

WOMEN AND GIRLS IN THE CRIMINAL JUSTICE SYSTEM

HEARING BEFORE THE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS FIRST SESSION

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WOMEN AND GIRLS IN THE CRIMINAL JUSTICE SYSTEM

Tuesday, July 16, 2019

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to call, at 10:08 a.m., in Room 2141, Rayburn House Office Building, Hon. Karen Bass [chair of the subcommittee] presiding.

Present: Representatives Bass, Nadler, Jackson Lee, Demings, McBath, Deutch, Richmond, Jeffries, Cicilline, Lieu, Dean, Mucarsel-Powell, Cohen, Ratcliffe, Chabot, Steube, Lesko, Reschenthaler, McClintock, and Cline.

Staff Present: David Greengrass, Senior Counsel; Joe Graupen-Sperger, Chief Counsel; Milagros Cisneros, Detailee; Monalisa Dugue, Deputy Chief Counsel; Rachel Rossi, Counsel; Veronica Eligan, Professional Staff Member; Anthony Valdez, Intern; Michael Nevett, Intern; Jason Cervenak, Minority Senior Counsel; Andrea Woodard, Minority Professional Staff Member; and Erica Barker, Minority Clerk.

Ms. BASS. The Committee on Crime, Terrorism, and Homeland Security will come to order. Without objection, the chair is authorized to declare recesses of the Subcommittee at any time.

I welcome everyone to today's hearing on Women and Girls in the Criminal Justice system. I now recognize myself for an opening statement.

I am very pleased that this Subcommittee is holding this hearing today. After decades of policies that led to mass incarceration, we are finally at a point of examining the policies and the consequences. What has been missing from the discussion of criminal justice reform is the special and specific impact the tough-on-crime era has had on women and children.

Today's hearing begins a discussion about women in the criminal justice system. It is critical that we understand how and why women become involved in the system, what happens to them when they are incarcerated, and what their trajectory is once released. We need to examine the impact of the war on drug-related policies, that specifically targeted women in hopes of capturing men. What happens to families, and especially children, when women are in-

carcerated? We need to examine the special needs women have when they are incarcerated, what is different? What are is different? What happens to their children while they are in the system, and when they are released?

For example, Federal law can lead to termination of parental rights if the child of an incarcerated woman remains in foster care beyond 18 months. Some States have even shortened the timeline to 6 or 12 months. If a woman receives a sentence of 5 years, why should she face losing her children forever to adoption? Examining pregnancy while incarcerated is the most obvious difference. Specifically, prisons and jails are not designed or equipped to deal with the issues are of pregnant women in custody.

I would like to recognize now Charlotte Cook. Wave your hand, please. While in prison, she complained that she was pregnant. The medical staff at the prison insisted that it was just because she was fat and stressed out. After much persistence, a blood test ruled that she was, in fact, pregnant, although 6 weeks into her pregnancy without prenatal care. She had complications, and her son was born a preemie at 4.5 pounds. Eighteen months later, he was diagnosed with severe autism.

The health needs of women, regardless of pregnancy, is different, and all women should have access to appropriate medical care. That includes access to gynecological care and not just during the child-bearing years. So, what is to be done?

Through this hearing we will learn the common reasons why women enter the criminal justice system. This testimony must inform our next steps on sentencing reform. The testimony of Ms. Kerman and Ms. Shank will help us determine whether it is time to revisit our overly broad drug conspiracy laws, which tend to leave low-level offenders, commonly women, laden with the responsibility for actions they did not commit, or sometimes, didn't even know about.

We must also consider methods of reviewing extremely long sentences, as the number of women serving life sentence is on the rise. One out of every 15 women in prison, nearly 7,000, is serving a life, or virtual life sentence. While 80 percent of women in the criminal justice system are mothers, these life sentences do not only affect the person incarcerated, but they also affect the children who lose a parent.

Thus, the conversation of incarcerated women must include a conversation about their children. The Urban Institute's research shows that staying in touch promotes positive outcomes for both the children and their parents, which often reduces recidivism.

Communities must also be part of the conversation. Teachers and staff should prioritize knowledge and sensitivity about issues children of an incarcerated parent face. Schools should spearhead efforts to meet the needs of children with incarcerated loved ones, and offer resources or clubs targeted towards students who have been affected by incarceration, including support groups, counseling, extracurricular activities, providing opportunities to process experiences through poetry, writing arts and journaling.

Perhaps if we do this, we can reduce the statistic that 50 percent of children who have a parent incarcerated wind up incarcerated later in life. Connections should be made with community pro-

grams and local service providers that serve families affected by incarceration for additional support.

Finally, we cannot ignore the conditions of women in prison and the difficulties of their reentry back into communities after release. I hope to explore how we can improve the conditions of women incarcerated to ensure that their most basic needs are met, including the needs of incarcerated pregnant women. Any facility that incarcerates women must be held to minimal standards of care. Today, women will no longer be overlooked in the criminal justice conversation. We must have an overall approach to criminal justice reform that specifically considers women.

I look forward to hearing the testimony of our panel of witnesses and the opportunity to discuss these issues. I now recognize the Ranking Member, Hon. Mr. Ratcliffe.

Mr. RATCLIFFE. Thank you, Chair Bass. Thanks to each of our witnesses for being here today to discuss the impact of the criminal justice system on women and girls. To do that, I think it is crucial that we take a step back to first understand the importance of the criminal justice system in the first place. Law enforcement officers, men and women of all races and all backgrounds put their lives on the line everyday all around this country to protect our communities. They make these extraordinary sacrifices to ensure that children are safe from exploitation by sex offenders. They do that to keep women and girls safe from domestic abusers. They make these sacrifices to defend the weak and the vulnerable among us. Importantly, they also do it to uphold the Rule of law.

We should all agree on these fundamental principles. As Members of Congress, our role is to ensure that Lady Justice is blind, and that bias has no place in our criminal justice system. As my good friend and the former chair of this subcommittee, Trey Gowdy, once said, we should strive for criminal justice system that is not just respected by the American people, but is worthy of their respect.

As a former prosecutor, my role was to be a zealous advocate for the truth. And during that time, I encountered crimes committed that were shocking to my conscience and sickening to my soul. In those cases, enhanced sentences and mandatory minimums were fair and they were just. Crimes committed against children, the most innocent and the most vulnerable Members of our society, should stick with us, they should haunt us, and then they should spur us to take action.

Much of the debate here in Congress has been about criminal justice reforms and the impact of mandatory minimums and how to reduce recidivism. We should be vigilant in determining the causes of increasing female incarceration rates in this country. We should be open to addressing, in a bipartisan fashion, the unique needs of women and girls in our criminal justice system.

As Congress has debated criminal justice reform, many States have acted as laboratories of democracy, creating innovative ways to handle their unique challenges in providing Congress with a view of what works and what doesn't work. We can and we should learn from that.

Let us not forget that even some so-called nonviolent offenses, there are victims too numerous to mention and unfortunately too

easy for us to ignore. Drug traffickers that profit off the importation of deadly and illicit drugs, like heroin, methamphetamines and Fentanyl in our communities leave a trail of destruction in their wake. The race or gender of drug traffickers does not matter. What matters is that their victims come from all backgrounds and from all walks of life.

I yield back.

Ms. BASS. It is now my pleasure to recognize Chair of the full Judiciary Committee, the gentleman from New York, Mr. Nadler.

Chairman NADLER. I thank the Crime Subcommittee chair, our colleague from California, Karen Bass, for holding this important hearing on the special issues related to women and girls in the criminal justice system. In recent years, there has been a growing consensus that our Nation's criminal justice system must be substantially reformed. One critical element of this national conversation that has been largely absent, however, is consideration of the unique experiences and needs of women and girls in the system, and our responsibility could develop creative ways to address those issues. It is particularly urgent that we do so, because women are the fastest growing segment of our Nation's incarcerated population. While recent efforts at reforming the criminal justice system are at least partly responsible for slight reductions in the rate of incarceration overall, the proportion of incarcerated women is steadily rising. This disturbing trend must be examined.

In addition, we still must consider whether the reforms already instituted across the country are appropriately designed to address the issues faced by women and girls in the criminal justice system. These issues are numerous and diverse, impacting all stages of the criminal justice system.

One such injustice, for example, is the so-called girlfriend problem, where a woman in a relationship is held responsible through conspiracy charges for the entirety of a criminal scheme orchestrated by her partner, often involving drug distribution, in which the woman had minimal involvement. In such cases, the woman may even receive a harsher sentence than her relationship partner who had the real role, because the more culpable partner is able to cut a deal for shorter sentence based on divulging information to prosecutors. The less culpable partner does it not have much of any useful information to divulge because she doesn't know any, and thus lacks the leverage to obtain a more favorable plea agreement.

Addressing this unfair situation is important because the war on drugs appears to be a large driver of the incarceration rates of women, as illustrated by the fact that the proportion of women in prison for a drug offense has increased from 12 percent in 1986, to 25 percent in more recent years.

Another problem is the impact of pretrial custody on women. Over 60 percent of women who are incarcerated have not even been convicted of a crime, and yet, they are held in pretrial custody in jail. This is particularly disturbing because many of these women are the only providers for their children.

A recent survey revealed that more than 150,000 children had a parent in jail, because the parent could not afford bail. Not because the parent presented a particular risk to the community or risk of

not appearing at trial. That means children are impacted by pre-trial detention in startling numbers. This problem is most often caused by pretrial incarceration by sole provider mothers. Clearly, we must take steps to address this crisis of vastly overused pretrial custody.

We must also focus on unique inequities that women face while incarcerated. As a result of Subcommittee Chair Bass' leadership, Congress finally passed legislation implementing reforms at the Federal level, that ban shackling during pregnancy and require the provision of feminine hygiene products in Federal prison. These provisions were enacted last year in the first setback with bipartisan support, including the efforts of our current Ranking Member of the committee, Doug Collins.

Much more must be done to improve the conditions for women in Federal and State prisons and jails, and I hope this will also be a bipartisan priority. As this Committee develops plans to further reform our criminal justice system, it is clear that our efforts must be informed by the unique issues faced by women in that system. I appreciate the chair for holding this important hearing, which will assist us in this process. I look forward to hearing from our witnesses and I yield back the balance of my time.

Ms. BASS. It is now my pleasure to introduce today's panel: Ms. Jesselyn McCurdy is Deputy Director at the Washington Legislative Office of the American Civil Liberties Union, where she represents the ACLU before Congress and the executive branch. She covers various criminal justice issues, including Federal sentencing, prison reform, drug policy and capital punishment. She previously served as the lead counsel with this Subcommittee on the historic Fair Sentencing Act of 2010, which lowered the 100-to-1 disparity between crack and powder cocaine.

Ms. Cindy Shank is a mother of three beautiful children, turned advocate for criminal justice reform following her time in prison. Ms. Shank's 15-year sentence under drug conspiracy laws was commuted by President Obama after she served 8 years in prison. Ms. Shank was featured in the HBO documentary, "The Sentence."

Ms. Piper Kerman, author of "Orange is the New Black," which about the 13 months Piper served at the Federal correction institution in Danbury, Connecticut. She is an advocate who teaches writing classes at two State prisons in Ohio, as an affiliate instructor with Oberlin University.

Ms. Aleks Kajstura is the legal director for the Prison Policy Initiative and has played a central role in building Prison Policy Initiative campaign against prison gerrymandering, and led the organization's work on its second major issue, sentencing enhancement zones.

Ms. Patrice Onwuka, a senior policy analyst at Independent Women's forum. We welcome our witnesses and thank them for participating in today's hearing. Please note that your written statement will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in 5 minutes. To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you will have 1 minute to conclude your testimony. When the light turns red, it signals that your 5 minutes expired. Before proceeding with testi-

mony, I hereby remind each witness that all your written and oral statements made to the Subcommittee in connection with this hearing are subject to penalties of perjury.

Ms. McCurdy.

TESTIMONY OF JESSELYN McCURDY

Ms. McCURDY. Thank you, Chairwoman Bass. The American Civil Liberties Union would like to thank you and the Ranking Member Ratcliffe for the opportunity to testify at today's hearing on Women and Girls in the Criminal Justice System. Prison is a woman's issue. Lost in the sobering statistics on this country's prison population and the narrative surrounding mass incarceration is the degree to which women are ensnared in the criminal justice system.

Over the past 30 years, the number of incarcerated women has grown exponentially. Again, women are the fastest growing segment of the prison population, increasing by 700 percent from 1980 to 2017, a rate twice that of men. Today, more than 200,000 women are incarcerated in jails and prisons across this country. The majority of women in prison are incarcerated for low-level offenses, most often property and drug-related crimes. Even as the rate of incarceration for women has risen dramatically in recent years, the percentage of women sentenced for crimes involving violence has fallen.

Much of the growth in the women's prison population over the past 30 years can be attributed to the war on drugs. From 1988 to 1999, the number of women in State facilities for drug offenses grew by 888 percent. Drug and property offenses are often fueled by conditions of poverty, addiction, and untreated mental health issues, which is experienced by many women cycling through the criminal justice system.

In addition to poverty, what often lands women in prison is their history of physical and sexual abuse, high rates of HIV, and substance abuse problems. When they participate in more serious crimes, including serious drug crimes and robbery, women are minor accomplices. When women commit homicide, they often do so to protect themselves from men who have abused them. Women of color are disproportionately represented in the population incarcerated women. In 2014, Black women were more than twice, and Latino women were 20 percent more likely than White women to be incarcerated. Although the racial disparities among incarcerated women have narrowed over the past 15 years, the legacy of the disparity remains. Girls are more likely than boys to be in the juvenile facilities, due to low-level status offenses, or technical violations, and are far less likely to be detained for violent offenses.

Women make up approximately 7 percent of the Federal prison population. Almost 13,00 women compared to 1980 when there were 13,000 women in both State and Federal prisons combined. More than 70 percent of the women sentenced in 2017 in the Federal system were convicted of drug trafficking, fraud, or immigration offenses.

In the same year, 68 percent of females sentenced had little or no prior criminal history. Furthermore, women frequently end up in Federal prison due to Federal drug conspiracy laws. Too often,

Federal drug conspiracy laws disproportionately punish those who unwittingly and unknowingly find themselves caught in the net of drug-related activity, even in a peripheral role.

Women who are minimally involved in drug dealing but who have partners or family Members involved in the drug trade can be required to serve long sentences as a result of conspiracy. Some of these relationships are abusive, or coercive, or leave women vulnerable and with few options.

Women of color often find themselves subject to prosecution based on relationships and associations, rather than their own personal conduct. Adding to the burden of women behind bars is the majority of women in prison are mothers. Since 1991, the number of children with a mother in prison has grown 131 percent. The majority of these women are both custodial parents and primary financial providers. Further, mothers behind bars are five times more likely than men to report that their children are in foster care or cared for by the State.

The very existence of parental relationships can be endangered when a parent is incarcerated. Incarcerated parents who have not abused or neglected their children are far likelier to lose their parental rights permanently than a nonincarcerated parent who has assaulted their child.

Women are the fastest growing population in the U.S., leaving far too many children and families without a mother, despite the fact she is often their primary caregiver. Until we recognize the unique circumstances, needs, and consequences associated with women who come in contact with the criminal legal system, we will never truly address this Nation's mass incarceration problem.

Thank you.

[The statement of Ms. McCurdy follows:]

STATEMENT OF MS. McCURDY

Introduction¹

The American Civil Liberties Union (ACLU) would like to thank Crime Subcommittee Chairwoman Karen Bass and Ranking Member John Ratcliffe for the opportunity to testify before the House Committee on the Judiciary's Subcommittee on Crime, Terrorism, and Homeland Security during this hearing on Women and Girls in the Criminal Justice System.

For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and the law of the United States guarantee to everyone in the country. With more than four million Members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, DC, for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, gender identity or expression, disability, national origin, or record of arrest or conviction. The ACLU advances equality through litigation and policy advocacy. The ACLU's priorities include defending the rights of immigrants, advocating for economic justice, and defending the housing rights of vulnerable populations.

¹Special thanks to Lauren Kuhlik Equal Justice Works Fellow, Sponsored by Crowell & Moring for drafting portions of this testimony.

I. Trends Among Women in Prison

Prison is a women's issue.² Lost in the sobering statistics on the country's prison population and the narrative surrounding mass incarceration is the degree to which women are ensnared in the criminal justice system. Over the past thirty years, the number of incarcerated women has grown exponentially. Women are the fastest growing segment of the prison population, increasing by 700% from 1980 to 2017—a rate twice that of men.³ Recent statistics from the Federal Bureau of Justice Statistics (BJS) indicate that, of the estimated 6.9 million persons under the supervision of adult correctional systems at year-end 2013, 18%, or 1.2 million, were women.⁴ Today, more than 200,000 women are incarcerated in jails and prisons nationwide.⁵ As of 2013, almost 60% of all women in correctional facilities were between the ages of 18 and 39.⁶

The majority of women are incarcerated for low-level offenses, most often property and drug-related crimes.⁷ Even as the rate of imprisonment for women has risen dramatically in recent years, the percentage of women sentenced for crimes involving violence has fallen.⁸ Much of the growth in the women's prison population over the past thirty years can be attributed to the "War on Drugs." From 1988 to 1999, the number of women in State facilities for drug offenses grew by 888%.⁹ In New York for example, drug offenses accounted for 91% of the increase in the number of women sentenced to prison between 1986 and 1995.¹⁰ This legacy has continued, and, at the end of 2012, a higher percentage of incarcerated women than men are serving time for drug offenses.¹¹ Drug and property offenses are often fueled by conditions of poverty, addiction, and untreated mental health issues, which is experienced by many of the women cycling through the criminal justice system.¹²

Women are more likely than men to commit crimes because of poverty. Women represent a disproportionate number of people arrested for and convicted of property crimes such as fraud, forgery, and embezzlement.¹³ When they participate in more serious crimes, including serious drug crimes and robbery, women are generally not principals of the crime, but rather are minor accomplices.¹⁴ When women commit

²Prisoners are nearly always housed according to their sex as assigned at birth. See Classification and Housing of Transgender Inmates in American Prisons, 127 HARV. L. REV. 1746, 1748 (2014). "Women in prison" refers to individuals housed in women's facilities, who may include transgender men and other gender non-conforming people; transgender women, who are often housed in male facilities, also face similar obstacles in prison arising from their own trauma histories and are equally entitled to appropriate gender-responsive programming.

³THE SENTENCING PROJECT, INCARCERATED WOMEN AND GIRLS (updated 2019), available at <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/> [hereinafter INCARCERATED WOMEN]. <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>.

⁴Lauren E. Glaze & Danielle Kaeble, Bureau of Justice Statistics, Correctional Populations in the United States, 2013 1, 6 (2014), available at <http://www.bjs.gov/content/pub/pdf/cpus13.pdf> [hereinafter BJS STATISTICS].

⁵Aleks Kajstura, Prison Policy Initiative, Women's Mass Incarceration: The Whole Pie 2018 (2018), available at <https://www.prisonpolicy.org/reports/pie2018women.html>; E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2016 4 (2018), available at <https://www.bjs.gov/content/pub/pdf/p16.pdf>; ZHEN ZENG, BUREAU OF JUSTICE STATISTICS, JAIL INMATES IN 2016 9 (2018), available at <https://www.bjs.gov/content/pub/pdf/ji16.pdf>.

⁶E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2013 8 (2014), available at <http://www.bjs.gov/content/pub/pdf/p13.pdf> [hereinafter PRISONERS IN 2013].

⁷*Id.* at 15. In 2013, approximately 63% of women in prison were incarcerated for non-violent offenses. *Id.*

⁸In the late 1970s, the rate of imprisonment for women was 10 per 100,000 in the State prison system, 49% of whom were sentenced for violent crimes. NATASHA A. FROST *et al.*, Institute on Women and Criminal Justice, Hard Hit: The Growth in the Imprisonment of Women, 1977–2004 7, 10 (2006), available at <http://csdp.org/research/HardHitReport4.pdf> [hereinafter HARD HIT]. By 2011, the imprisonment rate had risen to 65 per 100,000; however, as of 2012, approximately 37% of women in State prisons were sentenced for violent crimes. See PRISONERS IN 2013, *supra* note 5, at 6, 15.

⁹LEONORA LAPIDUS *et al.*, CAUGHT IN THE NET: THE IMPACT OF DRUG POLICIES ON WOMEN AND FAMILIES 16 (2005), available at https://www.aclu.org/sites/default/files/field_document/asset_upload_file431_23513.pdf.

¹⁰HARD HIT, *supra* note 6, at 24.

¹¹BJS STATISTICS, *supra* note 3, at 15.

¹²ACLU OF PENNSYLVANIA, REPRODUCTIVE HEALTH LOCKED UP: AN EXAMINATION OF PENNSYLVANIA JAIL POLICIES 2 (2012), available at http://www.aclupa.org/download_file/view_inline/756/484/ [hereinafter REPRODUCTIVE HEALTH LOCKED UP].

¹³FEDERAL BUREAU OF INVESTIGATIONS, ARRESTS BY SEX, 2017 (2018), available at <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-42>.

¹⁴DARRELL STEFFENSMEIR & EMILIE ALLAN, GENDER AND CRIME-DIFFERENCES BETWEEN MALE AND FEMALE OFFENDING PATTERNS (2002), available at <http://law.jrank.org/pages/1250/Gender-Crime-Differences-between-male-female-offending-patterns.html>; see also Myrna S.

homicide, they often do so to protect themselves from men who have abused them.¹⁵ Thus, a man and a woman convicted of the same crime and given the same sentence may have been treated unequally by the system. Women's sentences are often disproportionate to their crimes and often do not take into consideration these mitigating factors.¹⁶

Women of color are disproportionately represented in the population of incarcerated women. In 2014, Black women were more than twice as likely as White women to be incarcerated and Latina women were 20% more likely to be incarcerated than White women.¹⁷ Although the racial disparity among incarcerated women has narrowed in the past fifteen years—the rate of incarceration for Black women in prison declined by 30% between 2000 and 2009—the legacy of disparity remains.¹⁸ Among women ages 18–19, the results were particularly pronounced—Black women were almost five times more likely than White women of the same age to be incarcerated.¹⁹ Latina women were also incarcerated at a disproportionate rate.²⁰ Although Black children make up only 14% of all youth under age 18, 34% of girls incarcerated in youth facilities are Black; similarly, Native American youth make up only 1% of all youth but represent 3% of girls incarcerated in juvenile facilities.²¹ Girls are more likely than boys to be in juvenile facilities due to low-level status offenses or technical violations and are far less likely to be detained for violent offenses.²²

II. Women in the Federal Prison

A. Mandatory Minimums and Federal Crimes

The Sentencing Reform Act of 1984 (SRA) is the framework for the current federal sentencing system. In an effort to increase uniformity and reduce sentencing disparity, the SRA eliminated indeterminate sentencing (*i.e.*, federal parole) and established the U.S. Sentencing Commission (Sentencing Commission) which led to the creation of the Federal Sentencing Guidelines (Guidelines).²³ In 1986, not long after the SRA was enacted, the Anti-Drug Abuse Act (ADAA) established mandatory minimum sentences for federal drug crimes.²⁴ The ADAA and other laws passed after 1986 included long sentences for many drug offenses based on the drug type and quantity, not the role the person played in a drug conspiracy.²⁵

There are only two options judges have to reduce mandatory sentences for people convicted of drug crimes. These options occur when:

- An individual cooperates or provides substantial assistance to prosecutors investigating related offense; or
- A person qualifies for the “safety valve.” The five part “safety valve” criteria is when an individual has: (1) No more than one criminal history point; (2) not been involved in violence or had a weapon; (3) not committed an offense involving serious bodily injury or death; (4) not played a leadership role; and (5) fully and truthfully disclosed information.²⁶

Raeder, *Gender-Related Issues in a Post-Booker Federal Guidelines World*, 37 McGEORGE L. REV. 691, 726–31 (2006) (explaining the “girlfriend problem,” which forces female romantic partners of male drug offenders to decide between leaving those partners—and the security they provide—and participating either actively or passively in their crimes).

¹⁵ Meda Chesney-Lind, *Women and the Criminal Justice System: Gender Matters 3*, available at https://www.gvsu.edu/cms4/asset/903124DF-BD7F-3286-FE3330AA44F994DE/women_and_the_criminal_justice_system_gender_matters.pdf#page=3.

¹⁶ See generally Raeder, *supra* note 119 (arguing that defense counsel and judges should do more to take women's backgrounds into consideration during sentencing).

¹⁷ INCARCERATED WOMEN, *supra* note 2, at 2.

¹⁸ See MARC MAUER, THE SENTENCING PROJECT, THE CHANGING RACIAL DYNAMICS OF WOMEN'S INCARCERATION 1 (2013), available at http://sentencingproject.org/doc/publications/rd_Changing%20Racial%20Dynamics%202013.pdf.

¹⁹ *Id.*

²⁰ *Id.*

²¹ WENDY SAWYER, PRISON POLICY INITIATIVE, YOUTH CONFINEMENT: THE WHOLE PIE (2018), available at <https://www.prisonpolicy.org/reports/youth2018.html>.

²² *Offense Profile of Committed Residents by Sex and Race/Ethnicity for United States*, 2015, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PROTECTION (2014), https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/Offense_Committed.asp.

²³ CCTF, *Transforming Prisons, Restoring Lives: Final Recommendations of the CCTF 5* (Jan. 2016), <https://www.urban.org/sites/default/files/publication/77101/2000589-Transforming-Prisons-Restoring-Lives.pdf>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

Furthermore, federal drug conspiracy laws result in long, harsh sentences for people who are not involved in crimes beyond their associations with intimate partners and family Members. According to Sec. 21 U.S.C. 841 and 21 U.S.C. 846, anyone who attempts or conspires to commit a drug offense will be subject to the same penalties as those for the actual offense.²⁷ Too often, federal drug conspiracy laws disproportionately punish those who unwittingly or unknowingly find themselves caught in the net of drug-related activity, even in a peripheral role. Women who are minimally involved in drug dealing, but who have partners or family Members involved in the drug trade can be required to serve long sentences as a result of conspiracy laws. Some of these relationships are abusive or coercive and leave women vulnerable and with few options. Women of color often find themselves subject to prosecution based on their relationships and associations rather than their own personal conduct. Drug conspiracy laws have contributed to the recent explosion of drug convictions and incarceration rates for women in the federal system.

One such story is that of Danielle Metz, a mother of two who received a triple life plus 20 years sentence for her involvement in her husband's cocaine distribution enterprise which was her first offense.

"Danielle was the youngest of nine children raised in New Orleans and became involved with a drug dealer named Glenn when she was 18. She recalls that Glenn, then 30, promised to care for her and her baby. She says that she knew he was involved in drug distribution and that she was not initially involved in his activities. They married after they had a daughter together, Gleneisha.

Metz says her husband was very controlling and forbid her from getting a job or leaving their home for more than an hour at a time. According to Metz, he became physically and mentally abusive after they married and made her feel subservient because he paid the bills. She recalls that he later asked her to ride with her aunt Angela, a petty drug dealer who had become involved in Glenn's drug activities, to transport money to Houston. Metz says she accompanied her aunt twice and brought cocaine back to New Orleans on one of these occasions. According to Metz, she also collected money from Western Union, also at Glenn's request.

In 1990, they moved to Las Vegas, separating her from her family. According to Metz, Glenn struck her, causing her nose to gush with blood, while they were visiting her sister in Los Angeles. While returning to Las Vegas, Metz planned her escape. The next day, before boarding a flight to New Orleans, where her family still lived, Metz says she called Glenn to tell him where she had left the car and that she was leaving him. Two months later, she was arrested and indicted for participating in a drug conspiracy with her estranged husband.

Metz, then 26, was sentenced to three life without parole sentences plus 20 years in 1993. It was her first conviction. Metz was convicted largely on the basis of testimony from her aunt Angela, who had earlier been arrested for an unrelated drug charge and testified against Metz and her husband as part of a plea deal. Metz says that she had no useful information she could trade, the only way to win a sentence reduction under federal mandatory sentencing."²⁸

In 2016 after serving 23 years in federal prison, President Barack Obama granted Metz clemency. At the age of 50, Metz enrolled in school at Southern University of New Orleans and is studying to become a social worker. She recently made the dean's list with a 3.75 grade point average.

