increase is a combination of factors: tougher sentencing laws for women's drug offenses, the building of new facilities for women, and an increase in women's non-violent property crimes during two economic recessions.

The story behind these numbers begins with an understanding of women's pathways into criminality as well as the unique issues women confront as a result of their race, class, and gender. Research confirms that women offenders differ significantly from their male counterparts in terms of their personal histories and how they enter into crime (Belknap, 2001). For example, female offenders are more likely to share a history of physical and/or sexual abuse. They are often the primary caretakers of young children at the time of arrest and they have separate, distinctive physical and mental needs. Their involvement in crime is often economically motivated, driven by poverty and /or substance abuse. Women are also less likely to be convicted of a violent offense, and their risk to society is much lower than that of men. In other words, women offenders face gender-specific adversities – namely, sexual abuse, sexual assault, domestic violence, and poverty (Covington & Bloom, in press, 2006). A recent study of women in prison-based drug treatment programs shows that drug-dependent women and men differ with regard to employment histories, substance-abuse problems, criminal involvement, psychological functioning, sexual and physical abuse histories, and child-support activity prior to incarceration (Messina, Burdon, Hagopian and Prendergast, 2006).

Juvenile offenders also reflect gender differences. Rates for less serious crimes, such as smoking marijuana and shoplifting, are similar for boys and girls. But rates of serious and violent crime are lower among girls. Girls, for example, are more likely than boys to be arrested and detained for status offenses—acts that would not be offenses if committed by an adult, such as promiscuity, truancy, or running away (Sherman, 2005). A national study found that institutionalized girls are far more likely to think about and attempt suicide than are boys (Wells, 1994). One explanation for this self-destructiveness is that, like their adult counterparts, girls in the criminal justice system have high rates of physical and sexual abuse. (Abuse survivors in general attempt suicide more often than do persons without abuse histories.) Also, many girls enter the system pregnant; some become pregnant while incarcerated (Belknap, Dunn, and Holsinger, 1997).

A national profile outlines the following characteristics of women offenders (Bloom, Owen, and Covington, 2003):

- Disproportionately women of color
- In their early-to-mid-thirties
- Most likely to have been convicted of a drug or drug related offense
- Fragmented family histories, with other family members also involved with the criminal justice system
- Survivors of physical and/or sexual abuse as children and adults
- Significant substance abuse, physical and mental health problems
- High school degree/GED, but limited vocational training and uneven work histories

In short, the females flooding our criminal justice system are mostly young, poor, undereducated, women and girls of color with complex histories of trauma and addiction. Most are nonviolent and not threats to the community. Survival (of abuse and poverty) and addiction are the most common pathways to crime for women. Their greatest needs are multi-faceted treatment for addiction and trauma recovery, and education for job and parenting skills. They need the opportunity to grow, to learn, to make changes in their lives. As Mary Leftridge Byrd, former Superintendent of the Muncy Women's Prison in Pennsylvania, said in her message to new inmates, "This period of incarceration . . . can be a 'time out' for reflection, collecting yourself and honestly confronting the reason you find yourself in this place. . . . Do not simply serve time, let the time serve you. Do not just let things happen, make things happen" (Byrd, 1998).

However, the current focus and goal of our criminal justice system is control, not change. The environment of most correctional facilities does not facilitate growth and development in women's lives. But what kind of environment would help women change? When we understand women's psychological development, we discover the kind of environment that facilitates growth. Relational theory can help us create the kinds of programs and environment in the criminal justice system that will be most effective for women and girls.

### **RELATIONAL THEORY: WHAT IS IT?**

Over the past three decades, there has been a recognition and acknowledgement of the differences between women and men. One difference is the way in which men and women develop psychologically. Jean Baker Miller posed the question of how women develop in her 1976 book, *Toward a New Psychology of Women*. Until then, traditional theories of psychology described development as a climb from childlike dependence to mature independence. A person's goal, according to these theories, was to become a self-sufficient, clearly differentiated, autonomous self. A person would spend his or her life separating and individuating until he or she reached maturity, at which point the person was equipped for intimacy.

Miller challenged the assumption that separation was the route to maturity. She suggested that those theories might be describing men's experience, while a woman's path to maturity was different. A woman's primary motivation, said Miller, is to build a sense of connection with others. Women develop a sense of self and self-worth when their actions arise out of, and lead back into, connections with others. Connection, not separation, is the guiding principle of growth for women.

Previously, theoreticians had treated women's emphasis on connection as a sign of deficiency. Working at the same time as Miller, Carol Gilligan, a developmental psychologist, was gathering empirical data that reflected fundamental gender differences in the psychological and moral development of women and men (Gilligan, 1982). In her book, *In a Different Voice: Psychological Theory and Women's Development*, Carol Gilligan observed, "The disparity between women's experience and the representation of human development, noted throughout the psychological literature, has generally been seen to signify a problem in women's development. Instead, the failure of women to fit existing models of human growth may point to a problem in the representation, a limitation in the conception of the human condition, an omission of certain truths about life" (Gilligan 1982, pp. 1-2).

Miller's work led a group of researchers and practitioners to examine the importance of gender differences in understanding women's psychological development. The Stone Center at Wellesley College was created for the purpose of thinking through the qualities of relationships that foster healthy growth in women (Jordan, 1984, 1985; Jordan & Surrey, 1986; Kaplan, 1984; Surrey, 1985). The basic assumption of the Stone Center model is that "connection" is a basic human need, and that this need is especially strong in women (Jordan, Kaplan, & Miller, 1991). All people need both connection with others and differentiation from others, but females are more attuned to connection while males are more attuned to differentiation. Byington (1997) explained this connection as follows:

Theoretically, girls perceive themselves to be more similar than different to their earliest maternal caretakers, so they do not have to differentiate from their mothers in order to continue to develop their identities. This is in contrast to boys, who must develop an identity that is different from the mother's in order to continue their development. Thus, women's psychological growth and development occur through adding to rather than separating from relationships. Consequently, defining themselves as similar to others through relationships is fundamental to women's identities (p. 35).

A "connection" in the Stone Center relational model is "an interaction that engenders a sense of being in tune with self and others, of being understood and valued" (Byington, 1997, p. 35). True connections are mutual, empathic, creative, energy-releasing, and empowering for all participants (Miller, 1986). Such connections are so crucial for women that women's psychological problems can be traced to disconnections or violations within relationships—whether in families, with personal acquaintances, or in society at large.

*Mutuality* means that each person in a relationship can represent her feelings, thoughts, and perceptions, and can both move with and be moved by the feelings, thoughts, and perceptions of the other person. Each person, as well as the relationship, can change and move forward because there is mutual influence and mutual responsiveness.

*Empathy* is a complex, highly developed ability to join with another at a cognitive and affective level without losing connection with one's own experience. An empathic person both feels personally authentic in the relationship and feels she can "see" and "know" the other person. A growth-fostering relationship requires mutual empathy, which in turn requires that both parties have the capacity to connect empathically.

Mutuality and empathy empower women not with power *over* others, but rather power *with* others. In traditional relationships, one person or group of persons is often dominant and the other subordinate, or one person or group is assigned the task of fostering the psychological development of others. Historically, women have been assigned the task of fostering the psychological development of others, including men and children. By contrast, in mutually empowering

relationships, each person grows in psychological strength or power. Women become more able to share power for constructive, creative ends.

Mutual, empathic, and empowering relationships produce five psychological outcomes. All participants gain: 1) increased zest and vitality, 2) empowerment to act, 3) knowledge of self and others, 4) self-worth, and 5) a desire for more connection (Miller, 1986). These outcomes constitute psychological growth for women. Mutuality, empathy, and power with others are essential qualities of an environment that will foster growth in women.

By contrast, Miller (1990) has described the outcomes of disconnections—non-mutual or abusive relationships—which she terms a “depressive spiral.” These are: 1) diminished zest or vitality, 2) disempowerment, 3) unclarity or confusion, 4) diminished self-worth, and 5) a turning away from relationships. All relationships involve disconnections, times when people feel their separateness and distance. However, growth-fostering relationships are able to allow disconnections that, with effort on each person’s part, can be turned into connections. In non-mutual and/or abusive relationships, disconnections are not turned into true connections.

Drawing on Miller’s and Gilligan’s work, the Stone Center theorists over the past 25 years have been developing a relational model of women’s psychology. This was originally called Self-in-Relation theory and is currently called Relational-Cultural Theory. According to Kaplan (1984), the three major concepts in relational theory are:

Cultural context. This theme recognizes the powerful impact of the cultural context on women’s lives.

Relationships. This theme stresses the importance of relationships as the central, organizing feature in women’s development. Traditional developmental models of growth emphasize independence and autonomy. This theory focuses on women’s connection with others.

Pathways to growth. The third theme acknowledges women’s relational qualities and activities as potential strengths that provide pathways to healthy growth and development. In traditional theory, women’s ability to more freely express emotions, and women’s attention to relationships, often led to pathologizing them

The relational model affirms the power of connection and the pain of disconnection for women. As a result, the approach requires a paradigm shift that has led to a reframing of key concepts in psychological development, theory, and practice. For example, instead of the “self” as a primary focus, there is a focus on relational development. The experience of connection and disconnection are the central issues in personality development, with repeated disconnections having psychological consequences.

## **RELATIONAL THEORY AND THE CRIMINAL JUSTICE SYSTEM**

### **Gender-Responsive Services**

For several reasons, an understanding of relational theory is important for those who work in the criminal justice system. First, most current programs have been designed by men for men. In order to develop effective services for women and girls, we need to create programs for them based on the reality of their lives and on what we know about female growth and development. Being gender-responsive means creating an environment through site selection, staff selection, program development, content and material that reflects an understanding of the realities of women's and girls' lives and addresses their strengths and challenges (Covington & Bloom, 2003). In a 1997 report on gender-responsive services for adolescent girls to the governor from the Office of Criminal Justice Services for the State of Ohio, Belknap et al. (1997) wrote,

When examining gender-specific programming, it is important to recognize *equality does not mean "sameness."* Equality is not about providing the same programs, treatment and opportunities for girls and boys. . . . Equality is about providing opportunities that mean the same to each gender. This new definition legitimizes the differences between boys and girls. Programs for boys are more successful when they focus on rules and offer ways to advance within a structured environment, while *programs for girls are more successful when they focus on relationships* with other people and offer ways to master their lives while keeping these relationships intact (p. 23, emphasis added).

That report went on to list the following criteria for gender-specific programming and service delivery systems (p. 23):

- meet the unique needs of females
- acknowledge the female perspective
- support the female experience through positive female role models
- listen to the needs and experiences of adolescent females
- recognize the contributions of girls and women
- respect female development
- empower girls and young women to reach their full potential
- work to change established attitudes that prevent or discourage young women from recognizing their potential

As expressed in the American Correctional Association (ACA, 1995) *Policy Statement*, "Correctional systems should be guided by the principle of parity. Female offenders must receive the equivalent range of services available to male offenders, including opportunities for individual programming and services that recognize the unique needs of this population" (p. 2). Parity differs conceptually from "equality": Women offenders should receive opportunities, programs, and services that are equivalent, but not identical, to those available to male offenders (Bloom, Owen, & Covington, 2003).

Another key element of policy for women offenders concerns a review of policies and procedures. Although staff working directly with female offenders on a day-to-day basis are aware of the

procedural misalignment of some procedures with the realities of women's lives, written policy often does not reflect the same understanding of these issues. As stated by the ACA, "Sound operating procedures that address the (female) population's needs in such areas as clothing, personal property, hygiene, exercise, recreation, and visitations with children and family" should be developed (ACA 1995, p. 2).

Children and families play an important role in the management of women offenders in community and custodial settings. As noted elsewhere in this chapter, more female than male offenders have primary responsibility for their children. However, female offenders' ties to their children are often compromised by criminal justice policy. ACA policy states that the system should "facilitate the maintenance and strengthening of family ties, particularly between parents and children (ACA 1995). In Florida, an emphasis is on the relationship of women offenders with their children and other family members because it has potential rehabilitative effects in terms of motivation for treatment and economic responsibility.

The guiding principles that follow are designed to address system concerns about the management, supervision, and treatment of women offenders in the criminal justice system. They provide a blueprint for a gender-responsive (a woman- and girl-centered) approach to the development of criminal justice services (Bloom, Owen, & Covington, 2003).

- *Gender*: Acknowledge that gender makes a difference.
- *Environment*: Create an environment based on safety, respect, and dignity.
- *Relationships*: Develop policies, practices, and programs that are relational and promote healthy connections to children, family, significant others, and the community.
- *Services and Supervision*: Address substance abuse, trauma, and mental health issues through comprehensive, integrated, and culturally relevant services and appropriate supervision.
- *Socioeconomic status*: Provide women with opportunities to improve their socioeconomic conditions.
- *Community*: Establish a system of comprehensive and collaborative community services.

Note that the above principles state "...culturally relevant services..." Culture may be seen as a framework of values and beliefs and a means of organizing experiences. Providing appropriate services and supervision for a woman calls for consideration of the particular circumstances of each woman – of her reality as it has been informed by her individual history, including her class and racial, ethnic, and cultural context. No two women exist in exactly the same circumstances and context, although all exist in the same circumstance as women.

A risk of "cultural encapsulation" exists when correctional personnel allow culturally based perceptions of reality to dominate (Wren, 1962). A culturally encapsulated person, unable to see others through a different cultural lens, may regard as pathological what is normal for the minority group (Falicov, 1998). The challenge is to become culturally attuned; that is, to become aware and accepting of cultural differences when working with someone from a different cultural background.



## The Relational Experiences of Women

The second reason why we need to understand relational theory is to avoid re-creating in correctional settings the same kinds of growth hindering and/or violating relationships that women and girls experience in the free world. It is also important to consider how women's life experiences may affect how they will function in the criminal justice system.

Abusive families and battering relationships are typical in the lives of female offenders (Chesney-Lind, 1997; Owen & Bloom, 1995). Frequently, adult female offenders had their first encounter with the justice system as juveniles – often after running away from home to escape situations involving violence and sexual or physical abuse. In such situations, prostitution, property crime, and drug use become a way of life. Not surprisingly, addiction, abuse, economic vulnerability, and severed social relations often result in homelessness, another frequent complication in the lives of women in the criminal justice system (Bloom, 1998).

Studies of female offenders point to yet another gender difference – the importance of relationships and the criminal involvement that often results from relationships with family members, significant others, or friends (Chesney-Lind, 1997; Owen, 1998; Owen & Bloom, 1995; Pollock, 1998). Women are often first introduced to drugs by their partners, and these partners frequently continue to supply drugs. Women's attempts to get off drugs and their failure to supply partners with drugs through prostitution or other means often elicit violence from their partners. However, many women remain attached to their partners despite neglect and abuse. These issues have significant implications for therapeutic interventions addressing the impact of relationships on women's current and future behavior.

As mentioned, disconnection and violation characterize the childhood experience of most women and girls in the system. According to a sampling of women in a Massachusetts prison (Coll & Duff, 1995), 38 % of the women had lost parents in childhood, 69 % had been abused as children, and 70 % had left home before age 17. They lacked experience of mutual and empathic relationships. Although Gilligan, Lyons, & Hanmer (1990) report that girls are socialized to be empathic more than boys, incarcerated women and girls have been exposed repeatedly to non-empathic relationships and so either lack empathy for both self and others, or are highly empathic toward others but lack empathy for self. In order to change, women need to experience relationships that do not re-enact their histories of loss, neglect, and abuse.

Likewise, disconnection and violation have characterized most of the adult relationships of women in the system. Seventy % of women in the Massachusetts study had been repeatedly abused verbally, physically, and/or sexually as adults (Coll & Duff, 1995). Another study, this one of drug-abusing pregnant women (Amaro & Hardy-Fanta, 1995), found that:

Men who go to jail, men who do not take care of them or their children, and men who disappoint them fill the lives of these women. Even more striking is the extent to which the women

suffered physical abuse from their male partners. Half of the women in this study reported abuse from the men in their lives; occasionally from ‘tricks,’ although more typically from their partners (p. 333).

Women at high risk for drug abuse are frequently isolated socially—single parents, unemployed, or recently separated, divorced, or widowed (Finkelstein, 1993; Finkelstein & Derman, 1991; Wilsnack et al., 1986). Psychological isolation also occurs when the people in a woman’s world fail to validate and respond to her experience or her attempts at connection. Miller (1990) has described the state of “condemned isolation” where a woman feels isolated in her important relationships and feels that she is the problem; that she is condemned to be isolated, with no possibility of changing this situation. This state of shame and condemned isolation is highly correlated with drug use, as drugs become a way of coping with intense feelings and a sense of hopelessness.

Jordan et al. (1991) have described the tremendous cultural shaming around women’s yearnings for connection, sexuality, and emotionality. Women are prone to feel personally deficient—“something is wrong with me”—to take responsibility for problematic relationships, and thus to seek all kinds of ways to alter themselves. In nonmutual relationships, women often carry the disavowed feelings of pain, anger, or fear of those with whom they are connected. Women and girls in the criminal justice system endure even heavier shame, as society stigmatizes them as female offenders.

Together, abuse, isolation, and shame can send women into the previously mentioned “depressive spiral” that is the opposite of growth: 1) diminished zest or vitality, 2) disempowerment, 3) unclarity or confusion, 4) diminished self-worth, and 5) a turning away from relationships. This depressive spiral characterizes too well the females in our criminal justice system.

### **The Role of Motherhood**

A major difference between female and male offenders involves their relationships with their children. The Bureau of Justice Statistics reports that in 1997, 65 % of the women in state prisons and 59 % of the women in federal prisons had minor children. The majority were single mothers, with an average of two children. About two-thirds of women in state prisons and one-half of women in federal prisons lived with their young children before entering prison. Furthermore, the number of children with incarcerated mothers nearly doubled between 1991 and 1999 – from 64,000 to 126,000. Currently, it is estimated that 1.3 million minor children have a mother who is under some form of correctional supervision (Mumola, 2000).

Incarcerated women are mostly portrayed as inadequate, incompetent mothers who are unable to provide adequately for the needs of their children (Garcia Coll et al., 1998). In reality, the stress of separation from and concern about the well-being of their children are among the most damaging aspects of prison for women, and the problem is exacerbated by a lack of contact (Baunach, 1985; Bloom & Steinhart, 1993). “One of the greatest differences in stresses for women and men serving time is that the separation from children is generally a much greater hardship for women than for men” (Belknap, 1996, p. 105). For many incarcerated mothers, their relationships – or lack thereof – with their children can profoundly affect how they function in the criminal justice system. Often,

behaviors such as negativism, manipulation, rule breaking, and fighting among incarcerated women are signs of what Garcia Coll et al. (1998) have described as “resistance for survival” in response to the grief, loss, shame, and guilt these women feel about their roles as mothers.

Grandparents most frequently care for the children of female offenders, while approximately 10 % of these children are in foster care or group homes. According to the Bureau of Justice Statistics, 54 % of mothers in state prisons had no personal visits with their children since their admission (Mumola 2000). Geographical distance, lack of transportation, the prisoner-caregiver relationship, and the caregiver’s inability to bring a child to a correctional facility represent the most common reasons for a lack of visits. In some cases, the forced separation between mother and child can result in permanent termination of the parent-child relationship (Genty, 1995). In addition, passage of the Adoption and Safe Families Act (ASFA) in 1997 increased the risk of such termination. This legislation allows states to file for termination of parental rights if a child has been in foster care for 15 or more of 22 consecutive months.

Even when a child is able to visit an incarcerated mother, the event is often not a positive experience. Few correctional programs assess themselves through the eyes of children. Prison visiting facilities are created solely to address the issues of safety and security, without consideration for how a child experiences the prison environment. Such issues as travel logistics, clearance processes, noise levels and distractions in visiting rooms, privacy, and the availability of toys or other child-friendly resources—any or all of which can have a profound impact on the visiting child’s experience—are most often ignored. What should be an experience fostering family support and connection is instead often an unpleasant or traumatic occasion for both the child and the mother.

The only source of hope and motivation for many women during their involvement with the criminal justice system and their transition back to the community is a connection with their children. When asked why some women return to prison, one mother commented:

Many women that fall [back] into prison have the problem that their children have been taken away. When they go out to the street, they don’t have anything, they have nothing inside. Because they say, “I don’t have my children, what will I do? I’ll go back to the drug again. I will go back to prostitution again. And I’ll go back to prison again. Why fight? Why fight if I have nothing?” (Garcia et al., 1998, p. 266).

Recognizing the centrality of women’s roles as mothers provides an opportunity for criminal justice, medical, mental health, legal, and social service agencies to include this role as an integral part of program and treatment interventions for women.

