



**Written Testimony of Emily Mooney of the R Street Institute
submitted to the U.S. Commission on Civil Rights for its public briefing on
“Women in Prison: Seeking Justice Behind Bars”**

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On behalf of the R Street Institute, I welcome this opportunity to submit written testimony in anticipation of the U.S. Commission on Civil Rights (UCCR) briefing regarding the federal government’s role in protecting the rights and dignity of women in federal and state prisons.

The R Street Institute is a non-profit, non-partisan public policy research organization focused on promoting limited, effective government. Our criminal justice team is composed of individuals with a diverse array of personal and professional experience with the justice system: a former police officer and federal prosecutor, a former state prosecutor, former juvenile and adult defense attorneys, and public policy scholars. Our assessment of the current problems apparent in our justice system and of potential solutions stems from both our policy research and this wealth of experience.

We believe that criminal justice policy reflects the values we hold as a society. As such, our criminal justice system must be centered around the basic value of human dignity, must be guided by the philosophies of limited government and parsimony, and must show deep respect for personal liberty.¹

The decision to incarcerate marks the zenith of government intervention, at which point we have entrusted our justice system with the power to remove much of an individual’s personal liberty in the name of public safety and accountability for wrongdoing. It is therefore of the utmost importance that we, as a society, ensure that the aims of such intervention are accomplished and that our fundamental values are respected. To do so, we must ensure that when we incarcerate, we: (1) preserve human dignity; (2) improve public safety; (3) wisely steward taxpayer dollars and; (4) promote a stronger and more free society.

Today, however, many federal and state prisons are failing to preserve these fundamental values by disrespecting the rights and dignity of incarcerated women. Indeed, when facilities fail to assess needs and to provide adequate services, the core aims of the justice system are at substantial risk of remaining unrealized. And this is to the detriment of women, their families and the public at-large.

¹ Arthur Rizer and Emily Mooney, “A Call for a Revised Set of Values,” The Square One Project, September 2018, pp. 1-11. https://2o9ub0417chl2lg6m43em6psi2i-wpengine.netdna-ssl.com/wp-content/uploads/2018/09/ACallforaRevisedSetofValuesArthurRizer_Final.pdf.

I. Trends Among Women in Federal and State Prisons: Population Growth, a New Offense Pattern, Different Sentences, and Stagnated Reform

Over the last several decades, the total number of women incarcerated in state or federal prisons across the nation has grown exponentially. Approximately 23,000 women were state or federal prisoners in 1985. In 2000, the number rose to 93,000.² And, by 2016, over 110,000 women were state or federal prisoners.³ This represents over a 380 percent increase in the number of female prisoners under state or federal jurisdiction from 1985 to 2016.⁴ By contrast, the number of male prisoners under state or federal jurisdiction grew by roughly 190 percent over the same time period.⁵

This explosion in incarcerated women is due in large part to increases in sentencing for nonviolent offenses. Whereas it used to be the case that almost half of women in state prisons had committed violent offenses, today about a third of female state prisoners are incarcerated for a violent offense and almost two thirds are imprisoned for nonviolent ones.⁶ In comparison, the majority of men incarcerated in state prisons are held for a violent offense.⁷

Due, in part, to this difference in offense composition, women often have shorter sentences and serve less time behind bars than incarcerated men. For example, recent analysis of the Louisiana correctional population found that, on average, women in state custody were sentenced to a maximum of 11.5

² Bureau of Justice Statistics, "Correctional Populations in the United States 1985," U.S. Dept. of Justice, 1987, p. 54. <https://www.bjs.gov/content/pub/pdf/cpus85.pdf>; Paul Guerino et al., "Prisoners in 2010," Bureau of Justice Statistics, p. 2. <https://www.bjs.gov/content/pub/pdf/p10.pdf>.

³ It is important to note that Bureau of Justice Statistics population estimates represent counts of individuals sentenced to one year of prison or more. See E. Ann Carson, "Prisoners in 2016," U.S. Dept. of Justice, January 2018, p. 4. <https://www.bjs.gov/content/pub/pdf/p16.pdf>.

⁴ At year-end 1985, there were 23,099 female prisoners under state or federal jurisdiction. At year-end 2016, there were 111,616. This change represents a 383% growth in the number of female state and federal prisoners from 1985 to 2016. See Bureau of Justice Statistics, Bureau of Justice Statistics, "Correctional Populations in the United States, 1985," U.S. Dept. of Justice, p. 54. <https://www.bjs.gov/content/pub/pdf/cpus85.pdf>; and *Ibid.*

⁵ At year-end 1985, there were 479,277 male prisoners under state or federal jurisdiction. At year-end 2016, there were 1,395,141 male prisoners under state or federal jurisdiction. This change represents a 191% growth in the number of male state and federal prisoners from 1985 to 2016. *Ibid.*, p. 53. <https://www.bjs.gov/content/pub/pdf/cpus85.pdf>; and "Prisoners in 2016," p. 4. <https://www.bjs.gov/content/pub/pdf/p16.pdf>.