Women, like Danielle, make up approximately 7% of the federal prison population.²⁹ More than 70% of the women in federal custody in 2017 were sentenced for drug trafficking (37.2%), fraud (20.4%), or immigration (15.3%) offenses.³⁰ 60-eight percent (68.0%) of females sentenced to federal prison had little or no prior criminal history and only 3% had serious or significant criminal histories. Latina women made up 44% of women convicted for drug trafficking while White women were 35% and Black women made up almost 15%.³¹ Black and White women each

²⁷ 21 U.S.C. 841 and 846.

²⁸ ACLU, *A Living Death: Life without Parole for Nonviolent Offenses* 45 (Nov. 2013), <https://www.aclu.org/report/living-death-life-without-parole-nonviolent-offenses>.

²⁹ *Inmate Gender*, FEDERAL BUREAU OF PRISONS (July 6, 2019), https://www.bop.gov/about/statistics/statistics_inmate_gender.jsp.

³⁰ U.S. SENTENCING COMM'N., *Quick Facts: Women in the Federal Offender Population* 1 (2018), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Female_Offenders_FY17.pdf.

³¹ *Id.*

made up 37% of those sentenced for fraud, with Latina women making up 20%. In 2017, almost 77% of females in the federal system were sentenced to prison, but 15% received a mandatory minimum sentence.³² However, the difference in the length of sentence between those who received mandatory sentences and those who did not is drastic. Women who were sentenced to mandatory minimum sentences received an average of 75 months or over six years while those who did not were sentenced to an average of 19 months or a little over a year and a half.³³

Today, there are almost 13,000 women³⁴ in Bureau of Prisons (BOP) facilities across the country compared to 1980, when there were 13,000 women in both State and federal prisons.³⁵ Since that time, women in prison have increased by twice the rate of men incarcerated.³⁶ Unfortunately, in addition to poverty, what often lands women in prison are their histories of physical and sexual abuse, high rates of HIV, and substance abuse problems.³⁷ When women are incarcerated, their children and families are also impacted. Others, in particular, are an integral part of the family structure.

B. Conditions of Confinement for Women in Federal Prison

In September of 2018, the U.S. Department of Justice (DOJ) Office of Inspector General (OIG) released a report that evaluated the Federal Bureau of Prisons (BOP) management of women in the agency's custody entitled *Review of the Federal Bureau of Prisons' Management of Its Female Inmate Population*.³⁸ OIG examined BOP's capacity and efforts to address the unique needs of women in federal prisons through the agency's policies, programs, and decisions from FY 2012 through FY 2016. The OIG evaluated how BOP's Women and Special Populations Branch and other relevant offices implemented pregnancy programs, gender-responsive trauma treatment and policies related to physical searches of female inmates as well as inmate access to feminine hygiene products. Finally, the OIG reviewed BOP's decision to convert its Danbury, Connecticut low security facility from a female to a male prison and how that affected women who had been housed at Danbury.³⁹

The OIG concluded that BOP had not been strategic in its management of females in its custody. They remended that BOP take supplemental steps to ensure that individual facilities are meeting the needs of females. The report found instances where BOP's programming and policies did not fully consider the needs of women inmates, thus making it hard for women to take advantage of important programs and supplies. The OIG concluded that BOP was following Prison Rape Elimination Act (PREA) standards and regulations, but the policies prohibiting cross gender searches were carried out inefficiently. Lastly, they determined the BOP's conversion of Danbury to a male prison had negatively affected some females who had been housed at the facility.

III. Burdens of Mothers in Behind Bars

The majority of women in prison are mothers. Since 1991, the number of children with a mother in prison has grown 131%.⁴⁰ In 2004, approximately 62% of women had minor children.⁴¹ The majority of these women were both custodial parents and primary financial providers. Mothers behind bars are likely to have lived in single-parent households and the overwhelming majority report that they were responsible for the daily care of their children. Unlike males, incarcerated women report that the other parent is not the caregiver for their children while they are incarcerated. Instead, a grandmother or other relative is the most likely caregiver for a woman's child or children. Further, 11% of mothers behind bars—five times more than men—report that their children are in foster care or otherwise cared for by the state.⁴²

³² *Id.*

³³ *Id.*

³⁴ *Trends in U.S. Corrections*, THE SENTENCING PROJECT at 4 (last updated June 2019).

³⁵ *Id.* at 4.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Review of the BOPs' Management of its Female Inmate Population*, OFFICE OF THE INSPECTOR GEN. (September 2018), <https://oig.justice.gov/reports/2018/e1805.pdf/>.

³⁹ *Id.* at 45 Appendix 1.

⁴⁰ Lauren E. Glaze & Laura M. Maruschak, *Bureau of Justice Statistics, Parents in Prison and Their Minor Children 2* (2010), available at <http://www.bjs.gov/content/pub/pdf/pptmc.pdf>.

⁴¹ *Id.* at 3.

⁴² *Id.* at 5.

Since women are more likely than men to be the primary or sole caretaker of their children prior to incarceration,⁴³ children and families are profoundly affected by the rising numbers of women sent to prison.⁴⁴ Between 1991 and 2007, the number of children with a mother in prison more than doubled.⁴⁵ About 62% of women in State prisons, and 56% of women in federal prison, have minor children.⁴⁶ The very existence of the parental relationship can be endangered when a parent is incarcerated.⁴⁷ Incarcerated parents who have not been accused of neglect or abuse are far likelier to lose their parental rights permanently than are non-incarcerated parents who have assaulted their children. Thousands of parents in the last decade have had their rights terminated solely on the basis of their incarceration.⁴⁸ In addition to the devastating consequences of parental incarceration on families, children's future prospects also dim; children with mothers in custody are more likely to develop depression and anxiety, are at heightened risk of future substance abuse problems, and are more likely to become involved in the criminal justice system.⁴⁹

IV. Needs of Women in Prison

A. Differing Health Needs

Women in prison have medical and mental health histories and needs that differ from the nonincarcerated population as well as their male counterparts. Women in jails and prisons have significantly higher rates of both chronic conditions (which include cancer, diabetes, asthma and other conditions) and infectious diseases (which include tuberculosis and sexually transmitted infections) than do their male counterparts.⁵⁰ Prison itself can contribute to health concerns; incarceration is directly linked to premature mortality for women, but not for men.⁵¹ Additionally,

⁴³ In 2004, 64.2% of mothers in prison reported living with their minor children in the month prior to arrest or just prior to incarceration, compared to 46.5% of men. Further, 41.7% of mothers reported they were single parents in the month prior to arrest or just prior to incarceration. Nearly 11% of mothers in custody reported that their children were currently in foster care, compared to 2.2% of men. While 88.4% of men in prison reported their children were being cared for by another parent, only 37% of women in prison reported the same. *Id.* at 2, 4–5.

⁴⁴ *Violence Against Women*, *supra* note 112, at para. 49; Dorothy E. Roberts, Prison, Foster Care, and the Systemic Punishment of Black Mothers, 59 UCLA L. REV. 1474, 1479–83 (2012) (describing how the increasing number of incarcerated Black mothers is destroying “critical family and community ties”).

⁴⁵ GLAZE & MARUSCHAK, *supra* note 129, at 2.

⁴⁶ *Id.*

⁴⁷ For an overview of how incarceration can lead to the termination of parental rights—especially of mothers—see Eli Hager & Anna Flagg, *How Incarcerated Parents Are Losing Their Children Forever*, THE MARSHALL PROJECT (Dec. 2, 2018), <https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-children-forever> (noting that incarcerated parents who have never been accused of child neglect or abuse are more likely to have their rights terminated than non-incarcerated parents who have physically or sexually assaulted their children). See also Adoption and Safe Families Act of 1997 (“ASFA”), PUB. L. NO. 105–89, 111 Stat. 2115 (legislation incentivizing adoption of children in foster care in the name of finding a permanent home) (codified in scattered sections of title 42 of the United States Code); Deseriee A. Kennedy, Children, Parents & the State: The Construction of A New Family Ideology, 26 BERKELEY J. GENDER L. & JUST. 78, 104–7 (2011) (describing and criticizing how ASFA in conjunction with State laws has increased terminations of parental rights due to incarceration for more than 15 months); *Violence Against Women*, *supra* note 112, at para. 49 (noting the danger of ASFA leading to termination of parental rights of mothers who leave their children in foster care due to incarceration).

⁴⁸ See Hager & Flagg, *supra* note 136.

⁴⁹ Roberts, *supra* note 133, at 1481–2 (noting that “[s]eparation from imprisoned parents has serious psychological consequences for children, including depression, anxiety, feelings of rejection, shame, anger, guilt, and problems in school”); THE REBECCA PROJECT FOR HUMAN RIGHTS & NAT’L. WOMEN’S LAW CTR., MOTHERS BEHIND BARS: A STATE-BY-STATE REPORT CARD AND ANALYSIS OF FEDERAL POLICIES ON CONDITIONS OF CONFINEMENT FOR PREGNANT AND PARENTING WOMEN AND THE EFFECT ON THEIR CHILDREN 9, 12–13 (2010), available at <https://www.nwlc.org/sites/default/files/pdfs/mothersbehindbars2010.pdf> (noting the prevalence of “significant attachment disorders,” substance abuse, sexual promiscuity, and criminal behavior among children affected by maternal incarceration).

⁵⁰ Laura M. Maruschak, *et al.*, Bureau of Justice Statistics, Medical Problems of State and Federal Prisoners and Jail Inmates, 2011–12 5 (2015), available at <https://www.bjs.gov/content/pub/pdf/mpspji1112.pdf#page=5>. However, women in prison are no longer more likely to be diagnosed with HIV than men in prison. Laura M. Maruschak & Jennifer Bronson, Bureau of Justice Statistics, HIV in Prisons, 2015—Statistical Tables 4 (2017), available at <https://www.bjs.gov/content/pub/pdf/hivp15st.pdf>.

⁵¹ Michael Massoglia, *et al.*, *The relationship between incarceration and premature adult mortality: Gender specific evidence*, 46 SOCIAL SCIENCE RESEARCH 142, 150 (2014), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6123019/> (finding that, after controlling for

substance abuse issues and mental illness are more prevalent among incarcerated women. A staggering proportion of incarcerated women suffer from mental health problems. In federal facilities, more than 40% more women than men have been diagnosed with mental health conditions.⁵² Much higher numbers of women in State prisons and local jails are reported to suffer from mental health problems than similarly situated men.⁵³ Women also report past physical or sexual abuse, as well as other traumas, at a higher rate than their male counterparts.⁵⁴ In one BJS study, for example, 57% of women in State prison facilities, as compared with 16% of men, reported having been abused prior to admission.⁵⁵ These numbers might be significant underestimates; for example, the Federal Bureau of Prisons (BOP) relies on estimates that upwards of 90% of women entering prison have experienced trauma, most often sexual abuse.⁵⁶

Because the great majority of people in prisons have always been men, corrections health care policies were created with the needs of men at the forefront, without regard for women's unique health needs. Despite the constitutional mandates of *Estelle v. Gamble*, which requires prisons to provide adequate medical care to the people in their custody,⁵⁷ widespread deficiencies in appropriate healthcare standards for females continue to exist. These deficiencies are cast in no sharper relief than in the context of reproductive health care policies and practices for women in prison. Particularly given the demographic composition of incarcerated women,⁵⁸ reproductive health care is one vital component in the provision of adequate access to health care for women in prison. In many core areas, the reproductive health services rendered to pregnant women are abysmally inadequate. Lawmakers and correctional facilities can ill-afford to continue to ignore the reproductive health care rights of incarcerated women. The public and our leaders must raise our voices to demand these critical rights for all.

B. Prenatal Care

Approximately between four and five percent of women admitted into prisons and jails are pregnant at intake, though data on the actual number of pregnant women in prisons and jails remains elusive.⁵⁹ As the number of incarcerated women increases, correctional institutions must increasingly face the task of caring for pregnant women in jails and prisons. They are increasingly responsible for providing prenatal medical treatment, caring for women who give birth behind bars, serving the needs of mothers and their children, and providing access to abortions for those who wish to terminate their pregnancies. Corrections facilities have repeatedly shown that they are either unable or unwilling to provide the level of care necessary to ensure the health and safety of pregnant women who are incarcerated.

Little formal data exists about the quality of medical care provided to pregnant females.⁶⁰ However, what reports do exist tend to indicate that prenatal care is

all known factors that could impact the outcome, incarceration led to increased risk of death for women; for men, socioeconomic factors explained the difference in premature mortality between those who had and had not been incarcerated).

⁵² DORIS J. JAMES & LAUREN E. GLAZE, BUREAU OF JUSTICE STATISTICS, MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1, 4 (2006), available at <http://www.bjs.gov/content/pub/pdf/mhnpj.pdf>.

⁵³ *Id.*

⁵⁴ Caroline Wolf Harlow, BUREAU OF JUSTICE STATISTICS, PRIOR ABUSE REPORTED BY INMATES AND PROBATIONERS 1 (1999), available at <http://www.bjs.gov/content/pub/pdf/parip.pdf>.

⁵⁵ *Id.* Additionally, in federal prisons, 39.9% of women reported past abuse, compared to 7.2% of men. In jails, 47.6% of women reported past abuse, compared to 12.9% of men. More than a third of women in State prisons or local jails reported being physically or sexually abused before the age of eighteen. *Id.*

⁵⁶ OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE, REVIEW OF THE FEDERAL BUREAU OF PRISONS' MANAGEMENT OF ITS FEMALE INMATE POPULATION 6 (2018), available at <https://oig.justice.gov/reports/2018/e1805.pdf> [hereinafter OIG Report].

⁵⁷ *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

⁵⁸ See PRISONERS in 2013, *supra* note 5 and accompanying text.

⁵⁹ BUREAU OF JUSTICE ASSISTANCE, BEST PRACTICES IN THE USE OF RESTRAINTS WITH PREGNANT WOMEN AND GIRLS UNDER CORRECTIONAL CUSTODY 3 (2014), available at [https://www.nasmhpd.org/sites/default/files/Best_Practices_Use_of_Restraints_Pregnant\(2\).pdf](https://www.nasmhpd.org/sites/default/files/Best_Practices_Use_of_Restraints_Pregnant(2).pdf) [hereinafter BJA BEST PRACTICES]; see also Victoria Law, *Pregnant and Behind Bars: How the US Prison System Abuses Mothers-to-Be*, *The Guardian* (Oct. 20, 2015), http://www.theguardian.com/us-news/2015/oct/20/pregnant-women-prison-system-abuse-medical-neglect?CMP=share_btn_tw.

⁶⁰ See Law, *supra* note 27; THE REBECCA PROJECT FOR HUMAN RIGHTS & NATIONAL WOMEN'S LAW CENTER, MOTHER'S BEHIND BARS 8 (2010), available at <https://www.nwlc.org/sites/>

lacking or completely absent in many cases.⁶¹ Lack of access to prenatal care is especially dangerous because most women have high-risk pregnancies and need special care to keep them and their children safe during and after pregnancy.⁶²

One example is a former inmate at Wichita County Jail in Wichita Falls, Texas, who brought suit against jail officials and staff in May 2014 after she was forced to give birth in a prison cell, ultimately resulting in the loss of her baby.⁶³ Nicole Guerrero was eight-and-a-half months pregnant when she was admitted to the jail. According to her complaint, several days later, Ms. Guerrero began experiencing lower back pain, cramping, and vaginal discharge and bleeding. Over the course of several hours, Ms. Guerrero experienced excruciating pain while her repeated requests for help and medical attention were ignored. Ms. Guerrero went into labor while locked in a cell. She was aided by detention officers only in the final stages of her delivery, and even then, no medical personnel assisted her. The baby's umbilical cord was wrapped around her neck, and she was dark purple in appearance and unresponsive. The detention officer assisting Ms. Guerrero made no attempt to revive the baby while awaiting emergency services. Her baby was pronounced dead later that morning.⁶⁴ Ms. Guerrero's lawsuit has since been settled.⁶⁵

C. Shackling Pregnant Women

In addition to failing to provide necessary care, prisons may also actively harm pregnant people by shackling them. Shackling pregnant women is a dangerous and inhumane practice and widely regarded as an assault on human dignity, as well as an unsafe medical practice. Although significant progress has been made to prohibit this practice in federal prisons, women in prisons across the country are still routinely shackled during pregnancy and childbirth.

Shackling poses an unacceptable risk to the health of the pregnant woman. Freedom from physical restraints is especially critical during labor, delivery, and during postpartum recovery. Women often need to move around during labor, delivery and recovery, including moving their legs as part of the birthing process. Restraints on a pregnant woman can interfere with the medical staff's ability to appropriately assist in childbirth or to conduct sudden emergency procedures.⁶⁶ Because shackling limits the ability of a woman to move during labor, she is left unable to adequately shift positions to manage the extreme pains of labor and childbirth. This limitation of movement during pregnancy and labor can also increase the risk of blood clots.⁶⁷ Leg restraints may also cause severe cuts on women's ankles because of the strains associated with childbirth.⁶⁸ Using restraints after delivery may prevent mothers from effectively healing.⁶⁹

Additionally, during all stages of pregnancy, shackling poses an unacceptable risk to the health and safety of the fetus and the life of a child. Pregnancy can create problems with balance that are exacerbated by shackling. Falls can injure not only the mother, but also the fetus.⁷⁰ When restraints are used during labor, doctors are limited in how they can manipulate a mother for the safety of the unborn child.

[default/files/pdfs/mothersbehindbars2010.pdf#page=8](#) (describing lack of formal policies related to prenatal care across the country).

⁶¹ Barbara A. Hotelling, *Perinatal Needs of Pregnant, Incarcerated Women*, 17 J. OF PERINATAL EDUC. 37, 37–42 (2008), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2409166/pdf/JPE170037.pdf>.

⁶² *Id.*

⁶³ See Complaint at 4–8, *Guerrero v. Wichita Cty.*, No. 14–00058 (N.D. Tex. May 21, 2014).

⁶⁴ See *id.*

⁶⁵ *County Commissioners Approve Settlement in Nicole Guerrero v. Wichita County*, TEXOMAS (Dec. 7, 2015), <https://www.texomashomepage.com/news/local-news/county-commissioners-approve-settlement-in-nicole-guerrero-vs-wichita-county/290456878>.

⁶⁶ AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, HEALTH CARE FOR PREGNANT AND POSTPARTUM INCARCERATED WOMEN AND ADOLESCENT FEMALES 2–3 (2011), available at <http://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co511.pdf?dmc=1&ts=20151027T1653481414> [hereinafter ACOG, HEALTH CARE FOR INCARCERATED WOMEN].

⁶⁷ *Id.* at 3.

⁶⁸ Dana L. Sichel, *Giving Birth in Shackles: A Constitutional and Human Rights Violation*, 16 AM. U. J. GENDER SOC. POL'Y. & L. 223, 225 (2007).

⁶⁹ Dana Sussman, *Bound by Injustice: Challenging the Use of Shackles on Incarcerated Pregnant Women*, 15 CARDOZO J.L. & GENDER 477, 487 (2009).

⁷⁰ Julie B. Ehrlich & Lynn M. Paltrow, *Jailing Pregnant Women Raises Health Risks*, WOMEN'S ENWS (Sept. 20, 2006), <https://womensenews.org/2006/09/jailing-pregnant-women-raises-health-risks/>.

During the final stages of labor it is important for the physician to Act quickly to avoid potentially life-threatening emergencies for both the mother and the unborn child. Shackles severely limit such actions and as such pose a threat to the survival of the fetus. Doctors may not be able to perform emergency caesarean sections in time due to shackles.⁷¹

Among the states that have restricted shackling of pregnant females, none have documented instances of women in labor escaping or causing harm to themselves, the public, security guards, or medical staff. In most instances, armed corrections officers accompany shackled women into or around the delivery room. These officers can ensure the safety of the physicians, mothers and the newborn without the use of shackling restraints.⁷² Currently, twenty-two states—Arizona, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, New York, Pennsylvania, Rhode Island, Texas, Vermont, Washington and West Virginia and the District of Columbia, have laws prohibiting or restricting shackling pregnant women.⁷³ The Federal Government has also codified a long-standing ban on shackling pregnant females in federal custody with the just enacted First Step Act.⁷⁴

D. Solitary Confinement

Women may also disproportionately be placed in solitary confinement, especially pregnant women,⁷⁵ individuals with mental illness,⁷⁶ transgender women and other sexual minorities,⁷⁷ and—in a particularly disturbing trend—victims of sexual assault by prison guards.⁷⁸ Women of color, especially Black women, are held in solitary confinement at rates far exceeding their White counterparts.⁷⁹ Women are also

⁷¹ Sussman, *supra* note 47, at 487.

⁷² See Chris DiNardo, *Pregnancy in Confinement, Anti-Shackling Laws and the “Extraordinary Circumstances” Loophole*, DUKE J. L. & GENDER POL’Y. 271, 281 (2018).

⁷³ See ARIZ. REV. STAT. § 31–601; CAL. PENAL CODE §§ 3407, 3423; COLO. REV. STAT. ANN. §§ 17–1–113.7, 17–26–1104.7, 19–2–924.7, 26–1–137; DEL. CODE ANN. TIT. 11, § 6603; FLA. STAT. § 944.241; HAW. REV. STAT. § 353–122; IDAHO CODE ANN. § 20–902; 55 ILL. COMP. STAT. 5/3–15003.6; 730 ILL. COMP. STAT. ANN. 125/17.5; LA. REV. STAT. ANN. §§ 15:744.2–744.7; ME. REV. STAT. ANN. tit. 30–a, §§ 1581–83; MD. CODE ANN., CORR. SERVS. § 9–601; MASS. GEN. LAWS CH. 127, § 118, as amended by 2014 MASS. ACTS CH. 103; MINN. STAT. § 241.87–.88; NEV. REV. STAT. ANN. § 209.376; N.M. STAT. ANN. § 33–1–4.2; N.Y. CORRECT. LAW § 611; 61 PA. CONS. STAT. ANN. § 5905; R.I. GEN. LAWS § 42–56.3–3; TEX. GOV’T. CODE ANN. § 501.066; TEX. LOC. GOV’T. CODE ANN. § 361.082; VT. STAT. ANN. TIT. 28, § 801a; WASH. REV. CODE §§ 72.09.651, 70.48.500; W. VA. CODE §§ 31–20–30a, 25–1–6.

⁷⁴ FIRST STEP ACT, H.R. 5682, 115th Cong. § 301 (2018).

⁷⁵ See, e.g., *Reassessing Solitary Confinement: Hearing Before the Senate Judiciary Committee’s Subcommittee on the Constitution, Civil Rights and Human Rights*, 2011–12 LEG. SESSION 4 (N.Y. 2012) (statement of Correctional Association of New York) available at <http://www.correctionalassociation.org/wp-content/uploads/2012/10/testimony-solitary-confinement-june-2012.pdf> (describing challenges pregnant women in isolation can face in trying to access medical care); Complaint at 9, *Seitz v. Allegheny Cty.*, No. 16–1879 (W.D. Pa. Dec. 19, 2016), available at <https://www.aclupa.org/download—file/view—inline/2943/1055>.

⁷⁶ See, e.g., James Ridgeway & Jean Casella, *Locking Down The Mentally Ill: Solitary Confinement Cells Have Become America’s New Asylums*, THE CRIME REP., Feb. 18, 2010, available at <http://www.thecrimereport.org/news/inside-criminal-justice/locking-down-the-mentally-ill/>; MARY BETH PFEIFFER, *CRAZY IN AMERICA: THE HIDDEN TRAGEDY OF OUR CRIMINALIZED MENTALLY ILL* 42–49 (2007); JENNIFER R. WYNN, *et al.*, CORRECTIONAL ASS’N. OF NEW YORK, MENTAL HEALTH IN THE HOUSE OF CORRECTIONS: A STUDY OF MENTAL HEALTH CARE IN NEW YORK STATE PRISONS 48 (2004). In some places, mentally ill women awaiting trial in jail may be transferred to solitary confinement at a State prison indefinitely because the cost of treating them at the jail is too high. Allen Arthur & Dave Boucher, *Too Sick For Jail—But Not for Solitary*, THE MARSHALL PROJECT (Feb. 15, 2018), <https://www.themarshallproject.org/2018/02/15/too-sick-for-jail-but-not-for-solitary>.

⁷⁷ Gay and bisexual prisoners, both male and female, are far more likely to have experienced solitary confinement than their cisgender straight counterparts. ILAN H. MEYER, *et al.*, *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey*, 2011–2012 4 (2017), available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/Meyer_Final_Proofs.LGB_In_.pdf#page=4.

⁷⁸ Kim Shayo Buchanan, *Impunity: Sexual Abuse in Women’s Prisons*, 42 HARV. CIV. RTS—CIV. LIBRS. L. REV. 45, 66 (2007) (describing sexual abuse of women including the variety of forms the abuse takes).

⁷⁹ Alexandria M. Foster, *Unfinished Uniformity in Systematic Sentencing: Oppressive Treatment and Disproportionate Punishment Outcomes for Black Women in Federal Prisons*, 6 IND. J.L. & SOC. EQUITY 267, 276 (2018). The racial disparity of who gets placed into solitary confinement is far more pronounced in women’s institutions than in men’s. For example, Black women account for under 24% of the female prison population but nearly 40% of women in solitary confinement. Black men represent a much higher percentage of the male population at 42.5% and

Continued

more likely than men to receive disciplinary actions for minor, nonviolent infractions like “disobedience” and also more likely to be placed into solitary confinement as punishment for such minor infractions.⁸⁰

Solitary confinement can wreak extreme psychological harms on people generally, and pregnant women particularly. Even without the heightened risks created by solitary confinement, pregnancy often carries greater risks of stress and depression.⁸¹ Placing pregnant women in solitary confinement only amplifies these risk factors. Stress on a pregnant woman may result in grave harms to the pregnant woman and her fetus, including preterm labor, low birth weight, and mental health problems for the child.⁸²

For these reasons, international standards set by the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders—known as the Bangkok Rules—prohibit the placement of pregnant or nursing women in solitary confinement.⁸³ States are starting to take notice: Pennsylvania,⁸⁴ New York,⁸⁵ Massachusetts,⁸⁶ and California⁸⁷ limit the placement of pregnant people in solitary confinement under statutes, regulations, or settlement agreements. However, most pregnant women in the United States remain vulnerable to the threat of solitary confinement and the terrible risks this practice creates for both women and their pregnancies.

E. Birth Behind Bars

After giving birth, women who are incarcerated must face the additional strain of separating from their newborns. Currently, the overwhelming majority of children born to incarcerated mothers are immediately separated from their mothers after birth and placed with relatives or into foster care.⁸⁸ It is estimated that 85% of incarcerated mothers in the United States are involuntarily separated from their child as a result of their incarceration.⁸⁹ In-prison nurseries and community based residential parenting programs are available in only a handful of states.⁹⁰ Only 42% of mothers in prison reported weekly contact with their children through in-person visits, video communications, telephone, mail, or e-mail.⁹¹ These options tend to be infrequent, unpredictable, and of poor quality. Tragically, more than half of incarcerated mothers reported that they had never experienced an in-person visit with their child.⁹²

represent 46.1% of the male population in solitary confinement. THE ASSOCIATION OF STATE CORRECTIONAL ADMINISTRATORS & THE LINMAN CENTER FOR PUBLIC INTEREST LAW AT YALE LAW SCHOOL, REFORMING RESTRICTIVE HOUSING: THE 2018 ASCA-LIMAN NATIONWIDE SURVEY OF TIME-IN-CELL 23 (2018), available at https://law.yale.edu/system/files/documents/pdf/Liman/asca_limn_2018_restrictive_housing_revised_sept_25_201_8_embargoed_untd.pdf#page=25.

⁸⁰ Joseph Shapiro, et al., *In Prison Discipline Comes Down Hardest on Women*, NPR (Oct. 15, 2018), <https://www.npr.org/2018/10/15/647874342/in-prison-discipline-comes-down-hardest-on-women>.

⁸¹ See generally Christine Dunkel Schetter & Lynlee Tanner, *Anxiety, Depression, and Stress in Pregnancy: Implications for Mothers, Children, Research, and Practice*, 25 CURR OPIN PSYCHIATRY 141, 141–48 (2012), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4447112/pdf/nihms-693331.pdf> (describing high rates of depression and anxiety among pregnant people, especially the poor and people of color, and associated negative birth outcomes).