The invisibility of women in the criminal justice system often extends to their children. And this situation is exacerbated by the fact that there are few sources of data about offenders’ children. However, one study (Johnston, 1995) identified three factors that were consistently present in the lives of the children of incarcerated parents: parent-child separation, enduring traumatic stress, and

inadequate quality of care. Not surprisingly, these factors can have a profound impact on children's ability to successfully progress through the various developmental stages of childhood. For instance, children born to women in the criminal justice system experience a variety of prenatal stressors (e.g., a mother's drug or alcohol use, poor nutrition, and high levels of stress associated with criminal activity and incarceration). Better outcomes can be achieved if mothers can adopt more stable lifestyles and receive adequate nutrition and proper medical care. There is a clear need for a range of prenatal services for women during both their incarceration and their transition back to the community (Johnston, 1995).

Parental crime and incarceration continues to impact children throughout adolescence. These children are subjected to unique stressors because of their parents' involvement with the criminal justice system. Johnston (1995) has identified higher rates of troubling behaviors, including aggression, depression, anxiety, parentified behaviors, substance abuse, and survivor guilt among these children, as well as an increased risk that they, too, will become involved with the criminal justice system. It is important that gender-responsive interventions for women in the system better address the effects of parental incarceration on children.

### **Re-entry and Relational Theory**

If women are to be successfully reintegrated back into society after serving their sentences, there must be a continuum of care that can connect them to a community. In addition, the planning process must begin as soon as women begin serving their sentences, rather than during the final 30 to 60 days of a prison term (the current practice). In fact, very few inmates have reported receiving pre-release planning of any kind in prisons and jails (Lynch & Sabol, 2001). However, women re-entering the community after incarceration require transitional services from the institution to help them reestablish themselves and their families. These former prisoners also need transitional services from community corrections and supervision to assist them as they begin living on their own again (Covington, 2003a).

Ideally, a comprehensive approach to reentry services for women would include a mechanism to allow community-based programs to enter institutional program settings. At the women's prison in Rhode Island, former Warden Roberta Richman opened the institution to the community through the increased use of volunteers and community-based programs. This policy allowed the women to develop connections with community providers as a part of their transition process. It also created a mutual accountability between the prison and the community (Richman, 1999).

The restorative model of justice is yet another means for assisting female offenders as they prepare to reintegrate themselves into their neighborhoods and communities. The framework for restorative justice involves relationships, healing, and community, a model in keeping with female psychosocial developmental theory. To reduce the likelihood of future offending among known lawbreakers, official intervention should emphasize restorative rather than retributive goals. Offenders should be provided opportunities to increase their "caring capacity" through victim restitution, community service, and moral development opportunities, rather than be subject to experiences that encourage violence and egocentrism (as do most prisons and juvenile institutions in the United States) (Pollock, 1999, p. 250).

In turn, this process provides yet another mechanism to link women with support and resources.

### **Relational Theory: A Systems View**

Tragically, current correctional settings often recreate women's relationships of disconnection and violation on a systemic level. Our criminal justice system, which is based on power and control, reflects the dominant/subordinate model of our patriarchal society. It is a microcosm of the larger social system. Relationships in correctional settings are based on ranking people, with women and girls at the lowest rung of the ladder. This ranking is even reflected in the classification and pay scale of correctional employees. Those who work with females often earn less and are seen as having less important jobs. In addition, the women who work in correctional settings often feel neglected and abused by the sexist culture. When relationships among staff are nonmutual and disrespectful, there is an increased risk that staff will treat offenders in the same way.

“Condemned isolation” describes what women and girls often experience in this system. Although their life experiences have much in common, they are not encouraged to bond and connect with one another. In their isolation from families and children, they often try to create “pseudo-families” on the inside (Owen, 1998). These families and relationships are discouraged. Furthermore, drugs are often available in jails and prisons, sometimes brought in and sold or bartered by correctional officers (Salholz & Wright, 1990). Staff members can form the same kinds of destructive relationships with women that women have had with their supplier-partners on the outside.

Women are also at risk for abuse within the prison system. An ongoing investigation by the Human Rights Watch Women's Rights Project documented custodial misconduct in many forms, including verbal degradation, rape, sexual assault, unwarranted visual supervision, denying goods and privileges, and use or threat of force. “Male correctional officers and staff contribute to a custodial environment in state prisons for women that is often highly sexualized and excessively hostile” (Human Rights Watch Women's Rights Project 1996, p. 2). Chesney-Lind & Rodriguez (1983) found a significant risk of male staff and other inmates sexually assaulting incarcerated girls. Yet the girls, not the males, are stigmatized: “there is considerable documentation of incarcerated pregnant females being encouraged or even forced to give their babies up for adoption . . . even if the girl became pregnant while incarcerated” (Belknap et al., 1997, p. 15).

What women need instead is an application of relational theory on a system-wide basis. A pilot project in a Massachusetts prison found women benefiting from a group in which women both received information and had the opportunity to practice mutually empathic relationships with each other (Coll & Duff, 1995). Women also need relationships with correctional staff that are respectful, mutual, and compassionate. Respect was one of the main things girls in the Ohio study said they needed from staff (Belknap et al., 1997, pp. 25-26). Finally, women will benefit if relationships among staff members, and between staff and administration, are mutual, empathic, and aimed at power-with-others rather than power-over-others. The culture of corrections (the environment created by the criminal justice system) can be altered by the application of relational theory.

### **OTHER RELEVANT THEORIES**

When used as a core construct, relational theory can help us develop an approach to programs in correctional settings that is gender sensitive, addressing itself to the realities of women's and girls' lives. Two other theories—a holistic theory of addiction and a theory of trauma—can further aid in designing gender-responsive services (Covington, 1998, 1999; Covington & Bloom, in press). Because addiction and trauma dominate the lives of many female offenders, it makes sense to understand how these experiences affect women and how women recover from such experiences. The following is an examination of both theories through a relational lens.

### **Addiction Theory**

Drug violators typically return to criminal patterns of behavior after release unless their drug addiction is addressed while they are incarcerated or immediately upon release (Moon et al., 1993). Because 61 % of women in federal prisons are there for drug offenses, and because up to 80 % of women in state prisons are long-standing substance abusers, we need to understand how addiction and recovery work among women. Recovery is possible, and we have the opportunity to assist women and girls in beginning the recovery process.

Addiction can be viewed as a kind of relationship. The addicted woman/girl is in a relationship with alcohol or other drugs, “a relationship characterized by obsession, compulsion, nonmutuality, and an imbalance of power. It is a kind of love relationship in which the object of addiction becomes the focus of a woman's life” (Covington and Surrey 1997, p. 338). Addicted women frequently use relational imagery to describe their drug use, such as “My most passionate affair was with cocaine.” At first the drug is her best friend, but as women describe the progress of their addiction, they say things like, “I turned to Valium, but then Valium turned on me.” We can speak of addiction as a contraction of connection. Recovery, then, is an expansion of connection (Covington & Beckett, 1988).

Moreover, women frequently begin to use substances in ways that initially seem to make or maintain connections, in an attempt to feel connected, energized, loved, or loving when that is not the whole truth of their experience (Surrey, 1991). Women often turn to drugs in the context of relationships with drug-abusing partners—to feel connected through the use of drugs. Male friends and partners often introduce women to alcohol and drugs, partners are often their suppliers, and partners often resist their efforts to stop using drugs.

Women may begin to use substances to alter themselves to fit the relationships available. Miller (1990) has described this basic relational paradox—when a woman cannot move a relationship toward mutuality, she begins to change herself to maintain the relationship. Stiver (1990) has written about children of “dysfunctional” families who frequently turn to substances to alter themselves to adapt to the disconnections within the family, thus giving the illusion of being in relationship when one is not or is only partially in relationship.

Women often use substances to numb the pain of nonmutual, nonempathic, even violent relationships. Addicted women's lives are full of men who disappoint them, don't provide for their children, and go to jail. These women long for the fathers of their children to provide emotional and financial support, but such longings often lead to disappointment and solace in drug use. Worse,

many women report violence from the men in their lives. Nonmutual or abusive relationships produce the “depressive spiral” described above, and women may then turn to substances to provide what relationships are not providing, such as energy, a sense of power, or relief from confusion. These behaviors are characteristic of chemically dependent women in general, yet it is magnified for those in the criminal justice system.

Traditionally, addiction treatment has been based on a medical model, which views addiction as a disease. The most commonly used analogy is that addiction is like diabetes, a physical disease that carries no moral or social stigma. This analogy is often useful because neither diabetes nor addiction can be managed by will power. They both require adherence to a lifestyle regimen for physical and emotional stability.

However, this analogy sees the disease/disorder rooted solely in the individual. As we move into the twenty-first century, health professionals in many disciplines are revising their concept of disease in general. Based on a holistic health model, we are now acknowledging not only the physical aspects of disease, but also the emotional, psychological, and spiritual aspects (Northrup, 1994).

We will better understand addiction as a disease/disorder if we see it holistically and include cancer as an analogy. The diabetes model is useful, but too individualistic and simplistic to adequately explain addiction. “Like cancer, addiction has a physical component as well as emotional, psychological, and spiritual dimensions. . . . [T]wo other components of disease must also be added to a fully holistic model: the environmental and the sociopolitical dimensions” (Covington, 1998, p.147). It’s interesting that few people question that cancer is a disease, while many question that addiction is a disease, even though up to 80 % of doctors link cancer to lifestyle choices (diet and exercise) and the environment (pesticides, emissions, nuclear waste, etc.) (personal communication, Siegel, 1996).

There are also sociopolitical aspects of both cancer and addiction: both carcinogenic products and addictive substances (legal and illegal) make huge profits for powerful business interests. In addition, medical doctors prescribe 80 % of the amphetamines, 60 % of the psychoactive drugs and 71 % of the antidepressants to women (Galbraith, 1991). Companies that produce and sell alcohol are indirectly responsible for over 23,000 deaths and 750,000 injuries each year—and these are only the figures reported to insurance companies (Zawistowski, 1991). Even though some women may have a strong genetic predisposition to addiction, an important treatment issue is acknowledging that many of them have grown up in an environment where drug dealing and addiction are a way of life.

A holistic model of addiction is essentially a systems perspective. We look at the complete woman and try to understand the connection of addiction to every aspect of the self—physical, emotional, and spiritual. We understand that the addicted woman is not using alcohol or other drugs in isolation, and we take into account her relationships to family, loved ones, her local community, and society.

The Center for Substance Abuse Treatment (CSAT) funds ongoing studies of women’s addiction and treatment, establishes minimum standards for treatment, and provides demonstration models for treatment in programs around the country. It operates within the U.S. Public Health Service, an agency of the Department of Health and Human Services. CSAT (1994, p. 178) recognizes the need



for gender-specific treatment for women, and has stated the following issues essential to a comprehensive treatment program:

1. The process of addiction, especially gender-specific issues related to addiction (including social, physiological, and psychological consequences of addiction, and factors related to the onset of addiction)
2. Low self-esteem
3. Race, ethnicity and cultural issues
4. Gender discrimination and harassment
5. Disability-related issues, where relevant
6. Relationships with family and significant others
7. Attachments to unhealthy interpersonal relationships
8. Interpersonal violence, including incest, rape, battering, and other abuse
9. Eating disorders
10. Sexuality, including sexual functioning and sexual orientation
11. Parenting
12. Grief related to the loss of alcohol or other drugs, children, family members, or partners
13. Work
14. Appearance and overall health and hygiene
15. Isolation related to a lack of support systems (which may or may not include family members and/or partners) and other resources
16. Life plan development
17. Child care and custody

The CSAT list above, like the holistic approach, takes into account physical, psychological, emotional, spiritual, and sociopolitical issues. Notice also how similar this list is to the list of issues proposed by the National Institute of Corrections (Bloom, Owen & Covington, 2003) and the Ohio study (Bloom, 1997, p. 6; Belknap et al., 1997, p. 24). CSAT also included this list in their publication on promising practices for women in the criminal justice system (CSAT, 1999).

Although the addiction treatment field considers addiction a “chronic, progressive disease,” its treatment methods are more closely aligned to those of the emergency-medicine specialist than the chronic-disease specialist (White, Boyle & Loveland, 2002). Recent articles assert that treating severe and chronic substance use disorders through screening, assessment, admission, and brief treatment, followed by discharge and minimal aftercare, is ineffective and results in shaming and punishing clients for failing to respond to an intervention design that is inherently flawed.

An alternative to the acute intervention model is *behavioral health recovery management* (BHRM). This concept grew out of and shares much in common with “disease management” approaches to other chronic health problems, but BHRM focuses on quality-of-life outcomes as defined by the individual and family. It also offers a broader range of services earlier and extends treatment well beyond traditional treatment services. BHRM models extend the current continuum of care for addiction by including: (1) pretreatment (recovery-priming) services, (2) recovery mentoring through primary treatment, and (3) sustained post-treatment recovery-support services (White et al., 2002).

Although the debate over models will continue, this updated and expanded disease perspective offers a more helpful approach to the treatment of addiction for women because it is comprehensive and meets the requirements for a multidimensional framework. The holistic health model allows clinicians to treat addiction as the primary problem while also addressing the complexity of issues that women bring to treatment: genetic predisposition, health consequences, shame, isolation, and a history of abuse, or a combination of these. For example, while some women may have a genetic predisposition to addiction, it is important in treatment to acknowledge that many have grown up in environments in which drug dealing, substance abuse, and addiction are ways of life. In sum, when addiction has been a core part of the multiple aspects of a woman's life, the treatment process requires a holistic, multidimensional approach.

When a diverse group of recovering women were interviewed, they identified four issues that changed the most for them in recovery and that most contribute to relapse: self, relationships, sexuality, and spirituality (Covington, 1994). These four issues parallel the seventeen items in the CSAT list above. The first two of these issues—self and relationships—are briefly discussed here.

Addiction can be understood as a self-disorder. A generic definition of addiction is, “the chronic neglect of self in favor of something or someone else.” One of the first questions women in recovery need to begin to address is, “Who am I?” Women in our culture are often taught to identify themselves according to role: mother, professional, wife, partner, daughter. Women in the criminal justice system also identify themselves—as does society—as offenders, and they become stigmatized. Many women also enter the system with a poor self-image and a history of trauma and abuse. Creating the kinds of programs that help women to develop a strong sense of self, an identification that goes beyond who they are in the criminal justice system, is vital to their re-entering society. Recovery is about the expansion and growth of the self.

Relationship issues are also paramount in early recovery. Recent studies confirm that gender differences exist among men and women substance abusers regarding their relationships with family members. For example, women substance abusers tend to have severe family and social problems coupled with minimal family support upon entering treatment (Grella et al. 2003). In addition, some women use addictive substances to maintain relationships with using partners, to fill up the void of what is missing in relationship, or to deal with the pain of being abused. Women in the criminal justice system often have unhealthy, illusory or unequal relationships with spouses, partners, friends and family members. For that reason, it is important for programs to model healthy relationships, among both staff and participants, providing a safe place and a container for healing (Covington, 1999). One of the greatest challenges is to overcome the alienation fostered within prison walls, and replace it with a greater sense of relationship in community. Being in community—that is, having a sense of connection with others—is essential for continuous, long-term recovery.

## **Trauma Theory**

An understanding of trauma is also essential (Covington, 2003b). Trauma is not limited to suffering violence, but includes witnessing violence, as well as the trauma of stigmatization because of poverty, racism, incarceration, or sexual orientation. We have seen that the vast majority of female

offenders have been physically and/or sexually abused both as children and adults. Thus, most female offenders are trauma survivors when they enter the system, and then they are at risk for retraumatization by the system. Incarceration can be traumatizing in itself, and the racism and classism that characterize the criminal justice system can be further traumatizing. Many women use alcohol or other drugs in order to medicate the pain of trauma. Trauma can skew a woman's relational experience and hinder her psychological development.

It is now considered necessary for all service providers to become "trauma informed" if they want to be effective. Trauma-informed services are services that are provided for problems other than trauma but require knowledge concerning violence against women and the impact of trauma. Per Harris & Falot (2001), trauma-informed services:

- take the trauma into account
- avoid triggering trauma reactions and/or retraumatizing the individual
- adjust the behavior of counselors, other staff, and the organization to support the individual's coping capacity
- allow survivors to manage their trauma symptoms successfully so that they are able to access, retain, and benefit from these services.

Becoming trauma-informed is particularly important for the criminal justice system. This is a critical step in the rehabilitation of women (Covington, 2003a).

Psychiatrist Judith Herman (1997) writes that trauma is a disease of disconnection and that there are three stages in the process of healing from trauma: (1) safety, (2) remembrance and mourning, (3) and reconnection. "Survivors feel unsafe in their bodies. Their emotions and their thinking feel out of control. They also feel unsafe in relation to other people" (Herman, 1997, p. 160). Stage One (safety) addresses the woman's safety concerns in all of these domains. In the second stage of recovery (remembrance and mourning) the survivor tells the story of the trauma and mourns the old self that the trauma destroyed. In Stage Three (reconnection) the survivor faces the task of creating a future; now she develops a new self.

Safety, the Stage One recovery from trauma, is the appropriate first level of intervention for a criminal justice setting. If we want to assist women in changing their lives, we must create a safe environment in which the healing process can begin to take place. We can help a woman feel safe in her external world by keeping facilities free of physical and sexual harassment and abuse. We can also help women feel safe internally by teaching them self-soothing mechanisms. Many chemically dependent trauma survivors use drugs to medicate their depression or anxiety because they know no better ways to comfort themselves.

It is also important to acknowledge that for some women and girls, their first experience of safety is in a correctional setting. Violence and abuse have been their experience at home and on the street. It is a harsh social reality when a female feels she is safer in a jail or prison.

For other women and girls, their experience in the criminal justice system is traumatizing and triggers memories of earlier instances of abuse. It can be retraumatizing when a sexual abuse survivor has a body search or must shower with male guards nearby. It can be retraumatizing when a battered woman is yelled or cursed at by a staff person. Survivors of trauma often experience symptoms of post-traumatic stress disorder (PTSD). *The Diagnostic and Statistical Manual of Mental Disorders*, (American Psychiatric Association, 1994, p. 427 – 429) lists these symptoms of PTSD:

- Re-experiencing the event through nightmares and flashbacks
- Avoidance of stimuli associated with the event (for example, if a woman was assaulted by a blond man, she may fear and want to avoid men with blond hair)
- Estrangement (the inability to be emotionally close to anyone)
- Numbing of general responsiveness (feeling nothing most of the time)
- Hypervigilance (constantly scanning one’s environment for danger, whether physical or emotional)
- Exaggerated startle response (a tendency to jump at loud noises or unexpected touch)

Because PTSD can affect the way a woman or girl relates to staff, peers, and the environment of a correctional setting, it will be helpful to ask, “Is this person’s behavior linked to PTSD?”

Women recovering from childhood molestation, rape, or battering are teaching us about the impact of such trauma on relational development. When early parental relationships are abusive, violating, and dangerous, all future relationships are impacted. The very high rate of substance abuse and addiction among survivors of abuse and violence suggests the likelihood of turning to substance abuse when healthy relationships are unavailable and when faith or trust in the possibility of growth in human connection is impaired. The use of alcohol and other drugs has become a way for women to deal with the emotional pain resulting from earlier abuse by someone close to them, someone they trusted (Covington & Surrey, 1997, p. 342).

Work with trauma victims has shown that social support is critical for recovery, and the lack of that support results in damaging psychological and social disruptions. Trauma always occurs within a social context, and social wounds require social healing (S. Bloom, 2000). The growing awareness of the long-term consequences of unresolved traumatic experience, combined with the disintegration or absence of communities for individuals in the criminal justice system (e.g., neighborhoods, extended families, occupational identities), has encouraged corrections researchers and practitioners to take a new look at the established practice and principles of the therapeutic milieu model.

The term “therapeutic milieu” refers to a carefully arranged environment designed to reverse the effects of exposure to interpersonal violence. The therapeutic culture contains the following five elements, all of them fundamental both in institutional settings and in the community (Haigh, 1999):

- *Attachment*: a culture of belonging
- *Containment*: a culture of safety
- *Communication*: a culture of openness
- *Involvement*: a culture of participation and citizenship
- *Agency*: a culture of empowerment (Haigh 1999)

Any teaching and/or rehabilitation process will be unsuccessful if its environment mimics the dysfunctional systems female prisoners have already experienced. Rather, program and treatment strategies should be designed to undo some of the prior damage. Therapeutic community norms are consciously designed to be different: safety with oneself and with others is paramount, and the entire environment is designed to create living and learning opportunities for everyone involved—staff and clients alike (S. Bloom, 2000). Finally, personal violence toward women must be understood in the larger societal context of systemic violence and oppression, including racism, classism, heterosexism, and ageism.

In summary, women begin to heal from addiction and trauma in a relational context. Recovery happens in connection, not in isolation. Nonmutual, nonempathic, disempowering, and unsafe settings make change and healing extremely difficult. The more we understand and apply relational theory, the more able we will be to help women who struggle with trauma and addiction.

## **GENDER-RESPONSIVE CURRICULA**

Effective, gender-responsive (woman- and girl-centered) models do exist for programs and agencies that provide for a continuity-of-care approach. The models described below are examples of interventions that can be used at various points within the criminal justice system and in community-based services, and respond to the needs of women and girls.