⁶ Lawrence Greenfield and Tracy Snell, "Women Offenders," *Bureau of Justice Statistics Special Report*, December 1999, p. 14. <https://www.bjs.gov/content/pub/pdf/wo.pdf>; "Prisoners in 2016," p. 18. <https://www.bjs.gov/content/pub/pdf/p16.pdf>; E. Ann Carson and Elizabeth Anderson, "Prisoners in 2015," U.S. Dept. of Justice, December 2016, p. 14. <https://www.bjs.gov/content/pub/pdf/p15.pdf>; E. Ann Carson, "Prisoners in 2014," U.S. Dept. of Justice, September 2015, p. 16. <https://www.bjs.gov/content/pub/pdf/p14.pdf>; E. Ann Carson, "Prisoners in 2013," U.S. Dept. of Justice, September 2014, p. 15. <https://www.bjs.gov/content/pub/pdf/p13.pdf#page=15>.

⁷ "Prisoners in 2016," p. 18. <https://www.bjs.gov/content/pub/pdf/p16.pdf>; "Prisoners in 2015," p. 14. <https://www.bjs.gov/content/pub/pdf/p15.pdf>; "Prisoners in 2014," p. 16. <https://www.bjs.gov/content/pub/pdf/p14.pdf>; "Prisoners in 2013," p. 15. <https://www.bjs.gov/content/pub/pdf/p13.pdf#page=15>.

years, whereas men were sentenced to a maximum of 16.8.⁸ This reflects the same trends seen in federal data, which suggest that women are often given shorter sentences even when they are found guilty of a similar crime.⁹ Indeed, one study found that male defendants received sentences more than 60 percent longer than females for a comparable offense and were more likely to be incarcerated if found guilty.¹⁰

Given these facts, it is not surprising that we have also seen an increase in the number of women being released from prison. In fact, much of this growth in the number of women reentering society can be attributed to matriculation out of state prisons. For example, in 1978, less than 10,000 women were released from state prisons. In 2016, around 70,000 were.¹¹ This growth in the number of female releases further underscores the importance of assessing the unique needs and difficulties faced by women in a justice system largely designed for men.

Recently, localities have turned to criminal justice reform to remedy prison overcrowding, soaring correctional costs and high recidivism rates. These efforts have focused on reforming sentences to be more proportional to the crime committed and diverting individuals convicted of nonviolent offenses away from incarceration and toward community-based services. As a result, states such as Texas and Georgia have seen prison populations drop.¹²

However, data seems to suggest that some of these reforms have benefited women less than men. In many states, female prison populations have continued to grow at significant rates or have plateaued even when male populations have begun to decline.¹³ In some cases, this has led to facility overcrowding and even to calls for new prisons.¹⁴ Such trends underscore the cost of ignoring the unique qualities of the female population when reforms are passed and implemented. While women

⁸ “Demographic Profiles of the Adult Correctional Population,” Louisiana Dept. of Public Safety and Corrections, June 30, 2018, p. 18.

<https://www.doc.la.gov/media/1/Briefing%20Book/July%2018/2.demographics.pdf>.

⁹ It is important to note that race and sex often play an intersectional role in sentencing, which leads to different sentencing outcomes for women of different racial backgrounds. See, e.g., “Demographic Differences in Sentencing: An Update to the 2012 *Booker* Report,” U.S. Sentencing Commission, November 2017, pp. 2, 6-9 and 20. https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf.

¹⁰ Sonja Starr, “Estimating Gender Disparities in Federal Criminal Cases,” *University of Michigan Law and Economics Research Paper* No. 12-018, August 2012, p. 17.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2144002.

¹¹ Estimates retrieved using Bureau of Justice Statistics, “Corrections Statistical Analysis Tool (CSAT)-Prisoners.” <https://www.bjs.gov/index.cfm?ty=nps>.

¹² Jolie McCullough, “Dip in Prison Population Continues Trend,” *The Texas Tribune*, Sept. 25, 2015.

<https://www.texastribune.org/2015/09/25/slight-dip-in-texas-prisoner-population-trend>; Elizabeth Pelletier et al., “Assessing the Impact of Georgia’s Sentencing Reforms,” Urban Institute, July 2017, pp. 1-2. https://www.urban.org/sites/default/files/publication/91731/ga_policy_assessment.pdf.

¹³ Wendy Sawyer, “The Gender Divide: Tracking Women’s State Prison Growth,” Prison Policy Initiative, Jan. 9, 2018. https://www.prisonpolicy.org/reports/women_overtime.html.

¹⁴ Barbara Hoberock, “Why does Oklahoma need \$1 billion more for corrections? It’s on track to lead the U.S. in incarceration, DOC director says,” *Tulsa World*, Jan. 16, 2018.

https://www.tulsaworld.com/homepagelatest/why-does-oklahoma-need-billion-more-for-corrections-it-s/article_2df2fe5d-33f0-5df9-a80b-a165e5b7a72a.html.

may be a small part of the total population in state and federal prisons, continued growth or delayed reductions in the female prison population should be a point of concern for state and federal policymakers alike.

II. The Unique History and Needs of Imprisoned Women

Understanding the factors that help explain an individual's pathway to crime is the first step to dismantling the cycle of crime and incarceration. Women entering prison report higher rates of trauma, mental health issues and substance abuse and were, as a whole, more impoverished than males at the time they entered. Moreover, their role as mothers and primary caretakers often extends the harm of incarceration to children and families. When we fail to acknowledge the traumatic histories and struggles faced by women in prison, we miss an opportunity to promote healing and transformation, and to give broken people and families a more stable foundation.