⁸² *Id.*

⁸³ G.A. Res. 65/229, ¶7(b), U.N. DOC. A/RES/65/229 (Mar. 16, 2011).

⁸⁴ See Settlement at 19, *Seitz v. Allegheny Cty.*, No. 16–1879 (W.D. Pa. Nov. 9, 2017), available at https://www.aclupa.org/download_file/view_nline/3230/1055#page=19.

⁸⁵ Settlement at 37, *Peoples v. Fischer*, No. 11–2694 (S.D.N.Y. Dec. 16, 2015), available at https://www.nyclu.org/sites/default/files/releases/20151216_settlementagreement_filed.pdf#page=36.

⁸⁶ MASS. GEN. LAWS ch. 127, § 39A (2018).

⁸⁷ CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION OPERATIONS MANUAL § 54045.11 (2017), available at https://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202017/2017_DOM.PDF#page=493.

⁸⁸ Michal Gilad & Tal Gat, *United States v. My Mommy: Evaluation of Prison Nurseries As A Solution for Children of Incarcerated Women*, 37 N.Y.U. REV. L. & SOC. CHANGE 371, 372 (2013).

⁸⁹ *Id.*

⁹⁰ Elizabeth Chuck, *Prison Nurseries Give Incarcerated Mothers a Chance To Raise Their Babies Behind Bars*, NBC NEWS (Aug. 4, 2018), <https://www.nbcnews.com/news/us-news/prison-nurseries-give-incarcerated-mothers-chance-raise-their-babies-behind-n894171>.

⁹¹ Gilad & Gat, *supra* note 72, at 386.

⁹² *Id.*

Pregnant women facing imminent separation from their newborns experience profound trauma.⁹³ The children who experience this separation are similarly harmed. The separation is considered an adverse childhood experience, which can cause long-lasting emotional and behavioral problems, especially compounded by other adverse experiences common among children with incarcerated parents such as poverty.⁹⁴ Empirical evidence shows that the separation of an infant from her mother during the first year drastically impairs her ability to sympathize or show concern for others.⁹⁵ Additional common symptoms of maternal separation include attachment disorders; aggression and anger; developmental and behavioral problems; sleeping, eating, or attention disorders; delays in educational development and achievement; excessive hostile behaviors toward peers; problems with social adaptation; greater likelihood to develop addiction to drugs or alcohol or engage in criminal activity; and unhealthy sexual behavior.⁹⁶

Access to sufficient supplies of menstrual hygiene products is a basic health care need that still goes unfulfilled at many institutions. Not all states require adequate access to menstrual products; even some indigent females are forced to purchase some or all of their monthly supply.⁹⁷ Because many facilities require women to ask correctional officers for menstrual products, the opportunity for abuse is rampant. Officers may use basic hygiene needs to coerce them for sexual or other favors or to punish them for any reason. They may also use the threat of withholding necessary products to keep women in line or to prevent them from reporting abuse or other harmful conditions. These possibilities are not just abstract; many women have had to navigate the difficulty of accessing menstrual hygiene products that should have been made freely available to them. For example, Maryland legislators heard testimony from women who were denied menstrual hygiene products by officers to control them and firmly establish a dangerous power dynamic;⁹⁸ a formerly incarcerated woman in Connecticut also recounted the fear and humiliation of having to ask officers for menstrual products knowing that her requests might be derided or even denied.⁹⁹

In one Michigan jail, women were regularly denied access to desperately needed menstrual products.¹⁰⁰ Females there received such products late, after begging for them, or not at all. They were therefore forced to use toilet paper to staunch the bleeding or else bleed into their prison jumpsuits. Because laundry day occurred once a week, women were forced to re-wear bloody clothes for up to a full week. In addition, prison staff forced women to compete for limited menstrual products, in one case ordering 30 women to share a pack of 12 sanitary napkins. This behavior was cruel and senseless—except as a method of humiliation and control.

F. Access to Menstrual Hygiene Products

Even when policies to provide menstrual hygiene products do exist, they are not always fully implemented. For example, BOP guidelines require provision of menstrual hygiene products, but a review by the OIG determined that women still do not have sufficient access.¹⁰¹

⁹³ See Robin Levi et al., *Creating the “Bad Mother”: How the U.S. Approach to Pregnancy in Prisons Violates the Right To Be a Mother*, 18 UCLA WOMEN’S L. J. 1, 55 (2010).

⁹⁴ LINDSEY CRAMER, URBAN INSTITUTE, PARENT-CHILD VISITING PRACTICES IN PRISONS AND JAILS 2 (2017), available at https://www.urban.org/sites/default/files/publication/89601/parent-child_visiting_practices_in_prisons_and_jails.pdf#page=6.

⁹⁵ Gilad & Gat, *supra* note 72, at 381.

⁹⁶ Id.; see also Megan McMillen, *I Need To Feel Your Touch: Allowing Newborns and Infants Contact Visitation With Jailed Parents*, 2012 U. ILL. L. REV. 1811, 1823 (2012) (noting that if the “mother-child bond is disrupted between the ages of six months and four years, a child’s development may be greatly [a]ffected,” including increased anxiety disorders, impairment of the child’s “ability to sympathize or show concern for others” later in life, and—even controlling for other factors—increased risk for future criminal behavior).

⁹⁷ See Lydia O’Connor, *Federal Prisons Made Menstrual Products Free. Now Some States May Follow Suit*, HUFFINGTON POST (Feb. 7, 2018), https://www.huffingtonpost.com/entry/state-prison-free-pads-tampons_us5a7b427be4b08dfc92ff5231.

⁹⁸ See Brian Witte, *No Tampons in Prison? #MeToo Helps Shine Light on Issue*, ASSOCIATED PRESS (Mar. 27, 2018), <https://www.apnews.com/6a1805c4e8204e5b84a0c549ff9b7a31>.

⁹⁹ See Chandra Bozelko, *Prisons That Withhold Menstrual Pads Humiliate Women and Violate Basic Rights*, THE GUARDIAN (June 12, 2015), <https://www.theguardian.com/commentisfree/2015/jun/12/prisons-menstrual-pads-humiliate-women-violate-rights>.

¹⁰⁰ Complaint at 13–14, *Semelbaucher v. Muskegon Cty.*, No. 14–1245 (W.D. Mich. Dec. 4, 2014), available at <https://www.clearinghouse.net/chDocs/public/JC-MI-0010-0001.pdf>.

¹⁰¹ OIG Report, *supra* note 24, at 29.

V. Gender Responsive Programming

Because women entering prison have trauma histories and needs different from men, correctional institutions must develop and implement gender-responsive programming. Gender-responsive programming includes medical and mental healthcare that is responsive to women's needs.

Pregnancy testing, prenatal care, and access to abortion must become standard in all institutions that house women. Some facilities have already begun to do this, but not nearly enough. For example, one study found that fewer than 40% of jails test women for pregnancy upon entrance and fewer than 50% utilize appropriate opioid withdrawal protocol for pregnant women.¹⁰²

A number of states and the Federal Government have experimented with gender-responsive pregnancy programs. A few states have piloted doula programs, in which pregnant women are given training and emotional support during pregnancy. Women were generally satisfied with these programs and had lower caesarean-section rates, although they did not lessen the grief the mothers felt at having to part with their infants after birth.¹⁰³ A more intensive program in Michigan allows some pregnant women to live in a special housing unit during pregnancy, receive intensive specialized prenatal care including substance-abuse treatment, receive other necessary social services, and live and bond with their children for a month after birth. This program has a high success rate, with positive outcomes for the children and lower recidivism rates for the mothers.¹⁰⁴ A federal program allows some women to live and bond with their infants after giving birth. Participants spoke positively of the program and the opportunity to form a bond with their children, but the program is underutilized.¹⁰⁵ These programs show the benefits of pregnancy-focused programming and care, but they have not been sufficiently replicated—prisons can do much more.

Similarly, states and facilities must work to ensure that women have access to menstrual hygiene products. Maryland now leads the way with a law requiring correctional facilities that house women to provide sufficient menstrual hygiene products to their females and to maintain records on the availability of such products.¹⁰⁶ Reporting and review of policies and actual availability is important, as the OIG report showed. Even when a policy exists, outside actors, such as legislatures or independent agencies, may need to step in when it does not translate to true access.¹⁰⁷

Trauma victims may suffer when guarded during their most private moments by men without a female guard present, in addition to the potential for abuse and degradation.¹⁰⁸ The loss of privacy experienced by people in prison is especially damaging to the many incarcerated women who are also victims of past sexual abuse, since close supervision and discipline by male guards can reinforce feelings of vulnerability and can re-traumatize women who have experienced violence by men.¹⁰⁹

¹⁰² See C.M. Kelsey, et al., *An Examination of Care Practices of Pregnant Women Incarcerated in Jail Facilities in the United States*, 21 MATERNAL AND CHILD HEALTH J. 1260 (2017).

¹⁰³ See Hotelling, *supra* note 29, at 41.

¹⁰⁴ *Id.*

¹⁰⁵ OIG Report, *supra* note 24, at 26.

¹⁰⁶ MD. CODE, CORR. SERVS. §§ 4–214, 9–616 (2017).

¹⁰⁷ See OIG Report, *supra* note 24, at 31–32.

¹⁰⁸ PREA regulations have prohibited male guards from viewing female prisoners while they shower, change clothes or use the toilet since 2012. 28 CFR 115.15 (d). However, this still regularly occurs. See Letter from Jocelyn Samuels, Acting Assistant U.S. Attorney General, to Governor Robert Bentley re Investigation of the Julia Tutwiler Prison for Women and Notice of Expanded Investigation 11 (Jan. 17, 2014) available at <https://ejl.org/sites/default/files/justice-department-findings-letter-tutwiler-prison-investigation.pdf#page=11> (finding female inmates at Julia Tutwiler Prison for Women in Alabama had no privacy in bathroom or showers and male officers routinely entered shower and bathroom facilities unannounced); Peter Goonan, *Strip-Search Videotaping of Female Inmates by Male Guards Ruled Unconstitutional by U.S. Judge in Springfield*, MASSLIVE (Aug. 27, 2014), (*Massachusetts guards watched videotaped strip searches of female inmates*). International standards clearly prohibit cross-gender supervision. Rule 53 of the UN Standard Minimum Rules for the Treatment of Prisoners (SMR) explicitly prohibits all cross-gender surveillance and provides for a female guard to accompany any male personnel in a women's facility. First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, *Standard Minimum Rules for the Treatment of Prisoners*, Rule 53 (1955), available at http://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf [hereinafter SMR 53]; see also Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, at para. 46 (noting the SMRs are “widely accepted as the universal norm for the humane treatment of prisoners”).

¹⁰⁹ ELIZABETH SWAVOLA, et al., VERA INSTITUTE OF JUSTICE, OVERLOOKED: WOMEN AND JAILS IN AN ERA OF REFORM 14 (2016), available at <http://www.safetyandjusticechallenge.org/wp->

The presence of male guards in women's facilities also increases the danger of staff sexual misconduct,¹¹⁰ which remains a serious problem in spite of increased awareness of the issue.¹¹¹

Thus, correctional facilities need to ensure that policies and programs are responsive to trauma. This includes not just counseling services, but a holistic approach to ensure that prison staff do not re-traumatize victims or prevent their recovery. Trauma-responsive programming has been instituted in some places. For example, the BOP has instituted two gender-responsive programs: Resolve and Female-Integrated Treatment Program (FIT). Resolve is a national program offered to women with trauma-related mental illness that includes education, psychological testing, and various types of group therapy intended to teach skills for overcoming symptoms.¹¹² Women who took the whole program have found it helpful in dealing with past trauma and preparing for life after prison, but staffing is so low that only 3% of women sentenced in BOP can be accommodated at a time.¹¹³ FIT is a more intensive, individualized program tailored to each woman's mental health, substance abuse, and trauma history. However, this program is only offered at one low-security institution and is therefore not available to the vast majority of women in BOP custody.¹¹⁴

VI. Conclusion and Recommendations

Women are the fastest growing incarcerated population in the United States, leaving far too many children and families without a mother. Until incarcerating women in this country becomes a punishment of last resort, the criminal legal system has to determine how to deal with the healthcare, childcare and gender programming needs of women in jails and prisons. With the unprecedented rise in the number of women behind bars, federal and State systems must figure out how best to keep women safe and healthy while in custody.

Once incarcerated, women are subjected to a system that was designed by and for men—with glaring voids of resources, treatments and conditions required for women. To create a smarter, fairer justice system, we must establish policies specifically designed with women in mind. Until we recognize the unique circumstances, needs and consequences associated with women who come into contact with the criminal legal system, we will never truly address the nation's mass incarceration problem.

Below are a number of recommendations that encourage the criminal legal system to use incarceration as a last option and to focus on keeping women home in society, and with their children and families.

1. Develop Alternatives to Incarceration. Compared to men, women—and girls—are more often first-time, low level offenders. Even women convicted of more serious offenses often became involved in criminal activity on behalf of male partners or other family Members. Society would be better served if more women were provided with opportunities to avoid incarceration through diversion programs, probation and other rehabilitative alternatives. Ensuring that women can access jobs, education, housing and adequate medical and mental health care would afford greater public safety without punitive and unnecessary incarceration.

2. Foster Mother-Child Relationships. Correctional facilities must develop and implement policies that support the bond between a mother and her child, even while the mother remains incarcerated. The mother-child relationship must be fostered through such measures as broader visitation policies, carefully designed in-

[content/uploads/2016/08/overlooked-women-in-jails-report-web.pdf#page=14](#) (danger of re-traumatization/PTSD due to male guards viewing them at intimate moments).

¹¹⁰ ALLEN BECK & RAMONA RANTALA, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION REPORTED BY ADULT CORRECTIONAL AUTHORITIES, 2009–11 1, 8 (2014) available at <https://www.bjs.gov/content/pub/pdf/svraca0911.pdf> (despite comprising only 7% of the population, women prisoners accounted for 33% of substantiated staff-on-inmate sexual victimization; in local jails, male guards perpetrated 80% of such incidents).

¹¹¹ See, e.g., Report of the Special Rapporteur on Violence Against Women: Addendum, para. 34, Mission to the United States of America, 6 June 2011, United Nations General Assembly A/HRC/17/26/Add.5, available at http://www.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.26.Add.5_en.pdf [hereinafter *Violence Against Women*] (describing continued sexual abuse of women in custody, both physically forced and otherwise coerced); Buchanan, *supra* note 62 at 55–57 (describing sexual abuse of women including the variety of forms the abuse takes); Elizabeth Chuck, “Frequent and severe” sexual violence alleged at women’s prison in Alabama, MSNBC (May 23, 2012), <http://usnews.msnbcnews.com/news/2012/05/23/11830574-frequent-and-severe-sexual-violence-alleged-at-womens-prison-in-alabama?lite>.

¹¹² OIG Report, at 7–8.

¹¹³ *Id.* at 19.

¹¹⁴ *Id.* at 8–9.

prison nursery programs, child-friendly visitation areas, video visitation to supplement, rather than replace, in-person visitation, access to email and keeping incarcerated women in close proximity to their home communities.

3. Ban Shackling and the Use of Solitary Confinement on Pregnant Women. All states must end the practice of shackling women during pregnancy, delivery and postpartum. The practice is inhumane and unsafe. Those states that have yet to enact anti-shackling laws must do so, and those states with anti-shackling laws need to strengthen their laws to ban the practice outright, as well as fully enforce their laws. Likewise, all states and jurisdictions should enact laws and policies to ban the practice of placing pregnant women in solitary confinement and ensure that those laws and policies are implemented.

4. Implement Clear Health Policies for Women. All correctional facilities housing women and girls must develop and implement clear policies regarding their specific health care needs, including but not limited to pregnancy care, postpartum care, the provision of abortions, routine gynecological care, and pre- and post-menopausal care. These policies must conform to the community standard of care and the law.

5. Train Corrections Staff. All corrections facilities housing women and girls must appropriately train their custody and medical care staffs to address women's unique needs, including their trauma history, higher rates of mental health diagnosis, menstrual needs, general health and reproductive health care needs, and their ongoing role as mothers and community Members.

6. Implement Gender-Responsive Programming. Many correctional facilities have experimented with various gender-responsive programming, including access to pregnancy-care and menstrual hygiene products and trauma-informed approaches to correctional management. Successful programs must be replicated and expanded to provide appropriate programming to all women under correctional supervision.

Ms. BASS. Thank you. Ms. Shank.

[The statement of Ms. Shank follows:]

TESTIMONY OF CYNTHIA SHANK

Ms. SHANK. Hi, thank you for allowing me to come here today and share my story. My name is Cynthia Shank, and in 2008, I was convicted on drug conspiracy charges from a crime that happened when I was 24 years old. I met a man when I was 24 years old in 1997 and he—in the course of our relationship over 5 years, he grew into a drug dealer, and he became a very large drug dealer. During my relationship with him, he was very abusive to me, keeping me from my family, keeping me from my friends, to the extent that there were locks on all the doors, double-sided locks and bars on all the windows. In the last year I was with him, I wasn't allowed to leave the house at all. Over the course of him being such a large drug dealer, his paranoia and control took over to the point where I had no control over anything that I could even do. He was murdered in 2002, and I was initially charged with conspiracy to his drug operation.

The charges were actually dropped, and I actually moved on with my life. I gave my life to the Lord. I started focusing on myself and bettering myself. I met a wonderful man, we got married, had two beautiful daughters. I was pregnant with my third daughter when I was indicted 5½ years later, all those crimes that were committed 5 or 6 years prior.

I then went away to prison in 2008 when my daughter, Annalise, was just 6 weeks old; Autumn was 4; and Ava was 2 years old. Needless to say, that prison destroyed my small young family. Prison is set up to separate and destroy bonds that are there, and as a mother, you need to be there for your children.

I was initially sent to Pekin, Illinois, which I was getting regular visits, and I was able to see the girls about every 6 to 8 weeks. The prison closed for women and it was transferred to a men's R gap, so I was sent to Coleman, Florida. So now, I saw my daughters once a year at that point, and they were still so young.

During my time in Florida, my husband filed for divorce, which I completely understood, because he was serving the sentence, too, with me. I wanted him to have a chance and a life. Sorry.

I spent 8½ years in Federal prison before I was given clemency by President Obama. During my time in Federal prison, though, I met many women who were just like me, who were serving long sentences for crimes related to their then, husbands or boyfriends that they had little knowledge of.

I had to witness and hear the cries of mothers at night who had just signed over custody of their children, because they no longer could be there for them, and they were taken away from them. To hear mothers cry at night over and over again, different mothers every night for something that—to have your child taken away from you forever and signed away is something that I will never forget, or coming back from a visit, and having a mother cry in my arms, because her daughter said, Mom, the person that I have been staying with has been touching me. These are the realities that when mothers leave, their children are put in places where they are not 100 percent protected. Nobody is going to care for your child as a mother does. So, when a mother is taken away, it is the children who suffer.

STATEMENT OF CYNTHIA SHANK

Thank you for the opportunity to testify today about the impact of the federal criminal justice system on my life and that of my family. My name is Cynthia Shank and I was released from federal prison in March, 2017 after President Barak Obama commuted my 15-year sentence for drug related offenses. I served nine years in federal prison.

My story is not uncommon. Prior to my conviction for my involvement in a drug conspiracy, I had no criminal record. I had been happily married for 4 years, was the mother of two young girls—Autumn and Ava—and 8 months pregnant with my third daughter, Annalise. My incarceration broke our young family apart and left permanent emotional and psychological scars on our daughters.

My offense stemmed from a relationship I began years earlier when I was 24-years-old. I was working as a bartender and met a young, attractive and attentive man named Alex. We started dating and soon began living together. Eight months into our relationship I came home from work early one day to find him selling a small amount of crack cocaine to a stranger in our living room. After my discovery Alex became anxious that I would report him and began following me to work and spending all day watching me to make sure I said nothing about his drug selling. After months of this my boss complained, and Alex pressured me to quit my job, which I did.

A year into our relationship I was completely dependent on Alex as he became more deeply involved in the drug trade. He was controlling and possessive of me and was both physically and verbally abusive. If I tried to visit my family he would insist I return home after only a short 30-minute visit. He eventually placed locks on all the windows and doors of our home and I rarely left the house. Even during periods when Alex would leave for extended trips he had me monitored. He called regularly to make sure I was at home and he sent his associates to knock on the door to make sure I was telling the truth.

During one of Alex's last trips away I gathered up enough nerve to leave and went to my sister's place. Three days later he came for me with a gun. To protect her and her young children, I left with him without a fight.

Alex did not love me but he wanted to keep me close because he thought I knew too much about his drug operation. I began to smoke an ounce of marijuana every

day just to numb myself to the pain of my existence. My sister suspected I was being abused by Alex when she found out I had gone to the hospital after I was beaten with a broomstick and had seriously injured my eye. There was nothing she could do, however, because I would never admit to the abuse and never report him to police. Alex told me, "if you call the cops I am going to shoot you." I believed him. At night he slept next to me with his hand under my pillow holding a gun.

The bigger his drug operation got the more paranoid and violent he became. Five years after we met, Alex was murdered in a shootout in front of our home. I was awakened by the sound of bullets and was called out of my bedroom by Alex's associate and was instructed to drive Alex to the hospital where he died. I could not believe he was dead when the police told me. To this day, I don't know who killed him.

My relationship with Alex would impact the rest of my life. I told police I had known about his drug operation. Months after his death my attorney told me that the case against me had been dismissed. I moved on with my life. I quit smoking marijuana. I reconnected with my faith. I got married and gave birth to two daughters. But years after Alex's death prosecutors decided to charge me under drug conspiracy laws and for intent to distribute large amounts of cocaine, crack and marijuana. I never sold drugs but I lived with a dangerous and manipulative drug dealer and in the eyes of prosecutors there was no difference.

I fought the charges and went to trial because I was not going to admit to something I did not do. I needed to finally stand up for myself and show my daughters how to be brave. I thought if I could just tell my story, they would understand. But all the trauma inflicted upon me by Alex didn't matter.

Ultimately, I was convicted and because of mandatory minimum sentencing requirements I received a 15-year term. My youngest daughter, Annalise, was six weeks old when I went to prison. My husband, Adam, became a single father. I believe the years and miles of separation caused by incarceration are designed to break the bonds between families. Phone calls and visits are strictly limited both by expense and prison rules. There is no support for the aftermath of incarceration, especially for the children left behind. The week I left for prison my girls started going to therapy, but that is a luxury most families cannot afford.

Most of the women I was incarcerated with were in prison because of drugs or money. They were poor and had struggled with a substance use disorder and never gotten help. Many were like me and had a partner who was primarily responsible for the crimes for which they had been convicted. If they had access to therapy, education and jobs their circumstances may have turned out differently.

According to The Sentencing Project, between 1980 and 2017, the number of incarcerated women increased by more than 750% nationwide. The rate of growth for female imprisonment has been twice as high as that of men since 1980. Today, the Bureau of Prisons incarcerates nearly 13,000 women.

I finally left prison because nine years after I was sentenced President Obama granted my petition for clemency. I was lucky but so many deserving women are still incarcerated and need relief from their excessive sentences.

Today, my life is amazing. I work full-time. I have my own home. And, I am reunited with my girls and enjoying every minute of being with them and raising them. I share my story with you today because I want to help other incarcerated women and help them achieve their own success story. I hope Congress will give them a second chance.

Ms. BASS. Thank you very much. Ms. Kerman.

TESTIMONY OF PIPER KERMAN

Ms. KERMAN. Thank you, Chairman Bass, Ranking Member Ratcliffe and Members of the committee. I appreciate you inviting me here. In my memoir, "Orange is the New Black," I recount the 13 months that I spent incarcerated in the Federal prison system with most of my time served at the Federal correctional institution in Danbury, Connecticut. I was also incarcerated for a first-time drug offense.

I am grateful to add my voice with other return citizens like Cindy Shank and Charlotte, who are here with us today, to call for changes to the U.S. criminal justice system. Our experiences are essential to understanding the reform that is needed in the system,

so that it will both provide for public safety, but in a way that is legal, humane and sensible, and that is why I am here today.

So, incarceration rates are not driven by crime rates. They are driven by policy decisions. For decades, women and girls have been the fastest growing part of the prison population in the United States. Is this because of an unprecedented crime wave perpetrated by American women? No. Rather, the 700 percent increase in female incarcerations has been driven by government policy, bad policy decisions, like the 1994 Federal crime bill, which resulted in inflated incarceration rates at both the Federal and the State levels. One of most clear-cut examples of the failed policies of mass incarceration is the increased imprisonment of women and girls and what happens to them and their families, like families like Cindy's.

There is very little public safety rationale for most women's prison sentences which impose a very heavy cost to the American public, both socially and economically. Almost all women—among all women in prison and jail, it is estimated that between 80 and 90 percent have themselves been victims of violence, or serious trauma, prior to their incarceration.

Because our law enforcement system does not target or treat all Americans equally, the data shows that women of color are over-represented in the criminal justice system, even though they are not more likely than White women to commit crimes. One of the reasons that my memoir caught the public imagination is that it is so unusual for a middle-class White woman to be policed and to be prosecuted and to be punished with prison. Unfortunately, the same cannot be said for women of color.

American prisons and jails are built by and for men, and they are governed by policies and procedures that are developed for male prisoners.

In addition, American prisons and jails are punitive, and they rarely rehabilitate or restore the people we send there, almost all of whom will return to the community. I was incarcerated in a women's prison, and I now teach in a men's medium security prison. I can assure you that there is no institution more hierarchical, dominance-orientated, patriarchal, and operating constantly on the threat and the promise of violence than an American prison.

This is not an accident; it is by design. The failure of punitive policy is reflected in our high recidivism rates. So, for most incarcerated women, regardless of their background, their prison sentence does not only punish them, and that is because most mothers in prison have kids under the age of 18.

Most incarcerated mothers are also the single heads of household, and when we lock them up, the effect on their family is seismic. On all measures from stable housing, being well-fed, to doing well in school, parental incarceration seriously harms children. So, we don't have to do things this way.

Before I conclude my testimony, I want to draw your attention to just two policies that could, if replicated across the country, help to fix some of the mistakes of the last four decades.

So, one is a program in New York called JusticeHome. JusticeHome began in 2013. As part of the program, in cooperation with judges and prosecutors, women who are facing prison or jail for a felony are given a chance to remain at home with their fami-

lies, to be held accountable in the community, and to get the help and support that they need to do better.

That is exactly what happens and 88 percent of JusticeHome graduates remain arrest-free after they complete the program. JusticeHome also realizes massive fiscal savings. If the total cost to taxpayers to incarcerate a woman in New York, if she has two children who go into foster care is over \$130,000 a year. It costs less than \$20,000 a year to support a woman to a better future via JusticeHome. It gets much better results.

Again, looking to the States for innovation, we see two new primary caretaker legislations adopted in Massachusetts and Tennessee. These new measures require judges in those States to consider family impact when they are sentencing a person who is a primary caregiver of minor children, and to impose accountability measures that are appropriate for the offense that will not harm those children.

It is worth pointing out that Massachusetts and Tennessee have very different political landscapes. Everybody can see the value of this kind of reform, regardless of their political party. Primary caretaker policies should be adopted within the Federal system, so that Federal judges are required to make the same considerations at sentencing.

Ms. BASS. Thank you.

Ms. KERMAN. So, I look forward to today's important testimony on women and girls' pathways into prison, the harsh conditions that we must survive there, and the steps that are necessary for a safe and successful return to the community. I implore the Members of this Committee and all public officials to prioritize policy changes that will reduce the number of women and girls ever going into a correctional facility because those are changes that will make us safer. Thank you.

Ms. BASS. Thank you.

[The statement of Ms. Kerman follows:]

STATEMENT OF MS. KERMAN

I spent 13 months as a prisoner in the Federal Bureau of Prisons system from 2004–2005, with most of my time served at the Federal Correctional Institution in Danbury, Connecticut.

If you are familiar with my book, *Orange Is the New Black*, I'm the first to acknowledge that unlike many prisoners, I have the resources and support to take my own experiences in prison and use them to try to make critical improvements to this country's criminal justice system. Since my release, I have worked with many criminal justice-involved women who advocate for the changes they need to be safe and to get back on their feet. I am here today in that capacity.