*Helping Women Recover: A Program for Treating Substance Abuse* is a unique, gender-responsive treatment model designed especially for women in correctional settings. It is currently in use in both institutional and community-based programs. The program materials provide treatment for women recovering from substance abuse and trauma by dealing with their specific issues in a safe and nurturing environment based on respect, mutuality, and compassion. This program addresses the issues of self-esteem, parenting, relationships, sexual concerns, and spirituality that have been identified by the Center for Substance Abuse Treatment (1994, 1999) in its guidelines for comprehensive treatment. *Helping Women Recover* integrates the theoretical perspectives of addiction, women's psychological development, and trauma in separate program modules of four sessions each (Covington, 1999, 2000). Using a female facilitator, the modules address the issues of self, relationships, sexuality, and spirituality through the use of guided discussions, workbook exercises, and interactive activities. According to recovering women, addressing these four areas is crucial to preventing relapse (Covington, 1994).

*Beyond Trauma: A Healing Journey for Women* is an integrated, theoretically based, gender-responsive treatment approach that consists of 11 sessions (Covington, 2003b). This program has been developed for use in residential, outpatient, and correctional settings in a group format (it can

be adapted for individual work). *Beyond Trauma* has a psychoeducational component that teaches women what trauma is, its process, and its impact on both the inner self (thoughts, feelings, beliefs, values) and the outer self (behavior and relationships, including parenting). The major emphasis is on coping skills with specific exercises for developing emotional wellness. The curriculum includes a facilitator guide, participant workbook, and videos. These items can be used alone or as a continuation of the trauma work in the *Helping Women Recover* curriculum (Covington, 1999).

*Voices: A Program of Self-Discovery and Empowerment for Girls* addresses the unique needs of adolescent girls and young women between 12 and 18. The program model uses a trauma-informed, strength-based approach that helps girls to identify and apply their power and voices as individuals and as a group. The focus is on issues that are important in the lives of adolescent girls, from modules about self and connecting with others to exploring healthy living and the journey ahead. Given the pervasive impact of abuse and substance use in many girls' lives, these themes are woven throughout the sessions. *Voices* encourages girls to seek and discover their "true selves" by giving them a safe space, encouragement, structure, and support to embrace their important journey of self-discovery. In addition, skill building in the areas of communication, refusal skills, anger management, stress management, and decision making is integrated across program topics. It can be used in many settings (e.g., outpatient and residential substance abuse treatment, schools, juvenile justice, and private practice) (Covington, 2004).

## CONCLUSION

Many women and men who work in criminal justice settings struggle with daily contradictions. One contradiction is that a system based on power and control is antithetical to what helps women and girls to change, grow, and heal. Hence, creating a new gender-responsive program or changing an existing program is a partial solution to meeting women's needs. Systemic change is essential. One of the primary goals of our criminal justice system must be to help women and girls reintegrate into society and lead productive lives. What can we do? We can intervene in the status quo on many different levels.

1. Try to change mandatory sentencing laws. Addicted women and girls need treatment, not prisons. Drugs are a public health problem, not a criminal justice problem. Treatment is both cheaper and more effective than prison at reducing recidivism (Gerstein et al., 1994; Finigan, 1996). CSAT (1999) writes, "Addicted women who are incarcerated because of our tightened drug laws will keep recycling through the criminal justice system unless they receive treatment. . . Most women do not need to be incarcerated to protect the community. The treatment they need can be provided in the community, with their families intact and with the chance to become sober and drug-free under real-life conditions" (p. 2.).
2. Staff our jails, prisons, and community correctional facilities with more female wardens and correctional officers. Female staff can serve as role models and help to reduce the risk of retraumatization by providing women and girls with a sense of safety. Only women and men who can do the above have the right to work with females.

3. Give supplementary training to correctional officers. Training academies often teach information and skills that apply only to men's facilities. Officers in women's and girls' facilities need to understand the realities of women's and girls' lives and the value of mutually empathic relationships, not just the kinds of rules and structure that may be effective with men and boys. They need to understand how disconnection, addiction, and trauma affect women and girls.
4. Teach women to value life, especially their own. It is hard for women to do so in a misogynist society where women get messages that their lives are trivial. Provide appropriate services and use treatment models and materials developed for women and girls.
5. Help women keep contact with their children. Currently, women's facilities are often set at great distances from where women's children live, so that visitation is difficult. But it is often their connections with their children that keep women alive and motivate them to change. It is equally essential that children's need for connection with their mothers is supported and facilitated. Maintaining these relationships is one form of prevention for families in the criminal justice system.
6. Become aware of our own attitudes about women and girls. Commit to changing our personal social system away from a system of power and control, and toward a system of mutually empowering relationships. Work to create an environment for change and healing in our own lives.

Women and girls need a criminal justice system that takes into account their realities and their need for connection in their lives and their experience of damaging disconnection. They need a system in which relational theory provides the underlying philosophy, shapes the dynamics of staff and offender relationships, and affects the ways staff interact and make decisions. Women and girls need to experience an environment of growth-fostering relationships based on respect, mutuality, and empowerment.

As we move into the twenty-first century, it is time to move beyond the culture of punishment and retribution that characterizes our criminal justice system and create a culture of community and healing. It is time for transformation.

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## DEMOCRATIZING CRIMINAL LAW AS AN ABOLITIONIST PROJECT

*Dorothy E. Roberts*

**ABSTRACT**—The criminal justice system currently functions to exclude black people from full political participation. Myriad institutions, laws, and definitions within the criminal justice system subordinate and criminalize black people, thereby excluding them from electoral politics, and depriving them of material resources, social networks, family relationships, and legitimacy necessary for full political citizenship. Making criminal law democratic requires more than reform efforts to improve currently existing procedures and systems. Rather, it requires an abolitionist approach that will dismantle the criminal law’s anti-democratic aspects entirely and reconstitute the criminal justice system without them.

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## INTRODUCTION

Reflecting on the theme of this Symposium, I realized that my criminal law scholarship over the last twenty-six years has been a democratizing project.<sup>1</sup> My work in this field coalesces around demonstrating and contesting the ways various aspects of the criminal justice system exclude black people from democratic participation in the service of white supremacy. In 2007, I entitled part of an article, “The System’s Anti-Democratic Function,” to sum up how mass incarceration, capital punishment, and police terror deny African Americans full citizenship by disenfranchising large numbers of black individuals, damaging black communities’ social networks, and reinforcing racist stereotypes about black criminality.<sup>2</sup> Democratizing criminal law requires, first and foremost, eliminating law enforcement’s anti-democratic functions that subordinate black people politically. Indeed, achieving racial justice in the criminal justice system is essential to making the United States a truly democratic society.

Attending to the criminal justice system’s subordinating function shifts the nature of the democratizing problem and, consequently, its solution away from black people’s attitudes and behaviors. The problem is

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<sup>1</sup> See, e.g., Dorothy E. Roberts, *Collateral Consequences, Genetic Surveillance, and the New Biopolitics of Race*, 54 HOW. L.J. 567 (2011) [hereinafter Roberts, *Collateral Consequences*]; Dorothy E. Roberts, *Complicating the Triangle of Race, Class, and State: The Insights of Black Feminists*, 37 ETHNIC & RACIAL STUD. 1776 (2014) [hereinafter Roberts, *Complicating the Triangle*]; Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 COLUM. HUM. RTS. L. REV. 261 (2007) [hereinafter Roberts, *Constructing*]; Dorothy E. Roberts, *Criminal Justice and Black Families: The Collateral Damage of Over-Enforcement*, 34 U.C. DAVIS L. REV. 1005 (2001) [hereinafter Roberts, *Criminal Justice and Black Families*]; Dorothy E. Roberts, *Foreword: Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 J. CRIM. L. & CRIMINOLOGY 775 (1999) [hereinafter Roberts, *Foreword*]; Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474 (2012) [hereinafter Roberts, *Prison, Foster Care*]; Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419 (1991) [hereinafter Roberts, *Punishing Drug Addicts*]; Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271 (2004) [hereinafter Roberts, *Cost of Mass Incarceration*].

<sup>2</sup> See Roberts, *Constructing*, *supra* note 1.

not black communities' alienation from law enforcement because criminal law is not democratic enough; the problem is that criminal law excludes black people from democratic participation in the political economy. In other words, the criminal justice system is not a democratic institution that needs to be more inclusive of black people; nor does its exclusion of black people result from bureaucratic malfunction.<sup>3</sup> Rather, the law enforcement bureaucracy is designed to operate in an anti-democratic manner. Therefore, democratizing criminal law requires an abolitionist—not reformist—approach.

### I. RACIST DEFINITIONS OF LAW BREAKING

As an initial matter, democratizing criminal law requires acknowledging that the very definition of law breaking in the United States is biased against black people.<sup>4</sup> Democratizing efforts that aim to improve relations between law enforcement and black communities in order to motivate obedience to the law overlook the law's criminalization of black people. In my first article, I argued that racism was critical to turning the public health problem of drug use during pregnancy into a crime, addressed by locking up black women rather than providing them with needed health care.<sup>5</sup> Prosecutors' identification of prenatal drug use as a crime and their extension of existing criminal statutes to cover harms to a fetus were shaped by racist media portrayals of pregnant black women and their "crack babies," as well as the longstanding devaluation of black motherhood.<sup>6</sup> Prosecutors concocted newfangled interpretations of homicide, assault, child neglect, and drug distribution laws to punish black women's childbearing and blame black mothers for the disadvantages their children suffered owing to structural racism. Treating black mothers as biological threats to their children became a rationale for punishing these women with astounding brutality.<sup>7</sup>

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<sup>3</sup> See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012); ANGELA Y. DAVIS, *ABOLITION DEMOCRACY: BEYOND PRISON, TORTURE AND EMPIRE* (2005); RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* (2007); ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA* (2016).

<sup>4</sup> See generally SARAH HALEY, *NO MERCY HERE: GENDER, PUNISHMENT, AND THE MAKING OF JIM CROW MODERNITY* (2016); KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2011).

<sup>5</sup> See Roberts, *Punishing Drug Addicts*, *supra* note 1.

<sup>6</sup> *Id.* at 1481; see also DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (2017).

<sup>7</sup> See, e.g., ROBERTS, *KILLING THE BLACK BODY*, *supra* note 6, at 167 ("Police arrested some [black female] patients [at the Medical University of South Carolina] within days or even hours of giving birth and hauled them off to jail in handcuffs and leg shackles.").



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I later made a similar observation about the criminalizing impact of loitering laws, challenging the claim made by social norm theorists that order-maintenance policing benefits communities—particularly black inner-city neighborhoods—because promoting norms of orderliness deters crime.<sup>8</sup> I argued, in contrast, that the identity of “visibly lawless” people at the heart of vague loitering laws incorporates racist notions of criminality and legitimates police harassment of black citizens. Social norm theorists who support order-maintenance policing make two key errors: (1) they misread the empirical data about crime and disorder<sup>9</sup> and (2) they misjudge the social influence of order-maintenance policing by failing to recognize that the categories of order and disorder have a preexisting meaning that associates black people with lawlessness.<sup>10</sup> In my earlier work, I wrote:

My point goes beyond the observation that the loitering law happened to result in the arrest of a disproportionate number of minorities. By necessarily assuming a distinction between law-abiding and lawless people that can be detected apart from criminal conduct, the gang-loitering ordinance incorporates and reinforces pernicious stereotypes about Black criminality.<sup>11</sup>

Focusing reform efforts on interrogating why black people break the law elides the more fundamental question of how racism affects the way law breaking is defined and identified in the first place. The criminal justice system’s reinforcement of a presumed association between black people and criminality in the very determination of law breaking undergirds the system’s anti-democratic function and points to the need for an abolitionist approach.

## II. CRIMINAL LAW’S DISENFRANCHISEMENT OF BLACK COMMUNITIES

The criminal justice system has long served as a chief means of excluding African Americans from full political participation.<sup>12</sup> In a prior work, I traced the origins of three pillars of the U.S. criminal justice system—mass incarceration, capital punishment, and police terror—to the enslavement of black people, and argued that the modern day survival of these pillars radically contradicts liberal democratic ideals in order to preserve an unjust racial order.<sup>13</sup> Through these institutions, law

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<sup>8</sup> See Roberts, *Foreword*, *supra* note 1.

<sup>9</sup> *Id.* at 806–08 (arguing that police officers routinely use black people’s race as a proxy for criminal propensity, leading to racial bias in arrests).

<sup>10</sup> *Id.* at 813–14 (pointing to events in New York City where order-maintenance proponents boasted of falling crime rates while ignoring the increased complaints of police abuse and the large number of innocent people who were detained, a majority of whom were black and Latino).

<sup>11</sup> *Id.* at 806.

<sup>12</sup> See ALEXANDER, *supra* note 3; DAVIS, *supra* note 3; MUHAMMAD, *supra* note 4.

<sup>13</sup> See Roberts, *Constructing*, *supra* note 1.

enforcement continues to implement slavery's logic: the criminal justice system implements the white supremacist myth that black people are less valuable than white people and therefore inherently subject to white rule. A related logic stemming from black resistance to subordination casts African Americans as a threat to the security of the nation that must be contained by law enforcement.<sup>14</sup>

Returning to loitering laws provides a paradigmatic example of subordination via the criminal justice system. In my criticism of order-maintenance policing, I noted the anti-democratic function of loitering laws that give police wide discretion to control black people's presence on public streets.<sup>15</sup> Restricting black people's freedom of movement historically facilitated racial subjugation:

The colonies sought to prevent slave rebellions by enacting laws that prohibited slaves from traveling without a pass and permitted slave patrols to arrest slaves on mere suspicion of sedition. After Emancipation, white southerners tied freed Blacks to plantations through Black Codes that punished vagrancy. As the Court described them, "vagrancy laws were used after the Civil War to keep former slaves in a state of quasi slavery."<sup>16</sup>

Vague loitering laws, like the Chicago gang loitering ordinance struck down in *City of Chicago v. Morales*,<sup>17</sup> give license to police officers to arrest people purely on the basis of race-based suspicion, identifying a class of citizens as "lawless" apart from their criminal conduct.

In another article,<sup>18</sup> I identified prison policy as a mechanism of black political subordination. Drawing on sociological studies, I catalogued the ways in which locking up astronomical numbers of black men and women interferes with their democratic participation in the national political economy. Mass incarceration confines and disenfranchises a staggering proportion of African Americans. Felon disenfranchisement laws have a significant impact on black political power, added to the inability to vote while behind bars.<sup>19</sup> Nearly one in seven black men of voting age has been

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<sup>14</sup> MUHAMMED, *supra* note 4.

<sup>15</sup> Roberts, *Foreword*, *supra* note 1.

<sup>16</sup> *Id.* at 788 (quoting *City of Chicago v. Morales*, 527 U.S. 41, 53 n.20 (1991)).

<sup>17</sup> 527 U.S. 41. The Gang Congregation Ordinance "prohibit[ed] 'criminal street gang members' from 'loitering' with one another or with other persons in any public place." *Id.* at 45–46.

<sup>18</sup> Roberts, *Cost of Mass Incarceration*, *supra* note 1; *see also* Roberts, *Criminal Justice and Black Families*, *supra* note 1.

<sup>19</sup> The Sentencing Project's recently updated primer estimates that, out of the 6.1 million Americans prohibited from voting due to disenfranchisement laws, 2.2 million are black citizens. JEAN CHUNG, SENTENCING PROJECT, FELONY DISENFRANCHISEMENT: A PRIMER 1–2 (2017), <http://sentencingproject.org/wp-content/uploads/2015/08/Felony-Disenfranchisement-Primer.pdf> [<https://perma.cc/F9GT-C63F>]. In some states, felony disenfranchisement laws permanently disqualify people convicted of felonies from voting, even after they have served their time behind bars. ALEXES

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denied the right to vote as a result of incarceration.<sup>20</sup> This dilution of voting power reduces black people's ability to have a say in elections and referenda, diminishing their power to help elect candidates and advocate for legislation that is in their best interests.

Moreover, the criminal justice system's supervision of black communities has a disempowering impact that extends far beyond electoral politics. Incarcerating so many members of black communities robs them of material resources, social networks, and legitimacy required for full political citizenship and for organizing local institutions to contest repressive policies.<sup>21</sup> Law enforcement also has silenced black protest and political leadership directly, as exemplified by the jailing of Martin Luther King, Jr., in Birmingham, Alabama,<sup>22</sup> the assassination of Fred Hampton by the Chicago Police Department and FBI,<sup>23</sup> and the military-style assault on protesters in Ferguson, Missouri, after the police killing of unarmed African-American teenager Mike Brown.<sup>24</sup>

My most recent criminal justice scholarship has examined how the contemporary intersection of the prison, welfare, and foster care systems in black mothers' lives intensifies the criminal law's anti-democratic function.<sup>25</sup> All three systems are marked by glaring race, gender, and class disparities, with cash poor and low-income black mothers disproportionately involved in them.<sup>26</sup> Thousands of black women in prison today—mostly for nonviolent offenses—need treatment for substance abuse, support for their children, or safety from an abusive relationship, not criminal punishment. Since Congress abolished the federal entitlement to welfare in 1996—fueled by racist stereotypes of black “Welfare Queens”—

HARRIS, A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR (2016); JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY (2006).

<sup>20</sup> Roberts, *Cost of Mass Incarceration*, *supra* note 1, at 1292 (citing MARC MAUER, RACE TO INCARCERATE 186 (1999)).

<sup>21</sup> See DONALD BRAMAN, DOING TIME ON THE OUTSIDE (2007); BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA (2007); MASS IMPRISONMENT: SOCIAL CAUSES AND CONSEQUENCES (David Garland ed., 2001); Roberts, *Cost of Mass Incarceration*, *supra* note 1.

<sup>22</sup> MARTIN LUTHER KING, JR., *Letters from Birmingham Jail*, in WHY WE CAN'T WAIT 85 (1963).

<sup>23</sup> JEFFREY HAAS, THE ASSASSINATION OF FRED HAMPTON: HOW THE FBI AND THE CHICAGO POLICE MURDERED A BLACK PANTHER (2011).

<sup>24</sup> Paul D. Shinkman, *Ferguson and the Militarization of Police*, U.S. NEWS & WORLD REP. (Aug. 14, 2014, 10:13 AM), <https://www.usnews.com/news/articles/2014/08/14/ferguson-and-the-shocking-nature-of-us-police-militarization> [<https://perma.cc/UZL6-8TDT>].

<sup>25</sup> Roberts, *Complicating the Triangle*, *supra* note 1, at 1777; Roberts, *Prison, Foster Care*, *supra* note 1, at 1476.

<sup>26</sup> See ALEXANDER, *supra* note 3; ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? (2003); BETH RICHIE, ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION (2012); DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2002).

public assistance has been restructured as a behavior modification system to regulate the sexual and reproductive decisions of cash poor mothers.<sup>27</sup> The multibillion-dollar foster care apparatus, which entails extreme disruption and surveillance of families, is a vital aspect of the U.S. carceral state that brutally intervenes in the very communities most devastated by the neoliberal evisceration of public resources. Federal law governing child welfare practice encourages the termination of incarcerated mothers' parental rights, and local policies do too little to keep these mothers in contact with their children or to support their families after they are released from prison.<sup>28</sup> On the contrary, the collateral penalties routinely inflicted on convicted women—including monetary sanctions and bans on welfare benefits, public housing, post-secondary financial aid, and professional licenses—place affirmative barriers to having the economic and social stability required to regain and maintain custody of children placed in foster care while the mother is behind bars.<sup>29</sup>

By attributing black families' hardships to maternal deficits, these punitive systems devalue black mothers' bonds with their children, and prescribe prison, low-wage jobs, foster care, and adoption in place of adequate resources and social change. State regulation of black women's bodies, already devalued by a long history of reproductive regulation and derogatory stereotypes of maternal irresponsibility,<sup>30</sup> makes excessive policing by punitive state systems seem justified in order to protect black communities and the broader public from harm.

Equally destructive of democratic participation is the routine harassment of black people for alleged petty offenses that often leads to impoverishing and detaining them without regard to their culpability for law breaking.<sup>31</sup> The relationship between black communities and law

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<sup>27</sup> See KAARYN S. GUSTAFSON, CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY (2012); GWENDOLYN MINK, WELFARE'S END (2002); ROBERTS, KILLING THE BLACK BODY, *supra* note 6; ANNA MARIE SMITH, WELFARE AND SEXUAL REGULATION (2007).

<sup>28</sup> Roberts, *Prison, Foster Care*, *supra* note 1.

<sup>29</sup> Geneva Brown, Am. Const. Soc'y, *Issue Brief: The Intersectionality of Race, Gender, and Reentry: Challenges for African-American Women* 1, 18 (2010), <https://www.acslaw.org/sites/default/files/Brown%20issue%20brief%20-%20Intersectionality.pdf> [<https://perma.cc/6L3G-GYTP>]; Nekima Levy-Pounds, *Beaten by the System and Down for the Count: Why Poor Women of Color and Children Don't Stand a Chance Against U.S. Drug-Sentencing Policy*, 3 U. ST. THOMAS L.J. 462 (2006); George Lipsitz, "In an Avalanche Every Snowflake Pleads Not Guilty": *The Collateral Consequences of Mass Incarceration and Impediments to Women's Fair Housing Rights*, 59 UCLA L. REV. 1746 (2012).