Studies have found that anywhere between a quarter to half of incarcerated women were abused as children.¹⁵ They also report higher rates of sexual abuse as children when compared to incarcerated men.¹⁶ Incarcerated women also have a higher incidence of interpersonal violence, with one estimate suggesting that as many as 90 percent of incarcerated women have experienced trauma at one point or another in their life.¹⁷ Research also suggests that men and women often respond differently to trauma.¹⁸ It is, therefore, all the more important that female prisoners have access to programming informed by their unique experiences and that correctional staff receive training that anticipates likely reactions. Helping women to work through these experiences respects their dignity and allows them the chance to be made whole. In any event, at a basic level, we must minimize any risk of re-traumatization and further harm.

Given this legacy of trauma, it is little surprise that the majority of women in prison suffer from poor mental health. Indeed, national estimates from 2005 suggest that 73 percent of women in state prisons and 61 percent of women in federal prisons have a mental health problem—compared to 55 and 44 percent of men, respectively.¹⁹ Furthermore, women incarcerated in state prisons were more than three times as likely to report being diagnosed with a mental health problem, more than twice as likely to report taking medication for their mental health and greater than twice as likely to have received mental

¹⁵ Nancy Wolff et al., "Patterns of Victimization Among Male and Female Offenders and Evidence of an Enduring Legacy," *Violence Victimization* 24:4 (2009), pp. 469-84. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3793850>.

¹⁶ Ibid.

¹⁷ Shannon Lynch et al., "Looking Beneath the Surface: The Nature of Incarcerated Women's Experiences of Interpersonal Violence, Treatment Needs, and Mental Health," *Feminist Criminology* 7:4, pp. 381-400. <https://journals.sagepub.com/doi/abs/10.1177/1557085112439224?journalCode=fcxa>; Shannon Lynch et al., "Women's Pathways to Jail: Examining Mental Health, Trauma, and Substance Abuse," U.S. Dept. of Justice, March 2013, p.1. <https://www.bja.gov/publications/womenspathwaytojail.pdf>; Office of the Inspector General, "Review of the Federal Bureau of Prisons' Management of Its Female Population," U.S. Dept. of Justice, September 2018, p. 6. <https://oig.justice.gov/reports/2018/e1805.pdf#page=10>.

¹⁸ Ibid., p. 6. <https://oig.justice.gov/reports/2018/e1805.pdf>. See also, Miranda Olf, "Sex and gender differences in post-traumatic stress disorder: an update," *European Journal of Psychotraumatology* 8:4 (2017). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5632782>.

¹⁹ Doris James and Lauren Glaze, "Mental Health Problems of Prison and Jail Inmates," U.S. Dept. of Justice, September 2006, pp. 4 and 6. <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>.

health therapy, as compared to their male counterparts.²⁰ These trends have continued in more recent national surveys.²¹ For this reason, it is especially important that women in prison have adequate access to the necessary mental health treatment and that reentry planning includes connecting women with mental health resources in the community.

Women are also significantly more likely than men to struggle with substance abuse or dependence and to have been using drugs at the time of their offense.²² In fact, national survey data from 2007 to 2009 found that almost 1 in every 2 female state prisoners were using drugs when they offended.²³ When combined with previous histories of sexual abuse, the prevalence of such drug use elevates women's risk of exposure to HIV and may explain the high infection rate among female prisoners.²⁴ All of this makes both addiction and HIV treatment, as well as HIV and STI (sexually transmitted infection) testing and education necessities in all female facilities.²⁵

Moreover, while both incarcerated men and women are often living in poverty prior to their time behind bars, women are even less likely to be employed full-time prior to their incarceration and report lower pre-incarceration incomes than males.²⁶ Often, women have even greater struggles finding and maintaining employment after release. In a study published by the Urban Institute, only a third of

²⁰ Ibid., p. 4.

²¹ Jennifer Bronson and Marcus Berzofsky, "Indicators of Mental Health Problems Reported by Prison and Jail Inmates, 2011-12," U.S. Dept. of Justice, June 2017, p. 4.
<https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf#page=4>.

²² Jennifer Bronson et al., "Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009," U.S. Dept. of Justice, June 2017, p. 3.
<https://www.bjs.gov/content/pub/pdf/dudaspij0709.pdf#page=3>.

²³ Bronson et al., p. 6. <https://www.bjs.gov/content/pub/pdf/dudaspij0709.pdf#page=6>.

²⁴ Federal and state prisoners are significantly more likely to have HIV/AIDs than the general population, with a 2011-2012 survey reporting an HIV/AIDS rate three times higher than that of the general population. See: Lauren Maruschak and Marcus Berzofsky, "Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12," U.S. Dept. of Justice, February 2015, p. 4.
<https://www.bjs.gov/content/pub/pdf/mpsfspji1112.pdf>. See also: Laura Maruschak, "Medical Problems of Prisoners," Bureau of Justice Statistics, 2008, p. 4. <https://www.bjs.gov/content/pub/pdf/mpp.pdf>; Carl Leukefeld et al., "Drug abuse treatment beyond prison walls," *Addiction Science & Clinical Practice* 5:1 (April 2009), pp. 25-26. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2749213>; Gail Wyatt et al., "The Efficacy of an Integrated Risk Reduction Intervention for HIV-Positive Women with Child Sexual Abuse Histories," *AIDS and Behavior* 8:4 (December 2004), pp. 453-54.
<http://healingourwomen.com/HOW%20PDF/The-Efficacy-of-an-Integrated.pdf>; Laura Maruschak, "Medical Problems of Prisoners," Bureau of Justice Statistics, 2008, p. 10.
<https://www.bjs.gov/content/pub/pdf/mpp.pdf>.