Women's incarceration is a growing problem and has been for years.¹ The majority of incarcerated women in this country are charged with drug offenses or property crimes; many of these are low-level offenses, yet they may be met with prison or jail sentences. A sentence means the removal of a woman from her community, from her family, from her children if she is a mother, and exile into a correctional facility.

American prisons and jails are built by and for men, governed by policies and procedures developed for male prisoners. I was incarcerated in a women's prison and I now teach in a men's medium-security prison and I can assure you there is no institution more hierarchical, dominance-oriented, patriarchal and based on the

¹Since 1978, women's State prison populations have grown 834%, while men's State prison populations have grown 367%. Wendy Sawyer, *The Gender Divide: Tracking Women's State Prison Growth* (2018). Prison Policy Initiative. Available at https://www.prisonpolicy.org/reports/women_overtime.html.

threat and promise of violence than an American prison. This is not an accident; it is by design.

Incarceration rates are driven by policy, not by crime rates. It's essential that current policymakers fully comprehend this crucial fact, as they bear the responsibility of reversing decades of bad criminal justice policy decisions and repairing their negative consequences for all Americans. Specifically, the federal crime bill of 1994 had the effect of not only inflating federal incarceration rates but also incentivizing the states to incarcerate more people. As a Nation we are still struggling with the legacy of this bad policymaking; many individuals, corporations and special interests draw huge benefit—and in some cases profit—from the status quo of mass incarceration.

While the lack of correlation between crime rates and incarceration is widely acknowledged by criminology experts, it remains unknown or unacknowledged by many policymakers and the public. The conventional wisdom that incarceration is the best or only response to crime is dead wrong, and has had corrosive consequences for this nation, especially for people of color and poor people who are most likely to be incarcerated. According to the 2014 report by the National Research Council of the National Academies on *The Growth of Incarceration in the United States*:

Yet over the four decades when incarceration rates steadily rose, U.S. crime rates showed no clear trend: The rate of violent crime rose, then fell, rose again, then declined sharply. The best single proximate explanation of the rise in incarceration is not rising crime rates, but the policy choices made by legislators to greatly increase the use of imprisonment as a response to crime. Mandatory prison sentences, intensified enforcement of drug laws, and long sentences contributed not only to overall high rates of incarceration, but also especially to extraordinary rates of incarceration in Black and Latino communities. Intensified enforcement of drug laws subjected blacks, more than whites, to new mandatory minimum sentences—despite lower levels of drug use and no higher demonstrated levels of trafficking among the Black than the White population. Blacks had long been more likely than whites to be arrested for violence. But three strikes, truth-in-sentencing, and related laws have likely increased sentences and time served for blacks more than whites. As a consequence, the absolute disparities in incarceration increased, and imprisonment became common for young minority men, particularly those with little schooling.²

It's important to emphasize this disconnect because we've so normalized prison and jail as our only response to problems and conflicts in our communities. The United States incarcerates far more of its own people than any Nation in the world. No society in human history has ever locked up so many of its own citizens. And yet: American prisons and jails don't fix problems like substance abuse and addiction, mental illness, or family or community violence. Quite the opposite, most correctional settings in this country unquestionably make these problems worse, not better, hidden behind the walls where we exile our own people.

After a person returns from prison or jail, their sentence is not over. Probation and parole are problematic systems that continue to punish rather than help people, and are particularly harmful to the poor, who make up the bulk of Americans caught in the maze of the criminal justice system. As civil rights lawyer Bryan Stevenson has noted, we have a legal system that treats you better if you are rich and guilty than if you are poor and innocent. I draw your attention to the Jeffrey Epstein case as just one among many very recent examples of this truth.

Among the most vulnerable people caught in the maze of the American criminal justice system are women and girls. Women are the fastest growing population in the American criminal justice system, and their families and communities are also punished by what happens when we choose to incarcerate a woman. A significant majority of women in prison are there for a nonviolent offense.³ Many women are incarcerated due to substance abuse and mental health problems, which are overwhelmingly prevalent issues in prisons and jails. For women and girls there is also

²National Research Council (2014). Summary. In Travis, J., Western, B. & Redburn, S. (Eds.), *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (pp. 1–12). Washington, DC: The National Academies Press.

³In 2012, 37.1% of women in State prison were held for a violent offense, compared with 55.0% of men. E. Ann Carson, Bureau of Justice Statistics, Prisoners in 2013, Tbl. 9, September 30, 2014, available at <http://www.bjs.gov/content/pub/pdf/p13.pdf>.

a staggering, widespread incidence of victimization by sexual abuse or other physical violence before incarceration.⁴

Before we even think about where or how women and girls should be incarcerated, we should consider if they should be incarcerated. There are other ways for them to serve their time that result in less damage to them and their families. When we look to the states, we see such innovations, such as JusticeHome in New York. JusticeHome allows some women who plead guilty to felonies to remain in their homes with their children. The women report regularly in court and are visited weekly by case managers to make sure they receive supervision and guidance about jobs, education and management of their homes and children. Some must receive treatment for drug addiction and mental illness. The cost of JusticeHome is less than 20,000 per family, while it costs over \$130K to incarcerate a woman in New York City for one year if two of her children are sent into foster care.⁵ What is priceless about this program is that it is working hard to keep families together which we know is an effective way to reduce crime and increase safety, and to stop a cycle that can condemn entire families to the penal system. 88% of JusticeHome graduates remain arrest-free after completion of the program.⁶

Again, looking to the states for innovation, we see new primary caretaker legislation adopted in Massachusetts and Tennessee that acknowledges that when a sentence is imposed it impacts not only the convicted person but also her children and family.⁷ These new measures require judges in Massachusetts and Tennessee to consider family impact when sentencing a person who is the primary caregiver of minor children, and to impose accountability measures appropriate for the offense that will not harm those children. This legislative reform was conceived of and championed by formerly incarcerated women from the National Council of Formerly Incarcerated and Incarcerated Women and Girls,⁸ a true example of the power of women's wisdom and activism in service of the lives of others; it should be adopted within the federal system so that federal judges are required to make the same considerations at sentencing.

Incarcerated women suffer from disproportionately high incidences of mental illness, substance use disorder, and survival of serious trauma like sexual assault or domestic abuse. However, these issues are not being addressed adequately in the federal prison system. With more than 200,000 people in its custody, the Federal Bureau of Prisons has grown to become the nation's largest prison system.⁹ The federal prison population has increased more than eight-fold since 1980,¹⁰ reflecting the United States' unique and regrettable reliance on incarceration to inappropriately and ineffectively address social problems like substance abuse, mental illness and poverty. Below I outline some of the ways in which the Bureau could and should improve its treatment of women in custody.

The Bureau of Prisons should adopt gender-responsive policies and programs along the lines of best practices in states such as Washington that reduce recidivism rates and give women opportunities to reintegrate into their communities and succeed post-incarceration.

Gender-responsive correctional approaches are guided by women-centered research. They are strengths-based, trauma-informed, culturally competent, and holistic. These approaches recognize the importance of relationships as a target of intervention for women. Finally, they account for the different characteristics and life ex-

⁴In 2012, 86% of women in jails had experienced sexual violence, 77% had experienced partner violence, and 60% had experienced caregiver violence before their incarceration. Lynch *et al.* *Women's Pathways to Jail: Examining Mental Health, Trauma, and Substance Use* (2013). Bureau of Justice Assistance. Available at <https://www.bja.gov/Publications/WomensPathwaysToJail.pdf>.

⁵McHugh, Diana. "Re: JusticeHome Success Data Points." Message to Kamara Jones. July 2, 2019. Email.

⁶McHugh, Diana. "Re: JusticeHome Success Data Points." Message to Kamara Jones. July 2, 2019. Email.

⁷Human Impact Partners. (April, 2019) *Keeping Kids and Parents Together: A Healthier Approach to Sentencing in MA, TN, LA*. Retrieved from <https://humanimpact.org/hipprojects/primary-caretakers/>.

⁸"Current Legislation." Families for Justice as Healing, available at <http://justiceashealing.org/current-legislation/>.

⁹Federal Bureau of Prisons, Inmate Statistics, July 30, 2015, available at http://www.bop.gov/about/statistics/population_statistics.jsp#pop_report_cont.

¹⁰Federal Bureau of Prisons, Past Inmate Population Totals, available at http://www.bop.gov/about/statistics/population_statistics.jsp#old_pops.

periences of women and men who are involved with the criminal justice system, and respond to their unique needs, strengths and challenges.¹¹

Most research in the correctional field has been conducted on men. The research that has been done on women shows that the risk factors I mentioned, and others specific to women, require different approaches than the BOP takes for men to reduce women's recidivism and achieve more successful outcomes. This is not unlike findings in other fields such as healthcare, where gender-specific research found that women experience heart attack symptoms quite differently from men.

This understanding in turn led to gender-specific responses to these symptoms.

Female prisoners are different from male prisoners in a number of obvious and less obvious ways. In addition to having a higher percentage of mentally ill people among their ranks, incarcerated women are often single moms with young children. Very high incidences of sexual and physical assault¹² are a reality for women in prison, jail and immigration detention centers, both before and during their incarceration. It is essential to consider this trauma to establish rehabilitation that works, and to avoid correctional settings that make things worse.¹³

Instituting gender-responsive policies garners significantly improved outcomes including reductions of inmate-on-staff assaults and inmate-on-inmate assaults, segregation placements, disciplinary reports, one-on-one mental health watches, petitions for psychiatric evaluation, crisis contacts, self-injury incidents and suicide attempts.¹⁴

These policies clearly make women's correctional facilities safer for prisoners and staff, which is the first step towards creating a rehabilitative environment. If we want to reduce recidivism for women and help them be more successful when they return home, we need to address their specific risk factors and needs—gender-responsive policies and programming, such as the following, account for these differences.

- Gender-responsive policies, first and foremost, recognize that there are gender-specific needs and modify facility operations, supervision, management, programs and services to address them.
- They ensure that all staff who work with women are trained in trauma-informed care, understand gender-responsive principles and how justice-involved women are different from men, and at a minimum, have effective communications and intervention skills.
- These policies influence facility culture so that there is a physical environment that is conducive to change (positive messages on walls, positive images), an attitude of respect among staff and inmates, positive encouragement for family visits and interactions, and calming environments (reduced noise level, banging, shouting).
- Practices and procedures are implemented that do not (re)traumatize or trigger women's trauma, such as letting women know ahead of time what is going to happen during a procedure, telling them what is happening during the procedure, and checking in with them after the procedure is conducted. Other similar examples include limited use of solitary confinement or segregation (which may trigger women), more limited use of strip searches (which may be reminiscent of rape), and limited or no use of restraints during pregnancy and delivery.
- Gender-responsive risk and needs assessments (such as the Women's Risk and Needs Assessment developed by Dr. Pat Van Voorhis and colleagues at the University of Cincinnati) should be used to identify specific risk factors 1such as

¹¹ National Resource Center on Justice Involved Women, Gender Responsive Discipline and Sanctions Policy Guide for Women's Facilities, Key Definitions, n.d., available at <http://cjinvolvementwomen.org/sites/all/documents/DisciplineGuideSectionIOOverview.pdf>.

¹² In State prison, 57.6% of women reported past physical or sexual abuse, compared to 16.1% of men. In federal prisons, 39.9% of women reported past abuse, compared to 7.2% of men. In jails, 47.6% of women reported past abuse, compared to 12.9% of men. Caroline Wolf Harlow, Bureau of Justice Statistics, *Prior Abuse Reported By Inmates And Probationers 1* (1999), available at <http://www.bjs.gov/content/pub/pdf/parip.pdf>. More than a third of women in State prisons or local jails reported being physically or sexually abused before the age of eighteen.

¹³ Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* (1996), available at <http://www.hrw.org/legacy/reports/1996/Us1.htm> [hereinafter *All Too Familiar*] ("One of the clear contributing factors to sexual misconduct in U.S. prisons for women is that the United States, despite authoritative international rules to the contrary, allows male correctional employees to hold contact positions over prisoners, that is, positions in which they serve in constant physical proximity to the prisoners of the opposite sex.").

¹⁴ National Resource Center on Justice Involved Women, Gender Responsive Discipline and Sanctions Policy Guide for Women's Facilities, Exhibit 1: Benefits of Implementing Trauma-Informed Approaches at MCI Framingham Frequency of Incidents in 2011 and 2012, n.d., available at <http://cjinvolvementwomen.org/sites/all/documents/DisciplineGuideSectionIOOverview.pdf>.

past trauma, abuse and anger. Treatment programs should be available that address the risks and needs identified through these assessments.

It is critical for the Bureau of Prisons to address the unique situation of women in prison when making choices about policies and programming for institutions that hold them. In addition to the roadmap to system-wide implementation that Washington State offers, the National Resource Center on Justice Involved Women—funded by the U.S. Department of Justice Bureau of Justice Assistance in partnership with the National Institute of Corrections—is an organization that the BOP can collaborate with to work for rapid adoption of gender-responsive policies and programs. Additionally, the Adult and Juvenile Female Offenders Network¹⁵—a national network of corrections workers, academics and community practitioners—has been working for decades to establish gender-responsive policies and programs in American prisons and jails, and its Members should prove valuable advisors to the BOP if it wishes to fulfill its responsibilities to the women in its custody.

One of the biggest needs is to keep these women, many of whom are single moms, close to their kids. When I was incarcerated at Danbury FPC, I met women who were raising their children in the visitors' room during brief visits, fending off sexual harassment, and struggling to get a high school education so when they got out they stood a chance at surviving. I saw women denied necessary medical care, and I saw women with mental health issues wait for months to see the one psychiatrist who was available for 1,400 women.

During my time in prison, I was transferred from Danbury to the federal Metropolitan Correctional Center in Chicago (MCC) to serve as a witness in a federal trial there. The Chicago MCC is 26 stories high and houses approximately 700 men. There were approximately 35 women in the female unit there and the conditions were abysmal. Federal jails are not intended for long-term housing, and thus lack programming, physical plant and other acknowledged essentials for a person serving a prison sentence, which are intended to hold them accountable and rehabilitate them so they can return safely to the community. Despite this, people often spend long periods of time locked up in federal jails. When I was in the MCC, there was a woman who had been held there for *two years*.

At the Chicago MCC, women were kept locked on the 12th-floor unit for many days at a time; access to the library and to physical recreation and the outdoor area was sporadic at best; no women were allowed to participate in GED programs or any educational opportunities; female prisoners were not allowed to work and earn money; we had no direct access to any medical staff, or in fact any administrative staff; and we were largely reliant on a single correctional officer to get any concerns addressed. Many women on the unit were severely mentally ill. The last two months of my incarceration were exponentially more difficult than the first 11 because of the conditions in the Chicago MCC, and I have many more resources and opportunities than most women incarcerated in federal prisons.

Women in federal custody have less access compared to male federal prisoners to important rehabilitative programs like UNICOR (vocational training in prison industry programs that provide the highest compensation among federal prisoner jobs) and the Residential Drug & Alcohol Program (an intensive program that cuts a year from a prisoner's sentence).

Many women have been sent far from their families and communities, much further than the BOP's stated parameter of 500 miles from a prisoner's home.¹⁶ For a family that lives in poverty in New Hampshire, the Bronx or Pennsylvania, a place like Aliceville, Alabama, Dublin, California or Waseca, Minnesota might as well be the moon in terms of children and other family Members being able to visit. The majority of women in prison were their children's primary or sole caregiver prior to incarceration.¹⁷ When these women are incarcerated, maintaining any semblance of a relationship with their children largely depends on regular visitation.¹⁸

¹⁵ Association on Programs for Female Offenders (APFO), an American Correctional Association, available at <http://www.ajfo.org/>.

¹⁶ Federal Bureau of Prisons, Custody and Care: Designations, July 30, 2015, available at http://www.bop.gov/inmates/custody_and_care/designations.jsp.

¹⁷ Lauren E. Glaze & Laura M. Maruschak, Parents in Prison and Their Minor Children, U.S. Dept. of Justice, Of Justice Statistics Special Report, 4, (2008), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf>.

¹⁸ Susan D. Phillips, The Sentencing Project, Video Visits For Children Whose Parents Are incarcerated: In Whose Best Interests? 1–2 (2012), available at http://sentencingproject.org/doc/publications/cc_Video_Visitation_White_Paper.pdf (describing the importance of and barriers to visitation of incarcerated parents).

A child's need to see and hold his or her mother is one of the most basic human needs.

Important things to consider about women in federal custody are disconnection from young children and family who rely heavily on these mothers prior to incarceration; vastly and disproportionately inadequate living conditions compared with male prisoners; and, a marked lack of rehabilitative programming or work opportunity that is tailored to address women's pathways into prison, which is the best way to ensure their safe and permanent return home. These realities are emblematic of the BOP's indifference to the situation and outcomes of female prisoners. The BOP is currently seeking to appoint a new Director; a commitment and ability to implement gender-responsive policies and programming should be a requirement for the job. To fulfill its public safety mission and to avoid discriminatory practices, the BOP must adopt gender-responsive policies, programs and facility design, following the best practices of corrections departments in states like Washington and Iowa. At the Washington Corrections Center for Women for instance, the Gender Responsiveness Action Plan allows female prisoners to attend seminars focusing on healthy relationships, safety awareness, health, nutrition, handling anger and stress, and goal setting.¹⁹

The BOP has a legal and moral obligation to ensure that time in custody is equitable, safe, and rehabilitative for women. In addition, Congress should use all measures available to facilitate the BOP's early release of currently incarcerated people who are eligible to return to their communities.

The BOP could exercise greater discretion, granted in the Second Chance Act and the First Step Act, to move thousands out of federal prison facilities to complete their sentences in their communities. In addition to reducing overcrowding, utilizing the Second Chance Act and the First Step Act would keep incarcerated people closer to their homes, creating benefits for prisoners and their communities. They would be following the precedent of the U.S. Sentencing Commission's 2014 decision to reduce the length of time that certain federal prisoners are spending in incarceration.²⁰

The bottom line is that mass incarceration in America is a failed policy experiment, not a legitimate response to violence or crime in our communities. Current legislators have a responsibility to make our criminal legal system fairer, more effective, and more just, and they have an opportunity to do so now when public understanding and opinion on these issues has changed. There is abundant data and evidence proving we have better responses to addiction, mental illness and even violence than reliance on prisons and jails.

There is no population of people where reform can more obviously be implemented than women and girls in the criminal justice system. Research, case studies, and a host of programs and organizations that demonstrate the value and efficacy of gender-responsive policies and programs provide the map to solutions that do not rely on incarceration. This map is vital not just to the thousands of women who currently churn through American prisons and jails each year, but to the families and communities to which they return. It is long past time for Congress to lead the way and make common-sense criminal justice policy that reflects smart and humane ideas and values about justice and accountability.

Ms. BASS. Ms. Kajstura.

TESTIMONY OF ALEKS KAJSTURA

Ms. KAJSTURA. Thank you, Chairwoman Bass, and Ranking Member Ratcliffe and Members of the subcommittee, for providing me the opportunity to share some data on women's incarceration, not only because this is an issue that has been overlooked for far too long, but also because women's experiences in the criminal justice system serve to highlight the faults of the entire system.

¹⁹ Jennifer Sullivan, Female Inmates Treatment is Evolving, The Bulletin, November 7, 2013, available at <http://www.bendbulletin.com/news/1262705-151/female-inmates-treatment-is-evolving>.

²⁰ Hearing before the Senate Judiciary Committee, Oversight of the Bureau of Prisons Hearing, Liman Statement for the Record, November, 12, 2013, available at http://www.lawyale.edu/documents/pdf/Liman/Senate_Judiciary_Committee_BOP_Oversight_Hearing_Liman_Statement_for_the_Record_Nov_12_2013.pdf website.pdf.

The U.S. incarcerates women at the highest rate in the world, so there is a lot of data to dig through, but as I outline the basics, I would like you all to keep one fact in mind: One in four women who are incarcerated have not been convicted. That figure alone demonstrates that we use incarceration far too much. Since the 1970s, women's State prison populations have grown faster than their male counterparts. There are nearly 10 times as many women in State prisons now as 40 years ago. Despite this dramatic growth, women's incarceration remains an afterthought. In most States, women have not benefited from recent efforts to reduce incarceration as much as men have.

There are many complex and interconnected reasons why the U.S. is incarcerating women at ever increasing rates. Here are a couple of examples: States continue to widen the net of criminal justice involvement by criminalizing women's responses to gender-based abuse and discrimination. We have heard about the expansion of drug conspiracy laws that lead to even minor or peripheral roles of women receiving very harsh sentences, even more harsh than those in charge of the operation. In terms of gender abuse, you have policy changes that led to mandatory dual arrests, just simply for fighting back against domestic violence. Once caught in the net, there are fewer diversion programs available to women.

In Wyoming, for example, there was a boot camp that allowed men to participate in a 6-month program instead of having to serve a lengthy sentence, but no similar program is available in the State for women, so they face years of incarceration for first-time offenses, while their male counterparts can quickly return to the community. And then once women are incarcerated, they face more and harsher disciplinary sanctions for similar behavior when compared to men, and this disciplinary action harms women's ability to earn time off the sentence and decreases chances of parole.

The tentacles of mass incarceration have a long reach. Women incarcerated in jails and prisons account for just a small percentage of women under some form of correctional control.

Probation accounts for the majority of women under correctional control, and is often billed as an alternative to incarceration, but compliance with restrictive probation terms is particularly difficult for women, it often sets us up to fail. For example, probation comes with mandatory monthly fees, which women are in the worst position to afford. Failing to pay these fees alone is often a violation of probation. Childcare duties further complicate compliance, because probation requirements often include travel to mandatory meetings, or having to get advanced permission for an emergency school pick-up, or advanced permission for an emergency doctor's visits.

Ongoing struggles with mental health and substance abuse disorders, which affect women in jails far more than men, require additional support rather than being viewed as punishment—rather than being punished as a failure of probation. Even as incarceration rates drop, women's incarceration continues to grow; getting hard data is the obvious next step for policy change. You would think that knowing how many women are locked up, and where, and why, would be easy; after all, this is a population that is lit-

erally counted multiple times a day, but there is an astounding lack of data on incarceration.

I set out to give a complete picture of women's incarceration in my report, *Women's Mass Incarceration: The Whole Pie*, and I had to weave together data scattered across incompatible government reports and surveys.

For example, the last time the Bureau of Justice Statistics published a comprehensive report on incarcerated women, it was 1999, that is 20 years ago. Since then, data on incarcerated women have been available piecemeal scattered throughout BJS publications. Even worse, BJS has stopped even collecting some data on women incarcerated, much less publishing it.

When our statistical agencies are blindfolded, the policymakers are too. Having, accurate, timely data is an important part of ending mass incarceration of women. But quite frankly, there is such vast room for improvement in so many areas that we can wait for data collections to catch up while we take commonsense action today.

[The statement of Ms. Kajstura follows:]



**Written Testimony of Aleks Kajstura,
Legal Director, Prison Policy Initiative**

**Subcommittee on Crime, Terrorism and Homeland Security
of the U.S. House Committee on the Judiciary**

**Hearing date
July 16, 2019**

Women and Girls in the Criminal Justice System

Thank you, Chairwoman Bass and members of the Subcommittee for providing the opportunity for me to testify. My name is Aleks Kajstura and I am an attorney and Legal Director of the Prison Policy Initiative. We are a non-profit, non-partisan organization based in Massachusetts. Our mission is to produce cutting edge research to expose the broader harm of mass criminalization, and spark advocacy campaigns to create a more just society.

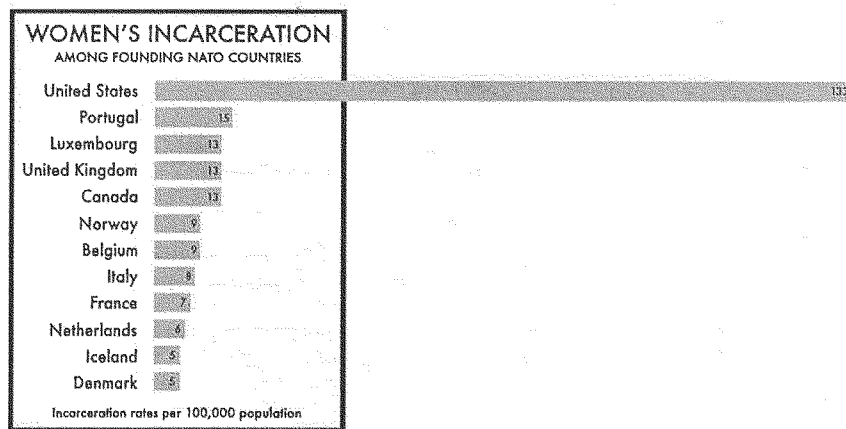
I am thankful for this opportunity to share some data on women's incarceration with the Subcommittee, not only because this is an issue that has been overlooked for too long, but also because women's experiences with the criminal justice system serve well to highlight the faults of the whole system.

The U.S. in context

I have been asked to put numbers on the issues facing women in the criminal justice system. The US incarcerates women at the highest rate in the world, so there is a lot of data to dig through, but as I outline the basics, I would like you to keep one particular fact in mind:

1 in 4 women who are incarcerated have not been convicted.

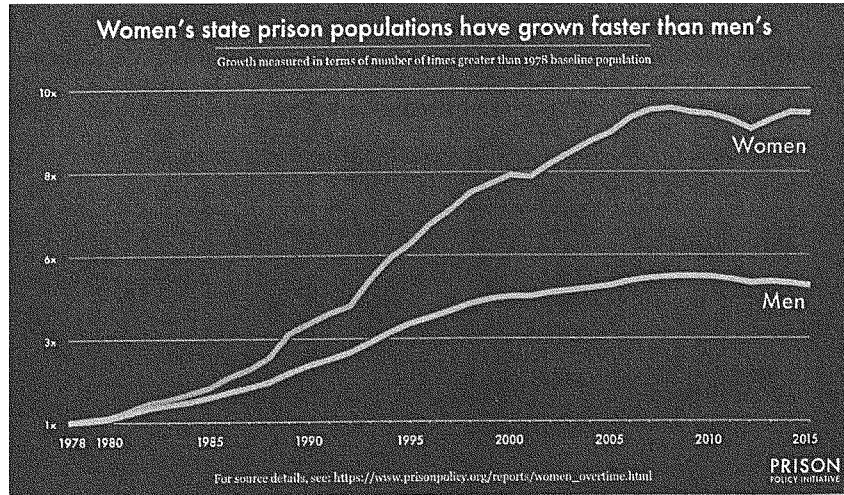
That figure alone demonstrates how we over-use incarceration. But there are many other ways to look at the problem. For example, the U.S. is home to only 5% of the world's female population, but it accounts for nearly 30% of the world's incarcerated women. And when it comes to its peer nations, it is literally off the charts:



Source: <https://prisonpolicy.org/global/women/2018.html>

Worsening problem

Since the 1970's women's state prison populations have grown faster than their male counterparts. There are nearly 10 times as many women in state prisons now as there were 40 years ago. Despite this dramatic growth, women's prisons have remained an afterthought – they continue to operate like men's prisons, despite those populations having different needs.



In most states, women's prison populations don't appear to have benefitted from recent efforts to reduce incarceration as much as men's prison populations have. In a number of states, women's prison populations are growing faster than men's, and in others, they are growing while men's are actually declining. In some states, both women's and men's populations have fallen, but women's have fallen less dramatically than men's. Nationally, men's state prison populations have dropped about 5% since they peaked in 2009, but women's prison populations have fallen only a fraction of a percent.

Causes

There are a myriad of interconnected reasons why the U.S. is incarcerating women at ever-increasing rates. Here are a few examples:

States continue to “widen the net” of criminal justice involvement by criminalizing women’s responses to gender-based abuse and discrimination. For example, the expansion of drug conspiracy laws means that even those with minor or peripheral roles in the sale or manufacturing of drugs receive the same harsh sentences as those in charge of the operation. Other policy changes have led to mandatory or “dual” arrests for fighting back against domestic violence, increasing criminalization of school-aged girls’ misbehavior — including survival efforts like running away — and the criminalization of women who support themselves through sex work.

Fewer diversion programs are available to women. In Wyoming, for example, a “boot camp” allow men to participate in a six-month program, instead of serving a lengthy prison sentence. But no similar program is available for women in the state, so women face years of incarceration for first-time offenses while their male peers return quickly to the community. (After suing the state the women were allowed to attend a similar program — in Florida, 2,000 miles from home.)