<sup>30</sup> See ANGE-MARIE HANCOCK, THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN (2004); MELISSA V. HARRIS-PERRY, SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA (2011); ROBERTS, KILLING THE BLACK BODY, *supra* note 6.

<sup>31</sup> See ACLU, IN FOR A PENNY: THE RISE OF AMERICA'S NEW DEBTORS' PRISONS (2010), [https://www.aclu.org/files/assets/InForAPenny\\_web.pdf](https://www.aclu.org/files/assets/InForAPenny_web.pdf) [<https://perma.cc/PJK3-WRRZ>]; NICOLE VAN

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enforcement is better characterized as mass control than either protection from harm or adjudication of guilt or innocence. The cycle of racist state control works as follows.

First, police officers patrolling black communities engage in discriminatory stop and frisk and other law enforcement procedures that unjustly target black men, women, and children for arrest for minor crimes.

Second, many black people who cannot afford to pay bail end up spending vast amounts of time in jail awaiting adjudication and pleading guilty to crimes they did not commit.

Third, post-conviction monetary sanctions and other collateral penalties impose additional punishments that create a two-tiered system of criminal justice that exacts more onerous and perpetual punishment on those who do not have the money to pay for them.<sup>32</sup>

This cycle targets entire black communities for state regulation that deprives them of the resources, liberties, and legitimacy needed for democratic participation.

## III. AN ABOLITIONIST APPROACH TO DEMOCRATIZING CRIMINAL LAW

The anti-democratic function of criminal law suggests that a reformist approach is inadequate to democratize it. Improving procedures within a system designed to exclude black people from political participation may obscure its anti-democratic aspects or even make it operate more efficiently. Making law enforcement appear more legitimate to black people so they are more willing to obey the law mistakes the problem as one of black law breaking rather than white supremacy. It is nonsensical to believe an anti-democratic system can be fixed by ensuring greater obedience from the very people it is designed to subordinate. As I have written: “[d]eveloping a norm of trust in repressive agencies would be pathetic and self-defeating.”<sup>33</sup> Rather, my analysis of criminal law’s anti-democratic function suggests the need for an abolitionist approach.

My criminal law scholarship has not claimed that criminalizing pregnant black women, loitering laws, order-maintenance policing, mass incarceration, capital punishment, and police terror enforce a democratic system in a discriminatory manner. Rather, I have argued that these institutions enforce an undemocratic racial caste system originating in slavery. Making criminal law democratic, then, requires something far

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CLEVE, CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA’S LARGEST CRIMINAL COURT (2016); HARRIS, *supra* note 19; Issa Kohler-Hausmann, *Managerial Justice and Mass Misdemeanors*, 66 STAN. L. REV. 611, 685 (2014).

<sup>32</sup> HARRIS, *supra* note 19, at 9; *see also* Roberts, *Collateral Consequences*, *supra* note 1, at 570.

<sup>33</sup> Roberts, *Cost of Mass Incarceration*, *supra* note 1, at 1295.

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more radical than reducing bias or increasing inclusion in this anti-democratic system. Democratizing criminal law requires dismantling its anti-democratic aspects altogether and reconstituting the criminal justice system without them. I therefore have joined calls for an abolitionist approach.<sup>34</sup>

Approaching the democratization of criminal law as an abolitionist project means releasing the stranglehold of law enforcement on black communities that currently excludes residents from democratic participation so they have more freedom to develop their own democratic alternatives for addressing social harms. Such efforts include: (a) ending police stop and frisk practices, bail, monetary sanctions, restrictions on felons' voting rights, and other collateral penalties; (b) drastically reducing the numbers of incarcerated people by repealing harsh mandatory minimums for violent crimes, eliminating incarceration for nonviolent offenses, giving amnesty to those currently locked up under draconian laws, and decriminalizing drug use and possession and other conduct that poses little harm to others; and (c) holding police and other law enforcement agents accountable for brutality and rights violations.<sup>35</sup> An abolitionist project thus requires envisioning a radically different approach to crime that creates alternatives to prison as the dominant means of addressing social harms and inequities.<sup>36</sup> Additionally, abolition must be accompanied with "a redirection of criminal justice spending to rebuild the neighborhoods that they have devastated," as well as "a massive infusion of resources to poor and low-income neighborhoods to help residents build local institutions, support social networks, and create social citizenship."<sup>37</sup>

In the domestic violence context, black feminists have begun to think through what abolition means. The experience of black women at the intersection of the criminal justice system and other punitive state institutions has generated their exploration of approaches to domestic violence that do not rely on law enforcement for protection.<sup>38</sup> Black feminists are developing an anti-carceral approach that places domestic

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<sup>34</sup> See, e.g., DAVIS, *supra* note 3; GILMORE, *supra* note 3; MAYA SCHENWAR, LOCKED DOWN, LOCKED OUT: WHY PRISON DOESN'T WORK AND HOW WE CAN DO BETTER (2014); PRISON RESEARCH EDUC. ACTION PROJECT, INSTEAD OF PRISONS: A HANDBOOK FOR ABOLITIONISTS (2006).

<sup>35</sup> See ALEXANDER, *supra* note 3; DAVIS, *supra* note 3; MARIE GOTTSCHALK, CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS (2015).

<sup>36</sup> Roberts, *Constructing*, *supra* note 1, at 285.

<sup>37</sup> *Id.*

<sup>38</sup> See BETH RICHIE, COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BATTERED BLACK WOMEN 14 (1996); ANDREA RITCHIE, INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR (2017); *Building Peaceful Communities*, PROJECT NIA, <https://niastories.wordpress.com/about/> [<https://perma.cc/TRU3-H7UX>]; Roberts, *Complicating the Triangle*, *supra* note 1, at 1777.

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violence in a broader context of inequitable social structures, tying intimate violence to state violence. They recognize that the U.S. law enforcement system has not only locked up enormous numbers of black people, but also often harms black victims of domestic abuse when police arrest, injure, or kill black women who summon them for help.<sup>39</sup> In response, they have proposed community-based responses that address the social underpinnings of violence and that hold community members accountable without subjecting them to state violence.<sup>40</sup> The black feminist strategy for addressing domestic violence suggests the possibility of taking an abolitionist approach to criminal law without sacrificing protection from violence in black communities.

Finally, democratizing criminal law must be explicitly anti-racist in order to contest the white supremacist ideology that maintains its anti-democratic function. A majority of white Americans acquiesce in or support the anti-democratic features of the U.S. criminal justice system because these features prop up the unequal U.S. racial order. They are willing to tolerate intolerable amounts of state violence against black people because their white racial privilege protects them from experiencing this violence themselves and because they see this violence as necessary to protect their own privileged racial status.<sup>41</sup>

The Chicago gang-loitering ordinance in *Morales* proves exemplary. As I noted earlier, the categorical racial separation of law-abiding and lawless citizens permitted the simultaneous commitment to liberal democratic and totalitarian principles.<sup>42</sup> Presumptively law-abiding citizens could continue to frequent public forums free from police interference, while presumptively lawless people were viewed as justifiably subject to aggressive police surveillance. The gang-loitering ordinance was passed by the predominantly white Chicago City Council while minority communities were disproportionately subjected to the violations of liberty it imposed. Most of the political representatives of the black communities affected by the ordinance opposed it. By centering on suspected gang members and their companions, the very terms of the law applied virtually to minorities only. Relatively few white Chicagoans, on the other hand, risked being arrested for standing on the streets of their neighborhoods. White

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<sup>39</sup> See RICHIE, *supra* note 26; RITCHIE, *supra* note 38.

<sup>40</sup> See, e.g., *Building Peaceful Communities*, *supra* note 38.

<sup>41</sup> See CAROL ANDERSON, *WHITE RAGE: THE UNSPOKEN TRUTH OF OUR RACIAL DIVIDE* (2016); DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1993); CHRIS HAYES, *A COLONY IN A NATION* (2017); IAN HANEY LOPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM & WRECKED THE MIDDLE CLASS* (2015).

<sup>42</sup> See *supra* note 19 and accompanying text.



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Americans embrace law enforcement strategies that disenfranchise black communities because these strategies converge with white interests in reducing crime while preserving their own individual freedoms.

#### CONCLUSION

In addressing the nature of racism in America, playwright Lorraine Hansberry did not speak about a fairer way of punishing the crimes of black people; rather, she identified “the paramount crime in the United States” as “the refusal of its ruling classes to admit or acknowledge in any way the real scope and scale and character of their oppression of Negroes.”<sup>43</sup> Democratizing criminal law requires acknowledging the crimes that an anti-democratic criminal justice system perpetrates against black people and abolishing them so that black communities have greater freedom to envision and create democratic approaches to social harms—for themselves and for the nation as a whole.

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<sup>43</sup> Roberts, *Constructing*, *supra* note 1, at 261 (quoting Lorraine Hansberry, *The Scars of the Ghetto*, 16 MONTHLY REV. 577, 588–91 (1965)).

## ENDING CASH BAIL IS A WOMEN’S RIGHTS ISSUE

SAVANNA JONES\*

The long arm of the United States carceral system has grabbed hold of women in the last several decades. From 1980 to 2016, the number of incarcerated women increased more than 700%.<sup>1</sup> That is more than double the already staggering rate of increase for men during the same time period.<sup>2</sup> Nearly half of incarcerated women are held in jails—in stark contrast to the trends in the total incarcerated population, in which the state prison system holds twice as many people as jails.<sup>3</sup> Further, more than half of women held in local jails are being held pretrial, meaning they have not been convicted of a crime.<sup>4</sup> In concrete numbers, 231,000 women were incarcerated in the United States in 2019, and 26% of those women were not yet convicted of any crime.<sup>5</sup>

The ills of pretrial detention disproportionately affect women because they are more likely to be detained pretrial and because of their unique social and economic positions. For example, they are generally less financially solvent than a man in the same position, more susceptible to the abuse that runs through the carceral system, and more likely to be the primary caretaker of their children.<sup>6</sup> Suffering incarceration while still being considered legally innocent causes unnecessary trauma both to the detained individual and their family,<sup>7</sup> perpetuates the harms of overcrowding in jails,<sup>8</sup> and runs counter to the American axiom of innocent until proven guilty. In this way, ending the system of cash bail is a women’s rights issue, as women – particularly poor women of color – bear the brunt of the policy.

### I. Women Are Disproportionately Detained Pretrial

Women are generally less able to post bail, which results in their staggering rates of pretrial detention.<sup>9</sup> At its most fundamental level, cash bail criminalizes poverty, which is a condition disproportionately experienced by women, namely

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<sup>1</sup> *Incarceration of Women is Growing Twice as Fast as that of Men*, EQUAL JUST. INITIATIVE (May 11, 2018), <https://eji.org/news/female-incarceration-growing-twice-as-fast-as-male-incarceration/>.

<sup>2</sup> *Id.* See also Aleks Kajstura, *Women’s Mass Incarceration: The Whole Pie 2019*, PRISON POL’Y INITIATIVE (Oct. 29, 2019), <https://www.prisonpolicy.org/reports/pie2019women.html>.

<sup>3</sup> For the total incarcerated population in 2020, 1,291,000 are held in state prisons and 631,000 are held in local jails. *Id.*; Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, PRISON POL’Y INITIATIVE (Mar. 24, 2020), <https://www.prisonpolicy.org/reports/pie2020.html>.

<sup>4</sup> In 2019, 101,000 women were held in local jails and 61,000 of them had not been convicted of a crime. Kajstura, *supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Insha Rahman, *Bail and Pretrial*, VERA INST. OF JUST., <https://www.vera.org/ending-mass-incarceration/reducing-the-use-of-jails/bail> (last visited Nov. 7, 2020).

<sup>9</sup> See *id.* See also Kate Torgovnick May, *The hidden victims of the bail crisis? Women*, IDEAS.TED.COM (Apr. 12, 2019), <https://ideas.ted.com/the-hidden-victims-of-the-bail-crisis/>.

women of color, and their dependents. Simply put, to “post bail” means that a defendant pays a sum of money that has been determined by a judge in exchange for being let out of jail before their trial. If they return to all of their scheduled court dates, they will likely get that money back. The theory behind bail is that by collecting money from the defendant in exchange for their pretrial freedom, the defendant is incentivized to appear at their scheduled court date. If a defendant cannot post bail, they are kept in jail until trial. Ironically, women as a group tend not to be a flight risk,<sup>10</sup> rendering this theory behind bail moot.

In practice, the system of cash bail means rich people do not serve time pretrial, but poor people do: an individual can be stuck in jail for weeks or even months before trial simply because they cannot afford their freedom.<sup>11</sup> Though bail poses a problem for all poor defendants, it is particularly burdensome for women. The gender pay gap is well documented—in 2018, women earned, on average, just 82 cents for every dollar earned by a man, and that gap is better described as cavernous for women of color.<sup>12</sup> A study by the non-partisan Prison Policy Initiative found that “women who could not make bail had an annual median income of just \$11,071”—for Black women that number is just \$9,083.<sup>13</sup> When the typical bail amount rivals a full year’s income, it is no surprise that so many women are stuck in jail pretrial.<sup>14</sup>

## II. One Day Spent in Jail Before Trial is One Day Too Many

### A. *Individuals Entering Jail Are Subjected To Traumatic and Embarrassing Strip Searches Regardless of Conviction-Status*

No matter how short a pretrial detention period, the inability to post bail can expose women to unnecessary, traumatizing strip searches. In the name of safety and order in detention facilities, correctional officials may conduct degrading and humiliating strip searches of individuals entering the jail’s general population.<sup>15</sup> Even pretrial detainees are subject to these procedures, which often include invasive cavity searches.<sup>16</sup> Strip searches at a detention facility in California required women to “pull down [their] underwear ... spread [their] feet wide, and

<sup>10</sup> *Id.*

<sup>11</sup> See Lea Hunter, *What You Need To Know About Ending Cash Bail*, CTR. FOR AM. PROGRESS (Mar. 16, 2020, 9:05 AM), <https://www.americanprogress.org/issues/criminal-justice/reports/2020/03/16/481543/ending-cash-bail/>.

<sup>12</sup> On average, white women earn \$0.79 on a white man’s dollar; Black women earn \$0.62; and Hispanic women earn \$0.54. See Robin Bleiweis, *Quick Facts About the Gender Wage Gap*, CTR. FOR AM. PROGRESS (Mar. 24, 2020, 9:01 AM), <https://www.americanprogress.org/issues/women/reports/2020/03/24/482141/quick-facts-gender-wage-gap/>.

<sup>13</sup> Kajstura, *supra* note 2.

<sup>14</sup> The median bail amount is \$10,000. See Bernadette Rabuy and Daniel Kopf, *Detaining the Poor*, PRISON POL’Y INITIATIVE (May 10, 2016), <https://www.prisonpolicy.org/reports/incomejails.html>.

<sup>15</sup> See, e.g., *Florence v. Bd. of Chosen Freeholders of the Cty. of Burlington*, 566 U.S. 318, 322, 335-337 (2012).

<sup>16</sup> *Id.* at 327.

bend at [their] waist ... [r]each behind with [their] hands, spread open [their] vagina lips, and cough.”<sup>17</sup> Such a procedure can understandably be traumatizing on its own, but in addition, incarcerated women are more likely than the general population to have experienced sexual trauma prior to their encounters with the carceral system. According to the Bureau of Justice Statistics, 57% of women incarcerated under state jurisdiction reported experiencing either sexual or physical abuse prior to their incarceration.<sup>18</sup> This means that a significant portion of these women detained pretrial are subject to sexual re-traumatization by an arm of the justice system, simply because they could not pay for their pretrial freedom.

### *B. Jails Foster Dangerous Environments and Provide Poor Living Conditions*

Professor Shon Hopwood of Georgetown University Law Center often repeats to his students that it is not uncommon for defendants to ask for a sentence of a year and a day in order to bypass jail and instead serve their sentence in prison. Jails, as a whole, are considered dangerously overcrowded and tend to be run more strictly with less resources.<sup>19</sup> For example, jail phone calls are three times as expensive as calls from prison and other communications are more restricted as well.<sup>20</sup> Compared generally to prisons, the lack of funding in jail manifests as worse living conditions, lack of access to health care—poignantly mental health care—and rehabilitation services, and makes for an overall more dangerous environment.<sup>21</sup> This is to say, that when given the choice between jail or prison, many find prison to be preferable to the stricter conditions of confinement in jails, and those more harsh conditions are the ones to which pretrial detainees are subjected.

### *C. Incarceration Engenders Psychological Trauma*

The psychological trauma of unnecessary and arbitrary pretrial detention can be debilitating.<sup>22</sup> At its most extreme consequence, suicide rates in jails are astonishingly high. In fact, suicide has been the leading cause of death in jails since 2000.<sup>23</sup> In a report prompted by the horrific circumstances of Sandra Bland’s death in pretrial detention, the Huffington Post reported that 25% of jail

<sup>17</sup> *Amador v. Baca*, No. CV 10-01649-SVW-JEM (C.D. Cal. June 7, 2017); *See also Bull v. City & Cty. of San Francisco*, 595 F.3d 964 (9<sup>th</sup> Cir. 2010) (upholding VBC (visual body cavity) searches without individual suspicion as constitutional).

<sup>18</sup> *Women in the Criminal Justice System*, THE SENTENCING PROJECT 2 (2007) <https://www.sentencingproject.org/wp-content/uploads/2016/01/Women-in-the-Criminal-Justice-System-Briefing-Sheets.pdf>.

<sup>19</sup> *See generally* Alexi Jones, *Does our county really need a bigger jail?*, PRISON POL’Y INITIATIVE (May 2019), <https://www.prisonpolicy.org/reports/jailexpansion.html>.

<sup>20</sup> Kajstura, *supra* note 2.

<sup>21</sup> *Id.*

<sup>22</sup> Adureh Onyekwere, *How Cash Bail Works*, BRENNAN CTR. FOR JUST. (June 2, 2020), <https://www.brennancenter.org/our-work/research-reports/how-cash-bail-works>.

<sup>23</sup> *See* Dana Liebelson & Ryan J. Reilly, *Sandra Bland Died One Year Ago*, HUFFINGTON POST (July 13, 2016), <https://highline.huffingtonpost.com/articles/en/sandra-bland-jail-deaths/>.

suicides occurred within the first three days,<sup>24</sup> even when the individual who committed suicide had been arrested on minor charges that were extremely unlikely to result in prison time.”<sup>25</sup> This shocking statistic reflects just how anxiety-inducing and hopeless the criminal justice system feels from inside, just as much as it reflects on the bad conditions of confinement to which we subject those in jails.

On top of the individual trauma incarceration inflicts on women, it is not hard to imagine the additional stressors that the experience of incarceration—especially when inflicted pretrial—places upon a mother. Who will pick up her children from school that day and for every other day moving forward? How will they eat? Will they be properly taken care of?

### **III. Pretrial Detention Takes a Toll on Both the Individual Woman’s Life and That of Her Children**

Arrest and subsequent pretrial detainment can often happen suddenly and without warning, and the sudden removal of the mother from a household will often destabilize both her and the familial unit from which she is plucked. Nearly 80% of women in jail, including those held pre-trial, are single mothers.<sup>26</sup> Single mothers, particularly single mothers of color, are one of the lowest-earning demographics in the U.S.<sup>27</sup> Therefore, they are the least likely to be able to afford bail and more likely to be held pretrial than their childless or male counterparts.<sup>28</sup> Further, single mothers face significant barriers in accumulating wealth, which leaves many without an economic safety net.<sup>29</sup> So, when a big, surprise expense comes up, like bail, they often do not have the resources necessary to meet that expense.

#### *A. Pretrial Detention Has Resounding, Negative Consequences on the Children of Those Incarcerated*

The Prison Policy Initiative reports that 66% of women held pretrial are parents of minor children.<sup>30</sup> As mothers are typically the primary caregivers for minor

<sup>24</sup> The video of Sandra Bland’s violent arrest centered her story among the sea of violent acts by police. She was pulled over after failing to signal a lane change and refused to put out her cigarette when asked to by the officer. He responded by forcibly removing her from the car and getting quite physical with her in the process. Bland was held pretrial because she did not have enough money for bail. Within 65 hours of her arrest, she had hanged herself in her jail cell. *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Samantha Cooney, *Women are the Fastest Growing Population in U.S. Jails*, TIME (Aug. 18, 2016, 1:08 PM), <https://time.com/4457322/women-jails-vera-institute-report/>.