²⁵ Some jurisdictions either require or allow HIV testing in some form at intake. However, in several states surveyed in 2015, individuals had to opt-in to receive testing. See Laura Maruschak and Jennifer Bronson, "HIV in Prisons, 2015-Statistical Tables," U.S. Dept. of Justice, August 2017, p. 5.
<https://www.bjs.gov/content/pub/pdf/hivp15st.pdf>.

²⁶ National Center for Education Statistics, "Highlights from the U.S. PIAAC Survey of Incarcerated Adults: Their Skills, Work Experience, Education, and Training," U.S. Dept. of Education, November 2016, p. 9.
<https://nces.ed.gov/pubs2016/2016040.pdf>; Bernadette Rabuy and Daniel Kopf, "Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned," Prison Policy Initiative, July 9, 2015, <https://www.prisonpolicy.org/reports/income.html>.

women were employed eight to ten months after their release from prison compared to about half of men.²⁷ In part, this may be explained by the fact that the fields in which women often seek employment after their incarceration—such as retail or healthcare—are often subject to occupational licensing and criminal background checks.²⁸ In comparison, stereotypically male career fields, such as construction or manufacturing, are often more willing to hire individuals with criminal records.²⁹ In order to give women a launching pad for long-term financial security, additional investments must be therefore be made to provide women access to quality correctional education, vocational training and other programs that create a pathway toward stable employment.

For many incarcerated women, these adverse challenges—trauma, mental illness, substance abuse and poverty—are multi-faceted and closely intertwined.³⁰ For example, female prisoners with mental health problems are even more likely than those without to report struggling with substance abuse or dependency, being homeless in the year before their arrest, having previously experienced physical or sexual abuse and having parents who abused substances.³¹ Women with a mental health problem are also more likely to have been convicted of a violent offense and to pose a threat to facility safety—often connecting a complex history of being victimized to a future of victimizing others.³² For these reasons, state and federal prisons must take a comprehensive approach to addressing these needs.

In addition to needing a pathway toward healing, mental health and financial security, the simple fact of female biology and the demands of motherhood present a litany of other unique needs. For example, most incarcerated women are of reproductive age and therefore require feminine products, such as pads and tampons, to maintain basic hygiene. Furthermore, national survey data from the early 2000s suggests that anywhere between 3 and 5 percent of women are pregnant at the beginning of their incarceration, and scholars have further estimated up to two thousand incarcerated women give birth each year.³³ Accordingly, state and federal prisons should also be equipped to provide quality prenatal

²⁷ Kamala Mallik-Kane and Christy A. Visher, “Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration,” The Urban Institute, February 2008, pp. 16. <https://www.urban.org/sites/default/files/publication/31491/411617-Health-and-Prisoner-Reentry.PDF>.

²⁸ Jesse Kelley, “Barriers to Reentry and Their Disparate Impact,” *R Street Shorts* No. 59, July 2018, p. 2. <https://2o9ub0417chl2lg6m43em6psi2i-wpengine.netdna-ssl.com/wp-content/uploads/2018/07/Final-Short-No.-59-for-posting.pdf#page=2>.

²⁹ *Ibid.*

³⁰ For information on the relationship between trauma, substance abuse and mental health, see: “A Treatment Improvement Protocol: Trauma-Informed Care in Behavioral Health Services,” Substance Abuse and Mental Health Services Administration, 2014, p. 10. https://www.integration.samhsa.gov/clinical-practice/SAMSA_TIP_Trauma.pdf.

³¹ James and Glaze, p. 10. <https://www.bjs.gov/content/pub/pdf/mhppji.pdf#page=10>.

³² In 2005, approximately 17 percent of female state prisoners with a mental illness were charged with a physical or verbal assault after admission compared to 6 percent of female prisoners without a mental health problem. This is also displayed in trends of the total prison population. See James and Glaze, p. 10. <https://www.bjs.gov/content/pub/pdf/mhppji.pdf#page=10>; Bronson and Berzofsky, p. 9. <https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf#page=9>.

³³ Laura Maruschak, “Medical problems of jail inmates,” Bureau of Justice Statistics, November 2006, p. 1. <https://www.bjs.gov/content/pub/pdf/mpji.pdf>; “Medical Problems of Prisoners,” p. 4. <https://www.bjs.gov/content/pub/pdf/mpp.pdf>; and Jennifer Clarke and Rachel Simon, “Shackling and

and postpartum care and should eliminate or severely restrict the use of practices such as shackling during transportation, which can cause harm to mother or baby.