And then, while women are incarcerated, they face a greater likelihood of disciplinary action — and more severe sanctions — for similar behavior when compared to men. Disciplinary action works against an incarcerated woman’s ability to earn time off of her sentence and against her chances of parole.

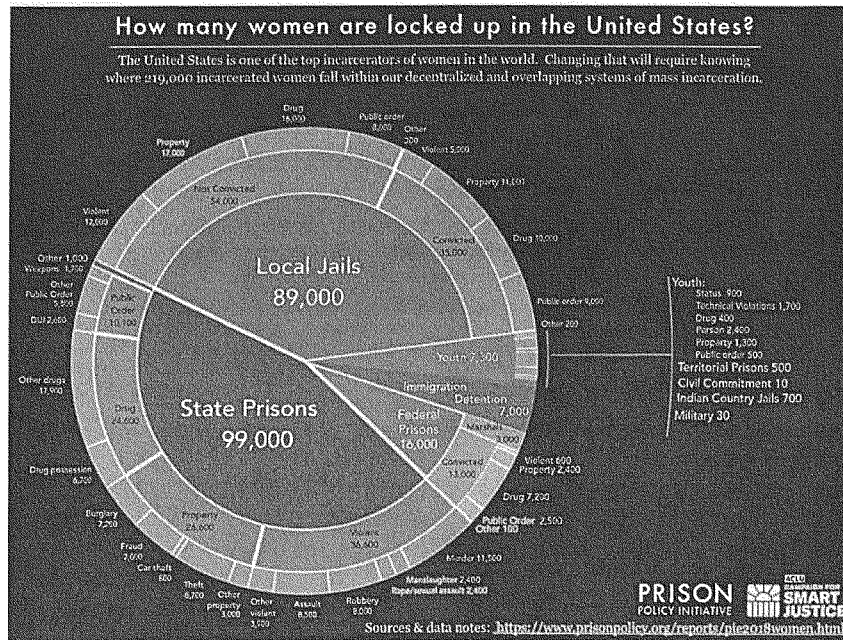
The tentacles of mass incarceration have a long reach

Women incarcerated in jails and prisons account just for a small percentage of women under some form of correctional control. Probation accounts for the majority of women under correctional control. Probation is often billed as an “alternative to incarceration,” but compliance with restrictive probation terms of probation is particularly difficult for women, so it often sets us up to fail.

For example, probation often comes with monthly fees, which women are in the worst position to afford. Failing to pay these probation fees is often a violation of probation. Childcare duties further complicate probation requirements that might require meetings with probation officers, with no extra money to spend on babysitters or reliable transportation across town. And ongoing struggles with mental health and substance use disorders also mean that women need additional support rather than punishment for “failures” on probation.

Not having basic data holds back reform efforts

Even as incarceration rates drop, women's incarceration continues to grow at alarming rates. Getting the hard data is the next obvious step in making policy change. You would think that knowing how many women are locked up, and where, would be easily available. After all, this is a population that is literally counted multiple times a day.



But there is an astounding lack of data on women's incarceration.

When I set out to give a complete picture of women's incarceration in my report "Women's Mass Incarceration: The Whole Pie", I had to weave together data scattered across incompatible government reports and surveys to answer even the most basic questions.

For example, how many officers and enlisted women are held under military jurisdiction? The last time Bureau of Justice Statistics (BJS) published that number was 1998. That's over 20 years ago. I'm guessing much has changed in our armed forces in the last two decades. Since then nearly 300,000 women have served in Afghanistan and Iraq alone. It would be good to know how they are faring under military jurisdiction.

Did you know that the last time the BJS published a comprehensive report on incarcerated women it was 1999? That's literally in the last century. Since then, data on incarcerated women has been available piecemeal scattered throughout BJS publications. But the even worse, the BJS has stopped even *collecting* data on women's conviction status in jails, much less publishing it. Nearly 50% of incarcerated women are held in jails, but the BJS doesn't even ask whether they are convicted or awaiting trial. As you may remember, my calculation shows that 1 in 4 women who are incarcerated today have not been convicted, but that is at its core derived from 2009 data – we need to know what has changed since then to assess the impact of reforms efforts.

When our statistical agencies are blindfolded, the policy makers are too. This has consequences: overall incarceration rates are falling, but women's incarceration is still growing.

Further Reading

This testimony was compiled from several recent Prison Policy Initiative publications. For more details I would highly recommend the following four reports and articles:

- Women's Mass Incarceration: The Whole Pie 2018
<https://www.prisonpolicy.org/reports/pie2018women.html>
- The Gender Divide: Tracking Women's State Prison Growth
https://www.prisonpolicy.org/reports/women_overtime.html
- State-level studies identify causes of the national "gender divide"
https://www.prisonpolicy.org/blog/2018/04/11/state_studies_gender/
- States of Women's Incarceration: The Global Context 2018
<https://www.prisonpolicy.org/global/women/2018.html>

Thank you for your time and consideration.


Aleks Kajstura
Legal Director

Ms. BASS. Thank you. Ms. Onwuka.

TESTIMONY OF PATRICE LEE ONWUKA

Ms. ONWUKA. Good morning. Thank you, Chair Bass, thank you Ranking Member Ratcliffe.

I work with the Independent Women's Forum and we are an educational organization committed to increasing the number of women who value free markets and personal liberty. We advance policies that enhance people's freedoms, and choices, and opportunities. And so, my focus specifically, my work focuses on expanding opportunity for women. This subject is something that is really important to us. So, this is truly a great time of opportunity for women. We know that we have record low unemployment rates. Over 1,800 new businesses were started by women each day from 2017 to 2018. Firms owned by black, or women of color, have triple digit growth over the past decade. Yes, a criminal background lobs too many women out of opportunity and economic mobility. Work is a critical component to the successful transition from the criminal justice system back into society.

So, I am encouraged by the historic, bipartisan First Step Act that was passed and signed into law last year. It laid it a foundation, but we know there is more to do for women. Conversations like today remind us that the left and the right are committed to helping every American achieve their right to life, liberty, and the pursuit of happiness.

Organizations across the philosophical spectrum are engaged in criminal justice efforts, and for different reasons. I think we can all agree that committing a crime and paying her debt to society should not preclude a woman from the pursuit of a better future. It is not just her future, but the future of her children, her family, her community that depend on her successful transition back into society. It all starts with so many women who are in the criminal justice system.

You have heard the statistics, they are staggering. What is interesting is that we saw the replacement of judicial discretion with one-size-fits-all sentencing mandates, landing a lot of low level, nonviolent offenders in Federal prisons for longer periods of time, than otherwise they might have been given, and particularly because there are alternatives to serving time.

Now that not only impacted women, but their families. As a result, you have more women are likely to have served as a primary caregiver to children prior to entering prison and have plans to return upon release. We know that children whose parents are involved in the justice system, they face a host of challenges and difficulties. Incarceration also forces families deeper into poverty and debt. The burden falls on family Members, society, and yes, us taxpayers.

The family bond, especially with their children, often becomes a motivating factor for women not to return to crime. So effective criminal justice requires respect for the dignity of all people, and the successful means towards rehabilitation.

Now while serving time, women face special challenges some of the panelists have talked about this, from general health and wellness to ongoing gynecological care and prenatal care if they are

pregnant. They require separate facilities for showering and using the toilet. Serving a criminal sentence, though, should not mean that female inmates serve in dehumanizing, unsanitary, unsafe, or unhealthy conditions.

Some level of privacy from male guards is a reasonable expectation and can protect female prisoners, many of whom are experienced sexual violence. Incarcerated pregnant women are the most vulnerable.

Unfortunately, the justice system really considers the special needs of this population. Thankfully, this shackling of women is a practice has been ended by law because of the risk it poses to moms and babies. Now as a mother of a 7-month baby boy, this is especially close to my heart.

Ongoing physical and mental health care should not be forgotten. When it is time for a woman to return—to be released from prison, that is not the moment to begin thinking about what she is going to do afterwards. We know that are women's recidivism rates are similarly troubling to those of men, about one-quarter of women released from prison have an arrest for a new crime within 6 months, one-third within a year, and two-thirds 5 years out.

So training, technical educational opportunities, including those tied to the faith community, can be assets in the rehabilitation re-entry process. There is evidence these programs work. The First Step Act encourage rehabilitation programs offers and offer significant incentives to inmates to participate in recidivism reduction programs. A strong economy is an ally in providing women opportunities. Where government puts up roadblocks to opportunity, the government needs to remove them. We have seen that occupational licenses have been a tremendous hindrance for women who simply want to work. That is a place we can start, and we are seeing States take some action there. The criminal justice system is an area where we all believe that smart reforms can help women who want to be productive Members of society, so I look forward to today's discussion.

[The statement of Ms. Onwuka follows:]

STATEMENT OF MS. ONWUKA

Chairman Bass, Ranking Member Ratcliffe, and Members of the Committee thank you for inviting me to appear today.

My name is Patrice Onwuka, and I am a senior policy analyst at the Independent Women's Forum. We are a nonprofit organization, committed to increasing the number of women who value free markets and personal liberty. We advance policies that enhance people's freedom, choices, and opportunities. My work focuses on expanding opportunity for women.

There's no better time to talk about women and opportunity than today.

As of June, we are at a near record-low unemployment rate for women of *3.3 percent*. There are more than *11 million* women-owned businesses. Over *1,800* new small businesses started each day on average from 2017 to 2018. Firms owned by women of color have had triple-digit growth over the past decade. We graduate more women from college today than men and in scores of industries, women outearn men.

Because of a strong economy and over 7 million unfilled positions, employers are considering for employment applicants whom they would have passed on in the past. That includes returning citizens and people who have criminal records. This is good news for this community that struggles with obtaining steady employment, a key factor determining whether they will become a productive citizen or return to prison.

Women in the justice system are also benefiting from greater opportunity, but unfortunately, they have been left out of the conversation of criminal justice reform. I'm glad today's hearing will focus on their unique issues and concerns,

The number of women in prison has increased by more than *700 percent* since 1980. As a nation, we are home to around 30 percent of the world's incarcerated women.

Lawmakers on the left and the right recognize that in the past we may have been tough on crime—and needed to be. Today, the shift to be smart on crime provides a chance to reform laws that have yielded punishments which were out of whack with the crime or to create policies that help women prepare for life after serving time.

Over Incarceration of Women

Judges have enjoyed discretion in weighing the merits of cases and determining the best punishment for crimes committed by individuals.

Our justice system changed significantly in the 1970s and 1980s when Congress and State legislatures implemented mandatory sentencing for drug crimes with the intention of attacking the drug trade and deterring people from drug use. Understandably, the spread of drugs warranted a strong response. Unfortunately, limiting judicial discretion and imposing inflexible punishments led to skyrocketing incarceration rates. There were just *13,000 incarcerated women* in 1980 and that swelled to more than *110,000 women* in 2016. The federal female prison population has risen twice as fast as the male population. Some 1.3 million women are under the supervision of our criminal justice system.

Women are more likely to commit property crimes and drug crimes and offenses than men. In State prisons, for example, *25 percent* of women in prison have been convicted of a drug offense, compared to 14 percent of men in prison.

Because of sentencing changes, low-level, non-violent offenders landed in federal prisons for longer periods of time, when otherwise, they might have been given parole or sent to diversion programs.

Conservative and liberal lawmakers are trying to address the unintended consequences of a heavy-handed approach to sentencing.

The bipartisan First Step Act passed and signed into law by President Donald Trump in December 2018, reduced or reformed several federal mandatory minimum laws that, prospectively, will reduce unjustly harsh sentences, restore discretion to judges, and allow for resentencing.

In 2019, over a dozen female inmates (*2 percent* of 1,050 federal inmates) received reduced sentences as a result of these changes. Going forward, likely more women will end up serving fairer sentences or may be given alternatives to sentencing such as community-based diversion programs, rehabilitation for addiction, treatment for mental illness, paying restitution, or community service.

Alternatives to imprisonment can rehabilitate the offender, reduce prison and jail costs, and prevent additional crimes from occurring in the future. Victims of crimes are helped, communities are helped, and individuals are helped.

Americans overwhelmingly support alternatives to sentencing: *77 percent* of adults believe that alternatives to incarceration should be used often or sometimes.

Criminal justice reforms should not eliminate punishments for offenders, but they offer a chance to ensure that punishments fit the crimes. Effective punishments can reduce the likelihood that a woman recidivates. Over 40 percent of all people leaving prison will re-offend and be back in prison within three years of their release.

By addressing underlying causes of crime such as addiction or mental illness, we may help people from reoffending. That is good for families, who don't have to lose moms and dads for years at a time. It also allows women to keep working to earn income, pay taxes, and support their families. That truly gives people a chance at a better life.

Dignity for Women in Prison

Women have unique health and wellness needs that men do not have and ones that do not disappear when they serve time in prison. Women need on-going gynecological care and prenatal care if they are pregnant. Women have menstrual cycles that demand hygiene products such as menstrual pads and tampons. They require separate facilities for showering and using the toilet.

Serving a criminal sentence should not mean that female inmates serve in dehumanizing, unsanitary, unsafe, or unhealthy conditions. Nor should they have to pay for products that they cannot afford.

If women are pregnant, it is especially important for both the health of the mother and the baby that their prenatal care is provided.

As a mother of a seven-month-old, I can only imagine how challenging it would be to be restrained while pregnant and especially during labor and delivery. Although 2,000 births occur to women in custody, the stories of miscarriages that follow from shackled inmates falling and hurting themselves remind us why this practice was important to end.

These are two areas where progress has been achieved on the federal and State levels. The First Step Act directed the Federal Bureau of Prisons to make feminine hygiene products available to prisoners for free. It also prohibits the use of restraints on pregnant women in federal prisons unless there are good reasons for her to be restrained, such as being a flight risk or a healthcare professional determines the use of restraints is necessary for treatment.

There are still areas for more to be done at the federal level to provide dignity for women inmates. It's reasonable for women to have privacy from male correctional officers when they are undressed in showers, bathrooms, and dressing rooms or being searched. States are adopting such measures like Louisiana, which passed reforms to preclude male correctional officers from conducting pat-down searches.

These are expectations that transcend partisanship and underscore that even behind bars, women should be treated with dignity.

Removing Barriers to Opportunity

We are living through an impressive time for women in the labor force. The tight job market today is also encouraging employers to hire individuals that they would not have considered before such as those with a criminal record. Some private employers are proactively removing questions about criminal pasts from employment applications.

Yet, too many women are locked out of the economic recovery, the labor force, and the prospect of economic mobility because of their criminal background. From sentencing to second chances, women who desire to make amends, better themselves, and become productive citizens face government-imposed barriers to achieving opportunity.

Once a woman leaves incarceration, she needs to work. Former inmates who find steady employment are less likely to return to crime. However, women with low educational levels and who lack a steady employment history and vocational skills face difficulty finding employment.

The government can help women gain the skills, education, and training that they need to secure work opportunities beginning while serving their time.

Vocational training and career technical education programs teach inmates employment skills or job-specific skills with the goal of reducing the risk of recidivating.

The First Step Act encouraged rehabilitation programs and offers significant incentives to inmates who participate in recidivism reduction programs.

Congress and states should explore and assess the effectiveness of such programs to scale what works and learn what doesn't work.

Occupational Licensure

Occupational licenses are another barrier of entry for those with a criminal record. Occupational licenses are government "permission slips" to work in a vocation. Workers have to satisfy state-level requirements of education and training at their own expense.

Occupational licensure has expanded significantly over the last five decades increasing from just 5 percent of the workforce in 1950 to 20 percent in 2000.

There are hundreds of occupations that require licensure and many of them are vocations that women work in: Manicurists, cosmetologists, makeup artists, preschool teachers, shampooers, interior designers, florists, hair braiders, and tax preparers. These can be low- and middle-income vocations where individuals can work for employers or be entrepreneurs.

Occupational licensure creates barriers to work because they often require higher levels of educational attainment and skills that can be costly and take a long time to secure. The qualifications may be unnecessary or unrelated to the actual vocation. Many occupational licenses are not portable across State lines. Most concerning, many states have "good character" standards that prohibit ex-offenders from ever obtaining a license.

A study by an Arizona State University researcher found that states with the heaviest occupational licensing burdens saw an average increase of over 9 percent

in new-crime recidivism rates over a three-year period. Conversely, states with the lowest burdens and no character provisions saw an average decline of nearly 2.5 percent in the recidivism rate.

Reforming occupational licenses are an important key to reducing recidivism. This is a bipartisan area of concern; the Obama Administration released a report calling for occupational licensing reforms. It's encouraging to see states eliminate licensing requirements or good character provisions.

Preparing women for life after prison will help them settle into a productive lifestyle and prevent them from returning to the behaviors that led to their crimes.

The criminal justice system is an area where we believe that smart reforms can help women who are breadwinners for households where someone is serving time or who have themselves been in the justice system and want to be productive Members of society.

It's exciting to see criminal justice reforms at the State and federal level deliver transformational impact for women and by extension their families and communities.

Thank you for the opportunity to be here this morning to discuss these issues of importance to women in society. I welcome any questions you may have.

Ms. BASS. Thank you. I want to thank all the witnesses for your testimony today. We will now proceed under the 5-minute Rule with questions. I will begin by recognizing myself for 5 minutes.

Ms. SHANK, I did not understand why you were indicted. You said that you were indicted, it sounded like years after your partner, who abused you, passed away. You were originally—could you please go through the sequence again and explain why you were indicted?

Ms. SHANK. Absolutely. It tends to be a little confusing sometimes. The person that I was dating was murdered, like I had mentioned, in 2002. I was initially charged with conspiracy in 2002. I received a letter from my attorney 3 months after the initial charge stated that my case had been dismissed.

Ms. BASS. Your conspiracy was?

Ms. SHANK. Drug-related conspiracy for a drug crime.

Ms. BASS. So, you conspired to sell the drugs, even though you were locked in the house against your will?

Ms. SHANK. I lived in the home. So, I like I said, I moved on with my life. I had married and had children. Then in 2007, they knocked on my door with an indictment and charged me with conspiracy. Not only did I get charged with conspiracy, but I also received four felonies. I was charged with the possession with intention to distribute cocaine, crack and marijuana, along with the conspiracy charges, and a two-point gun enhancement, based that I lived in the home.

Ms. BASS. So, you were indicted 5 years after the drug dealer died?

Ms. SHANK. Yes.

Ms. BASS. Years after you were originally arrested?

Ms. SHANK. Yes.

Ms. BASS. That is crazy. After you were released, I wanted to know what happened with your children. Who took care of your children while you were incarcerated?

Ms. SHANK. Their father.

Ms. BASS. Their father took care of the children. After you got out, did you get custody of your children?

Ms. SHANK. Absolutely. Three weeks after I got out, I went down with their dad and I have joint custody of my daughters now. He is a wonderful man, and father, a wonderful father. He is never

kept the children from me. He was very helpful in keeping my relationship with them.

Ms. BASS. How much time did you serve?

Ms. SHANK. Nine years.

Ms. BASS. So, how old are your children?

Ms. SHANK. Autumn is 15, Ava is 13, and Annalise is 11.

Ms. BASS. So, from what years to when, when you went in, they were how old?

Ms. SHANK. 4, 2, and 6 weeks old.

Ms. BASS. When you were released, they were how old?

Ms. SHANK. 13, 11, and 9.

Ms. BASS. Were you able to stay in touch with them? Didn't you say for a while you were close to them, but then you were transferred away?

Ms. SHANK. Yes. Initially, I was in Pekin, Illinois, and I was able to see them in my first 3 years for about every 6 weeks. I was able to maintain some type of connection with them being so small. But, the prison had closed for women, and I was transferred with 40 other women to Coleman, Florida.

Ms. BASS. Did anybody take into consideration the fact that you would not be able to be in touch with your family if you moved?

Ms. SHANK. There was no consideration for anybody. There was 240 women that were scattered all across the country. Pekin was the closest prison for all the women there. So, women ended up in California, Texas, Florida.

Ms. BASS. I am sorry to interrupt you. I was concerned about my time. The one thing that is said about women that are incarcerated different than men is that women don't receive visits. Women visit men in prison, men don't visit women in prison. I wanted to know from Ms. Shank and Ms. Kerman, was that your experience? Is that what you saw when you were in prison or is that not accurate?

Ms. SHANK. Absolutely. Women would get visits, and they would be very sparse as far as people visiting their families. I mean, you get a lot of grandmothers bringing kids, caregivers.

Ms. BASS. How many and how often did you see women whose children were in foster care while they were—

Ms. SHANK. Often. I mean, I would talk to a lot of women, I was there for 9 years, so I spoke with many women over the years that would lose their children, custody of their children.

Ms. BASS. Parental rights would be terminated if they were incarcerated too long?

Ms. SHANK. Yes, absolutely.

Ms. BASS. Ms. Kerman, what was your experience in seeing, did you see women receive visits? Did you know women who lost their children? Did you know women who were in foster care?

Ms. KERMAN. Thank you, Chair Bass. I feel that the relationship between mothers and children is the single most important factor of incarceration of women. I was not a mother when I was incarcerated. I am now. I think about that all the time. I thought about it all the time when I was locked up. I was very, very lucky, I was serving time in Connecticut and a resident of New York City, so for many people it was easy to visit me. Since then, the facility in Danbury has been repurposed, and a huge percentage of women

who were incarcerated there have also been transferred far away from their families.

What would happen is that you would see women my bunkmate never received a visit the entire time we bunked together. She had two children. Then, there were certain families that were fortunate enough to be able to be up in the visiting room with some frequency.

Ms. BASS. I am going to run out of time. I just wondered if anybody can comment on women that they saw who became pregnant while they were incarcerated?

Ms. SHANK. There was a woman in Florida who became pregnant by an officer while I was incarcerated. That is something that doesn't get talked enough about, the safety of women with officers who are there.

Ms. BASS. Thank you. Mr. Ratcliffe.

Mr. RATCLIFFE. I thank the chair.

Ms. Onwuka, you highlighted in your testimony the importance of dignity for women in prison. I agree with you: This certainly should not be a partisan issue. We should all be able to address in the spirit of bipartisanship, I think we can, the needs of women, girls in the criminal justice system.

Some of those issues, as you pointed out, were addressed in the First Step Act, which President Trump signed into law late last year, but you mentioned, also, that there are still areas for more to be done at the Federal level to provide dignity for women inmates. So, can you elaborate on those additional areas it for improvement? Specifically, I am interested if you know any States that have taken action in those specific areas? Then if time is permitting, I would like to get the perspective of Ms. Shank and Ms. Kerman, given your experiences.

Ms. ONWUKA. Thank you. So actually, the comments of Ms. Cynthia Shank just now touch on one of those, the male prison guards area. I mentioned I think it is reasonable for women to have some expectation of privacy, particularly when they are changing, they are undressing, they are showering. We know that female prisoners are vulnerable, and a lot of them have unfortunately experienced sexual violence in the past.

So, when you have a situation where, perhaps, a male correctional officer enters into a female cell, and she is changing, she may protest, and say, Can I have some privacy? A verbal altercation could ensue. This could be triggering for that woman behind bars, and it could lead to a place that she doesn't want to go, and you don't want to have her being.

So, I think the American—there are a couple of conservative organizations and progressive organizations that have come together to talk about why during incarceration, it is reasonable that male guards shouldn't be present when a woman is strip-searched. They shouldn't be supervising women who are in showers and other sensitive areas. Even the idea of forced and inappropriate inspections, these things are counterproductive to rehabilitating a woman behind bars.

So, I think there is an area there for understanding what is it? What happens when male guards are present? What are potential guidelines or guardrails that should be put in place between men

and women in sensitive areas? We understand there are other places where it makes sense to have that happen.

Another area that I think is concerning for pregnant women, we did talk about the shackling of women being ended, but I think the continued care for women who had a baby afterwards is really important.

Some researchers found that correctional facilities tend to fail to provide physician-recommended standards of care for pregnant women, and that places women's health and the health of the child at risk, even after a woman has had a baby. I know very many women, who have had children, understand that there is an emotional toll that is taken. So, when you are denied medical care, or you don't have adequate medical care, even mental healthcare that may be needed postpartum. I think those are areas where you both need some guidance from obstetricians and gynecological experts on what kind of care is actually needed, and how Federal prisons can provide that care.

Then in terms of States, I would have to do a deeper dive, I do know States like Louisiana, a lot of red conservative States have actually been implementing some of these at the State level. Texas is another great place that has implemented some changes in terms of Federal prisons, and so happy to provide some additional research at another time.

Mr. RATCLIFFE. Thank you.

Ms. Shank and Ms. Kerman, do you want to add to that? Any perspective that you want to provide on those issues of dignity for women, areas that we could focus on here?

Ms. SHANK. Absolutely. The guard-to-female situation is something I don't speak about often, primarily because my children are usually in the room when I go and speak, but it is very prevalent, the guard and inmate relationships that happen in prisons. I never felt safe changing; guards know your routines and if they want to single you out, they will. It is very common for an officer to single somebody out.

Ms. BASS. Would the witness yield for a minute? When you say guard-to-prisoner relationships, are these consensual, or are you describing rape?

Ms. SHANK. Well, when you put into perspective somebody who is over you who is in charge of you, they are consensual to the extent where you ask the inmates are there, but they are also vulnerable. These are their caregivers, these are people that are over them, they are authority over them, so while they are consensual relationships that I am aware of, to me, there is a level of not being consensual.

Ms. BASS. Power.

Ms. SHANK. Power, absolutely. They wield that power. I never had a relationship with an officer, but I can tell you that officers would know when I would shower, and they would walk by my room, they would enter my room when I was getting dressed frequently. It happened at every prison that I was at. I was at three different places, and this is just my story. I mean, you can talk to any one of those women, and they will all tell you it was very common to know that this officer was in a relationship with that inmate, or it was just something that happened all the time.

Ms. BASS. Thank you.

Mr. RATCLIFFE. Thank you.

Ms. BASS. Mr. Nadler.

Mr. NADLER. Ms. Kerman, your time in custody, you observed other women who were pregnant, I assume. You observed women who were pregnant gave birth while incarcerated? Can you describe what you observed?

Ms. KERMAN. Thank you, Mr. Nadler. I will never forget the first day in prison for a variety of reasons, but one of the things that I remember so clearly after being processed in by correctional officers and transformed into 11187424, it was February, I was being escorted up to the unit where I would live, to the building that would house me, and there were a group of women standing outside the building. There was a woman who was very visibly pregnant. I learned that she was 8 months pregnant, and I remember just being so confused when I saw her. I was literally, like, this must be a mistake. It had never occurred to me that there would be pregnant women in prison.

I am still deeply confused by that. I am deeply troubled by the fact that so many women enter prison, and, of course, they have gone through an entire judicial process prior to incarceration, and that our choice as a society is to force them to go through their pregnancy and childbirth while under custody in a setting, as Ms. Onwuka has pointed out, that is not appropriate for pregnant people.

That particular young woman that I saw went into labor shortly thereafter, just a few weeks later, she went into labor. She was the first person I had ever seen in labor. She labored for about 12 hours there in the prison, occasionally checked on by staff, but largely assisted by the other women.

Mr. NADLER. In a hospital unit?

Ms. KERMAN. Finally, after about 12 hours, they took her out to the local hospital, which is where she gave birth. She was then immediately returned to the prison postpartum in recovery from having given birth, but also incredibly drawn, sad and devastated, because she had been separated from her infant, and all the biology that we know tells us that babies and mothers need to be together for months, for years really.

Certainly, that young lady who was serving an 18-month sentence for a low-level drug offense, could have stayed in the community to give birth. She was from rural Maine, and it was very lucky that her family was able to take the baby, and it was very lucky that they were occasionally able to make the 8-hour drive down for her to see the baby.

It was also very lucky that she was going home soon, because not everyone is that fortunate. The most important thing from my point of view that we think about pregnancy is reproductive rights, freedom, and motherhood when we think about women in the criminal justice system.

Mr. NADLER. Let me ask that the video can clip from the Orange is the New Black which displays this heart-wrenching moment.

Ms. KERMAN. Let me quickly explain that this depicts the return of a prisoner immediately after giving birth.

[Video shown.]

Mr. NADLER. How long after giving birth was she returned to the prison?

Ms. KERMAN. The next day. She had a regular and uncomplicated birth. So, as soon as she could be medically discharged from the hospital, she was brought to prison.