<sup>27</sup> Sophia Kerby, *Pay Equity and Single Mothers of Color*, CTR. FOR AM. PROGRESS (Apr. 16, 2012, 9:00 AM), <https://www.americanprogress.org/issues/race/news/2012/04/16/11436/pay-equity-and-single-mothers-of-color/>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Wendy Sawyer, *How Does Unaffordable Money Bail Affect Families?*, PRISON POL’Y INITIATIVE (Aug. 15, 2018), <https://www.prisonpolicy.org/blog/2018/08/15/pretrial/>.

children, taking the maternal figure out of the household can have devastating consequences on the family.<sup>31</sup> This is especially true—and painful—where mothers operate as both the primary caregiver and the breadwinner. As the number of women held in detention pretrial grows, so too does the number of destabilized and traumatized children.

It is not outlandish to imagine a scenario in which a woman is arrested while her children are oblivious to the situation. If she can afford bail for her charges, she will be released back to her life and her children. If not, her children might be waiting for her to come home, which will not happen. The uncertainty of such a situation is understandably destabilizing and frightening to a child. In *U.S. v. Hooks*, an Alabama District Court found the fact that Hooks, a single mother, had absolutely no arrangements in place for the care of her very young children was sufficient reason to merit her pretrial release.<sup>32</sup> The court stressed that her status as a single mother *alone* was not enough to warrant her release, but that, in her specific circumstances, the lack of a plan was sufficient.<sup>33</sup> It found that her immediate detention would punish her children and determined that to be unfair. But, is it not reductive to hold that being the sole caretaker of a minor child is not generally an extenuating circumstance in itself? Even if an average woman's circumstances are not quite as dire as that of Ms. Hooks, she still is likely to experience difficulty making arrangements for her children and will be subjected to all of the additional stress and anxiety that come with that frantic task. Further, this places unimaginable duress on children who, for all intents and purposes, rely on their mother for care, love, and life's necessities.

When their mother is incarcerated, many children will find themselves displaced and emotionally vulnerable. Currently, 45% of incarcerated mothers rely on their children's grandparents for caregiving responsibilities while they are in detention.<sup>34</sup> While there are certainly many benefits of being cared for by kin, these grandparents face many of their own challenges. Approximately one in four children living with a grandmother live in poverty, and one in three do not have health insurance.<sup>35</sup>

All children will react differently to these outward stressors, but some common experiences are anxiety, traumatic loss and stress, developmental regressions, and embarrassment.<sup>36</sup> Children in these situations are more likely to develop mental

<sup>31</sup> Kajstura, *supra* note 2.

<sup>32</sup> *United States v. Hooks*, 330 F. Supp. 2d 1311, 1313 (M.D. Ala. 2004).

<sup>33</sup> *Id.*

<sup>34</sup> Creasie Finney Hairston, *Kinship Care When Parents are Incarcerated: What we Know, What we Can Do*, PRISON LEGAL NEWS, 7 (2009), [https://www.prisonlegalnews.org/media/publications/annie\\_e\\_casey\\_foundation\\_kinship\\_care\\_when\\_parents\\_are\\_incarcerated\\_report\\_2009.pdf](https://www.prisonlegalnews.org/media/publications/annie_e_casey_foundation_kinship_care_when_parents_are_incarcerated_report_2009.pdf).

<sup>35</sup> Nancy G. La Vigne, et. al, *Broken Bonds: Understanding and Addressing the Needs of Children with Incarcerated Parents*, URBAN INST. JUSTICE POLICY CTR. 6 (2008), <https://www.urban.org/sites/default/files/publication/31486/411616-Broken-Bonds-Understanding-and-Addressing-the-Needs-of-Children-with-Incarcerated-Parents.PDF>.

<sup>36</sup> *See Sawyer, supra* note 30.

health problems than their peers due in part to the absence of their parents, but also because of the “difficulty meeting basic needs” that arises “for families with a member in prison or jail.”<sup>37</sup> This can also result in lower educational achievement and impaired relationships at school.<sup>38</sup> Through no fault of their own, these children are being punished by the carceral system when their parents are taken away, especially when that is done so suddenly and before arraignment.

Where a woman is released on bail, she will have time to find living accommodations and guardians for her children. Additionally, this can serve as crucial time in emotionally preparing a child (and the mother, for that matter) for the whirlwind experience that is the criminal justice system. If a child is given time to learn what to expect from the incarceration of their mother instead of waking up one day to her absence, they will be better situated mentally for enduring the length of her sentence.

#### *B. Women Held Pretrial Can Unnecessarily Face Loss of Jobs and Housing*

Again, because of how the cash bail system disproportionately disadvantages impoverished women of color, those held pretrial are more likely to be hourly wage workers,<sup>39</sup> working for minimum wage or less.<sup>40</sup> For these women, even a few days in jail can result in the loss of a job.<sup>41</sup> Because this group is also likely to live with meager financial means, losing a job can quickly put their housing at risk.<sup>42</sup> Ultimately, taking these women out of the home before trial, much less out of the workplace, causes them great economic distress that, in turn, can create generational trauma and perpetuate cycles of poverty.

### **IV. Ending Cash Bail Is Both Possible and Necessary**

A criminal justice system in which punishment comes only upon conviction is not a quixotic daydream but has actually become reality in the nation’s capital. Washington D.C., well ahead of the curve on criminal justice reform, began taking steps to eliminate cash bail in the 1960’s<sup>43</sup> and should now serve as a

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Poverty wages are “hourly wages that would leave them below the federal poverty guideline for their family size if they are the sole earner in the family, even if they work full-time, year-round.” See David Cooper, *Workers of color are far more likely to be paid poverty-level wages than white workers*, ECONOMIC POL’Y INST. (June 21, 2018, 4:53 PM), <https://www.epi.org/blog/workers-of-color-are-far-more-likely-to-be-paid-poverty-level-wages-than-white-workers/>. See generally

<sup>40</sup> Among those who earn minimum wage or less, 62% are women and 38% are men. Jens Manuel Krogstad, *More women than men earn the federal minimum wage*, PEW RESEARCH (May 5, 2014), <https://www.pewresearch.org/fact-tank/2014/05/05/more-women-than-men-earn-the-federal-minimum-wage/>.

<sup>41</sup> See Hunter, *supra* note 11.

<sup>42</sup> See *id.*

<sup>43</sup> Colin Doyle, et. al, *Bail Reform: A Guide for State and Local Policymakers*, CRIM. JUST. POL’Y PROGRAM HARVARD LAW SCH. 35 (2019),



model for the nation. The city now strongly favors unconditional pretrial release, employs strict timeliness requirements for assessing a defendant after arrest, and provides procedural protections for preventive detention.<sup>44</sup> The D.C. Bail Project, housed at Georgetown University Law Center, was a major player in these reforms, by “provid[ing] judges with background information about a defendant’s ties to the community to help judges make more informed decisions about release.”<sup>45</sup> Now, D.C. releases 94% of defendants pretrial, and 90% of them appear for their scheduled court dates.<sup>46</sup> Further, only approximately 2% were rearrested for a crime of violence while in the community pending trial.<sup>47</sup> If the goal of cash bail is truly to ensure a court appearance and protect community safety, the D.C. case study revealed the Emperor is not wearing any clothes.

Judge Truman Morrison of the D.C. Superior Court addresses those still skeptical of pretrial release by explaining that there will always be an element of risk in deciding to release an individual before trial. However, “that [is] the price of our ordered system of liberty and justice.”<sup>48</sup> The only way to ensure complete safety is to incarcerate the whole populous and that, of course, “is not the American way.”<sup>49</sup>

## V. Conclusion

Cash bail perpetuates a notion that is the very antithesis of the oft-quoted central tenet of the American criminal justice system: ‘innocent until proven guilty.’ The weight of pretrial detention falls disproportionately upon poor women and their families as do the subsequent burdens of the trauma of incarceration. Ending cash bail procedures is a major step toward ending the criminalization of poverty. Further, by eliminating the current cash for freedom system, the 26% of women currently held in jails pretrial will no longer be incarcerated a single day before they are found guilty by a jury of their peers, if that conviction ever comes. Instead of sitting behind bars, these women will be with their families, they will be contributing to the economies in their local communities,<sup>50</sup> and they will be given the time to make arrangements (if necessary) that ease the transition for both them and their children for their subsequent incarceration. Ending cash bail does not skirt the proper administration of justice, rather it humanizes and equalizes the process.

<https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=9a804d1d-f9be-e0f0-b7cd-cf487ec70339&forceDialog=0>.

<sup>44</sup> *Id.* at 36-37.

<sup>45</sup> *Id.* at 35.

<sup>46</sup> *Id.* at 13.

<sup>47</sup> *Performance Measures*, PRETRIAL SERVS. AGENCY FOR D.C., <https://perma.cc/AT9Y-V4EL> (last visited Nov. 7, 2020).

<sup>48</sup> Melissa Block, *What Changed After D.C. Ended Cash Bail*, NPR (Sept. 2, 2018, 7:43 AM), <https://www.npr.org/2018/09/02/644085158/what-changed-after-d-c-ended-cash-bail>.

<sup>49</sup> *Id.*

<sup>50</sup> *See id.*



# CONDITIONS AND CONSEQUENCES OF INCARCERATION

**Full Report:** <https://www.usccr.gov/pubs/2020/02-26-Women-in-Prison.pdf>

# **Women in Prison: Seeking Justice Behind Bars**

Briefing Report Before  
The United States Commission on Civil Rights  
Held in Washington, D.C.

Briefing Report

February 2020

## EXECUTIVE SUMMARY

This report studies the civil rights of women in the United States prison system. The Constitution and federal statutes require that men and women in prison receive equal treatment. A 2011 report from the Commission's New Hampshire Advisory Committee found that New Hampshire failed to meet the needs of incarcerated women in New Hampshire, which caused harm.<sup>1</sup> Other investigations have demonstrated that women in U.S. prisons can face particular challenge in a prison system not designed for them. The population of women in prison has increased dramatically since the 1980s, and this growth has outpaced that of men in prison, yet there have been few national-level studies of the civil rights issues women experience.

On February 22, 2019, the Commission held a briefing focused on the civil rights of women in prison, including deprivations of women's medical needs that may violate the constitutional requirement to provide adequate medical care for all prisoners; implementation of the Prison Rape Elimination Act (PREA); and the sufficiency of programs to meet women's needs after release. The Commission also examined disparities in discipline practices for women in prison compared with men, and in impacts of women being placed far from home or having their parental rights terminated. Commissioners heard testimony from state and federal corrections officials, women who have experienced incarceration, academic and legal experts, and advocates. The Commission also sent Interrogatories and Document Requests to the Federal Bureau of Prisons and the Department of Justice and analyzed their responses. Commission staff provided quantitative and qualitative research about the main issues facing women in prison.

As discussed in greater depth throughout this report, data suggest that women in prison have some unique needs distinct from men. Women have health needs that differ from men, which many prison systems are ill-prepared to address.<sup>2</sup> Data reflect that, compared with men, women entering prison are more likely to suffer from chronic or severe mental health issues, are more likely to be survivors of trauma and/or sexual violence, and have higher rates of substance abuse than their male counterparts.<sup>3</sup> While incarcerated, women are significantly more likely to be sexually

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<sup>1</sup> New Hampshire Advisory Committee to the U.S. Commission on Civil Rights, *Unequal Treatment: Women Incarcerated in New Hampshire's State Prison System*, Sept. 2011, p. 2. [https://www.usccr.gov/pubs/docs/Unequal\\_Treatment\\_WomenIncarceratedinNHStatePrisonSystem.pdf](https://www.usccr.gov/pubs/docs/Unequal_Treatment_WomenIncarceratedinNHStatePrisonSystem.pdf) (hereinafter New Hampshire Advisory Committee to USCCR, *Unequal Treatment: Women Incarcerated in New Hampshire's State Prison System*).

<sup>2</sup> See *infra* notes 83-102 and 590-629.

<sup>3</sup> Alix McLearn, Administrator for the Women and Special Populations Branch, Federal Bureau of Prisons, Written Statement for Women in Prison Briefing before the U.S. Commission on Civil Rights, Feb. 22, 2019, at 1,3 (hereinafter McLearn Statement).

harassed and abused than are men.<sup>4</sup> Pregnant women in prison risk practices such as shackling during birth (where lawful) or failure to provide adequate pre- and post-natal care, and they generally face abrupt separation from their newborn babies.<sup>5</sup> The Commission heard bipartisan testimony decrying these practices.<sup>6</sup> LGBT incarcerated women often face challenges in receiving the medical care they need, in addition to often being subjected to harassment, abuse, and discriminatory treatment at the hands of prison officials and other inmates,<sup>7</sup> particularly if they are transgender women placed in men's prisons.<sup>8</sup>

Women who enter prison are also more likely than men who enter prison to be the primary caregiver to their children and are more likely to lose custody and parental rights upon incarceration.<sup>9</sup> Incarcerated women, as a group, have less education and lower income levels than their male counterparts, and these data suggest that disparities are harsher for women of color in the criminal justice system.<sup>10</sup> Once incarcerated, women often experience disparities in discipline, compared with male inmates,<sup>11</sup> and have less access to rehabilitative programs that would address their needs and ability to successfully re-enter society and avoid recidivism.<sup>12</sup> Our investigation illuminates the lack of opportunities to acquire a skill that would assist in post-incarceration employment opportunities for women versus men. For example, women in prison are often offered work or program opportunities such as cleaning, domestic work, and “female-coded” occupations,<sup>13</sup> rather than the same chances as incarcerated men to learn new skills.<sup>14</sup>

As discussed below, the vast majority—88 percent—of women in prison are serving time in state-run facilities. Although states have significant police powers and run their own state and local

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<sup>4</sup> See *infra* notes 668-89.

<sup>5</sup> See *infra* notes 619-45.

<sup>6</sup> See *infra* notes 646-56.

<sup>7</sup> See *infra* notes 668-89, 768-79, 790-98 and 806-23.

<sup>8</sup> Douglas Routh, Gassan Abess, David Makin, Mary Stohr, Craig Hemmens, and Jihye Yoo. “Transgender Inmates in Prisons: A Review of Applicable Statutes and Policies,” *International Journal of Offender Therapy and Comparative Criminology*, vol. 61, no. 6 (2015): 645-666 at 646, <https://doi.org/10.1177/0306624X15603745> (hereinafter Routh et.al, “Transgender Inmates in Prisons”).

<sup>9</sup> See *infra* notes 464-73 and 474-88.

<sup>10</sup> See *infra* notes 74-81 and 1150.

<sup>11</sup> See *infra* notes 538-42, 768-79, 790-98 and 806-23.

<sup>12</sup> See *infra* notes 976-1008.

<sup>13</sup> Lori Kenschaft, Roger Clark, and Desiree Ciambrone. *Gender Inequality in Our Changing World: A Comparative Approach* (London: Routledge, 2015), p. 52-3 (noting that female-coded occupations are positions that allow women to define themselves as helping other people. In comparison, the authors define male-coded occupations as positions that involve physical strength, tolerate discomfort, willingness to take risks, all of which allow men to display masculinity through their job).

<sup>14</sup> See *infra* notes 240-49.

prisons, the federal government not only runs federal prisons, but it is also the ultimate guarantor of constitutional rights of women institutionalized in the United States. It is charged with setting national standards and bringing enforcement actions when needed. Moreover, the federal government conditions federal grant monies and programs on compliance with basic civil rights laws. In that capacity, it also sets appropriate national standards, provides assistance in coming into compliance, and enforces the law.

Chapter 1 of this report provides background of critical data and research findings on the number of women in prison and demographic trends about their characteristics and place of incarceration. It also provides an overview of applicable civil rights law, including constitutional protections and relevant statutes such as the Civil Rights of Institutionalized Persons Act (CRIPA) and the Prison Rape Elimination Act (PREA), both of which the federal government enforces and may protect the rights of women in prison. This report then follows the path of women who are incarcerated and provides research about the obstacles they face. Chapter 2 discusses how women are classified upon entry into the prison system, how placement tools are being developed to address women's needs while incarcerated, and the implications of placement on women's roles in their family, and parenting. Chapter 3 provides an analysis of women's health issues and challenges, access to care, the situation of pregnant women, and the problem of sexual abuse impacting women in prison. Chapter 4 discusses the problem of sexual abuse impacting women in prison. Chapter 5 analyzes disparities in discipline that may impact women in prison, emerging practices and trends in how staff are trained to work with women prisoners, and whether women staff are necessary to protect them. Chapter 6 then studies rehabilitation, educational, and vocational training programs for women in prison and their impacts on life after prison. After this report's review of this broad swath of data, Chapter 7 analyzes and evaluates the Federal Bureau of Prisons and the Department of Justice's efforts in protecting the rights of women in prison.

Finally, the Commission sets forth findings and recommendations, key components of which are summarized below:

### **Highlighted Findings**

Notwithstanding federal statutory legal protections such as the Civil Rights of Institutionalized Persons Act (CRIPA) and the Prison Rape Elimination Act (PREA), aimed at protecting incarcerated people, many incarcerated women continue to experience physical and psychological safety harms while incarcerated and insufficient satisfaction of their constitutional rights.

Classification systems which are not calibrated for gender-specific characteristics have been shown to classify incarcerated women at higher security requirement levels than necessary for the safety and security of prisons. This classification results in some women serving time in more restrictive environments than is necessary and appropriate.

Incarcerated parents permanently lose parental rights at higher rates than parents whom courts find to have neglected or abused their children but are not incarcerated.

Incarcerated women generally have biological healthcare needs distinct from incarcerated men. They have a constitutional right to have these healthcare needs met.

Sexual abuse and rape remain prevalent against women in prison. This continuing prevalence has led to significant litigation involving several different institutions, at tremendous cost to taxpayers and providing strong evidence of the need for reform at the institutional level, even following passage of the Prison Rape Elimination Act (PREA) in 2003. Reports include abuse of incarcerated women by staff and other incarcerated women that is prevalent and pervasive.

Studies have shown incarcerated women are often given disproportionately harsh punishments for minor offenses while incarcerated compared to incarcerated men. This disproportionality results in such outcomes as placing women in segregation for minor violations of prison regulations, which denies them good time credits which would shorten their sentences and denies them programming privileges, among other restrictions. Reports indicate women are disproportionately punished harshly for offenses such as “being disorderly” where men tend more often to be punished for violence.

Prison officials, supervisors, and correctional officers are inconsistently trained on the prevalence of disproportionate punishment of incarcerated women and evidence-based disciplinary practices.

### **Highlighted Recommendations**

Prison officials should adopt validated assessment tools, currently available, to avoid inaccurately classifying incarcerated women to a higher security level than appropriate.

Prison officials should enforce policies that support parental rights and familial contact except where inconsistent with safety concerns. Such policies include keeping incarcerated parents apprised of family court proceedings, providing transportation to those proceedings, and assisting in locating counsel. Institutions should implement visitation policies with the goal of maintaining familial relationships.

Prison officials should implement policies to address women’s specific healthcare needs, including gynecological and prenatal care, as is constitutionally required.

All prisons should prohibit shackling pregnant women and placing them in solitary confinement, as these practices represent serious physical and psychological health risks.

The Department of Justice should rigorously enforce the PREA standards, including training and certifying auditors and investigating whether facilities are in fact in compliance. Congress should provide more funds for investigations and audits.

Prisons should implement evidence-based discipline policies that are trauma-informed to avoid harsh punishments for minor infractions, recognizing significant harms that can result from placement in restrictive housing. Prisons should ensure restrictive housing is not used against people of color, LGBT people, and people with mental health challenges in a discriminatory manner based on these characteristics.

Prison officials should implement staff training to address the high rates of trauma among incarcerated women and adjust prison policies accordingly, including training on evidence-based discipline practices.



## CHAPTER 8: FINDINGS AND RECOMMENDATIONS

### Overview

#### *Findings*

Finding 1. The incarceration rate for women is rapidly increasing, even as the overall rate for men is declining. Despite this increase policies and practices in women's prisons generally do not adequately protect the civil rights of these women.

Finding 2. Incarcerated people retain many civil rights despite their incarceration. They retain the right to enforce the legal protections to which they are entitled through administrative proceedings and the courts. These rights include the freedoms of speech and religion, the right to petition courts for relief, the right to be free from cruel and unusual punishment, the right to due process, and the right to be free from discrimination.

Finding 3. The Eighth Amendment prohibition on cruel and unusual punishment includes the right for incarcerated people to receive adequate healthcare, to be protected from sexual assault and harassment, and to experience overall conditions that do not violate contemporary standards of decency.

Finding 4. Many prison policies and facilities are not designed for women or tailored to their specific needs. Rather, many policies were adopted from men's prison institutions without evaluating their application to women's prison institutions.

Finding 5. Incarcerated women report extremely high rates of histories of physical, sexual, and mental trauma, much higher rates than incarcerated men report, although incarcerated men also report high rates of trauma. Studies indicate as many as 90% of incarcerated women experienced traumatic events prior to their incarceration, including, but not limited to physical assault, sexual assault, and psychological degradation.

Finding 6. Incarcerated women are disproportionately women of color and LGBT people.