Finally, it is essential that state and federal prisons promote positive relationships between incarcerated mothers and their children and help them establish a path toward reunification upon reentry.³⁴ Women held in state prisons are more likely to report being a parent than men, and incarcerated mothers are more likely than incarcerated fathers to have lived with their child prior to incarceration.³⁵ Incarcerated mothers are also more than twice as likely to be a single parent as incarcerated fathers and three times as likely to report having been the primary caretaker.³⁶ It is therefore of the utmost importance that prison programming and policy both gives them an opportunity to facilitate positive relationships with their children while incarcerated and equips them with the skillsets necessary to be healthy, loving parents upon release.

III. The Role of Gender-Responsive Policy and Practice

As established, the needs of women are unique particularly with respect to their status as parents and caregivers, their unique biology, and the high prevalence of past trauma and often resultant physical and mental illness and substance abuse. Gender-Responsive policies incorporate these unique needs into practice. Accordingly, they often focus on relationship and strength development, account for the impact of trauma and are holistic in nature with respect to health.³⁷ Further, they promote safety by effectively addressing the underlying issues that promoted criminal activity and equip women with the tools to become productive citizens upon reentry. At their best, they seek to build a stronger society by reconnecting broken families and in so doing, they more wisely steward taxpayer dollars through investment in programs that are proven to effectively increase societal benefits and reduce risks to safety.

Despite such knowledge, however, women in prison often continue to see these core needs unmet. Rather than to be treated with dignity and care informed by their experiences of trauma, women are at high risk of further victimization while behind bars.³⁸ And, this is particularly disconcerting, as simply witnessing another person commit violence—an all too common feature of our prison system—may increase the likelihood that they will return to bad habits, such as abusing alcohol and drugs or be further traumatized in other ways.³⁹

Separation: Motherhood in Prison,” *AMA Journal of Ethics* Policy Forum, September 2013.

<https://journalofethics.ama-assn.org/article/shackling-and-separation-motherhood-prison/2013-09>.

³⁴ It is important to recognize that relationships should not be promoted when they conflict with the best interests and wellbeing of the child.

³⁵ It should be noted that among federal prisoners, males were more likely than females to report being a parent. See Lauren Glaze and Laura Maruschak, “Parents in Prison and Their Minor Children,” U.S. Dept of Justice, August 2008, pp. 2 and 4 <https://www.bjs.gov/content/pub/pdf/pptmc.pdf>.

³⁶ *Ibid.*, pp. 4-5. <https://www.bjs.gov/content/pub/pdf/pptmc.pdf>.

³⁷ For more information, see: Stephanie Covington and Barbara Bloom, “Gender Responsive Treatment in Correctional Settings,” *Inside and Out: Women, Prisons, and Therapy* (The Hatworth Press, 2006), pp. 9-33. <https://www.stephaniecovington.com/assets/files/FINALC.pdf#page=3>.

³⁸ Wolff et al., pp. 469-84. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3793850>.

³⁹ Shelly Mcgrath et al., “The Effects of Experienced, Vicarious, and Anticipated Strain on Violence and Drug Use among Inmates,” *American Journal of Criminal Justice* 37:1 (March 2012), pp. 60-75.

https://www.researchgate.net/publication/238499127_The_Effects_of_Experienced_Vicarious_and_An

Further, notwithstanding current knowledge of best practices, correctional staff in women's facilities still often fail to receive trauma-informed and gender-responsive training. This makes correctional staff more likely to respond to female inmates in ways that are unproductive or harmful.⁴⁰ Indeed, even correctional officers lament this knowledge gap. For example, a 2016 report describing the findings of a gender-informed practice assessment of Illinois' Logan Correctional Facility found that more than half of correctional staff felt that they were not well-equipped to work with female inmates.⁴¹ As a result, staffers often overused punitive sanctions, particularly when dealing with women with mental illness.⁴² Others were openly derogatory, depicting female prisoners as "worthless" or "animals" and mocked prisoner programming.⁴³ In fact, the study's authors concluded that: "In the absence of formally developed policies and procedures that address the unique requirements of working with women, informal and, at times, inhumane practices have evolved."⁴⁴ This hardly describes a constructive environment for transformation.

Behavioral and mental health services needed to support imprisoned women are also lacking. For example, a 2011-2012 survey found that only 54 percent of prisoners showcasing serious psychological distress and 63 percent with a history of poor mental health received mental health treatment after admission.⁴⁵ And, in federal prisons in particular, women are often unable to access trauma treatment programming until later in their sentence due to lack of sufficient staffing.⁴⁶ Moreover, a national estimate suggests that more than two thirds of state prisoners who meet the criteria for drug abuse or dependence do not receive the treatment they need while behind bars.⁴⁷ Even when corrections

[ticipated Strain on Violence and Drug Use among Inmates](#). One of the pillars of trauma-informed care is creating a safe environment for the client, both physically and emotionally. See, e.g., "A Treatment Improvement Protocol: Trauma-Informed Care in Behavioral Health Services," p. 19. https://www.integration.samhsa.gov/clinical-practice/SAMSA_TIP_Trauma.pdf.

⁴⁰ See, e.g., Erica King and Jillian Foley, "Gender-Responsive Policy Development in Corrections: What We Know and Roadmaps for Change," National Institute of Corrections, October 2014, p. 3.