Mr. NADLER. Let me ask in the few seconds I have left, Ms. Shank. I believe the mandatory minimum sentencing laws are unjust for individuals and harmful to our communities and society. Can you tell us something about sentencing reform, any particular reforms you think would address issues specific to women?

Ms. SHANK. That is a good question. Alternatives to sentencing? Is that what you are asking?

Mr. NADLER. Well, alternatives to mandatory sentencing. Whatever you—

Ms. SHANK. I mean, I think we need to give the discretion back to the judges, they need to be able to do their job. I think if they are allowed, if we take away mandatory minimum sentencing and allow them to sentence people on an individual basis, I think that would be more productive. I think we wouldn't have such an overload of people in prison, just kind of cut and dry, saying Okay, this is a category that you fall in, you go this way, you go right. I think it needs to be individual. I think you need to base—everybody's story is different; everybody's circumstances are different. I think the judge needs to be allowed to make that decision.

Mr. NADLER. Thank you very much, my time has expired.

Ms. BASS. Mr. Chabot.

Mr. CHABOT. Thank you very much, Madam Chair. Ms. Onwuka, if I could, you had mentioned in your testimony programs connected to the faith community, could you kind of expound upon that what have been your interactions, or your experience relative to faith-based programs in prisons, women's prisons, or men's for that matter?

Ms. ONWUKA. Sure. Thank you so much. I think the critical aspect of rehabilitation for many people behind bars has been faith, and the ability for those people to be connected to justice and restoration on a personal sense of their faith and their guiding beliefs. Part of that as you have seen some pretty successful programs that are faith-based that have actually been very helpful in achieving that.

So, prison programs that I have seen very effective, the first one that comes to mind is PEP. In general, you have seen prisoners who participate in job training and educational programs; they are less likely to recidivate, and they are more likely to avoid reincarceration afterwards. The PEP program, which is the Prison Entrepreneurship Program, I believe it is Texas-based, has been a tremendous example of kind of faith-based, but also just private organization going in there and providing prisoners with the skills that they need, particularly around entrepreneurship.

I like entrepreneurship because it is one of those areas where individuals who have a criminal record, for example, can actually start their own shop, hang their own shingle. I mentioned the statistic that 1,821 women, the new businesses were started each day in 2007 to 2018 because people were able to start those businesses

that they want to do. So, PEP is a really great example of a program that works in the State level, and can be scaled nationally.

Ms. ONWUKA. When it comes to other faith-based programs that reduce recidivism, I think there are some other programs out there. Prison Fellowship is another great one, national Christian non-profit serving prisoners. It was launched in, again, Texas. It is one of those places that has been a great launching pad for some of these programs.

I will give you some statistics from their success. According to a study by the Texas Policy Council, only 8 percent of the participants returned to prison within 2 years who completed the program that they provided compared to 20 percent of offenders who were eligible for the program but elected not to participate.

So, I think those are two examples of good programs, entrepreneurship related that could be helpful.

Mr. CHABOT. Thank you very much.

The next question I will ask any of the panel Members who might like to comment until I run out of time. Most prisoners, men or women, are going to get out some day, and even those that have some form of homicide often times are going to get out. Those that have job skills at the Federal level we have prison industries. I used to work with, in the city of Cincinnati when I was on city council and as a county commissioner, programs that encourage people to work, and we had two-for-one programs. For every day you were out doing something on a work crew, you got 2 days off your sentence, for example.

Relative to trying to get a skill that when the person gets out, that they could put actually into use, also making your time in prison perhaps pass more quickly, if that is possible, do you have any examples or programs that you think may have worked where you were at or an example where it doesn't work? Ms. Shank?

Ms. SHANK. One of the things that is very rarely offered in the Federal system, in the prisons that I was at, were any kind of programs whatsoever. There is the lack of program that we should be talking about. Each place that I was at, there was one program that would have been like a computer program. I was able to do that. That was the only program that I was able to do.

I did in Coleman, Florida, get my CDL. Have I driven a big rig since? No. It is something oriented towards men. There is a lack of programs. Also, any kind of programming that you do, there is a list you have to get on to get into this class.

Now, for me having a 15-year sentence, every class that I applied for, anybody who comes in after me and has a shorter sentence will be ahead of me on the list. So, guess how many programs I was able to do? Hardly any, because I would be moved back down the list because somebody with 2 years and is about to get out, would be able to do it. Whether it was a reentry programs, whether it is any other kind of programs, there is not enough programming in the system.

Mr. CHABOT. Thank you very much.

Ms. KERMAN. Cindy is correct. The Federal Bureau of Prisons is particularly egregious in terms of very limited rehabilitative programming or restorative programming. She draws a good compari-

son or a good point that many of the programs, the limited programs that are available, are completely designed for men.

Ms. Onwuka points out a wonderful program, the PEP program in Texas. Unfortunately, that is only available to men. Women are not able to participate in Texas.

There is an amazing program called Inmates to Entrepreneurs, which is based out of North Carolina but operates in other places, which does work with women, both incarcerated women and women who have returned to the community.

Mr. Chabot should know that in our State of Ohio at the Ohio Reformatory for Women, which is a State facility, there is a tremendous program called Tapestry, which has been operating for 25 years, which is a recovery program for women with substance use disorder, but it does have a faith-based component.

Ms. BASS. Thank you.

Ms. KERMAN. It is remarkably successful and operates a network of graduates, 800 women who have returned to the community. Of course, to this point is available to only a tiny percentage of women.

Ms. BASS. Thank you. We are going to need to move on.

Ms. BASS. Ms. JACKSON LEE.

Ms. JACKSON LEE. Thank you so very much for holding this hearing and to you and the Ranking Member.

It is clear that as we look at this set of facts, emotion, passion, that there is much work to do to build on what we have done in this committee, prison reform first steps, sentencing reduction, much work to do as it relates to women. This testimony has given us sort of the launching pad to be able to do so.

We hope to introduce soon the End Racial Profiling, which certainly overlaps some of the reasons why women of color are in. I know that the idea of conspiracy on drugs is something that occurs with the man and the woman that is in on the conspiracy charge. We see that all the time. We must address that, and I look forward to looking specifically at those issues.

Let me quickly say that one of my constituents, Dr. Roe, was not incarcerated but wearing a jumper coming from Jamaica, West Indies, an African American woman, was forced to put a blanket on to get on an airplane from the Caribbean, which is where people come for fun and play. So, we know that it permeates through LGBTQ and others, and so we look forward to doing that legislation.

I want to focus, if I could, Ms. McCurdy, on this question. African American women are twice the rate of imprisonment for White women, Hispanic 1.4 times. My time is short. Can you just give a quick reason why you believe—and I want to ask some other questions to Ms. Shank and others—as quick reasons why you see that happening?

Ms. MCCURDY. Well, I think it is—

Ms. JACKSON LEE. Thank you for your work.

Ms. MCCURDY. No problem. It is important for this Subcommittee to focus on the fact and I think through all our testimony we have talked about it, but I just want to say it out loud, that some of the major reasons why women are ending up incarcerated is because they are traumatized and they have experienced

trauma, whether it is physical abuse, sexual abuse, witnessing a violence in their communities, as well as they are caught in a cycle of poverty.

So, until we address those concerns and we have real gender responsive programming that addresses the trauma that women have experienced—and men, but today we are talking about women—we are kind of spinning our wheels at this. Studies have said—

Ms. JACKSON LEE. Do you think women of color are caught up in those elements as well as Anglo women and others?

Ms. MCCURDY. Absolutely. Absolutely.

Ms. JACKSON LEE. I need to move—I just wanted to get that basic understanding of the reason. Thank you so very much.

Ms. SHANK, I have legislation moving through the Congress, unfortunately, it is stuck in the United States Senate—that deals with the birth of babies while incarcerated. You have given me the, as I say, the launch to add the children aspect, but it is to allow the mother to keep the baby. In some instances, they are incarcerated, and to keep the baby while incarcerated in a separate area and to nurture that child for 6 months.

Now, there are also options in the community for low offenses. We want to look at that. I want you to comment, if you will, on how powerful it would be if that scene where the woman would be coming back with her baby to a certain safe place, clean, orderly, baby nursery type, where those mothers could stay while they were incarcerated.

Ms. SHANK. I could barely watch that scene because it is very real. I had to turn away because it made me cry. It means everything if a mother could stay with her child. I don't know that to coming back to a nursery type situation without your child is going to do any good.

Ms. JACKSON LEE. Right. That is what I am saying. So, you come with the baby?

Ms. SHANK. You have to come with the baby.

Ms. JACKSON LEE. Right. Absolutely.

Ms. SHANK. You have to be able to be with the baby.

Ms. JACKSON LEE. That is what I was saying.

Ms. SHANK. It has to be able to—sorry. That must be able to happen. That is necessary, not only for the mother's sanity and well-being, but for the child as well. We have to remember that I am an adult, and I accepted the consequences of my sentencing, but my children were the innocent victims in this, and that is who we have to focus on. There is nothing available for children, even when I put my daughters in play therapy, they had to go to grief counseling. That was the therapy that they went to.

Ms. JACKSON LEE. So, may I add that we are now, with your testimony, believe that we should now look at that piece—

Ms. SHANK. Absolutely.

Ms. JACKSON LEE. —that helps mothers be together with their children, frequent visits—we are thinking of how we actually can do that, and you put a face on it.

Ms. SHANK. Frequent visits and also the type of visit. If you could allow more of a play-type situation instead of having your children having to sit in a chair and not be able to get up or some-

thing other than playing in a cement slab with no toys, really very limited things that you are playing with.

I created costumes with my children out of toilet paper when they came to visit me for Halloween. A mother will do anything that they can to make their child happy, but if there is not even anything there for them to be able to do that, I mean, our resources are very limited. You just must be able to offer them something to be able to bring that child some form of happiness and some form of connection with that child.

Thank you.

Ms. JACKSON LEE. That should be a part of our reformation for women.

Ms. SHANK. It should be part of the visits. Yeah. It should be part of rehabilitation, strengthening those family bonds. It is what keeps them together.

Ms. JACKSON LEE. Thank you so very much.

Ms. BASS. Mrs. Lesko.

Mrs. LESKO. Well, I want to thank you, Madam Chair. This has been a very interesting committee, so thank you for doing a hearing.

I want to say to Ms. Shank, thank you for sharing your story. I am glad that you, after 9 years got clemency and you are getting your life back together.

All of you, thank you for sharing your stories.

I do have a question, and I am not sure who to ask of it, but in Arizona, I am from Arizona, we worked on sentencing reform. I think this is a bipartisan issue, quite frankly, both conservative groups and nonconservative groups, or I don't know if you call it liberal or whatever, agree on this issue that there is a problem.

When we tried to do this in Arizona, the prosecutors pushed back saying, no, this is not first-time drug offenders that are in the Arizona prisons at least. The prisons actually showed us the statistics of who was in the prisons, and you had to be basically a drug dealer, not just a drug user, at least in Arizona, or it had to be a violent crime.

So, I guess, Ms. McCurdy, you might be the right person to answer, is this the case also in Federal prison? I mean, do you have first-time drug offenders? Who is in the prison?

Ms. MCCURDY. So, not only do you have a number of first-time—particularly with women, first-time drug offenders. In the Federal system, you are charged with trafficking or possession with the intent to distribute. Again, as we have talked about what often women fall victim to, is the conspiracy laws.

So, you don't have to necessarily have dealt drugs. You must have some role in a conspiracy, and that, quote/unquote, role is very little. As you have heard Cindy talk about, you could live with your partner and pick up the phone in your house that you live with your partner and that is enough to implicate you in a conspiracy. You can take money to the bank that your partner gave you. Again, you are not involved in the trade itself, but you have these peripheral roles, and that is enough to get you involved in the conspiracy. The problem on the Federal level is that the focus is not on your role; the focus is on the weight of the drugs.

So, if the conspiracy is large and the weight of the drugs is large and you don't have information to trade with the prosecutor to cooperate, you cannot get your sentence reduced to be on the mandatory minimum. Often women, because they are not involved in the trade, they end up taking the entire weight of the drug trade, which in some instances gets them life without parole sentences.

Mrs. LESKO. Very interesting.

The other thing that was brought up by one of the witnesses was about childcare. If you do get out and you are on probation, you must go to mandatory meetings. I know in our State of Arizona we offer free or reduced childcare to low-income working women. There is usually a waiting list because there is a certain amount of funds.

Is this something that I would assume would help in that situation? Because I imagine it would be difficult, especially if you are a single parent.

Ms. KAJSTURA. Yeah. So that is definitely a step in the right direction. One of the other problems on probation is you are restricted to the hours you are allowed to leave the house, for example, if you have to do an emergency pickup of your kid and you can't reach your parole or probation officer in time, or the same thing for an emergency hospital visits. You are torn between your caregiving duties and knowing that you are going to get sent back to prison if you take your kid to the emergency room.

Mrs. LESKO. Well, thank you. I only have 32 seconds left, and I have so many questions, so maybe I will follow up with all of you.

The one thing that we did in our State too was we reformed our occupational licensing. I would imagine that if you have a criminal history, it might be difficult to get a regular job. So, I would assume a lot of women could be self-employed. So, what are your thoughts on that—I don't know how to pronounce your name, Ms. Onwuka? Thank you.

Ms. BASS. Microphone.

Ms. ONWUKA. Your State is a great example of States of leading the charge in occupational licensing reform. For those who are unfamiliar, an occupational license is simply just a permission slip from the government for you to get into a vocation. That could be everything from hair braiding to being a florist.

There are lots of certifications and hurdles, frankly, that can be costly, particularly if you are low income, you don't have a lot of money, you are taking care of children and the time it takes to get those certifications. A lot of them have nothing to do with any sort of health or actual trade itself. It is just a way to limit competition.

So, Arizona is a great State. I think there are a lot of other States that are reforming, and I would absolutely encourage other States to look at particularly those industries where women are trying to get into those vocations. Those are entry-level jobs, and they can become a primary source of a very good income.

Mrs. LESKO. Madam Chair, I know my time is up, but I just wanted to share with the Members that in our Arizona prisons, at least, we have what is called Correctional Industries, and there we put women to work. I have toured it.

In fact, if you call a call center, you might be talking to a woman prisoner in Arizona, because they are actually contracted out and

they are doing call center work for different companies. So, it is a good way for people to get trained, and I support that.

I would like to work with you and other Members. I think there are pieces of this that we can work on in a bipartisan way.

Ms. BASS. Absolutely.

Mrs. LESKO. As long as we don't put in poison pills and that type of thing, I think we can work on it together.

Ms. BASS. Thank you.

Mrs. LESKO. Thank you.

Ms. BASS. Thank you.

Representative Demings.

Mrs. DEMINGS. Thank you so much, Madam Chair and thank you, Ranking Member, both of you, for your opening comments this morning that I think so adequately set the stage for today's hearing.

Thank you to each of you. I served as a law enforcement officer for a lot of years, and our mission was to protect victims, but our purpose was never to create more victims. I think that it is so important that we understand the individual circumstances and victimization and other characteristics that women who are incarcerated face, like being victims of domestic violence, substance abuse, mental illness, being poor or low income. All of those are challenges that if we are going to improve how we do business, we have got to factor those things in. Eighty percent of the women who are incarcerated are parents.

Ms. Shank, you are absolutely correct. I was a daddy's girl. I love my father, but you can't even put into words what it means to be with your mother and the special role that a woman plays, a mother plays in every household. So, thank you so much for being here today and helping us.

We haven't even talked much about once you are released and coming back into society and the challenges of that. Ms. Shank, I would like to start with you. If you could just talk about the separation from your husband, but eventually, you were able to remarry and all, and that is great, but could you talk about, once you were released, some of the challenges that you faced coming back into society.

Ms. SHANK. Yeah. We did not reconcile. We are divorced, but we have a great relationship. We are coparenting our daughters and doing that together.

When you are released, one of the challenges that I faced was to get a job. I was fortunate enough to get a job 29 days out of prison and just received my sixth promotion last week.

Mrs. DEMINGS. Congratulations.

Ms. SHANK. Thank you. That is determination and that is being a mother, having a lot of catching up to do.

One of the things that was really hard, my halfway house was in Kalamazoo, which is an hour and a half drive away from my hometown, and they would have me come three to four times a week between the hours of 8:00 a.m. and 3:00 p.m., which are my work hours, to come in for whatever they wanted me to come in for, just checkups, checking in, meetings, drops, whatever random thing that they wanted. If I didn't, then that was a violation of my probation. If I lose my job, which my job just hired me out, and

plus I am a felon which they are looking at me. I could have easily loose my job and that is a violation of my probation. They make things very difficult.

Thankfully, I had a vehicle. I asked the person at the halfway house, what would I do if I didn't have a car? She said, well, you would just take the bus. That is like 4 hours.

Mrs. DEMINGS. Days.

Ms. SHANK. Yeah, but they expect you to follow all these rules, which I understand, but they make things very difficult. That was very challenging for me early on. Luckily, I am off that home confinement and off probation. No, I am still on probation. I am still on for 5 years, but I don't have to do my check-ins anymore.

Mrs. DEMINGS. Thank you very much.

Ms. Kerman, do you have anything to add to that? Also, you talked about that this is about policy. Incarceration of women is more about policy and not crimes. Could you elaborate a little bit on that as well, please?

Ms. KERMAN. Sure. I woke up on the day of my release. I was in a Federal jail facility in Chicago, not the prison facility in Danbury. No one in the facility would confirm that I was, in fact, going to be released, but I was quite alert. I watched Martha Stewart get released from Federal prison the same day on the news.

Finally, hours later, a correctional officer said, come on, pack out, Kerman. They took me down to receiving and disbursement and said, we don't have any women's clothes, here are the smallest set of men's clothes we have. Here is a windbreaker. It was Chicago in the winter and here is \$28, this is a gratuity. I was like, thank you.

They took me to an alleyway door and opened up the alleyway door and were like, see ya. I was very, very lucky because my fiancé was waiting at the front door to take me home to New York, which was 800 miles away. If that had not been true, my entire life might have been, almost surely, completely different.

Because I had safe and stable housing, I was able to start work a week after my release from prison. I can't overstate how important that work piece is.

I was treated very differently by my Federal supervising probation office. Both of us were in the Federal system. Of course, I was subject to drug testing, check-ins, and so on and so forth, but they did not treat me with a heavy hand like they did Cindy.

I think we have to look very hard at what drives disparity in the system. It is race, it is class. It is unacceptable, it is illegal.

That brings me back to your question about policy and the fact that criminology experts all over the country will point out the fact that it is policy decisions that drive incarceration. Our incarceration rise in this country does not map to crime rates.

We began to incarcerate people at a very high rate as crime rates were actually beginning to decline. Crime rates continued to go up and up and up even as we now enjoy historically low crime rates, like some of the lowest crime rates ever recorded since we started recording.

Mrs. DEMINGS. Thank you so much. My 5 or 6 minutes goes very, very quickly.

Thank you so much, Madam Chair.

Ms. BASS. You are very welcome. Representative Cline.

Mr. CLINE. Thank you, Madam Chair.

I want to thank the witnesses for being here today.

I want to talk a little bit about the need for bail reform. Despite overall decreases in incarceration, pretrial detention since 2000 has increased by 31 percent to make up about two-thirds of the overall jail population. Over 60 percent of women who are incarcerated have not been convicted of a crime and are held in custody pretrial. This has a unique impact because two-thirds of the women who could not meet bail conditions, two-thirds were mothers of minor children.

So, at the time of the survey that I am quoting, over 150,000 children had a parent in jail because they could not afford their bail bond. That means children are impacted by pretrial detention in startling numbers, and this problem is most often caused by the pretrial incarceration of sole provider mothers. So, we need to take steps to address this problem.

As a former prosecutor, when you are presented with a potential bond situation in court, you have certain factors, at least in Virginia, to consider: Whether the defendant is a flight risk, whether they are a risk to the community if released, or whether the severity of the offense with which they have been charged is also something to consider.

There are also the issues of a secured bond versus an unsecured bond. We in Virginia have pretrial services, which can be administered, not in lieu of bond, but often they are a great way to help in the process to avoid having to keep someone incarcerated.

So, let me ask anyone who would like to comment on that, what steps can we take to help address this problem?

Ms. KAJSTURA. Well, I think part of the reason—so some of these problems are very systemic. Some of the impact that fees and bail bonds and the economic sanctions of the criminal justice system have on women are greater than men just because women don't tend to make as much money as men. This hits Black and Hispanic women even more so than White women.

Mr. CLINE. Okay. So, in addition—getting rid of a money-based bond, I get that. Let's go a little deeper. Secured versus unsecured, pretrial versus bond, can you speak to those specifics as to whether one might be more advantageous than another when it comes to reducing the impact on children in this situation?

Ms. KAJSTURA. Yeah. I am not sure about the way those distinctions would make a difference. Maybe somebody else could speak to it.

Mr. CLINE. Okay. Anybody else? Ms. McCurdy?

Ms. KERMAN. I received bail and was able to pay my bail with the help of my family, and that literally made all the difference in my life. We know the data shows that people who are able to afford bail get better outcomes in their cases, for a variety of reasons, but including the fact that they are not desperate to plead guilty and take pleas that they should not take, which, of course, 95 percent of all criminal defendants take a plea.

I can observe that from my time in that Federal jail, that women there who were on pretrial status were desperate. They were desperate about what was going on with their families. They were des-

perately uncertain about what was going to happen to their own lives. They had no idea—there is a woman who had been incarcerated there for 2 years pretrial.

Mr. CLINE. What about encouragement of stay-home monitoring? I mean, is that something that could enable maybe—

Ms. KERMAN. So, during my 6 years spent on pretrial, I simply reported to probation in New York City. My case was caught in Chicago, but I was supervised in New York City where I lived.

Mr. CLINE. You were 6 years on pretrial?

Ms. KERMAN. I spent 9 years under correctional control total, though I was fortunate to only spend 1 of it incarcerated.

Mr. CLINE. Wow.

Ms. KERMAN. So, 6 years of pretrial. I went through several probation officers that were supervising, but it was a pretty straightforward process. I turned up once a month. I was tested for drugs. All the same things that we require of probation, basically.

I was not a mother, so I think that a mother is even less of a flight risk or we have a greater consideration as a society to make sure that a mother is able to be in the community. Certainly, the Federal system is set up to do something other than rely on bail or pretrial incarceration in the outcome of its sentences.

I must reflect on the fact that, you are a former prosecutor, the responsibility of this really lies squarely within the prosecutorial function and its relationship with the supervision.

Mr. CLINE. With a recommendation. Right.

Ms. KERMAN. Women are a great example of the best possible candidates for pretrial treatment that does not involve incarceration.

Mr. CLINE. All right. Thank you. I yield back.

Ms. BASS. Thank you. Representative McBath.

Mrs. MCBATH. Thank you, Madam Chair.

Thank you to each of you for being here today to share your expertise and your personal experience. It is critical that we hear from you.

In recent years, I represent Georgia's 6th Congressional District, Georgia took on the challenge of criminal justice reform. Under the leadership of Governor Nathan Deal, a Republican, Georgia has enacted bipartisan reforms that are reducing recidivism—easy for me to say—recidivism and saving Georgia taxpayers billions of dollars.

Unfortunately, these reforms may not be doing enough to affect the outcomes for women. Women are now the fastest growing population in Georgia's justice system, sadly to say. I know that we have to do more to make sure that women are more than an afterthought as we work to improve our criminal justice system.

Ms. McCurdy, specialized courts like drug courts and mental health courts have been a major pillar of Georgia's criminal justice reform efforts, and they have also helped to reduce the incarceration of nonviolent individuals. How can we work to ensure that specialized courts are serving the needs of women?

Ms. MCCURDY. So specialized courts are definitely one answer to some of the problems in the system. The thing that I want to caution us about specialized courts is that often people are required to plead guilty before they get access to a specialized, a drug court, or a mental health court.

Particularly with drug courts, when you are dealing with people who have substance abuse problems and because of their problems can fall off the wagon and ultimately have already pled guilty. We have to really be careful about the way we use our drug courts so that we are not funneling people in the system or basically being able to create a system where they will ultimately fail because they can't adhere to the conditions of drug court.

So, my recommendation is particularly for drug courts, that we not require people to plead guilty at the time they enter and that they are able to at least try to get through the diversion aspect of the drug court before ultimately a plea or a decision about their actual charge is resolved.

Mrs. MCBATH. Would you actually say that the percentages of women that are actually having to plead guilty has gone up within recent years?

Ms. MCCURDY. Yes.

Mrs. MCBATH. Thank you for that.

Ms. Kajstura, please forgive me if I mispronounce your name, do you have anything to add to that? I would love to hear from you.

Ms. KAJSTURA. No, nothing to add. I would like to underline that the guilty plea aspect of diversion courts is the effects that cannot be understated. Any mistake then leads somebody back into the kind of mainstream courts with a guilty plea, whether or not they were, in fact, guilty. Because often, like any plea bargains, if you are facing a very high sentence possibility, you are coerced into pleading just to get out of jail, just to get out of prison.

Mrs. MCBATH. Thank you.

Another component of criminal justice reform in Georgia is the rehabilitative programs, including drug and mental health treatment and programs that improve people's employment prospects upon their release. Again, these investments in people save money by keeping people from committing crimes again.

Ms. McCurdy, what obstacles do women face in assessing these programs? I am sure there are lots of obstacles they are having to overcome.

Ms. MCCURDY. Well, I think, particularly in the Federal system, one of the obstacles to even participating in the programs in the Bureau of Prisons is there is not enough programming, as I think Cindy has said.

Even when there is programming, staff and women in prison don't even know about it. Particularly, for example, there is a trauma program called FIT in the Federal prison system. Only one facility actually, according to our Office of Inspector General report, even offers the program. Again, this is around trauma-responsive programming, and not many people knew about it.

There is another program, MINT, and that is a program that is supposed to help mothers stay with their children while they are incarcerated. Only 37 percent of the people in the Federal prison participated in it, and many did not know about it and weren't told about it from the Bureau of Prisons. There were plenty of slots that were available for women to participate in it. We must get the information out.

Mrs. MCBATH. Thank you so much.

Ms. BASS. Thank you.

Representative Steube.

Mr. STEUBE. Thank you, Madam Chair.

I hail from Florida where I spent some time in the State legislature, and we did, especially on the senate side, attempted to do an incredible amount of criminal justice reform before I left, and they were still working on it while I have been up here.

One of the things that we never focused on was the female side of prison reform and criminal justice reform. All the focus was kind of what you guys are talking about, was just, in general, mostly on the male side of the equation. So, I appreciate all of you being here today and kind of bringing this issue to the forefront.

I just would love to get your recommendations. Ms. Shank, in your testimony, you talked about women in prison with you and wanting them to have a second chance. Help me understand what that would look like. After a certain amount of time of good behavior, do we then bring them up for like a probation-type hearing? Like what, in your mind, is that second chance that we on the Federal side could look at doing in circumstances like that?

Ms. SHANK. Well, like right now with the First Step Act, their initiative with the programming. That to me is very important of allowing women to, first, let's get some programs in there. Let's allow them to get the help that they need. Let's allow them to get education. Then, putting in the incentives to give them help with time off or maybe just there is no parole or anything like that in the Federal system. You do 87 percent of your time.

Relief. They just need relief of anything that we could do to help shorten their sentences, whether it would be programming or whether it would be a bill that we pass that recalculates the weight and the calculation and what that means to sentencing. We just need to allow the women a chance to breathe, to give them that second chance.

There are women that I was incarcerated with who were serving 20–30-year sentences. For me, the prosecutor asked for 89 years. I received my mandatory minimum sentence. So, let's get rid of these mandatory minimum sentences. That, to me, is very important.

Mr. STEUBE. That was some of the things that we worked on the floor was getting rid of some of the mandatory minimums that went in. So, you are talking about rehabilitation, employment-type programs in the prisons.

Ms. Kerman, you had talked about the Justice Home program in New York. Is that something that you would like to see at the Federal level, some type of similar program at the Federal level? Is that lacking? Do we not have something like that at the Federal level?

Ms. KERMAN. There is nothing remotely like it available in the Federal system. So, again, that gives discretion to judges and prosecutors. They evaluate the case in front of them, their felony cases, and they may elect to allow the woman to stay in the community, again, go through accountability measures but also get some wrap-around help.