Finding 7. Very limited data exists on incarcerated women and their experience in the prison system, leaving policymakers at a deficit in designing and implementing policies for incarcerated women.

Finding 8. According to some experts, the routine practices of prisons (e.g. strip searches, or solitary confinement) and the physical environment and design of prisons (e.g. limited light, loud noises, clanking metal doors, and often extreme temperatures) can create or recreate the damaging experiences of trauma for women in prison. But prisons, when effectively run, can still accomplish their punitive and rehabilitative goals by using trauma informed responses without exacerbating the impacts on traumatized women.

Finding 9. Providing adequate services to assist formerly incarcerated individuals with reentering society can reduce recidivism rates, given that re-arrests are often related to technical violations of release provisions related to difficulties in meeting financial obligations, lower employment skills, or the inability to secure safe housing.

## **Adequacy of Legal Protections and Federal Action**

### ***Findings***

Finding 10. Legal barriers impede incarcerated people seeking to enforce their constitutional rights. These include procedural barriers, such as administrative exhaustion and limits on attorney's fees contained in the Prison Litigation Reform Act, and high substantive standards of proof, such as the deliberate indifference standard for Eighth Amendment claims. This standard requires not only that prison administrators knew of the rights violation that caused the harm to the inmate (such as lack of adequate medical care or extended solitary confinement), but, in addition to knowing about the deficit were indifferent to the harm the violation would cause.

Finding 11. Notwithstanding federal statutory legal protections such as the Civil Rights of Institutionalized Persons Act (CRIPA) and the Prison Rape Elimination Act (PREA), aimed at protecting incarcerated people, many incarcerated women continue to experience physical and psychological safety harms while incarcerated and insufficient satisfaction of their constitutional rights.

Finding 12. Federal funding assistance such as through the National Institute of Corrections and the National Resource Center on Justice Involved Women specific to issues faced by women in prison made an important contribution in the past by facilitating the development of research tools and training methods specific to policies and practices regarding incarcerated women. This assistance has been sharply decreased because of federal budget cuts and agency prioritization of funds.

Finding 13. DOJ litigation against prison systems involving sexual abuse among other wrongs, has secured important changes to safeguard incarcerated women's rights. Consent decrees have played important roles in resolving such cases to the parties' satisfaction, allowing for necessary reforms to commence and take hold.

Finding 14. DOJ has a finite capacity to litigate constitutional violations and therefore cannot litigate against all institutions that, for example, do not address women's medical needs, requiring additional mechanisms to ensure these rights.

Finding 15. DOJ is required pursuant to the Prison Rape Elimination Act (PREA) to conduct annual public meetings of the Review Panel on Prison Rape. DOJ has not held a meeting since 2014 and has none scheduled.

Finding 16. Of the investigations it has carried out under CRIPA, DOJ has focused heavily on sexual abuse and less so on other challenges suffered by women in jails and prisons. Noticeably lacking are investigations into issues unique to women that are unconnected to sexual abuse, including dedicated attention for feminine health needs or access to programs and resources equal to those made available to men.

### ***Recommendations***

Recommendation 1. Congress should restore federal assistance through the National Institute of Corrections and the National Resource Center on Justice Involved Women to resume the development of research tools and training methods regarding incarcerated women.

Recommendation 2. Congress should amend the Prison Litigation Reform Act to address unnecessary legal barriers that limit the ability of incarcerated people to bring meritorious cases of constitutional violations.

Recommendation 3. The Review Panel on Prison Rape should return to its mandated annual meetings rather than continue its ongoing noncompliance with the statute.

Recommendation 4. DOJ should continue to litigate enforcement of the civil rights of incarcerated women in states that violate these mandates and the rights of incarcerated women. It should expand its investigation and litigation capacity to ensure the rights of all incarcerated women are protected through internal recognition of these civil rights harms and requests for additional funding if necessary.

Recommendation 5. The National Institute of Corrections should direct its resources to continuing to develop and implement evidence-based, gender-informed policies and trainings. The NIC must be provided sufficient resources by Congress to do so.

## **Classification and Placement**

### ***Findings***

Finding 17. Classification systems which are not calibrated for gender-specific characteristics have been shown to classify incarcerated women at higher security requirement levels than necessary for the safety and security of prisons. This classification results in some women serving time in more restrictive environments than is necessary and appropriate.

Finding 18. Women who are classified at higher security levels may receive fewer programming (such as vocational and educational opportunities), community placement, and reentry opportunities, which often results in women serving more time in prison than would be required if they had access to and completed these programming opportunities.

Finding 19. Transgender inmates report often being placed in facilities which do not conform to their gender identity, but rather their biological assignment at birth. These misplacements subject them to a greater risk of harm. The federal Bureau of Prisons (BOP), which is administered by the Attorney General and the DOJ, has adopted definitions classifying transgender inmates to emphasize biological sex, which has the potential to lead to inaccurate classifications of transgender people.

## **Recommendations**

Recommendation 6. Prison officials should adopt validated assessment tools, currently available, to avoid inaccurately classifying incarcerated women to a higher security level than appropriate.

Recommendation 7. Prison officials should ensure they place transgender incarcerated people in an appropriate facility consistent with their gender identity which ensures their safety and does not unduly restrict their movements within the prison facility such as restrictive housing or protective custody.

## **Family Disruption**

### ***Findings***

Finding 20. Many incarcerated women are placed at facilities far from their families, many times as a result of a lack of regional facilities, despite policies requiring that they be placed as close to home as practicable. The federal system's goal of placement within 500 miles of home often still results in incarcerated women being located in a different state from their family, dramatically limiting visitation opportunities. Women's institutions are often isolated in rural areas. As a result, incarcerated women face barriers to receiving visitation from their family members and children.

Finding 21. Many prison policies do not prioritize family visits, such as by permitting extremely limited family visitation hours that often do not reflect distances visiting family must travel.

Finding 22. Women are disproportionately primary caretakers of minor children prior to incarceration. Women are estimated to be 5 times more likely to have a child placed in foster care while they are incarcerated, compared to incarcerated men.

Finding 23. Alternatives to traditional sentencing such as community placements or intermittent sentencing, such as pursuant to federal law permitting confinement during nights and weekends in some circumstances, are often not employed by sentencing authorities, despite the ability of these alternatives to help maintain family ties and avoid termination of parental rights.

Finding 24. Incarcerated parents are at risk of permanent loss of their parental rights when their children are placed in foster care. The Adoption and Safe Families Act calls for termination of

parental rights if a child has been placed in foster care for 15 of the past 22 months. Some states, such as Massachusetts, Missouri, Nebraska, New Hampshire, New Mexico, and Oklahoma, have amended state law to prohibit termination of parental rights solely on the basis of incarceration.

Finding 25. Incarcerated parents permanently lose parental rights at higher rates than parents whom courts find to have neglected or abused their children but are not incarcerated.

Finding 26. Prison policies can fail to support incarcerated parents' efforts to maintain their parental rights by impeding participation in hearings and contact with their children or through lack of coordination with social service providers.

Finding 27. Some prisons unnecessarily curtail inmates' opportunity for in-person contact with their loved ones by banning in-person visits after installing technology to support video conferencing systems to allow visitation without the need for physical proximity. In addition, prisons often charge inmates for the cost charged by the providers of video conferencing.

## **Recommendations**

Recommendation 8. Prison officials should enforce policies that support parental rights and familial contact except where inconsistent with safety concerns. Such policies include keeping incarcerated parents apprised of family court proceedings, providing transportation to those proceedings, and assisting in locating counsel. Institutions should implement visitation policies with the goal of maintaining familial relationships.

Recommendation 9. Prison officials should give strong preference to placing incarcerated women in as close proximity as possible with location of their family.

Recommendation 10. Institutions should provide free video and low-cost phone services to incarcerated persons, and should not ban in-person visits for non-safety reasons.

Recommendation 11. Prison officials should ensure adequate staffing to allow for more meaningful visitation hours, including regular evening and weekend availability, that reflect the realities of visiting family traveling long distances.

Recommendation 12. Lawmakers and judges should explore sentencing alternatives, such as intermittent confinement, drug treatment programs or early transfer to residential re-entry centers closer to family which would limit family disruption and decrease the likelihood of termination of parental rights resulting from incarceration.

## Healthcare

### *Findings*

Finding 28. Incarcerated women generally have biological healthcare needs distinct from incarcerated men. They have a constitutional right to have these healthcare needs met.

Finding 29. There is a lack of standardization among prison systems regarding how female-specific healthcare, such as gynecological and prenatal care, is provided. Some prisons provide adequate regular care while others do not.

Finding 30. Incarcerated women who are pregnant are at heightened risk of healthcare emergencies, yet there is a lack of standardization in policies governing how their healthcare needs should be met, particularly in light of the rural locations of many prisons and distances to adequate specialist healthcare for pregnant women.

Finding 31. Reports from incarcerated women include prison officials ignoring early symptoms of potential miscarriage until too late to intervene, failing to transport laboring women to the hospital, and forcing them to give birth in their cells alone.

Finding 32. Shackling pregnant women and placing them in solitary confinement still occurs in some institutions despite the proven risks these practices pose to the safety of pregnant women.

Finding 33. Incarcerated women report incredibly high rates of past trauma, resulting in the need for mental health care and treatment while incarcerated.

Finding 34. Some incarcerated women do not have access to feminine hygiene products or must purchase them, putting them at risk of infection and other health consequences when they cannot be obtained in a timely adequate fashion.

Finding 35. Many prisons are located far from urban centers where specialized care for women-specific health issues can be rendered.

Finding 36. LGBT women in prison are at even greater risk for their physical safety and healthcare needs being met than all women as a group.

Finding 37. The Bureau of Justice Statistics (BJS) does not collect information on pregnancy rates, medical treatment during and after pregnancy and health outcomes of pregnant incarcerated women.

### *Recommendations*

Recommendation 13. Prison officials should implement policies to address women's specific healthcare needs, including gynecological and prenatal care, as is constitutionally required.

Recommendation 14. All prisons should prohibit shackling pregnant women and placing them in solitary confinement, as these practices represent serious physical and psychological health risks.

Recommendation 15. Prisons should provide adequate feminine hygiene products free of charge.

Recommendation 16. Prison officials should adopt training policies that adequately train their staff on how to handle medical emergencies, including emergencies specific to women, any time of day or place they occur.

Recommendation 17. The federal government should facilitate standardization of prison healthcare through its convening and grant-making authority so that all health needs are met, including gender-specific health needs.

Recommendation 18. Prison administrators should adopt policies to ensure specialist healthcare is available and where necessary, provide transportation to a specialist healthcare provider without delay.

Recommendation 19. BJS should routinely collect information about pregnancy while incarcerated, such as medical treatment and health outcomes to insure best medical practices are being followed at the institutions charged with the women's care.

Recommendation 20. Prisons should have adequate mental health care staff and treatment programs available to meet the needs of the many incarcerated women with mental health challenges, such as past trauma.

## **Prevention of Sexual Abuse**

### ***Findings***

Finding 38. Sexual abuse and rape remain prevalent against women in prison. This continuing prevalence has led to significant litigation involving several different institutions, at tremendous cost to taxpayers and providing strong evidence of the need for reform at the institutional level, even following passage of the Prison Rape Elimination Act (PREA) in 2003. Reports include abuse of incarcerated women by staff and other incarcerated women that is prevalent and pervasive.

Finding 39. Incarcerated women who report sexual assault have experienced retaliation by their institutions and prison personnel in violation of PREA and their Eighth Amendment rights.

Finding 40. PREA's enforcement mechanism of 5% reduction in certain federal funds for noncompliance has not yet achieved full compliance with PREA:

- a. As of 2016, DOJ deemed 40 states and the District of Columbia out of compliance, although most continually assert every year they are working towards compliance;

- b. DOJ rarely reduces funds for noncompliance, and amounts allowed by the statute are not sufficient to serve as a true incentive for states to comply
- c. The Department of Justice does not have sufficient resources to ensure PREA auditors are properly trained and certified.

Finding 41. PREA standards prohibit prison personnel from conducting cross-gender searches and viewing incarcerated people in states of undress, however some prisons struggle to meet these requirements due to inadequate staffing.

Finding 42. Congress does not consistently appropriate grant funds sufficient to provide personnel, training, technical assistance, data collection, and equipment for institutions to comply with PREA.

***Recommendations:***

Recommendation 21. The Department of Justice should rigorously enforce the PREA standards, including training and certifying auditors and investigating whether facilities are in fact in compliance. Congress should provide more funds for investigations and audits.

Recommendation 22. Congress should enact stricter penalties for non-compliance with PREA standards focused on inmate safety.

Recommendation 23. Congress should consistently appropriate grant funding sufficient to ensure correctional agencies do not default on their obligations to incarcerated people to protect them from sexual abuse, such as funding for personnel, training, technical assistance, data collection, and equipment.

Recommendation 24. Prison officials should implement policies and discipline practices to eliminate retaliation for reporting sexual assault, and should take all necessary measures to ensure incarcerated people can report assault without risk to their safety.

Recommendation 25. PREA standards require prison officials to hire sufficient staff to ensure the safety of incarcerated people, including sufficient women staffing to perform searches and supervision in sensitive areas. In order to implement these requirements and comply with Title VII of the Civil Rights Act of 1964, officials should consider a rigorous analysis of their hiring practices, including whether a bona-fide occupational qualification is appropriate for any posting in the circumstances, consistent with legal precedent when such action is necessary and permissible by law.



## **Discipline and Restrictive Housing**

### ***Findings***

Finding 43. Studies have shown incarcerated women are often given disproportionately harsh punishments for minor offenses while incarcerated compared to incarcerated men. This disproportionality results in such outcomes as placing women in segregation for minor violations of prison regulations, which denies them good time credits which would shorten their sentences and denies them programming privileges, among other restrictions. Reports indicate women are disproportionately punished harshly for offenses such as “being disorderly” where men tend more often to be punished for violence.

Finding 44. Placement in solitary confinement, also known as segregation or restrictive housing, does profound physical and psychological harm. It may also result in a longer period of incarceration as people in segregation can lose good time-credits, do not have the same access to programming opportunities that can shorten their sentences, and do not have access to prison jobs.

Finding 45. Prisons inappropriately use segregation as a purported means of protection for LGBT people and people who report sexual assault, which amounts to additional punishment for these incarcerated people.

Finding 46. Incarcerated people who report past mental health challenges are more likely than other incarcerated people to be found in violation of prison rules and sent to restrictive housing.

Finding 47. Restricted housing is also often used disproportionately against people of color.

### ***Recommendations:***

Recommendation 26. Prisons should implement evidence-based discipline policies that are trauma-informed to avoid harsh punishments for minor infractions, recognizing significant harms that can result from placement in restrictive housing. Prisons should ensure restrictive housing is not used against people of color, LGBT people, and people with mental health challenges in a discriminatory manner based on these characteristics.

Recommendation 27. Prison officials should ensure the safety of LGBT people and people who report sexual assault without using punitive restrictive housing as the only alternative.

## **Training**

### ***Findings***

Finding 48. Prison officials, supervisors, and correctional officers are inconsistently trained on the prevalence of disproportionate punishment of incarcerated women and evidence-based disciplinary practices.

Finding 49. Prison policies generally are not designed to address the high rates of historical trauma among incarcerated women lead to women being punished for behavior that results from trauma. Policies and practices designed to address trauma have resulted in less violence and need for discipline, such as the dramatic reduction in the use of segregation after such policies were implemented in Julia Tutwiler Prison for Women in Alabama following a settlement agreement in 2015.

Finding 50. BOP executive staff had not, as of February 2019, completed trauma-informed training required of staff at women's institutions. According to the DOJ Office of Inspector General, such training of executive staff is necessary to inform BOP policy regarding incarcerated women.

Finding 51. State departments of corrections report a need for additional staff trained in medical and mental health needs, programming for pregnant women, and sufficient staff to support visitation by families and friends. Trauma-informed training of staff has not been fully implemented in many states.

### ***Recommendations***

Recommendation 28. Prison officials should implement staff training to address the high rates of trauma among incarcerated women and adjust prison policies accordingly, including training on evidence-based discipline practices.

Recommendation 29. BOP executive staff should complete trauma-informed training as recommended by the Office of the Inspector General, and should continually train new staff as they begin employment.

## **Programming**

### ***Findings***

Finding 52. Incarcerated women report an overall lack of programming in varying professions which would create a meaningful impact to their lives so they can successfully reenter the community after prison.

Finding 53. Reports indicate vocational programming for incarcerated women can be limited to professions that are stereotypically coded female, such as cosmetology, and not include training in professions that are stereotypically coded male, such as welding.

Finding 54. Programs that are present often are small in number with long waiting lists.

Finding 55. BOP has extensive waitlists for programs designed and proven successful to address the prevalent trauma in women's lives.

Finding 56. Corrections officials report a lack of sufficient staff to implement the programs they see as necessary.

***Recommendations***

Recommendation 30. Prison officials should implement programming necessary to assist incarcerated women to develop skills they need to successfully re-enter the community. They should hire appropriate staff to manage these programs.

Recommendation 31. Congress and states should appropriate sufficient funds to implement necessary programming.

Recommendation 32. Prison officials should not limit vocational opportunities available to incarcerated women based on gender stereotypes. Vocational programs should not be coded female-only, but should include programs that will optimize job advancement, regardless of gender.

Recommendation 33. BOP should increase availability of its trauma-related programming for incarcerated women.

Recommendation 34. Prison officials and lawmakers should fund and implement sufficient trauma-related programming to meet the incredible rates of trauma reported by incarcerated women.

12-2012

# The Only Way to End Racialized Gender Violence in Prisons is to End Prisons: A Response to Russell Robinson's "Masculinity as Prison"

Dean Spade

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## The Only Way to End Racialized Gender Violence in Prisons is to End Prisons: A Response to Russell Robinson's "Masculinity as Prison"

Dean Spade\*

### INTRODUCTION

In *Masculinity As Prison: Sexual Identity, Race, and Incarceration*,<sup>1</sup> Professor Russell Robinson explores the creation of the K6G unit of the Los Angeles County Jail. Robinson describes how this unit, designed to protect prisoners who may be targets because of their non-normative gender and/or sexual orientation, operates as a site for the enforcement of racialized and classed norms about sexual orientation and gender. In order to be housed in the K6G unit, prisoners must undergo screening<sup>2</sup> performed by two white, heterosexual deputies. These deputies quiz the prisoners on their familiarity with gay subcultural terminology and details about the West Hollywood neighborhood, a gathering place for white gay men in Los Angeles, in order to determine their suitability for the unit.<sup>3</sup> Once prisoners are admitted to the unit, they wear special powder blue uniforms to differentiate them from general-

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1. Russell Robinson, *Masculinity as Prison Sexual Identity, Race, and Incarceration*, 99 CALIF. L. REV. 1309 (2011).

2. *Id.* at 1311.

3. *Id.*

population prisoners, who wear dark blue.<sup>4</sup> Robinson's article exposes how the racialized, gendered, and classed construction of homosexuality, and the figure of the vulnerable gay prisoner, are produced and enforced in the Los Angeles County Jail to the detriment of queer and trans people of color and poor people who bear the brunt of racist, homophobic, and transphobic policing and criminalization. Robinson argues that the problematic practices of the K6G unit should be contested as a violation of the privacy rights of prisoners.<sup>5</sup>

Robinson's description of the K6G unit and its screening process offers an excellent site for engaging in a critique of projects that seek to protect those facing the most violent consequences of white supremacy, heterosexism, and gender binarism by achieving recognition or legibility for them in state apparatuses of security that are themselves key locations of that violence. This point is broadly useful given the centrality of recognition- and inclusion-focused legal equality strategies in contemporary white gay politics, which have both been a product of and worked to reify the limited and racist framings of gay identity that Robinson critiques in his article. The most well-resourced and well-publicized examples, extensively critiqued by many scholars and activists,<sup>6</sup> are the efforts to seek inclusion in marriage and military service, which have dominated as the most legible political claims of gay and lesbian rights in recent decades. Scholars and activists have also critiqued hate crimes legislation as a project that seeks recognition for those targeted by violence by expanding the punishing power of the criminal punishment system.<sup>7</sup> Critics

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4. *Id.* at 1321.

5. *Id.* at 1378.