<https://s3.amazonaws.com/static.nicic.gov/Library/029747.pdf>; Alyssa Benedict and Deanne Besos, "The Gender Informed Practice Assessment (GIPA) Summary of Findings and Recommendation: Logan Correctional Center, Illinois Department of Corrections," National Resource Center on Justice Involved Women, November 2016, p. 14. <http://www.thejha.org/sites/default/files/GIPA%20Logan%20CC%20Nov%202016%20Updated%20compressed.pdf>.

⁴¹ Benedict and Besos, p. 14

<http://www.thejha.org/sites/default/files/GIPA%20Logan%20CC%20Nov%202016%20Updated%20compressed.pdf>.

⁴² *Ibid.* pp. 11-15.

⁴³ *Ibid.* p. 12.

⁴⁴ *Ibid.* p. 11.

⁴⁵ Bronson and Berzofsky, p. 8. <https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf#page=8>.

⁴⁶ "Review of the Federal Bureau of Prisons' Management of its Female Population," p. 19. <https://oig.justice.gov/reports/2018/e1805.pdf>.

⁴⁷ Bronson et al., p. 13. <https://www.bjs.gov/content/pub/pdf/dudaspji0709.pdf#page=13>.

leadership identify the utility of these programs, state budget dilemmas frequently result in cuts to funding for treatment and reentry services. This undermines access to these critical services.⁴⁸

With respect to basic hygiene and physical health, women in federal facilities have not always fared much better. During field visits from July 2016 to September 2017, the DOJ's Office of the Inspector General found that although federal female inmates were provided many feminine hygiene products for free, they did not always have access to a sufficient quantity.⁴⁹ Similarly, they found pregnant women were not properly informed of even the programs that are currently available to them. Worse, many states still have yet to disavow dangerous practices, such as the shackling of pregnant women, nor do they provide incarcerated women physician-recommended standards of care.⁵⁰ As a result, both the health and lives of women in prison and their unborn children are put unnecessarily at risk.⁵¹

Finally, current prison communication and visitation policies often make connecting with children and family too difficult and expensive. And, when women in prison are able to interact with their children, the benefits may be limited by time restrictions, contact policies or physical barriers such as the infamous Plexiglas wall.⁵² While parenting programs do exist in some prisons, many do not allow children to directly participate in the programming—a loss for both child and mother.⁵³ Promoting these

⁴⁸ For example, see: Mary Ellen Klas, "Florida prisons cut programs to cover \$28 million deficit," *Tampa Bay Times*, May 6, 2018. <https://www.tampabay.com/florida-politics/buzz/2018/05/06/florida-prisons-cut-programs-to-cover-28-million-deficit>.

⁴⁹ "Review of the Federal Bureau of Prisons' Management of its Female Population," pp. 29-31. <https://oig.justice.gov/reports/2018/e1805.pdf>.

⁵⁰ See, e.g., Ginette Ferszt et al., "Where Does Your State Stand on Shackling of Pregnant Incarcerated Women," *Nursing for Women's Health* 22:1 (February 2018), pp. 18-20. [https://nwhjournal.org/article/S1751-4851\(17\)30335-5/pdf](https://nwhjournal.org/article/S1751-4851(17)30335-5/pdf); Committee on Health Care for Underserved Women, "Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females," The American College of Obstetricians and Gynecologists, November 2011. <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Pregnant-and-Postpartum-Incarcerated-Women-and-Adolescent-Females>.

⁵¹ See, e.g., C.M. Kelsey et al., "An Examination of Care Practices of Pregnant Women Incarcerated in Jail Facilities in the United States," *Maternal and Child Health Journal* 21:6, pp. 1260-66. <https://link.springer.com/article/10.1007/s10995-016-2224-5>; Victoria Law, "Pregnant and behind bars: how the US prison system abuses mothers-to-be," *The Guardian*, Oct. 20, 2015. <https://www.theguardian.com/us-news/2015/oct/20/pregnant-women-prison-system-abuse-medical-neglect>; Abigail Leonard and Adam May, "Whistleblower: Arizona inmates are dying from inadequate health care," *America Tonight*, May, 28, 2014. <http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/5/27/whistleblower-arizonainmatesaredyingfrominadequatehealthcare.html>; Kaitlin Owens and Emily Mooney, "Pregnant while imprisoned: The crisis thousands of women are facing," *The Hill*, Sept. 13, 2018. <https://thehill.com/opinion/criminal-justice/406522-pregnant-and-imprisoned-the-crisis-thousands-of-women-are-facing>.

⁵² For more information, see: Emily Mooney and Nila Bala, "The Importance of Supporting Family Connections to Ensure Successful Re-entry," *R Street Shorts* No. 63, October 2018, pp. 1-4. <https://2o9ub0417chl2lg6m43em6psi2i-wpengine.netdna-ssl.com/wp-content/uploads/2018/10/Final-Short-No.-63-1.pdf>.