Every woman is different. Some women need job education. Some women need mental health or access to mental healthcare, substance use disorder. Every case is different, but the results are fan-

tastic. It saves the taxpayers money, and it saves those families the trauma of being torn apart by incarceration.

I have to return to that question of trauma, because we know that it actually lies at the heart of most women's involvement in the criminal justice system. Eighty to ninety percent of women in the system have been the victims of sexual assault, other physical assault, or really significant trauma prior to their incarceration. The overlapping incidences of substance use disorder and mental health problems are directly related.

If people in the community get the trauma response that is necessary in a timely fashion, we would see—and this is true of men as well, but it is disproportionately true for women—something very, very different in the criminal justice system. That experience of trauma, as Cindy's history of being a victim of domestic abuse, should have been considered at sentencing.

Mr. STEUBE. Well, and you have previously testified before the Senate Judiciary Committee. Is that correct?

Ms. KERMAN. That is correct, sir.

Mr. STEUBE. In the Senate Committee on Homeland Security on issues of prison reform?

Ms. KERMAN. That is correct.

Mr. STEUBE. That was in 2014 and 2015?

Ms. KERMAN. Yes.

Mr. STEUBE. So, since that time, what progress, if any, has been made in prison reform at the Federal level?

Ms. KERMAN. I think that we have seen lots of innovations at the State level. We have seen very little progress in the Federal Government, other than the passage of the Federal legislations recently.

I must make the point that both the Federal Bureau of Prisons and all correctional systems operate with limited oversight in many cases and limited accountability when problems are found within correctional systems or individual prisons.

Ms. BASS. Thank you.

Ms. KERMAN. No prison has ever been closed because it was badly run.

Ms. BASS. Thank you.

Mr. STEUBE. Thank you. My time has expired.

Ms. BASS. Representative Deutch. I am sorry.

Mr. STEUBE. Thank you. Oh, no, you are fine. I just wanted to say that I would be happy to work on these issues moving forward with the committee. We did a lot of this in Florida, and I certainly think that their testimony is very impactful on the issues. So, thank you.

Ms. BASS. Thank you.

Representative Deutch.

Mr. DEUTCH. Thank you, Madam Chair.

Thanks to all the witnesses for being here. Thanks for your helpful and really powerful testimony.

Ms. Kajstura, you drafted an article entitled "Women's Mass Incarceration: The Whole Pie 2018" that dramatically captures the current State of women and girls in our Nation's criminal justice system. Some of the statistics in there, some of the statistics we have heard already today, over 219,000 women and girls incarcer-

ated in the U.S. We talked about the 700 percent increase since 1980.

The growth rate of incarcerated women now outpaces men. 60 percent of women in local jails have not been convicted of a crime, and 80 percent of the women—80 percent of the women being held in jails are mothers.

So, in January of this year, the American Journal of Public Health released a study on pregnancy in prisons, finding that in 22 States, they studied a total of 1,396 pregnant women who were held in prison, but accessibility to adequate medical care is atrocious. This is a devastating impact on women.

I would just flag one incident in my own district. On the morning of April 10, there was an incident in Pompano Beach, Florida, that I represent. I would like to submit for the record a letter from the Broward County Public Defender Howard Finkelstein to Broward County Sheriff Gregory Tony detailing the incident.

Ms. BASS. Without objection.

[The information follows:]

MR. DEITSCH FOR THE RECORD



Law Office of the
PUBLIC DEFENDER
 Seventeenth Judicial Circuit

Howard Finkelstein • Public Defender

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 Telephone: (954) 831-8650 • Fax: (954) 831-8853 • Internet Address: <http://www.browarddefender.org>

May 3, 2019

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 Broward Sheriff's Office
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 Fort Lauderdale, Florida 33312

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 Howard Finkelstein
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 Allen E. Smith
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Re: Childbirth in the Main Jail

Dear Sheriff Tony:

I am incensed and heartbroken after learning that a mentally ill client was forced to deliver her child alone in a jail cell. In the early hours of Wednesday, April 10, Tammy Jackson, who was full term and known to be so by jail and medical personnel, began complaining of contractions and asked staff for help. Instead of transporting Ms. Jackson to the hospital to deliver her child, staff attempted to contact an on-call physician at 3:16am. Hours passed as Ms. Jackson continued in labor, alone in an isolation cell. At 7:22am, staff was finally able to speak with the doctor, who advised that he would check on her when he arrived at the jail. One hour and 38 minutes later, Ms. Jackson reported she was bleeding but still she remained isolated in her cell, and no urgency was demonstrated by your staff. Six hours and 54 minutes after asking for help, a BSO tech notified medical staff that Ms. Jackson was holding her newborn baby in her arms, having delivered her baby without medication or the assistance of a physician. She was forced to deliver her baby alone.

Since the day of her arrest the previous month, the Broward Sheriff's Office was aware that Ms. Jackson was pregnant. She had been placed in the infirmary specifically so her medical issues could be monitored and addressed. Medical records indicate her baby was born at term; the birth was not premature or unexpected. Yet in her time of extreme need and vulnerability, BSO neglected to provide Ms. Jackson with the assistance and medical care all mothers need and deserve. Not only was Ms. Jackson's health callously ignored, the life of her child was also put at grave risk.

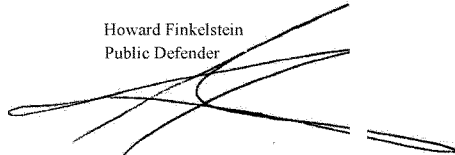
It is unconscionable that any woman, particularly a mentally ill woman, would be abandoned in her cell to deliver her own baby. Your staff did not protect either Ms. Jackson or her child. Despite their neglect and callous indifference, both Ms. Jackson and her child survived. It remains to be seen how this gross negligence will affect Ms. Jackson's already fragile mental health.

What happened to Ms. Jackson is outrageous and inhumane. I demand an immediate review of the medical and isolation practices in place in all detention facilities to ensure that no mother endures the ordeal Ms. Jackson survived.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard Finkelstein".

Howard Finkelstein
Public Defender

A handwritten signature in black ink, appearing to read "Gordon H. Weekes, Jr.". The signature is stylized with a large, sweeping "G".

Gordon H. Weekes, Jr.
Executive Chief Assistant Public Defender

Mr. DEUTCH. Thank you, Madam Chair.

Tammy Jackson, a 34-year-old woman, pregnant woman with a mental illness complained to jail officers at 3 a.m. that she was experiencing contractions. Jail officials moved the woman to an empty cell and left her alone for nearly 7 hours. Finally, after more than 4 hours, at 7:22 a.m., they spoke with a physician.

The physician stated he would check on her when he arrived. Then they waited. Finally, a deputy observed the woman squatting and screaming in pain and then, I quote, heard a baby crying as he approached the cell. When he saw Ms. Jackson standing with a baby in her arms, he helped wrap the baby with a towel.

The nurse described the incident as, and I quote "a pregnant female had a spontaneous delivery." Well, it shouldn't have happened like that, obviously. That is not how anyone should be treated in America.

However shocking as it may be, it is not an isolated occurrence. In fact, a few days earlier, another woman almost gave birth alone at a cell in the same facility. Fortunately, in that instance, jail officials transported the woman in time to a hospital where she gave birth to the baby.

I would just ask—I think I will ask Ms. McCurdy, you first, what kind of data should prisons and jails be collecting on pregnancy for incarcerated women?

Ms. MCCURDY. Well, first of all, I find it funny that they characterized it as a spontaneous birth when they had a 9 months' notice. I think it is important that we know four to five women enter jails pregnant, 4 to 5 percent of women enter jails pregnant. So, at the point that their pregnancy is acknowledged, medical attention should start at that point.

Just as if women were not in jail or prisons, they need the continuous medical prenatal attention that women need on the outside as well. So, we can't wait until they get to the point where they are about to have birth to give them prenatal care. We must do it from the day they enter jails.

More importantly, we need to stop putting pregnant women in jail. There are too many alternatives that we could turn to before the last option is to put a pregnant woman in jail.

Mr. DEUTCH. I appreciate that. I agree.

Just to put a few things in the record, that study also points out that there is no Federal agency that is responsible for collecting incarceration data that also collects pregnancy data. I assume—let me just confirm—that pregnancy data of incarcerated women should be collected by the Bureau of Justice Statistics, correct?

Ms. MCCURDY. Correct.

Mr. DEUTCH. The lack of pregnancy data collected on incarcerated women is an indication, obviously, that our prison and jail system has not adapted to the increasing number of women and girls in the system.

I am concerned, finally, that the quality of medical care and staff training for pregnant women can differ dramatically. Should a national standard be developed on the care that pregnant women receive while incarcerated?

Ms. McCURDY. Absolutely. Again, that national standard should start with keeping women out of jails and prisons that are pregnant.

Mr. DEUTCH. All right. Thank you. Thank you all very much. I yield back.

Ms. BASS. Representative Richmond.

Mr. RICHMOND. Thank you, Madam Chairwoman, and thank you for having this hearing.

As I hear from the witnesses today, it appears a number of things that I take out of it, one of which is the power and the amount of abuse that can happen in prosecutorial discretion. That is a question for, I think, this Committee and policymakers to determine how much power that prosecutors are going to have.

It was a prosecutor, Ms. Shank, that made the decision to come back after 5 years and charge you with a crime. Too often, prosecutors look at people as leverage to go after something else or collateral damage towards some other fight. I think that we need to make sure that we are holding our prosecutors accountable, so that if you are rich and affluent, you get different treatment than if you are poor and uneducated. I think that that is something that have to highlight.

The other point I heard is programming. One of the things that I find to be the climax of foolishness in our correctional system in America is the fact that we encourage people when we lock them up to better themselves, and then when they get out, we have barriers to them getting licenses in those very professions we train them in.

So, in many States, you have a catch-all phrase to get a license called good moral character. Well, we invested money in people—formerly incarcerated people to train them. What sense does it make to bar them from entering those professions once we invested in the training? Do you all agree that is counterproductive?

I would note that everybody seemed to say yes, so—

Ms. SHANK. Absolutely.

Ms. KERMAN. Yes.

Mr. RICHMOND. The other thing is the family connection. You all said it. I wrote an article a long time ago that said, I was talking about a father then, that the father may be in jail but the family is doing the time. Well, certainly when a mother is in jail, the family is doing the time.

In the First Step Act, we said that we have to incarcerate people within 500 driving miles of the home. I think that the conversation today gives real credence to, maybe with women, that number needs to be reduced in half when you think of the importance and the difficulty and the fact that women are less likely to be visited in jail.

The other thing I heard was gender-responsive correctional approaches that is guided by women-centered research and data. I think that that is very, very important, and I want to thank you all for your recommendations.

So, Ms. Kerman, let me ask you a question. You talked about Justice Home. Does that also apply for violent crimes or just non-violent crimes?

Ms. KERMAN. I think that is at the discretion of the prosecutors and the judges. Certainly, the program I served on, the board of the Women's Prison Association, which is one of the community agencies that does the ongoing work with participants, and we would certainly take anybody regardless of their crime of conviction. That program does give a possibility at record expungement, depending on what the crime is and depending on the person's completion of the program and, of course, depending on the discretion of the judge and the prosecutor.

I think that it is a very artificial line often that we make the distinction between crimes we characterize as violent and crimes that we characterize as nonviolent. Anyone who is intimate with the courts system and the way that charges are brought knows—

Mr. RICHMOND. Well—

Ms. KERMAN. —that those terms are not always true reflections.

Mr. RICHMOND. Well, let me just cut you off. Because I did criminal offense, and I am not talking about the nuance between weight and not weight, whether it is determined as violent. I am talking about crimes of violence where there is a physical victim.

Let me move on really quickly to something I don't think I heard, and that is housing at the end of incarceration is one of the biggest factors in recidivism. So, the question becomes, all of these artificial barriers to public housing, to public educational assistance, once you have been formerly incarcerated, how do we tackle those barriers?

The last part of that is seeing, especially with crack cocaine, if a child in public housing was convicted of having crack or drugs, then the mother gets evicted from public housing. Now, with opioids, we do not see prosecutors and housing authorities push to evict opioid parents. So, a note that we ought to treat them the same way. But, how important is housing in this whole equation, stable housing when you get out?

Ms. KERMAN. I mean, safe and stable housing is not only important for women's return to the community. A lack of safe and stable housing is a determining factor in why many women end up in the system in the first place. Not having a safe place to live, women's lack of safety has a contributing factor to their potential to commit crimes as well.

So as far as those many policy-based barriers to people gaining access to safe and stable housing, we should drop them. Those are not things that we have to do. Those are things that we choose to do. We should choose to tear down each and every barrier to full citizenship that people like me and Cindy face.

Ms. BASS. Thank you.

Ms. KERMAN. We deserve our citizenship in full.

Ms. BASS. Thank you.

Representative Jeffries.

Mr. JEFFRIES. Thank you, Chairwoman Bass, for convening this hearing and for your tremendous leadership in this area.

I want to thank all our witnesses for your presence here today and for the compelling information that you are providing.

Ms. Shank, I think you said in your testimony that you believe that the years and miles of separation caused by incarceration are in part designed to break the bonds between families. Is that right?

Ms. SHANK. That is absolutely correct. I feel that 1,000 percent. Being we were limited to 300 minutes a month on phone calls, which we have to pay for ourselves. I had three daughters. They are fighting over the phone. Imagine a child when they hear that beep. My kids would panic when they would hear that beep before the phone is going to hang up, and then to cry and telling me, don't hang up, Mommy, don't hang up. Mommy, please, don't hang up. The phone just to drop, it is devastating. It to happen every single time, I mean, it is set up to keep you apart.

They try and tell you that you are here and we want you to strengthen your family ties and they are offering things, but they don't offer anything. They move you 1,000 miles away, which I saw my daughters once a year. I had limited phone calls. They were too little to email and write letters. We would do the best we could. I would always write them and try anything I could to keep them to remember me, but it was very hard and very challenging.

Mr. JEFFRIES. You were released from prison, I believe, in March of 2017, after serving 9 years. Is that right?

Ms. SHANK. Correct.

Mr. JEFFRIES. Based on your experiences—and congratulate you on the success that you have had subsequent to your release—what is it that you think we as Members of Congress can think about in terms of how to both address the trauma that occurs based on the family separation and how to help facilitate the family unit coming together after one's release?

Ms. SHANK. I mean, that is a really good question because there is just nothing, nothing in play. I guess it would stem from the time that you are separated, to help during that time of incarceration, whether it is some type of family day they would offer at some of the prisons once a year, maybe encouraging that more. Just the type of visits that you have. Even the little visits I did have were very cold and the environment was very cold. It wasn't a very comforting environment. I think that plays a big part of it.

When you come home, it is up to you ultimately, but if there were some type of therapy, family therapy that could be offered, I think that is very helpful, if you offered it to people. I know for me, I am in therapy. My children are in therapy. That is something that we had to be proactive about as individuals. I know that many people don't have the luxury of that, maybe to offer that would be very helpful.

Mr. JEFFRIES. Thank you.

Ms. Onwuka, did I pronounce that correctly?

Ms. ONWUKA. Yes.

Mr. JEFFRIES. Okay. No, thank you.

In your testimony, I think you made the important observation that too many women are locked out of the economic recovery as a result of their criminal background. And that obviously has consequences and implications for being able to put the family unit back together and to robustly pursue the American Dream after a period of incarceration.

Could you offer some thoughts as to the impact of incarceration and the way forward in terms of how to make sure that we are really creating the ability for people, upon paying their debt to society, to follow the American Dream and succeed economically?

Ms. ONWUKA. Absolutely. Thank you. I spent a lot of time talking about the amount of opportunity that is available today in this economy and how because of that criminal record you are seeing people locked out. What is interesting is we are starting to see a shift now because of a tight jobs market, because it is harder to find qualified or employ people to fill positions, and we have 7.1 million unfilled positions right now in the economy.

I think employers are starting to look at people they would not have considered before, and that includes people who have a criminal background, who have a criminal record. That is, I think, a great thing for women and great for anyone who is coming out of the correctional system. Again, that doesn't mean that everybody is going to do that.

At the State level we have seen the movement towards ban-the-box. For those who are unfamiliar, it is the idea that employers do not ask whether you have any sort of criminal background. It is a way of giving someone a chance based on the merits of their experience and their background before writing them off because they have a criminal record.

There are States who have implemented it. I think, it is interesting. Private companies who do it from Coca-Cola to Koch Industries, Starbucks, Google, all of these companies have voluntarily started to do that. I think that is a way of opening up opportunity for women, for people of color, for everyone who has a criminal background.

I hesitate to say that it should be a Federal policy or that it should be mandated because it could have an unintended consequence, particularly against people of color and particularly against men of color, but there is an opportunity there for voluntary private sector companies to say, you know what, I am going to weigh someone's applications based on the merit.

I talked a lot about it, and several people have talked about vocations, and we have seen the Trump Administration interestingly talking about apprenticeships. It is an idea that I think people have forgotten or written off just to blue collar industries.

Recently, the Trump Administration released a new regulatory change that would actually expand apprenticeships to White collar opportunities, which I think is an interesting place because there are going to be people who have a criminal record who don't go to a 4-year college, who don't have a bunch of ABCs behind their name but still want to get into an industry that can be a great middle-class lifestyle.

Ms. BASS. Thank you.

Ms. ONWUKA. So, seeing that—oh, sorry.

Ms. BASS. Sorry. We need to move on.

Mr. JEFFRIES. My time is expired but thank you very much for your testimony.

Ms. BASS. Representative Cicilline.

Mr. CICILLINE. Thank you. I want to thank our Chairwoman Bass for convening this really important hearing and for your extraordinary and longstanding leadership on these issues. Thank you so much to our witnesses for really powerful testimony.

I want to focus for a moment on this whole idea of family impact, because I think one of the things that people need to understand,

one of my most haunting memories was doing a school visit and seeing a fifth-grade boy clearly distracted, kind of not paying attention, and me kneeling down to ask him if he was okay, and him in a very quiet voice saying, my mom went to jail last night.

The notion that he was expected to like study and pay attention and behave, and so understanding that in many ways children of incarcerated parents are victims as much as others and are blameless in the conduct of an adult parent but really suffer the consequences.

So, I am intrigued by this idea of both pre-sentence and post-sentence whether or not we ought to require sentencing judges and judges making determinations with respect to release to consider the impact on family, not just allow them to, but saying understand the reality of incarcerating.

This particularly is the case where women are most often the primary caregiver and the obvious special relationship between a mother and her children, whether we ought to do that both in pre-trial and in sentencing requiring, sort of understand, as a sentencing judge or as a judge making a bail determination the full impact of your decision on, not just the defendant, but the family who are blameless in this instance.

I wonder whether you agree, Ms. Shank and Ms. Kerman, that makes sense.

Ms. SHANK. It absolutely makes sense, and I think that should be highly considered.

Ms. KERMAN. It absolutely makes sense. Again, Massachusetts and Tennessee have signed that very requirement into law, and so judges in those States will be required to do just that.

Mr. CICILLINE. That is a requirement. It is not discretion. They are required to consider it?

Ms. KERMAN. The Governor of Tennessee just signed that legislation, I believe, last week or the week before, and it was in last year's omnibus crime reform bill in Massachusetts. So, the nitty-gritty is the transformation of the prosecutorial function and of the bench in terms of how prosecutors and judges understand what is expected of them.

Mr. CICILLINE. All right. When you make changes like that, I know you have to also implement training and good education both of the court and of the prosecutors.

The second thing I want to mention is there has been a lot of discussion about the separation of family as it relates to the placement of a defendant—of a person in custody and their family.

Is there any good policy or reason that you can think of—and this is for anyone—that we shouldn't simply require the Bureau of Prisons to place the defendant in the facility closest to their home, period, obviously consistent with security needs? But, if there is a facility closest to your home that meets the security, ought that be the presumption and they have to argue and if, in fact, they don't follow that, they have to give some reason?

Mr. CICILLINE. It seems to me 200 miles, even 250 miles is still a very long distance to expect anyone to travel. Why not just have the presumption, because it is your family.

Ms. KERMAN. Yeah. If you are a poor family in New Hampshire, the Bronx, then, Connecticut might as well be Mars for some people.

Mr. CICILLINE. I only have a little bit of time, so I just want to—do you agree that makes sense?

Ms. KERMAN. I absolutely agree that makes sense, that local supervision can get complicated and there is very little oversight. So, the requirement for the Federal Government to then oversee local law enforcement, which I would support, would be a necessity.

Mr. CICILLINE. The final thing I want to ask you about, Ms. Kerman and Ms. Shank, in the State of Rhode Island, we have a very robust reentry initiative in which defendants, before they are returned to a community, meet with a reentry counsel that has housing experts and healthcare experts and mental health to be sure that there is in place a comprehensive plan for their successful reentry. It has really produced extraordinary results because we have seen so much evidence about people who are released without that support system who come back because they don't have a place to live, they get involved with drugs again.

So, I am wondering whether your experiences in the Federal system, whether you had a similar experience that was sort of well planned before you were released so you would be successful. If not, do you think some model like that makes sense?

Ms. SHANK. Absolutely a model like that makes sense. There is really no programming, there is no reentry. There is very limited—you don't even have access to information to fill out for your driver's license. They give you zero. There is no information available to you in the Federal system. They do not prepare you whatsoever. They just do not. You are released when they release you, they are done with you.

Mr. CICILLINE. Great. Thank you so much.

I yield back.

Ms. BASS. Thank you.

Representative Dean.

Ms. DEAN. Thank you, Madam Chair.

I am pleased to be here, and I thank all of you for your important testimony on all of these issues.

In my limited time, I wanted to try to zero in on a couple of things. In my background, before I came to Congress this term, I was a State representative in Pennsylvania. I was on the judiciary Committee there, constantly fighting new mandatory minimums. So, I appreciate very much, Ms. Shank, the way you spoke about the discretion should be with the judges. So, some of these sentences might be that long under the discretion of the judge based on the facts and law in front of her or him.

But if we could, maybe I will start with you Ms. MCCURDY. I am also interested in the notion of addiction, substance abuse disorder and its impact on this. In Montgomery County, my own Montgomery County just May of this year, maybe you saw this case, a woman named Emma was convicted and sentenced to 21 years in prison as a result of distributing heroin, sharing heroin in a KFC bathroom with her friend who was 20 years old that day and died. Don't get me wrong, this is an extraordinarily serious case with victims all around.

The woman, Emma, was sentenced to 21 years in prison as a result of a mandatory minimum for, leaving the scene, allowing that woman to go on overdosed and die, not alerting first responders, but also enhanced because it was within 1,000 feet of a school.

Can you speak to the notion of addiction, substance abuse disorder, this is two 20-year-old women, addicts of heroin and how that translates into incarceration?

Ms. MCCURDY. Yes. I mean, that is part of both property and drug crimes that you see women being incarcerated for. Again, with women, a lot of times it is because of their addiction. They are not getting treatment necessarily once they go to jail or prison, and a lot of times they are self-medicating because of the trauma that they have experienced before coming into contact with the criminal justice system. So, then it just becomes a cycle. If we don't treat the trauma, we don't treat the substance abuse that is responding to the trauma that is the self-medication from the trauma, then we just keep going around and around in circles.

Ms. DEAN. I appreciate that. I also had the chance as a State representative to visit Muncy prison in Pennsylvania, an all-women's prison. Between addiction, mental health disorders, and the connection between conspiracy and life sentences is an extraordinarily powerful and sad place at the same time.

Can we talk about the issue, and maybe you both could tell me your experience with other women in prison whether they suffered life sentences, what we could be doing better in terms of life sentences particularly as it occurs with women?

Ms. SHANK. I mean, I think, initially, just sentencing somebody to life is wrong. I think we need to allow a person—I mean, I understand punishment in crime, but the punishment needs to fit the crime. I don't think we should just wash our hands at people. I think we need to allow somebody to punish them for their crime, let it fit the crime, but then let's help them not to let this happen again. What is the actual problem? Is it psychological? Is it mental health? Is it drugs, addiction? Do they need education? We need to not just lock people up, but we need to, as I like to say, bury them alive. We need to actually help them.

Ms. DEAN. So many of the women there describe that they just don't want to die there. They don't want this to be the end of their story. It is interesting you use the words wash our hands of people. I also was in Curran-Fromhold prison with Pope Francis in Philadelphia, where he used the gospel about washing the feet of your visitor, washing the feet of those who have traveled life's dusty, dirty road, because we all go down bad roads.

So maybe, Ms. Kerman, you could speak to that issue of the Pope wanted to say this is not your whole story and know that we are all broken people like you.

Ms. KERMAN. When I think about the point that you raise, Representative, I think about my students in Ohio. I have lifers in both the men's facility and the women's facility where I teach. I have a young woman in my women's writing class who was sentenced when she was 16 years old. The propensity for us to put children into the adult system in this country is significant.

We know that the decade between 15 and 25 is a decade where brain development is not complete; impulsivity, judgment, and bad

decisions are rife. We all make bad decisions during that time period in our lives, not all of us are held accountable in the same way.

I look at any—I have three students who were sentenced as children to adult life sentences, and they each, all three of them, are remarkably intelligent, thoughtful, humane people, and very different people now than when they committed their crimes. I believe passionately that everyone deserves a second chance and sometimes a third chance, but deserves to be measured, not only for their worst act, but also for their best acts and the best things they are capable of.

That does not mean that victims do not deserve a central role in reforms to our criminal justice system, but what we have seen in places like California and other places in this country is that victims and survivors of crime are increasingly advocating for the very reforms that other parts of the community are also calling for.

Ms. DEAN. I just want to put onto the record, if I may, an article—

Ms. BASS. Without objection.

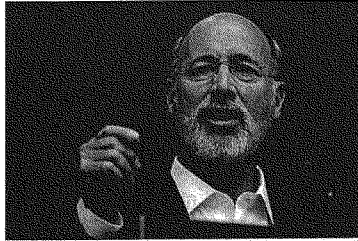
Ms. DEAN. —that I have of our governor, Governor Wolf, granting clemency, commuting some sentences of lifers. It is very important that he do that, but many States and our Federal Government actually seek greater criminal justice reform.

[The information follows:]

MS. DEAN FOR THE RECORD

Wolf grants clemency to two more inmates, including first female lifer since 1990

By
Laura Benshoff
December 20, 2018



Gov. Tom Wolf speaks at a campaign rally for Pennsylvania candidates in Philadelphia, Friday, Sept. 21, 2018. (Matt Rourke/AP Photo)

Pennsylvania Gov. Tom Wolf has commuted the sentences of three inmates who would otherwise die in prison, bringing the total number granted during his administration up to five. Benny Ortega, Tina Brosius, and Raymond Jordan had each served decades in state prison for offenses ranging from drug trafficking to first-degree murder. Under Wolf, they applied for clemency, riding a wave of hope that his administration would revive a rehabilitative process that had fallen out of favor.

Amid these victories, criminal justice reform advocates say the commutation process remains opaque and disheartening, and many more worthy candidates are not being selected out of political concerns.

Wolf granted Ortega a commutation on Tuesday, calling his 125-to-292-year sentence for selling cocaine and marijuana "egregious and inhumane." Ortega is now eligible for parole and will be placed on the Pennsylvania Parole Board's interview list.

On Thursday, the governor granted clemency to Tina Brosius, 43, who was convicted of first-degree murder when in 1994 at the age of 18 she allowed her newborn baby to drown in the portable toilet where she'd just given birth in Dauphin County. Brosius already had two daughters at the time, who have advocated continually for her release.

Jordan, 58, stabbed a man while high on cocaine in Philadelphia in 1985. He has had no misconduct write-ups in prison since 1998, according to those familiar with his application.

Brosius and Jordan will be released to a community corrections center for year, before serving out the rest of their sentences on parole, according to Wolf's spokesman J.J. Abbott.

'A candle at the end of a tunnel'

Each commutation is "a candle at the end of a tunnel" said Kathleen Brown, professor emerita at

the University of Pennsylvania who works with lifers across the state to file commutation applications.

Commutation is ostensibly based on a person's behavior following a criminal conviction, not on the severity of the crime itself. Inmates must apply to the Board of Pardons, where a staff of six sifts through which petitions will be heard.

Inmates who have clean records of conduct, pursued higher education while incarcerated, and assumed leadership roles while in prison are considered to be good candidates. Those convicted of a violent offense must earn upvotes from all five board members for their petitions to advance to the governor's desk.