6. *See, e.g.*, THAT'S REVOLTING! QUEER STRATEGIES FOR RESISTING ASSIMILATION (Mattilda Bernstein Sycamore ed., 2004); LISA DUGGAN, THE TWILIGHT OF EQUALITY?: NEOLIBERALISM, CULTURAL POLITICS, AND THE ATTACK ON DEMOCRACY (2004); Ian Barnard, *Fuck Community, or Why I Support Gay-Bashing*, in STATES OF RAGE: EMOTIONAL ERUPTION, VIOLENCE, AND SOCIAL CHANGE 74–88 (Renée R. Curry & Terry L. Allison eds., 1996); Morgan Bassichis, Alexander Lee & Dean Spade, *Building an Abolitionist Trans and Queer Movement with Everything We've Got*, in CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX 15–41 (Eric A. Stanley & Nat Smith eds., 2011); Cathy J. Cohen, *Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?*, 3 GLQ: J. LESBIAN & GAY STUDIES 437 (1997); Paula Ettelbrick, *Since When Is Marriage a Path to Liberation?*, 6 OUT/LOOK: NAT'L LESBIAN & GAY Q. 14 (1989); Katherine M. Franke, *The Politics of Same-Sex Marriage Politics*, 15 COLUM. J. GENDER & L. 236 (2006); Angela P. Harris, *From Stonewall to the Suburbs? Toward a Political Economy of Sexuality*, 14 WM. & MARY BILL RTS. J. 1539 (2006); Darren Lenard Hutchinson, "Gay Rights" for "Gay Whites"? *Race, Sexual Identity, and Equal Protection Discourse*, 85 CORNELL L. REV. 1358 (2000); Chandan Reddy, *Time for Rights? Loving, Gay Marriage, and the Limits of Legal Justice*, 76 FORDHAM L. REV. 2849 (2008); Ruthann Robson, *Assimilation, Marriage, and Lesbian Liberation*, 75 TEMP. L. REV. 709 (2002); Craig Willse & Dean Spade, *Freedom in a Regulatory State? Lawrence, Marriage and Biopolitics*, 11 WIDENER L. REV. 309 (2005); Kenyon Farrow, *Is Gay Marriage Anti-Black?*, KENYON FARROW (June 14, 2005), <http://kenyonfarrow.com/2005/06/14/is-gay-marriage-anti-black/>.

7. *See* Bassichis, Lee & Spade, *supra* note 6, at 17, 33–35; Sarah Lamble, *Transforming Carceral Logics: 10 Reasons to Dismantle the Prison Industrial Complex Through Queer/Trans Analysis*, in CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX, *supra* note 6, at 235–65, 249–52; JOEY L. MOGUL ET AL., QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES 118–39 (2011); Katherine Whitlock, In a Time of Broken

argue that hate crimes laws not only fail to prevent violence against queer and trans people, they also build the arsenal of the criminal punishment system, which is the most significant perpetrator of violence against queer and trans people.<sup>8</sup>

This essay extends this critical engagement with recognition- and inclusion-focused reforms to look at the subject of Robinson's study, the K6G unit. It asks what Robinson's findings might suggest about how queer and trans politics addresses criminalization. Specifically, I argue that prison abolition scholarship provides the critical tools necessary to fully understand why reforms like the creation of a special unit in the Los Angeles County Jail for gay and trans prisoners will consistently fail to address violence and will, in fact, become new sites for enforcing racialized gender and sexuality norms to the detriment of the most criminalized populations. Robinson successfully exposes the absurdity of a project to properly identify vulnerable prisoners by quizzing them about and measuring them against white gay cultural norms. I suggest that privacy arguments do not do enough to help us analyze the problems with the K6G unit. We need the politics and analysis developed by prison abolition scholarship and activism in order to even begin to imagine any solutions that would reduce or eliminate the horrifying conditions facing trans, gender non-conforming, and queer prisoners.

## I.

### PUNISHMENT AND THE STATE ADMINISTRATION OF RACE AND GENDER

Angela Davis has described the historical trajectory that formed the criminal punishment system as a response to the formal abolition of slavery.<sup>9</sup> As she and others have pointed out, the Thirteenth Amendment's abolition of involuntary servitude includes a very important caveat: "except as punishment for crime whereof the party shall have been duly convicted."<sup>10</sup> Davis describes how, in the years following the abolition of slavery, southern prisons drastically expanded and went from being almost entirely white to primarily imprisoning Black people.<sup>11</sup> New laws were passed—the Black Codes—that criminalized an extensive range of behaviors and statuses, such as being unemployed or

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Bones: A Call to Dialogue on Hate Violence and the Limitations of Hate Crimes Legislation (Rachael Kamel ed., Justice Visions Working Paper, 2001), available at <http://srjp.org/files/Broken%20Bones-1.pdf>.

8. See, e.g., Dean Spade, *Methodologies of Trans Resistance*, in *A COMPANION TO LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER STUDIES* 237–61 (George Haggerty & Molly McGarry eds., 2007); DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS AND THE LIMITS OF LAW* 101–70 (2011); Whitlock, *supra* note 7.

9. ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 23–39 (2003).

10. U.S. CONST. amend. XIII; see also COLIN DAYAN, *THE LAW IS A WHITE DOG: HOW LEGAL RITUALS MAKE AND UNMAKE PERSONS* 62–64 (2011) (describing instances where Black people convicted of crimes were sentenced to be publicly auctioned after passage of the Thirteenth Amendment).

11. DAVIS, *supra* note 9, at 29.

disobeying an employer, solely where the accused was black.<sup>12</sup> These legal schemes permitted the capture of newly freed slaves into an only somewhat different system of forced labor, control, and racial violence.<sup>13</sup>

The nature of imprisonment changed during this time. Prisons adopted methods of punishment common to slavery, such as whipping, and implemented the convict leasing system that allowed former slave owners to lease the labor of prisoners, who were forced to work under conditions many have suggested were even more violent than those of slavery.<sup>14</sup> In 1873, 25 percent of all black convicts who were leased died; in 1898, nearly 73 percent of total revenue in Alabama came from convict labor.<sup>15</sup> People were literally captured and worked to death, providing cheap labor for white landowners and revenue for states.<sup>16</sup>

The contemporary criminal punishment system developed from this adaptation of slavery to create a somewhat different racially targeted form of control and exploitation. The continuation of those tactics can be seen in the prison system's contemporary operations. As Davis asserts,

Here we have a penal system that was racist in many respects—discriminatory arrests and sentences, conditions of work, modes of punishment . . . .

The persistence of the prison as the main form of punishment, with its racist and sexist dimensions, has created this historical continuity between the nineteenth- and early-twentieth-century convict lease system and the privatized prison business today. While the convict lease system was legally abolished, its structures of exploitation have reemerged in the patterns of privatization, and, more generally, in the wide-ranging corporatization of punishment that has produced a prison industrial complex.<sup>17</sup>

This analysis of the origins of imprisonment helps us understand imprisonment itself as racialized violence. Punishment and imprisonment were and are co-constitutive in the United States with processes of racialization. Today punishment systems are rationalized as race-neutral institutions for determining and punishing individual culpability, but such assertions are laughable in the face of the severe and obvious targeting of people of color in every aspect of policing, pre-trial imprisonment, prosecution, sentencing, imprisonment, probation, and parole. More than 60 percent of the people in prison are people of color, and one in every ten Black men age 30-39 is in prison or jail.<sup>18</sup> Black youth are 16 percent of the youth population, but 28

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12. *Id.* at 28.

13. *Id.* at 28–31.

14. *Id.* at 31–32.

15. *Along the Color Line*, DIGITAL HISTORY, [http://www.digitalhistory.uh.edu/disp\\_textbook\\_print.cfm?smtid=2&psid=3179](http://www.digitalhistory.uh.edu/disp_textbook_print.cfm?smtid=2&psid=3179) (last visited Dec. 10, 2012).

16. *Id.*

17. DAVIS, *supra* note 9, at 36–37.

18. SENTENCING PROJECT, CRIMINAL JUSTICE PRIMER (2009), available at <http://www>.



percent of juvenile arrests, 37 percent of the youth in juvenile jails, and 58 percent of the youth sent to adult prisons.<sup>19</sup> There are countless other statistics that demonstrate the racialized targeting of criminal punishment that is endemic to its formation and operation in the United States. The criminal punishment system in the United States, the most imprisoning country on Earth, is justified by the idea that it contains and neutralizes dangerous law-breakers. In reality, race, not dangerousness or illegal action, determines who is imprisoned.<sup>20</sup> US prisons are full of low-income people and people of color who were prosecuted for crimes of poverty and minor drug use. Racist tropes of Black dangerousness that have been a central part of US culture since slavery are invoked and mobilized in media to justify and normalize the continuing expansion of criminalization and imprisonment. Scholars consistently expose the disconnect between the myth that criminal punishment is focused on public safety and the reality that it operates as targeted racial violence.<sup>21</sup>

Processes of racialization, like the slavery/criminalization processes described by Davis, are inherently gendered and gendering, and the construction and administration of gender categories is always racialized. Racial and gender classification systems were essential to the founding violence of slavery and genocide that created the material conditions of the nation and endure as political rationales and fundamental categories of administrative operation for all of the projects and programs that constitute the state. From the founding of the United States, the legal rules governing indigenous and enslaved people articulated their subjection through the imposition of violent racialized gender norms, such as the enforcement of natal alienation among slaves and European binary gender categories and gendered legal statuses among indigenous people. From the beginning, racialized and gendered statuses and norms were essential to the colonization and slavery that produced the United States and its legal systems.<sup>22</sup> It is important to note that

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sentencingproject.org/doc/publications/cjprimer2009.pdf; see also *Racial Disparity*, SENTENCING PROJECT, <http://www.sentencingproject.org/template/page.cfm?id=122> (last visited Dec. 12, 2012).

19. *Race & Justice News*, SENTENCING PROJECT (Sept. 16, 2010), [http://www.sentencingproject.org/detail/news.cfm?news\\_id=992](http://www.sentencingproject.org/detail/news.cfm?news_id=992).

20. Maia Szalavitz, *Study Whites More Likely to Abuse Drugs than Blacks*, TIME (Nov. 7, 2011), <http://healthland.time.com/2011/11/07/study-whites-more-likely-to-abuse-drugs-than-blacks/>.

21. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010); DAN BAUM, *SMOKE AND MIRRORS: THE WAR ON DRUGS AND THE POLITICS OF FAILURE* (1996); HARRY G. LEVINE ET AL., *DRUG POLICY ALLIANCE, TARGETING BLACKS FOR MARIJUANA: POSSESSION ARRESTS OF AFRICAN AMERICANS IN CALIFORNIA, 2004-2008* (2010), available at [http://www.drugpolicy.org/sites/default/files/Targeting\\_Blacks\\_for\\_Marijuana\\_06\\_29\\_10.pdf](http://www.drugpolicy.org/sites/default/files/Targeting_Blacks_for_Marijuana_06_29_10.pdf); JUDITH GREENE ET AL., *JUSTICE POLICY INSTITUTE, DISPARITY BY DESIGN: HOW DRUG FREE ZONE LAWS IMPACT RACIAL DISPARITY – AND FAIL TO PROTECT YOUTH* (2006), available at <http://www.drugpolicy.org/sites/default/files/SchoolZonesReport06.pdf>.

22. See generally MOGUL ET AL., *supra* note 7; ANDREA SMITH, *CONQUEST: SEXUAL VIOLENCE AND AMERICAN INDIAN GENOCIDE* (2005); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993); Scott Lauria Morgensen, *Settler Homonationalism Theorizing Settler Colonialism Within Queer Modernities*, 16 GLQ: J. LESBIAN & GAY STUDIES 105, 116 (2010); Dorothy Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER SOC.

the statuses and norms established by these systems were, and are, racializing and gendering at the same time. They do not create rules for all women or all men or all white people or all native people or all black people. Instead, the laws governing slavery, land ownership, labor, health, mobility, punishment, and family create very specific statuses and norms according to specific race/gender positions. For example, white women have traditionally been forced into particular forms of domestic, unpaid labor; regulated through containment inside the legally mandated, marriage-based family form; and required to conform to a maternal role focused on “reproducing the race.” White women have been seen as fragile and weak, portrayed in law and politics as unfit for political life and wage labor. Various law and policy reforms, from early labor regulations to domestic violence criminalization, have been advocated on the basis of protecting white women. Meanwhile, black women have been denied access to recognized motherhood—their family bonds not recognized by law—and forced to do heavy labor both outdoors and inside the homes of white people. Their labor has often been excluded from protective regulation and not linked to eligibility for benefits. While white women’s sexuality has been revered as pure and requiring protection, black women have been routinely sexually assaulted and abused by white men. Their relationships to their children have been subject to disruption and termination under slavery and racially targeted child welfare programs. The racial and gender norms created through property law, family law, and criminal law establish specific racialized-gendered statuses and norms that can never be adequately analyzed or understood solely through a single vector of harm such as race or gender.<sup>23</sup> The specific vulnerabilities, responsibilities, and chances at life administered by US laws and institutions are racialized *and* gendered, not universal to all people assigned a particular gender or race category.<sup>24</sup> Thus, to assess the conditions produced by processes such as criminalization, it is essential to analyze the creation of racialized gender norms and statuses that are enforced by legal and administrative systems.

Trans studies scholars have provided analysis of how racialized gender norms are administered in spaces of concentrated state violence in the

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POL’Y & L. I (1993).

23. See generally SAIDIYA V. HARTMAN, *SCENES OF SUBJECTION: TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH-CENTURY AMERICA* (1997); Andrea Smith, *Heteropatriarchy and the Three Pillars of White Supremacy Rethinking Women of Color Organizing*, in *COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY* 66–73 (INCITE! Women of Color Against Violence ed., 2006); Kimberlé Crenshaw, *Mapping the Margins Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241 (1991).

24. See, e.g., Kimberlé Williams Crenshaw, *Mapping the Margins Intersectionality, Identity Politics, and Violence against Women of Color*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 357–383 (Kimberlé Williams Crenshaw et al. eds., 1995); *ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE: BLACK WOMEN’S STUDIES* (Gloria T. Hull et al. eds., 1982); ANGELA Y. DAVIS, *WOMEN, RACE AND CLASS* (1981); PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* (1990).

contemporary United States. Across the country, the spaces where people of color and poor people are concentrated for surveillance, punishment, targeted abandonment, and premature death—shelters, foster care and juvenile punishment group homes, psychiatric facilities, immigration prisons, jails, and the like—are sex-segregated, rigidly enforcing notions of gender binarism.<sup>25</sup> The enforcement of racialized gender norms in these spaces operates through coercion and violence overseen by state agents, including law enforcement and social service providers.<sup>26</sup> The violence in these spaces includes identity documentation and surveillance, dress regulations, strip searches, sexual assault, forced prostitution, family dissolution, verbal harassment, medical neglect, murder, and other contributors to early death.<sup>27</sup> Sex segregation is a key component of racialized social control, and these institutions focus enormous energy on classifying, policing, harming, and disappearing people who occupy and exceed the borderlands of gender legibility and sexual normalcy. The insights provided by indigenous studies, women of color feminist scholarship, critical race theory, trans studies, and other intellectual traditions help ground an understanding of racialized gender norms as foundational, rather than incidental, to US legal systems and institutions.

## II.

### THE LIMITS OF PRISON REFORM FOR ADDRESSING RACIALIZED GENDER VIOLENCE

Given the central role of racialized gender violence and the deadly administration of gendered racial norms in the programs and institutions of the United States, prison abolitionist scholars and activists have raised key questions about the role of reform projects in perpetuating and expanding these sites of violence.<sup>28</sup> Robinson describes how an ACLU lawsuit led to the creation of K6G. The suit aimed to address the dangerous conditions facing people placed in the “homosexual inmate unit” at the jail, arguing that they were not adequately protected from “predators.”<sup>29</sup> ACLU won a settlement in which the jail was required to establish procedures to protect these vulnerable

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25. See, e.g., D. MORGAN BASSICHIS, SYLVIA RIVERA LAW PROJECT, “IT’S WAR IN HERE”: A REPORT ON THE TREATMENT OF TRANSGENDER AND INTERSEX PEOPLE IN NEW YORK STATE MEN’S PRISONS (Dean Spade ed., 2007), available at <http://srp.org/files/warinhere.pdf>; Lamble, *supra* note 7; Dean Spade, *Compliance Is Gendered Transgender Survival and Social Welfare*, in TRANSGENDER RIGHTS 217–41 (Paisley Currah et al. eds., 2006); Toby Beauchamp, *Artful Concealment and Strategic Visibility Transgender Bodies and U.S. State Surveillance After 9/11*, 6 SURVEILLANCE & SOC’Y 356 (2009); Alexander L. Lee, *Gendered Crime & Punishment Strategies to Protect Transgender, Gender Variant & Intersex People in America’s Prisons* (pts. 1 & 2), GIC TIP J., Summer 2004, GIC TIP J., Fall 2004.

26. SPADE, *NORMAL LIFE*, *supra* note 8, at 101–70.

27. *Id.*

28. See, e.g., Bassichis, Lee, & Spade, *supra* note 6; DAVIS, *supra* note 9; Lamble, *supra* note 7.

29. Robinson, *supra* note 1, at 1319–20.

prisoners.<sup>30</sup> The result was the absurd screening process that Robinson describes, in which white, straight deputies assess whether or not particular prisoners belong in the K6G unit based on their responses to questions that gauge familiarity with white gay male culture.

This story illustrates the concerns abolitionists have voiced about approaches aimed at refining, improving, or otherwise tinkering with how people are imprisoned. The ACLU's attempt to reform the jail to reduce violence against queer and trans prisoners resulted in a policy that subjects prisoners to a highly racialized screening that prevents queer and trans people of color from accessing purportedly protective segregation. Prison reforms, abolitionists argue, tend to refine and reify the racialized-gendered control of prisons.<sup>31</sup> In general, reforms that try to address the violence caused by state enforcement of racialized gender norms and categories by slightly altering the categories being enforced or by adding additional categories consistently fail to meaningfully alleviate that violence. A typical response to the assertion that trans people face significant violence in prisons and jails is the proposal to build trans prisons.<sup>32</sup> In response to the persistent problems trans people face with identity documents that have gender markers on them that are difficult or impossible to change, the proposal to create a third gender category for government forms and identification often emerges.<sup>33</sup> These kinds of proposals, like the K6G unit, will inevitably fail to address the harms identified. Instead, they will become new sites for racialized gender norms to be enforced as state agents take up their posts enforcing identity categories in ways that will inevitably operate to the detriment of people of color, poor people, people with disabilities, and immigrants. The fundamental projects of security that animate criminal punishment and identity surveillance are established in and exist to secure and protect white supremacy and patriarchy. It is not a design flaw that

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30. *Id.*

31. See DAVIS, *supra* note 9, at 40–59; Eric A. Stanley et al., *Queering Prison Abolition, Now?*, 64 Am. Q. 115, 121–25 (2012).

32. This is based on my experiences working on issues of trans imprisonment for the last ten years, speaking with attorneys, public officials, students, academics, and activists about these issues. To my knowledge, the only place that has created an explicitly trans prison is Italy. See *Italy to Open First Prison for Transgender Inmates*, BBC NEWS (Jan. 12, 2010, 6:08 PM), <http://news.bbc.co.uk/2/hi/8455191.stm>. California houses a small number of trans women prisoners together in a medical unit in its Vacaville prison (a men's facility), but most trans people are placed according to birth gender in men's and women's prisons throughout the state, as in the rest of the United States. BASSICHIS, *supra* note 25, at 17–18; Dean Spade, *Documenting Gender*, 59 HASTINGS L.J. 731, 735 (2008); Tali Woodward, *Life in Hell In California Prisons, an Unconventional Gender Identity Can Be Like an Added Sentence*, SAN FRANCISCO BAY GUARDIAN ONLINE (Mar. 15, 2006), [http://www.sfbg.com/40/24/cover\\_life.html](http://www.sfbg.com/40/24/cover_life.html).

33. Australia made a splash in 2011 when it added a new option for the gender marker on its passports. Some applicants can now mark “X” rather than “M” or “F.” See *Sex and Gender Diverse Passport Applicants*, AUSTRALIAN PASSPORT OFF, <https://www.passports.gov.au/web/sexgenderapplicants.aspx> (last visited Dec. 12, 2012).

these systems and institutions are sites of transphobic and homophobic violence. They are working perfectly.<sup>34</sup>

This analysis raises important questions about Robinson's invocation of privacy claims to address his concerns about the K6G unit.<sup>35</sup> What does it mean to assert individual privacy rights in a system where strip-searches and other forms of forced nudity are daily realities, where consensual sex is criminalized and rape is routine, where filing a grievance or lodging any kind of protest means risking severe violence or death?<sup>36</sup> How might individual rights arguments obscure the nature of imprisonment as racialized state violence? How can one imagine a privacy right in a context of extreme control and constant humiliation and abuse? Given the role of slavery in forming the legal and economic systems of the United States, appeals to the Constitution both obscure how its text, including the Thirteenth Amendment, establishes ever-expanding racialized imprisonment and overlook the daily reality that law enforcement is lawless. It is no secret that police, wardens, parole officers, corrections officers, and Immigration and Customs Enforcement do not follow the laws and policies that are supposed to prevent the outrageous violence and abuse they commit every day.<sup>37</sup> Even when advocates win cases about the

34. See, e.g., MOGUL ET AL., *supra* note 7 (detailing the historic and contemporary roles of policing and criminalization in enforcing racialized gender norms); CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX, *supra* note 6 (examining how racialized gender norms are enforced on trans people by criminal punishment systems, and exploring queer and trans critiques of prison reform and calls for prison abolition); Stanley et al., *supra* note 31, at 121–23 (discussing how “an abolitionist analysis argues that the system is not broken but, according to its own logics, it is working perfectly”).