⁵³ Some programs, such as the federal government's Mothers & Infants Together (MINT) program and Washington's Residential Parenting Program, do allow mothers to live with infants in a community residential program for several months following their birth. However, these programs are not available

family connections is not only critical to relational, gender-responsive policy but research suggests that it helps to promote successful reentry.⁵⁴

Although many prisons have yet to fully embrace and implement gender-responsive programming, its importance has increasingly gained salience in the public debate. As a result, some jurisdictions have recognized their failures to provide dignity, safety and support to women behind bars and are reversing course. Under the recently passed First Step Act, women incarcerated in federal prisons will no longer be shackled during pregnancy, labor or postpartum recovery.⁵⁵ Similar initiatives to prevent shackling and provide greater dignity and care for women are being introduced in state legislatures or implemented as changes to departmental policy across the country.⁵⁶ The Bureau of Prison's *Female Offender Manual* testifies to the importance of gender-responsive policy and practice, and recommendations from the latest Inspector General's report promise to bring more positive changes, if implemented.⁵⁷ These are encouraging developments but state and federal policymakers must continue to push for more comprehensive reforms that adequately address the needs of women in prison.

IV. The Intersection of Female Incarceration, Child Caregiving and the U.S. Foster Care System

Given their role as primary caretakers, increases in the number of women in prison often bring collateral consequences to extended family members and other social service agencies. Indeed, in a national survey, eight in 10 mothers reported that they provided most of their child's daily care prior to their incarceration.⁵⁸ From 1991 to 2007, the number of mothers in state and federal prisons grew more than twofold.⁵⁹

This disproportionate caregiving burden often compounds the difficulties faced by incarcerated mothers, children and extended family. The overwhelming majority of incarcerated fathers are able to count on mothers—often the person who was already the primary caretaker of their child—to continue

to women with children of all ages. See, e.g., "Female Offenders," Federal Bureau of Prisons, accessed Jan. 24, 2019. https://www.bop.gov/inmates/custody_and_care/female_offenders.jsp.

⁵⁴ Ibid.

⁵⁵ Exceptions are made for a few rare circumstances, including cases in which a woman "is an immediate and credible flight risk that cannot be reasonably prevented by other means; or poses an immediate or serious threat of harm to herself or others that cannot reasonably be prevented by other means." See First Step Act <https://www.congress.gov/bill/115th-congress/senate-bill/756/text?q=%7B%22search%22%3A%5B%22S.+756%22%5D%7D&r=1&s=6#toc-id55891034f20e48488f5c60f457cb6e27>.

⁵⁶ See, e.g., Assembly Bill A118, New York State Senate, 2019.

<https://www.nysenate.gov/legislation/bills/2019/A118>; Mona Chalabi, "North Carolina ends shackling of inmates during childbirth," *The Guardian*, March 28, 2018. <https://www.theguardian.com/us-news/2018/mar/28/north-carolina-ends-shackling-of-inmates-during-childbirth>; H.B. 49 "Dignity for Incarcerated Women Act," Florida House of Representatives, 2019. <https://www.flsenate.gov/Session/Bill/2019/49/?Tab=BillText>.

⁵⁷ See e.g. "Review of the Federal Bureau of Prisons' Management of its Female Population," pp. 1-43. <https://oig.justice.gov/reports/2018/e1805.pdf>; Bureau of Prisons, "Female Offender Manual," U.S. Dept. of Justice, Jan. 2, 2018, pp. 2-20. https://www.bop.gov/policy/progstat/5200.02_cn1.pdf.

⁵⁸ Glaze and Maruschak, pp. 4-5, 16. <https://www.bjs.gov/content/pub/pdf/pptmc.pdf>.

⁵⁹ Glaze and Maruschak, p. 13 <https://www.bjs.gov/content/pub/pdf/pptmc.pdf>.

caring for the child during their incarceration.⁶⁰ However, when mothers are incarcerated, many rely on grandparents, extended family and the foster care system to provide care.⁶¹

Practically speaking, this means children of incarcerated mothers are often separated from the person upon whom they depend most. And often they are forced into situations wherein their care presents additional financial and emotional burdens for their extended family or strangers.⁶² Furthermore, research suggests that maternal incarceration not only puts young children at risk of not forming healthy attachments—one of the cornerstones of positive child development—but may also harm a child’s health,⁶³ bring shame and stigma, and promote antisocial behavior.⁶⁴

⁶⁰ In a 2004 national survey, almost 9 in 10 fathers incarcerated in state prisons reported that their child was being taken care of by the child’s other parent. *Ibid.*, p. 5

⁶¹ *Ibid.* See also: “Fragile Families Research Brief,” Woodrow Wilson School of Public and International Affairs, Princeton University, April 2008, p. 2.

<https://fragilefamilies.princeton.edu/sites/fragilefamilies/files/researchbrief42.pdf#page=2>.

⁶² Saneta deVuong-powell et al., “Who Pays? The True Cost of Incarceration on Families,” Ella Baker Center for Human Rights, Forward Together and Research Action Design, September 2015, p. 7. <https://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf>.

⁶³ In some cases, maternal incarceration may alternatively promote the wellbeing of incarcerated children.

⁶⁴ Children of incarcerated mothers often suffer from other adverse circumstances prior to maternal incarceration, which makes clear differentiation of the causal impact of maternal incarceration difficult to assess. However, the studies presented herein have found a significant association between maternal incarceration and child attachment, health, stigmatization and behavior. For information on child attachment, see: Julie Poehlmann, “Representations of Attachment Relationships in Children of Incarcerated Mothers,” *Child Development* 76:3 (May 2005), p. 690.