The process all but dried up after former Gov. Bob Casey commuted the sentence of serial killer Reginald McFadden in 1994.

McFadden, who corrections staff did not regard as a strong candidate, moved to upstate New York, where he was found guilty of two murders and a rape following his commutation.

When Gov. Wolf took office, reversing that trend seemed possible. The Board of Pardons, consisting of Lt. Gov. Mike Stack, state Attorney General Josh Shapiro, former Bucks County Director of Corrections Harris Gubernick, psychiatrist John P. Williams, and victim representative Marsha Grayson, has received dozens of applications each year.

So far, they have recommended six of these to the governor.

"There will be great joy when Tina is released," said Brown, not least in SCI Muncy, the medium-to-maximum security prison where she has been serving her sentence.

However, Brown said working on dozens of similar petitions that failed to advance has forced her to question the whole clemency process.

"I feel it's ethically not okay to bring hope to prisons if there's not hope," she said. "I was at [SCI] Muncy earlier this week and the flavor there is . . . , 'Why are we bothering to apply?' "

Richard Marra, 55, falls into the disappointed category. Marra's 53-year-old sister Marcie traveled to Harrisburg this week for what she hoped would be the next step in commuting her brother's sentence. In 1986, Marra committed murder during a fight in a nightclub in Philadelphia.

In March 2018, the Board of Pardons took his commutation application under advisement, before eventually denying it. Marra applied for reconsideration, armed with a new letter of support from the Philadelphia District Attorney's office. On Wednesday, he hoped he'd be granted a chance for a new hearing.

Only Stack voted in his favor.

"We were just so close," said Marcie. "It just breaks your heart."

Stack, who came into office promising to speed up pardons and commutations, maintains the system is "broken."

"A lot of time, tremendous amounts of resources go into the idea of rehabilitation," he said.
"When's enough enough?"

Having elected officials on the board is a problem, say Stack and Brown, and so is the need to have all five members agree to recommend a petition.

In a statement on Ortega's commutation, Abbott said the facts of that case demonstrate the need for criminal justice reform.

"Gov. Wolf encourages Pennsylvanians that have been treated similarly to apply for, commutation," he said.

Ms. BASS. Representative Mucarsel-Powell.

Ms. MUCARSEL-POWELL. Thank you, Chairwoman Bass, for holding such an important hearing.

The issue of women that are stuck in an unjust criminal justice system is becoming a greater issue in this country and it is rarely part of the conversation. So, I thank you, Ms. Shank, and other women who may be present here today, Ms. Kerman, for lifting up your voices, for your courage in sharing your stories. It is the only way that we are going to bring attention to the issues, so thank you for being here today.

The fact is that most women are charged with lower-level offenses and have less extensive criminal histories than their male counterparts. In 2017, women of color were particularly impacted by our laws where 40 percent of Federal women offenders are Hispanic, and 21 percent are Black. Of these women, upwards of 85 to 90 percent have a history of domestic or sexual abuse. Sixty percent of the women that are right now in prison have children 18 years or younger.

I wanted to start with Ms. McCurdy. In the past 40 years, we have seen that the State prison population of women has grown up to by 834 percent. Why do you think we have had such a drastic increase of women who are now in the prison system?

Ms. MCCURDY. Because of the war on drugs is one of the major reasons. Both in the Federal and State system, we have focused so much of our attention, for example, in the Federal system, 45 percent of the people that are in Bureau of Prison custody are there for drug offenses. So, almost half of the people that are in Federal custody are there for drug offenses. Some of them are women, but what you are seeing is the result of the focus on the war on drugs and why so many women and men are in prison, even though many of them really need treatment and don't need incarceration.

Our money would be better spent if we really focused on treating their substance abuse, because a lot of it is substance abuse, whether they were charged with trafficking or charged with possession, versus spending on the Federal level \$36,000 a year per person to incarcerate people. We could spend, I think Piper talked about \$20,000 a year for drug treatment, probably even less than that, though.

Ms. MUCARSEL-POWELL. Yeah. The economic cost is huge, but the human cost is devastating for generations.

Ms. MCCURDY. Is even more devastating. Absolutely.

Ms. MUCARSEL-POWELL. In 2016, the imprisonment rate of African American women was twice the rate of imprisonment for White women. Hispanic women were imprisoned 1.4 times more than White women.

Ms. McCurdy, why are women of color more likely to be imprisoned at twice the rate than White women? What solutions do you see in solving this gap?

Ms. MCCURDY. Well, again, as I talked about before, I think one is we have to develop alternatives to incarceration. Also, in terms of women that are in prison, we must be very responsive to their health needs, their mental health needs, their physical health needs, their gynecological needs. We also have to train correction

staff, for example, when women end up in prison, to make sure they are being responsive, gender responsive to women's needs.

As Piper said earlier, the prison systems were built on the fact that mostly men would be in them. So, a lot of the policies reflect that now and they have not caught up to the fact that we have so many women that are in those prison systems. Policies have to be responsive to gender needs. Those are some of the major things that we really need to focus on.

We talked about shackling on the Federal level, that has been addressed to a certain extent, but we haven't talked about solitary confinement. Pregnant women are often held in solitary confinement while they are pregnant and postpartum. We must ban the policies that allow women that are pregnant to be held in solitary confinement. That is very dangerous.

Ms. MUCARSEL-POWELL. Thank you, Ms. MCCURDY. As a mother, it has been tough to hear your testimony this morning. It is tough enough to see that this Administration is following family separation policies, and they are doing the same in the criminal justice system, and it is just heartbreaking.

A question for Ms. Kerman. You testified that policy, not crimes, drive our incarceration. I have seen that in other policies that the Administration has taken as well. Can you explain a little bit what you mean by that?

Ms. KERMAN. Sure. So, you are drawing attention to racial disparities in the system is a reflection of policy. So, I live in Ohio, you might have two young men committing the exact same offense, but by policy and procedure, one of those young men might be heavily policed if he lives in a poor neighborhood, and one of those young men might not be policed at all if he lives in a fraternity house at OSU. Those disparities, those are policy choices, and those things drive disparity and drive some of those problems.

We have talked a lot about substance use disorder and about its factor in driving incarceration and the availability or lack of treatment. I have to draw our attention back to this policy of mandatory minimum sentencing. If harsh punishment related to drug offenses worked, then we would not be where we are with addiction and drug abuse in this country.

Ohio has one of the highest overdose rates in the country. We incarcerate a huge number of low-level drug offender. It does not result in less addiction and less substance use.

There is a certain point in time, decades in, when we have to say regardless of what our punitive instincts are, that the policies and approach we have used is not working in terms of the public health and safety concerns which concern us the most. So that is a good example of that policy driving incarceration, even as it fails to solve the problems that we want solved in the community.

Ms. MUCARSEL-POWELL. Thank you, Ms. Kerman. I think I am out of time.

Ms. BASS. Representative Cohen.

Mr. COHEN. Thank you, Madam Chairman.

One policy we have in State and Federal both is we have private prisons. I would like to know your opinions on that as a factor in driving prison population and if there are any studies to show jurisdictions without private prisons and with private prisons and

the rate of incarceration and the length of sentences. Who wants to jump in?

Ms. KAJSTURA. So, I think private prisons definitely help keep mass incarceration in play in this country, because they provide space to hold people and they take often the kind of easiest cases, you could say, and charge the government the most to take care of people and do a really poor job of it because they have absolutely no government oversight.

The private aspect of incarceration extends far past prisons, and this is important because—particularly important to women’s incarceration because about half of women are actually incarcerated in jails rather than prisons. Jails use a lot of private contractors that make it hard and difficult to talk about family separation. In jails, even though you are ostensibly closer to home, often it is harder to keep in touch because the phone call rates are much higher. There are some county jails in Michigan where it is \$1.50 a minute to talk on the phone.

Jails are more likely to have letter bans, so literally banning letters from home. Your kids are relegated to a postcard size that is public, you can’t put it in an envelope, to communicate with your family. Visits are often turned into video visits. So, a company comes in and charges \$20 for a visit, and your family still has to drive to the jail, but they can’t see you. They are put in a separate room with a video monitor.

So, yes, there is a lot of private companies benefiting from mass incarceration and making things worse within the criminal justice system.

Ms. SHANK. If I can just say that privatized prisons are like a self-fulfilling prophecy of prisons built in the State, and often if the bed is empty, the State is fined. So, the State is going to do everything they can to not be fined to fill these beds. So, it is like a self-fulfilling prophecy, no one wins except the people making the money.

Mr. COHEN. Tennessee is one of the worst States, I think. It was the home of Corrections Corporation of America, which is one of the large private prison people. I was a State senator for 24 years and thought—being in the Tennessee system because they would, lobby for longer sentences and lobby against different ways of release and that they made a lot of money and done really well. It is unfortunate, and that shouldn’t happen.

Has anybody done any studies on the cost to society of having a mother, particularly maybe as distinguished from a father, who is removed from a family and what cost that has to society at large?

Ms. McCurdy?

Ms. MCCURDY. I don’t know about financial. I haven’t seen any studies on the financial cost, but I know the cost to children is that they often develop depression, anxiety. In the end, they end up in the criminal and juvenile justice system. So, that is the human cost of being separated from their mothers, because they don’t have the guidance that they need in the early stages and are just, again, traumatized by their separation from their mother.

Ms. SHANK. I can tell you my own personal study, which was we had two incomes when we were married—a family. We had actually purchased our first home. We actually bought property to build

our first home. When I was initially indicted and when I went away to prison, we went to a single-family income where my then-husband, Adam, had to take a different job because he couldn't take care of a 6-week-old baby with the hours, so he had a loss in income there. Then he became dependent on the State for medical insurance for the children. I mean, you lose.

Mr. COHEN. I have a bill called the Fresh Start Act, which I have had for some time, and with the Democratic leadership here, we might have a chance to move it. It would provide a pathway for expungement in Federal crimes. If you had 7 years without any penalties and you have a nonviolent crime, you could get your record expunged.

How would expungement help women, other prisoners, and family reunification?

Ms. KERMAN. Expungement would be a huge benefit and a good example of a smart policy change. I am much, much more fortunate than most formerly incarcerated people in this country, but I still cannot escort my son's field trips under Ohio State law because I have a felony conviction, despite my good conduct since my release in 2005. I would say that expungement, under appropriate guidelines, with whatever you have considered putting into the legislation, would be a huge benefit.

There are an estimated 70 million people in this country who have some kind of a criminal record. So, this is not a fringe issue; this is something that impacts an enormous number of Americans.

Mr. COHEN. Thank you very much. I yield back.

Ms. BASS. Thank you very much.

I want to, before we conclude, really thank today's witnesses. I think this was a very, very powerful hearing. One of the things that I am so encouraged by from this hearing is this was a very bipartisan hearing. It was a bipartisan hearing from the witnesses and from the questions and comments of my colleagues on both sides of the aisle.

I do want to make a few points in concluding. I think it is clear, and statistics would back up, that women are arrested, not 100 percent, but a high percentage of women are arrested and incarcerated because of their relationships with men.

The conspiracy laws that especially were used a lot during the war on drugs were used to arrest women, to use women as leverage as the female partner of a drug dealer to get at the man, that maybe with the assumption that he would rescue her. What happens is that he abandons her, he cuts her loose, and she often takes the wrap and sometimes serves more time than the man she was being leveraged for.

A small percentage of women are arrested for violent crime, but even then, a lot of times the violent crimes is related to abuse. It is related to responding to someone who is abusing her, especially women who are arrested for murder. So, this gives us an opportunity to really examine gender-specific criminal justice reform.

A comment on pregnancy. When a woman delivers and is separated from her child, like was shown in the clip, it is not just a matter that she is sad; it is massive physiological changes that happen during and especially after pregnancy. There is a massive decrease in hormones that was happening to that woman. When

women go into postpartum depression, it is physiological as well as psychological. So, we can only imagine what happens to women who are put in solitary confinement during pregnancy or after delivery. It puts them at risk for suicide.

So, I am glad to see that there is interest and support on the issue from both sides of the aisle. The conversation that we have had with each other during this hearing, I believe that this could be the first step toward developing comprehensive legislation that addresses criminal justice reform that is also gender specific.

Thank you very much, and the hearing is adjourned.

[Whereupon, at 12:33 p.m., the Subcommittee was adjourned.]

APPENDIX

Testimony submitted by Prison Fellowship to the House, Committee on the Judiciary, for the record.

TESTIMONY OF PRISON FELLOWSHIP

Prison Fellowship® is the nation's largest Christian nonprofit serving prisoners, former prisoners, and their families, and a leading advocate for criminal justice reform. The organization was founded in 1976 by Charles Colson, a former aide to President Nixon who served a seven-month sentence for a Watergate-related crime. For over 40 years, our ministry has shared the new hope and life purpose available through Christ to men and women in prison. Those who once broke the law are transformed and mobilized to serve their community, replacing the cycle of crime with a cycle of renewal.

Our prison events, classes, and programs reach more than 375,000 prisoners each year. We have over 11,200 Prison Fellowship volunteers across the United States who make it possible to serve people in prison and nearly 300,000 children of incarcerated parents annually.

Located in 90 prisons in 28 states, the Prison Fellowship Academy is the organization's most intensive in-prison program, taking men and women through a voluntary, holistic life transformation spanning months, where they are mentored by Prison Fellowship staff and volunteers to lead lives of purpose and productivity inside and outside of prison. The Prison Fellowship Academy is designed to address criminogenic needs including anti-social cognition, anti-social companions, anti-social personality and temperament, family and marital relationships, substance abuse, employment, education, and recreation activities. In three State prisons in Texas and Minnesota, Prison Fellowship Academy participants make up entire prison units. The Prison Fellowship Academy and other faith-based classes are currently funded entirely through the generosity of private donors and foundations.

130 federal prisons participate in our Angel Tree program and 137 federal prisons have Prison Fellowship connection classes, which include Bible studies, recovery groups, and seminars on topics from marriage, anger management, and more. Prison Fellowship has a pending request to launch an Academy in the federal system and seeks to be recognized as an educational program under the Bureau of Prisons' reentry program division rather than only as a religious service under the chaplaincy division.

Incarcerated Women and the National Challenge Before Us

We commend the House Judiciary Committee for drawing attention to the challenges facing female prisoners through the "Women and Girls in the Criminal Justice System" hearing. We are honored to provide our insights drawn from our policy work and direct ministry to women impacted by crime and incarceration. Recent trends in corrections make the committee's dialogue on these matters urgent. The female prison population has increased by over 750 percent since 1980.¹ Women now comprise roughly 7% of the total incarcerated population.² At the end of 2017, there were more than 224,000 women behind bars.³ While this increase in incarceration has impacted women of every background, striking racial disparities are present, with the imprisonment rate for African-American females double that of White females.⁴

Just as troubling as these statistics are the histories of brokenness so many incarcerated women bring with them to their sentences. Data from a Bureau of Justice Assistance study of female jails makes clear that women who commit crime have often been victims of violence themselves. Eighty-six percent of respondents report sexual violence in their lifetime, 77 percent report partner violence, and 60 percent report violence by a caregiver or parent.⁵ Over 65 percent of women incarcerated in prisons and jails identify a history of serious mental health problems or serious

¹ Sentencing Project, *Fact Sheet: Incarcerated Women and Girls*, The Sentencing Project (2016), <https://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>.

² Jennifer Bronson & Ann Carson, *Prisoners in 2017*, Bureau of Justice Statistics (April 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>.

³ *Id.*

⁴ *Id.* at 15.

⁵ Shannon Lynch et al., *Women's Pathways to Jail: The Roles and Intersections of Serious Mental Illness and Trauma*, Bureau of Justice Assistance (September 2012), https://www.bja.gov/Publications/Women_Pathways_to_Jail.pdf.

psychological distress—rates substantially higher than their male peers.⁶ Between 2007 and 2009, 69.2 percent of female State prisoners met the Diagnostic and Statistical Manual of Mental Disorders criteria for drug abuse or dependency.⁷ Prison Fellowship does not highlight these sober realities to downplay personal responsibility for crime or deny that incarceration can be necessary on grounds of public safety and just punishment. Rather, these unsettling facts make the need for a corrections culture centered around the human dignity of incarcerated women—and their capacity for personal development and second chances—all the more urgent.

Our Direct Ministry and Policy Vision

Prison Fellowship's direct programming serves incarcerated women as they navigate a corrections system primarily designed with men in mind. Our evidence-based Academy program is now active in over 19 women's prisons in 14 states, with the strategic goal of ensuring a presence in at least one women's prison in every State by 2026. At a Southern California jail, Prison Fellowship is piloting the Create New Beginnings curriculum, using art as a restorative vehicle to help women in prison navigate topics like shame, empathy, and forgiveness.

Throughout our history, Prison Fellowship has also been blessed by the contributions of formerly incarcerated women on our staff. We would be remiss not to mention here in particular Mary Kay Beard, a former federal prisoner sentenced to a 21-year sentence who would go on to encounter the Christian faith and found Angel Tree, now one of the American church's most crucial expressions of the Gospel's love for children impacted by incarceration.⁸ In 2017, Prison Fellowship acquired Daughters of Destiny, a Florida-based ministry to incarcerated women co-founded by Annie Goebel, who was formerly incarcerated and continues to serve on Prison Fellowship's staff.

These direct encounters remind Prison Fellowship of the urgency for policies that make our justice system more restorative, evidence-based, and constructive. At the same time, we know the specific challenges of women in our prison system require specific policy remedies. Restrictive housing and physical restraints should not be used for pregnant incarcerated women, whether during term, in labor, or recovery, unless required to address clear and present danger to the woman, her child, or others.⁹ An estimated three to five percent of women in prison and jail are pregnant.¹⁰ As a ministry that values the sanctity of human life, Prison Fellowship urges full access to quality prenatal care for incarcerated women and their unborn children. Sixty-one percent of female State prisoners have children under the age of 18.¹¹ Access to parenting classes, regular contact with loved ones, and placement in facilities within reasonable proximity to family Members can allow incarcerated women to grow as responsible, engaged mothers. Moreover, the scale of prior abuse experienced by incarcerated women demands far more expansive trauma-informed care and greater training for corrections and programming staff. Finally, we urge policy-makers to be cognizant of how "collateral consequences" with limited rationale in public safety, including bans on access to nutrition, housing, and other safety net benefits placed on individuals with a criminal record, pose particular risks to formerly incarcerated women and their children.¹²

State Reforms

Prison Fellowship has been privileged to advance common sense State reforms that recognize the dignity of incarcerated women. In December 2018, we supported

⁶Jennifer Bronson and Marcus Berzofsky, *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates*, 2011–12, Bureau of Justice Statistics (June 2017), <https://www.bjs.gov/content/pub/pdf/imhprpi1112.pdf>.

⁷Jennifer Bronson, et. al, *Drug Abuse, Dependence, and Abuse among State Prisoners and Jail Inmates, 2007–2009*, Bureau of Justice Statistics (June 2017), <https://www.bjs.gov/content/pub/pdf/dudaspi0709.pdf>.

⁸Steve Rempe, *The Origins of Angel Tree, Prison Fellowship* (December 2, 2014), <https://www.prisonfellowship.org/2014/12/the-origins-of-angel-tree/>.

⁹Emily Greene and Kate Trammell, *Will Corrections Meet the Growing Needs of Its Growing Female Prison Population*, Prison Fellowship (March 19, 2018), <https://www.prisonfellowship.org/2018/03/will-corrections-meet-needs-growing-female-prison-population/>.

¹⁰Naomi Schaefer Riley, *On Prison Nurseries*, American Enterprise Institute (March 2019), <http://www.aei.org/publication/on-prison-nurseries/>.

¹¹Lauren Glaze and Laura Marushack, *Parents in Prison and Their Minor Children*, Bureau of Justice Statistics (March 2010), <https://www.bjs.gov/content/pub/pdf/pptmc.pdf>.

¹²USCCR, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, U.S. Commission on Civil Rights (June 2019), <https://www.usccr.gov/pubs/2019/0-13-Collateral-Consequences.pdf>.

the American Legislative Exchange Council’s model policy, “Dignity for Incarcerated Women.”¹³ In the 2019 Texas legislative session, Prison Fellowship supported the passage of House Bill 650, which featured several key protections for incarcerated women.¹⁴ In 2009, our ministry helped to pass Senate Bill 1290 in New York, which allows women who are pregnant to be removed from a prison for purposes of receiving proper medical care during childbirth and prohibits the shackling of an incarcerated woman during delivery of her child.¹⁵ Moreover, given that one in four female State prisoners are sentenced for drug crimes—a rate substantially higher than that of their male counterparts—incarcerated women have particularly benefited from Prison Fellowship’s successful advocacy for appropriate sentence reductions and alternatives to incarceration for certain drug offenses.¹⁶

The First Step Act Implementation

Prison Fellowship likewise had the opportunity to play a role alongside many Members of this Committee in the passage of the bipartisan First Step Act in December 2018. Key features of this legislation have already impacted women in our federal prison system. The bill codified certain Bureau of Prisons’ policies to provide female hygiene items free of charge and limit the use of restraints on pregnant women.¹⁷ Seventeen women have received sentencing reductions for certain drug crimes under the legislation’s retroactive application of the Fair Sentencing Act.¹⁸

Key provisions of the First Step Act nevertheless remain to be implemented, making congressional oversight crucial for the restoration of incarcerated women. Roughly half of all female federal prisoners are sentenced for drug crimes, and the First Step Act’s provisions for reforming punishment for these offenses await further implementation.¹⁹ The absence of a United States Sentencing Commission with a quorum means the sentencing guidelines have yet to reflect the First Step Act’s sentencing reforms for certain drug offenses. The Department of Justice and Independent Review Committee have put consideration and effort into developing the new Risk and Needs Assessment for federal prisons. These systems are used by numerous State and local justice systems to identify the criminogenic risks and corresponding recidivism-reducing programs for each incarcerated person.²⁰ Prison Fellowship urges further refinement and timely implementation of the assessment, and the corresponding expansion of quality prison programming. The establishment of this system will not only allow incarcerated women to have a more constructive experience in prison, but also allow them to earn certain opportunities, such as expanded contact with family Members or, based on their risk level and sentence type, earned-time credits to complete more of their sentence at a residential reentry center or in home confinement.²¹

We call on Congress to cement this shift to a more constructive federal prison culture through explicit, full funding of the First Step Act in FY2020 appropriations and in future appropriations cycles.

Geographic distance between federal prisoners and their home communities continues to weaken the family engagement and social support crucial for successful reentry.²² Research from the Chuck Colson Task Force on Federal Corrections found in 2014 that 27 percent and 25 percent of federal prisons lived more than 500 miles

¹³ ALEC, *Dignity for Incarcerated Women*, American Legislative Exchange Council (November 2018), <https://www.alec.org/model-policy/dignity-for-incarcerated-women/>.

¹⁴ H.B. 650, 86th Reg. Sess. (T.X. 2019).

¹⁵ S.B. 1290, 200–2010 Reg. Sess. (N.Y. 2009).

¹⁶ Bronson, *supra* note 2 at 15. (For a summary of Prison Fellowship’s approach to state-level criminal justice reform, see Prison Fellowship, Faith & Justice Legislative Playbook 2018–2019, Prison Fellowship (2019), https://www.prisonfellowship.org/wp-content/uploads/2019/06/J_FLegislativePlaybook2019.pdf).

¹⁷ Nathan James, *The First Step Act of 2018: An Overview*, Congressional Research Service (March 2019), <https://fas.org/sgp/crs/misc/R45558.pdf>; Office of Public Affairs, *Department of Justice Announces First Step Act Implementation Progress*, United States Department of Justice (April 2019), <https://www.justice.gov/opa/pr/departments-justice-announces-first-step-act-implementation-progress>.

¹⁸ USSC, *First Step Act of 2018 Resentencing Provisions Retroactivity Data Report*, United States Sentencing Commission (June 2019), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/first-step-act/201900607-First-Step-Act-Retro.pdf>.

¹⁹ Bronson, *supra* note 2 at 16; James, *supra* note 17 at 8–9.

²⁰ Public Safety Performance Project, *Risk/Needs Assessment 101: Science Reveals New Tools To Manage Offenders*, Pew Center on the States (September 2011), https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2011/pewriskassessmentbriefpdf.pdf.

²¹ James, *supra* note 17 at 5.

²² The Chuck Colson Task Force on Federal Corrections, *Final Recommendations of the Chuck Colson Task Force on Federal Corrections*, Urban Institute (January 2016), https://www.urban.org/research/publication/transforming-prisons-restoring-lives/view/full_report.

or between 250 and 500 miles from their primary residence.²³ The First Step Act codified an established BOP policy to house all prisoners, subject to other considerations, within 500 miles of their primary residence. Prison Fellowship recognizes how the BOP must carefully weigh this goal alongside numerous logistical, fiscal, and security priorities, including the very limited number of female BOP facilities. Nevertheless, we believe greater proximity between incarcerated women and their families will strengthen family relationships, including for those with children, and allow women to draw on the social networks needed to break the habits and mindsets that first brought them to prison. We therefore urge BOP to consciously pursue creative solutions to continue to reduce the geographic distance between incarcerated women and their home communities, so that as many women as possible can live within 500—and preferably 250—miles of their primary residence.

As the BOP continues to expand quality correctional programming under the First Step Act, it must be cognizant of crucial programmatic gaps for incarcerated women. A September 2016 Boston Consulting Group highlighted several “unmet population needs” among federal female prisoners for “intensive, residential mental health treatment” and “relationships management and self-management and control programming.”²⁴ We urge the BOP to revisit these needs among incarcerated women in the federal system.

Additional Recommendations

Addressing the unique needs of incarcerated women should rank as a key next step for both the Administration and Congress in building on the momentum of the First Step Act. In particular, we urge both Congress and the BOP to revisit some of the key recommendations of the Chuck Colson Task Force, on which Prison Fellowship’s Senior Vice President of Advocacy and Public Policy Craig DeRoche had the privilege to serve. The Task Force’s promotion on greater family engagement is particularly salient for incarcerated women. While commending serious BOP progress on this issue, the Task Force did emphasize lingering barriers, such as “visitation hours that were modified or restricted without adequate notice or explanation; visitation guidelines that varied across facilities, and even within facilities over time; and visitation privileges that were perceived to be restricted as a disciplinary measure.”²⁵ Specifically, the Task Force called for the establishment of a BOP “central family affairs and visitation office to oversee prison visitation procedures in the interests of facilitating family visits while ensuring security is not compromised, expand video conferencing and programs designed to enhance the bonds between incarcerated parents and their children, and increase other forms of support for families of those in prison.”²⁶ Given some of the extreme geographic distances between certain federal prisoners and their families, the Task Force also recommended greater contracting “with State facilities when no appropriate federal facility is located within reasonable proximity [of home.]”²⁷ We encourage this Committee and the BOP to revisit these recommendations and evaluate paths for implementation.

Second, the scale of abuse and past victimization experienced by incarcerated women demands a robust scaling up of trauma-informed care. An Office of Inspector General report from September 2018 highlighted how “due to current staffing BOP may not be able to ensure that all [female] inmates who are eligible for [the trauma treatment] program can participate in it before their release from BOP custody.”²⁸ The report further noted how the current model for BOP trauma-informed care could only reach “3% of BOP’s sentenced female inmate population” at a given time.²⁹ At an average BOP female institution, 17 percent of prisoners are on a waiting list for trauma care.³⁰ The painful psychological wounds experienced by too many incarcerated women in federal prisons are not being met with robust, easily

²³ *Id.* at 40.

²⁴ Boston Consulting Group, *Reducing Recidivism Through Programming in the Federal Prison Population*, Department of Justice (September 2016), <https://www.justice.gov/archives/dag/page/file/914031/download>.

²⁵ The Chuck Colson Task Force, *supra* note 22 at 40.

²⁶ *Id.*

²⁷ *Id.* at 41.

²⁸ *Id.* at 19.

²⁹ *Id.* at 21.

³⁰ Office of the Inspector General, *Review of the Federal Bureau of Prisons’ Management of its Female Inmate Population*, Department of Justice (September 2018), <https://oig.justice.gov/reports/2018/e1805.pdf>.

accessible trauma-informed care, and we urge greater BOP attention and funding and corresponding congressional oversight and action.

Thank you for this opportunity to present Prison Fellowship's policy recommendations to honor the dignity of incarcerated women to the Committee.