35. Robinson, *supra* note 1, at 1378.

36. See U.S. DEP'T OF JUSTICE, REVIEW PANEL ON PRISON RAPE, REPORT ON SEXUAL VICTIMIZATION IN PRISONS AND JAILS 43–49 (G.K. Mazza ed., 2012), available at [http://www.ojp.usdoj.gov/reviewpanel/pdfs/prea\\_finalreport\\_2012.pdf](http://www.ojp.usdoj.gov/reviewpanel/pdfs/prea_finalreport_2012.pdf); HUMAN RIGHTS COAL., UNITY AND COURAGE: REPORT ON STATE CORRECTIONAL INSTITUTION AT HUNTINGDON (2011), available at <http://hrcoalition.org/sites/default/files/Unity%20and%20Courage-SCI%20Huntingdon%20Report.pdf>; HUMAN RIGHTS WATCH, USA: NOWHERE TO HIDE: RETALIATION AGAINST WOMEN IN MICHIGAN STATE PRISONS, (1998), available at <http://www.unhcr.org/refworld/docid/3ae6a86718.html>; Amnesty Int'l USA, *Women in Prison A Fact Sheet*, [www.prisonpolicy.org/scans/women\\_prison.pdf](http://www.prisonpolicy.org/scans/women_prison.pdf) (last visited Dec. 12, 2012).

37. The headlines are filled with stories of the profiling, brutality, harassment, and discrimination practiced by law enforcement that demonstrate it as a daily reality, endemic to the culture of prisons and policing. Kevin Johnson, *Police Brutality Cases on Rise Since 9/11*, USA TODAY (Dec. 18, 2007, 7:39 AM), [http://www.usatoday.com/news/nation/2007-12-17-Copmisconduct\\_N.htm](http://www.usatoday.com/news/nation/2007-12-17-Copmisconduct_N.htm); Beth Stebner, *Women in Alabama Prison Suffered “Frequent and Severe Sexual Violence By Guards and Were PUNISHED When They Tried to Report Crimes,”* MAIL ONLINE (May 23, 2012, 7:50 PM), <http://www.dailymail.co.uk/news/article-2149077/Women-Alabama-prison-suffered-frequent-severe-sexual-violence-guards-PUNISHED-tried-report-crimes.html>; Daniel Villarreal, *Lone Star State Home to 5 of 10 Worst Facilities for Sexual Assault of Inmates, and LGBT Prisoners Are 15 Times More Likely to Be Victims*, DALLAS VOICE (Mar. 22, 2012, 5:06 PM), <https://www.dallasvoice.com/texas-prison-rape-capital-u-s-10105138.html>; *North Carolina Sheriff Found to Discriminate*, N.Y. TIMES, Sep. 19, 2012, at A21, available at [http://www.nytimes.com/2012/09/19/us/north-carolina-sheriff-found-to-discriminate.html?ref=police-brutalityandmisconduct&\\_r=0](http://www.nytimes.com/2012/09/19/us/north-carolina-sheriff-found-to-discriminate.html?ref=police-brutalityandmisconduct&_r=0); Southern Poverty Law Center, *Allegations of Racist Guards Are Plaguing the Corrections Industry*, 100 INTELLIGENCE REPORT, Fall 2000, available at

access to medical care or nutrition or protection from harm that law enforcement agents are supposed to provide, it is still inadequate, selective, or rarely provided, if at all. Selective enforcement, medical neglect, nutritional deprivation, harassment, and sexual violence are not anomalies in law enforcement systems: they are fundamental to them.

Because of the nature of our criminal systems and prisons, there is not a fair or safe way for queer, trans, and gender non-conforming people, or anyone, to be imprisoned. Starting from that premise, we can take different approaches to questions of reform, focusing more on decarcerating and dismantling systems of criminalization, and being extremely wary of reforms that purport to offer recognition and inclusion but actually expand and legitimize violent institutions. The best ways to protect queer, trans, and gender non-conforming people from police and prison violence is to keep them out of contact with police and prisons and to support them while they are locked up. In some places, people are pursuing this by working to decriminalize sex work or stop the creation of “prostitution free zones” and other special programs that enhance policing of the sex trade.<sup>38</sup> Some are working to oppose gang injunctions, “stop and frisk” practices, collaboration between immigration enforcement and criminal punishment systems, mandatory minimum sentences, prison building projects, and other expansions of criminalization.<sup>39</sup> Some

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<http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2000/fall/behind-the-wire>; Archive of Articles on Police Brutality, DEMOCRACY NOW!, [http://www.democracynow.org/topics/police\\_brutality](http://www.democracynow.org/topics/police_brutality) (last visited Dec. 12, 2012); Archive of Articles on NYPD Muslim Surveillance, ACLU.ORG, <http://www.aclu.org/blog/tag/nypd-muslim-surveillance> (last visited Dec. 12, 2012).

38. See, e.g., ALLIANCE FOR A SAFE & DIVERSE DC, MOVE ALONG: POLICING SEX WORK IN WASHINGTON, D.C. (2008); *Council Member Vote Against Making DC’s “Prostitution Free Zones” Permanent*, CHANGE.ORG, <https://www.change.org/petitions/council-member-vote-against-making-des-prostitution-free-zones-permanent> (last visited Dec. 12, 2012).

39. See, e.g., PASCAL EMMER ET AL., HEARTS ON A WIRE COLLECTIVE, THIS IS A PRISON, GLITTER IS NOT ALLOWED: EXPERIENCES OF TRANS AND GENDER VARIANT PEOPLE IN PENNSYLVANIA’S PRISON SYSTEMS (2011), available at <http://www.scribd.com/doc/56677078/This-is-a-Prison-Glitter-is-Not-Allowed>; Lornet Turnbull, *State Won’t Agree to National Immigration Program*, SEATTLE TIMES (Nov. 28, 2010, 9:59 PM), [http://seattletimes.nwsourc.com/html/localnews/2013545041\\_secure29m.html](http://seattletimes.nwsourc.com/html/localnews/2013545041_secure29m.html); Angela Davis, *Oakland Residents Must Stop the Gang Injunctions*, THE SIXTIES (Mar. 17, 2011), <http://sixties-1.blogspot.com/2011/03/angela-davis-oakland-residents-must.html>; Community United Against Violence, *LGBT Bay Area Says NO to Oakland’s Gang Injunctions*, FACEBOOK.COM (May 16, 2011, 4:41 PM), <http://www.facebook.com/notes/cuav/lgbt-bay-area-says-no-to-oaklands-gang-injunctions/480509037387>; *About Decarcerate PA*, DECARCERATE PA, <http://decarceratepa.info/about> (last visited Dec. 12, 2012); *About*, STOP INJUNCTIONS OAKLAND, <http://stoptheinjunction.wordpress.com/about/> (last visited Dec. 12, 2012); *Stop Secure Communities in New York*, CENTER FOR CONST. RIGHTS, <http://www.ccrjustice.org/nyscomm> (last visited Dec. 12, 2012); *Media*, STREETWISE & SAFE, <http://www.streetwiseandsafe.org/media/> (last visited Dec. 12, 2012) (listing media coverage of Streetwise & Safe’s members’ work opposing stop and frisk and other policing and criminalization practices); *Press Corner*, COMMUNITY UNITED AGAINST VIOLENCE (Oct. 11, 2011), <http://www.cuav.org/article/11>; *Say No to S-Comm*, STREETWISE & SAFE, <http://www.streetwiseandsafe.org/say-no-to-s-comm/> (last visited Dec. 12, 2012); *Stop “Secure Communities” in Massachusetts*, AM. FRIENDS SERVICE COMMITTEE, <http://afsc.org/event/stop-secure-communities-massachusetts> (last visited Dec. 12, 2012); *marginidas, End S-Comm Today!*, VIMEO.COM, <http://vimeo.com/41351111> (last visited Dec. 12, 2012).



activists and advocates are focused on individual advocacy for current prisoners, knowing that broad-based policy reform often expands the system or provides an inappropriately “one size fits all” solution. Instead, they advocate on a case-by-case basis for the changes individual prisoners believe will make them safer in their current environment, recognizing that prisoners’ situations and contexts differ and prisoners often have the best information about what might be safer in their particular circumstances.<sup>40</sup> Others focus on establishing resources for people coming out of prison to prevent the poverty and housing insecurity that often results in further criminalization.<sup>41</sup> Many are also working to establish community responses to violence that do not utilize police and courts, recognizing that calling the police often escalates violence for queer and trans people of color, immigrants, and people with disabilities.<sup>42</sup> These

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40. For example, the TGI Justice Project in San Francisco, CA, has provided direct support to transgender and intersex prisoners since 2004. *See* TGI JUSTICE, <http://www.Tgijp.org>. The group focuses on both helping individual prisoners survive and building criminalized trans people’s leadership and political capacity to push for change that gets to root causes of poverty and criminalization. The group has been consistently wary of strategies for systemic reform that tend to expand criminalization and imprisonment without offering tangible relief to prisoners. Telephone interviews with Alex Lee, Staff Attorney, TGIJP (Feb. 21, 2005; July 12, 2007; July 18, 2012). The Transformative Justice Law Project of Illinois similarly takes this approach, directly addressing harms facing criminalized low-income and street based transgender and gender non-conforming people but engaging from a perspective of prison abolition, and remaining critical of the system-building and system-sustaining potential of prison reforms. *See* TRANSFORMATIVE JUSTICE LAW PROJECT OF ILLINOIS, <http://www.tjlp.org>; Interview with Owen Daniel-McCarter and Avi Rudnick, Attorneys at TJLPI, in Chicago, IL (July 13, 2012).

41. For example, for the last ten years the Sylvia Rivera Law Project (SRLP) has worked to build the capacity of organizations providing legal services, shelter, health services, and other essential services for people exiting prison so that they can serve trans, intersex, and gender non-conforming people, who are often excluded from such services. SRLP provides trainings and builds relationships with these groups and develops public education materials aimed at their staff members. *See* *Trainings*, SYLVIA RIVERA LAW PROJECT, <http://srlp.org/our-services/trainings/> (last visited Dec. 10, 2012); *Legal Services*, SYLVIA RIVERA LAW PROJECT, <http://srlp.org/our-services/legal-services/> (last visited Dec. 10, 2012). SRLP also publishes a newsletter for imprisoned trans, intersex and gender non conforming people that includes contact information for services that can help with reentry in addition to art, poetry, articles about political work addressing criminalization and imprisonment, and trans politics. Imprisoned people, allies on the outside, and other SRLP members write the newsletter. SRLP also runs a penpal project, connecting imprisoned members to penpals on the outside. In addition to supporting people during imprisonment, these penpal relationships can provide essential resources for people as they work to plan housing and other necessities for release. Other organizations doing work to support trans, intersex, and gender non-conforming prisoners that operate with an anti-prison approach, such as TGIJP and TLJP of Illinois, similarly engage in holistic work that aims to support people while both imprisoned and coming out of prison, and to work broadly against criminalization and immigration enforcement by strategically campaigning against local policies and practices of law enforcement. *See supra* notes 38 & 39; Transforming Justice, *Make It Happen! Transforming Justice Ending the Criminalization & Imprisonment of Transgender & Gender Non-Conforming People*, VIMEO.COM, <http://vimeo.com/16952110>; TGI Justice, *Prison Industrial Complex - Trans Views*, YOUTUBE.COM, [http://www.youtube.com/watch?v=S5qw2kViAaM&feature=player\\_embedded](http://www.youtube.com/watch?v=S5qw2kViAaM&feature=player_embedded).

42. *See, e.g.*, THE REVOLUTION STARTS AT HOME: CONFRONTING INTIMATE VIOLENCE WITHIN ACTIVIST COMMUNITIES (Ching-In Chen et al. eds., 2011); generationFIVE, *Towards Transformative Justice Why a Liberatory Response to Violence Is Necessary for a Just World*, RESIST, Sept./Oct. 2008, available at <http://www.resistinc.org/newsletters/articles/towards-transformative-justice>.

organizations and projects understand the significant dangers queer, trans, and gender non-conforming people face at the hands of law enforcement and seek to offer material relief by helping people survive these systems, dismantling the pathways to criminalization that entangle vulnerable people, and creating alternative ways for people to get their needs met given that the criminal punishment system promises safety but never delivers. This approach to addressing homophobia and transphobia in criminal punishment systems rejects the quest for inclusion and recognition in violent legal and administrative apparatuses and the fantasy that any constitutional claim before a court will bring relief, and instead seeks the abolition of criminal punishment and immigration enforcement. It properly identifies the fruitlessness of seeking safety at the hands of the most significant perpetrators of racialized gendered violence. The K6G unit and its absurd and terrifying screening process provides an excellent illustration of the necessity of abolition-centered responses to homophobia and transphobia and of a critical understanding of the limits of legal recognition for social movements seeking relief from poverty and violence.





March 2021, NCJ 252645

## Survey of Prison Inmates, 2016

# Parents in Prison and Their Minor Children

Laura M. Maruschak, *BJS Statistician*

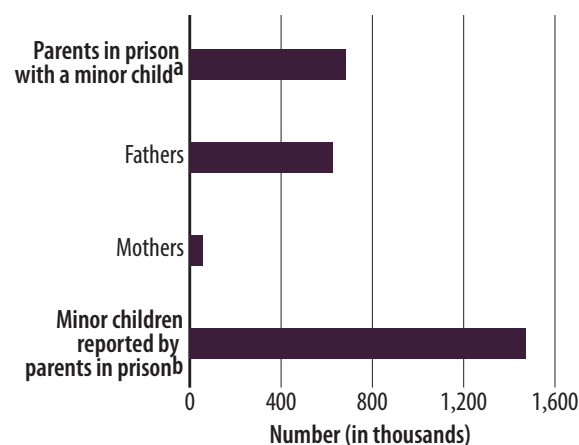
Jennifer Bronson, Ph.D., and Mariel Alper, Ph.D., *former BJS Statisticians*

An estimated 684,500 state and federal prisoners were parents of at least one minor child in 2016 (figure 1, table 1). About 626,800 (47%) males and 57,700 (58%) females in state or federal prison were parents with minor children. Prisoners reported having an estimated 1,473,700 minor children.

Statistics in this report are based on self-reported data collected through face-to-face interviews with a national sample of state and federal prisoners age 18 or older in the 2016 Survey of Prison Inmates (SPI). (See *Methodology*.) The SPI provides national statistics on prisoner characteristics across a variety of topics, including parental status.

In this report, “parents” refers to those prisoners who had either biological or adopted children. Because the SPI did not ask about stepchildren, estimates of parents do not include prisoners who only had stepchildren and estimates of children do not include stepchildren.

**FIGURE 1**  
Estimated number of all parents in state or federal prison with a minor child and number of minor children, 2016



Note: See table 1 for counts, percentages, and standard errors.

<sup>a</sup>Includes prisoners who reported having a biological or adopted child age 17 or younger at the time of the interview.

<sup>b</sup>Includes biological or adopted children age 17 or younger at the time of the interview.

Source: Bureau of Justice Statistics, Survey of Prison Inmates, 2016.

## Highlights

- Nearly half of state prisoners (47%) and more than half of federal prisoners (57%) reported having at least one minor child.
- In state prison, about 58% of females were parents with minor children, compared to 46% of males.
- Nearly 3 in 5 females (58%) and males (57%) in federal prison were parents with minor children.
- Nearly 1.5 million persons age 17 or younger had a parent who was in state or federal prison in 2016.
- Parents in state or federal prison had an average of two minor children each.
- An estimated 19% of minor children with a parent in state prison and 13% with a parent in federal prison were age 4 or younger.

## Other key findings

- Parents in state prison had 1,252,100 minor children, and parents in federal prison had 221,600 minor children (**table 2**).
- In state prison, fathers reported 1,133,800 minor children and mothers reported 118,300.
- In federal prison, fathers reported 208,200 minor children and mothers reported 13,400.
- Among state prisoners, an estimated 3 in 5 white (60%) and Hispanic (62%) females and about 1 in 2 black (50%) females were mothers with minor children (**table 3**).
- In state prison, 48% of black males, 51% of Hispanic males, and 40% of white males reported having a minor child.
- Nearly 7 in 10 Hispanic (67%) females in federal prison were mothers with minor children, compared to about 1 in 2 white (49%) and black (54%) females.
- Among federal prisoners, about 3 in 5 black (64%) and Hispanic (64%) males and 3 in 10 white (34%) males were fathers with minor children.
- The average age of a minor child among parents in state prison was 9 years old (**table 4**).
- Among minor children of parents in state prison, 1% were younger than age 1, about 18% were ages 1 to 4, and 48% were age 10 or older.
- The average age of a minor child among parents in federal prison was 10 years old.
- An estimated 13% of minor children of federal prisoners were age 4 or younger, and 20% were ages 15 to 17.

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# It's Time to Overhaul America's Broken Probation and Parole Systems

JULY 13, 2017  
BY TOPEKA K. SAM



A probation officer helps a new arrival at juvenile probation camp in Santa Clarita, California, on November 3, 2010. © Bethany Mollenkof/LA Times/Getty

I was released from prison two years and two months ago. Since then, I have been working to improve the lives of formerly incarcerated women and men.

I've received fellowships from Beyond the Bars and the Open Society Foundations, and was named a Justice in Education Scholar at Columbia University. I founded the Ladies of Hope Ministries[<http://www.thelohm.org/>](http://www.thelohm.org/), which helps women and girls transition from prison back into society through education, entrepreneurship, and advocacy. I am establishing Hope House, a re-entry housing development for women and girls. As a founding member and national organizer of the National Council for Incarcerated and Formerly Incarcerated Women and Girls[<http://www.thecouncil.us/>](http://www.thecouncil.us/), I have crisscrossed the country organizing council chapters and creating symposiums at law schools nationwide.

Yet those who monitor my activities as part of my sentence still view me with suspicion and disdain. "Your constant travel is reminiscent of a drug dealer, Ms. Sam," my probation officer's supervisor said to me recently. I looked her in the eye and tried to resist feeling devalued, shamed, stigmatized,

angry, and triggered. Despite the work I've done—work which has changed my life and helped me change the lives of others—the comment cut me to the core.

At that moment, I was reminded that probation is just another form of incarceration.

July 16 marks the beginning of the American Probation & Parole Association's Pretrial, Probation, and Parole Supervision Week[<https://www.appa-net.org/PPP-Supervision-Week/>](https://www.appa-net.org/PPP-Supervision-Week/), which is intended to “celebrate the success of the community corrections/supervision professionals who make our country safer,” in the words of the association's website. “These individuals help change lives of men/women and boys/girls, as well as enhance the quality of life in our communities.”

I am one of the 4.7 million people who live under the daily control of a probation supervisor or a parole officer. And I will not be celebrating next week. I spent three years in federal prison, six months in federal community custody at a halfway house, and the last two years and counting under federal supervised release. I know what it is to be policed and surveilled. I know what it's like to have your parents questioned about your whereabouts, to have their home invaded, all while your probation officer knows you are at work.

In theory, probation (supervised time in lieu of incarceration) and parole (early release from incarceration under supervision) are important elements in the drive for decarceration. However, the system has also created an additional layer of law enforcement control, intrusion, and surveillance—especially in communities of color, which are heavily policed already.

The system needs an overhaul. People who are monitored must be treated with human dignity. Our rights are often denied because of policies, procedures, and rules that are seldom explained and often administered arbitrarily. When we have been treated unfairly, there is no clear process to register grievances or appeal decisions that affect every aspect of our lives, including our very freedom.

Parole and probation officers could constructively help to, as the association put it, “enhance the quality of life” in my community of Harlem. To do this, the Bureau of Prisons, as well as city, county, and state probation and parole agencies, must increase accountability by fully training the people who serve in these powerful positions and by creating mechanisms to hold them responsible for their decisions. Those of us in the system must be able to exercise our rights without fear of reprisal and increased surveillance.

One counterproductive and punitive condition of release prohibits people under probation, parole, or supervised release from interacting with anyone who has a felony conviction without first securing approval. In practical terms, this means somebody leaving prison cannot reunite with their spouse,

relatives, or other loved ones if any of those people had a felony conviction in their past—even if it happened years ago. This tears families apart, cutting people off from love and support, and makes the challenges of coming home even more difficult.

When supervisors and administrators stop using policies like this as a tool of control and begin explaining the policies and rules of probation and parole to the women and men whose lives they monitor, I'll join the celebration of Pretrial, Parole, and Supervision Week. Until then, I will continue working with the formerly incarcerated women who are my mentors and the millions of my sisters and brothers who live under state control so we can build better lives and better communities.

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### **Topeka K. Sam**

Topeka K. Sam is founder of the Ladies of Hope Ministries, a founding member of the National Council for Incarcerated and Formerly Incarcerated Women and Girls, and a 2017 Soros Justice Fellow.

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