<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8624.2005.00871.x>; Joseph Murray and Lynne Murray, “Parental incarceration, attachment and child psychopathology,” *Attachment and Human Development* 12:4 (July 2010), pp. 292-96.

<https://www.tandfonline.com/doi/abs/10.1080/14751790903416889>. For information on mental health, stigmatization and antisocial behavior, see: Laurel Davis and Rebecca Shlafer, “Mental health of adolescents with currently and formerly incarcerated parents,” *Journal of Adolescence* 54:1 (January 2017), pp. 120-34. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5549675>; Melinda Tasca et al., “Prisoners’ Assessments of Mental Health Problems,” *International Journal of Offender Therapy and Comparative Criminology* 58:2 (2014), pp. 154-73.

<http://journals.sagepub.com/doi/abs/10.1177/0306624X12469602?journalCode=ijoe>; Ilan Harpaz-Rotem et al., “The Mental Health of Children Exposed to Maternal Mental Illness and Homelessness,” *Community Mental Health Journal* 42:5 (October 2006), pp. 437-48.

<https://link.springer.com/article/10.1007/s10597-005-9013-8>; and Elizabeth Davies et al.,

“Understanding the Experiences and Needs of Children of Incarcerated Parents: Views from Mentors,” Urban Institute Justice Policy Center, February 2008, p. 7.

<https://www.urban.org/sites/default/files/publication/31481/411615-Understandingthe-Needs-and-Experiences-of-Children-of-Incarcerated-Parents.PDF>; Joseph Murray et al., “Children’s Antisocial Behavior, Mental Health, Drug Use, and Educational Performance After Parental Incarceration: A Systematic Review and Meta-analysis,” *Psychological Bulletin* 138:2 (2012), pp. 175-210.

<https://psycnet.apa.org/fulltext/2012-00399-001.html>; Rosalyn Lee et al., “The Impact of Parental Incarceration on the Physical and Mental Health of Young Adults,” *Pediatrics* 131:4 (2013), pp. e1188-95. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3608482>.

When these negative externalities occur, they do little to ease the caregiving burden placed on extended families but rather, may accentuate them. Grandparents, for example, may be forced to both personally process their child's incarceration while also helping their grandchildren process the loss of a beloved parent in their daily lives. When a hurting child understandably acts up or displays antisocial behavior, the relative caretaker is once again the one who must learn how to deal productively with such behavior—a task made even harder as the elderly see their health and mobility decline. Moreover, child caretakers often must balance competing priorities and may find it difficult to meet the needs of multiple members of their family at once.⁶⁵

When children of women in prison do not have relatives that can care for them, they may find themselves in foster care. A national estimate suggests that one in nine mothers have a child in foster care and in 2013 alone, approximately 20,000 children were placed in foster care, in part, due to parental incarceration.⁶⁶ One study assessed that increases in the number of incarcerated females may explain 31 percent of the growth in foster care caseloads from 1985 to 2000.⁶⁷ However, other factors related both to maternal incarceration and child placement in foster care, such as parental substance abuse and addiction, may also mediate the relationship between female incarceration and child foster care involvement. Indeed, some scholars have found that having a child placed in foster care may actually precede and accelerate a “downward spiral” ultimately ending in the mother's incarceration.⁶⁸

Regardless of the order of events, when a female prisoner's child is in foster care, familial reunification becomes all the more difficult. Social workers are now tasked with the arduous job of coordinating child visits and contact with a parent behind prison walls. And, given the relatively smaller population of female prisoners, they are often consolidated in a few correctional facilities, which makes it less likely that women are placed in prisons near their families. As the distance between the incarcerated parent and their child increases, visits become more time-consuming, expensive and are often less likely to occur.⁶⁹

⁶⁵ Megan Thompson, “For incarcerated mothers, parenting is a day-to-day struggle,” *PBS News Hour*, May 13, 2018. <https://www.pbs.org/newshour/nation/for-incarcerated-mothers-parenting-is-a-day-to-day-struggle>.

⁶⁶ Sadly, national estimates suggest that foster care involvement is often a legacy shared by both mother and child. In a 2004 survey, seventeen percent of mothers in state prisons with minor children reported being in foster care at some point during their childhood. See Glaze and Maruschak, pp. 5 and 18. <https://www.bjs.gov/content/pub/pdf/pptmc.pdf>; and “Child Welfare Practice With Families Affected by Parental Incarceration,” Children's Bureau, October 2015, p. 3. https://www.childwelfare.gov/pubPDFs/parental_incarceration.pdf.

⁶⁷ Christopher Swann and Michelle Sylvester, “The foster care crisis: What caused caseloads to grow,” *Demography* 43:2 (May 2006), p. 328. <https://link.springer.com/article/10.1353/dem.2006.0019>.

⁶⁸ Timothy Ross et al., “Hard Data on Hard Times: An Empirical Analysis of Maternal Incarceration, Foster Care, and Visitation,” The Vera Institute of Justice, August 2004, p. 14. https://repositories.lib.utexas.edu/bitstream/handle/2152/15169/HardData_HardTimes_Vera.pdf?sequence=2.

⁶⁹ The greater the distance individuals are incarcerated from their home, the less likely they are to have been visited in the last month. See, e.g., Bernadette Rabuy and Daniel Kopf, “Separation by Bars and Miles: Visitation in state prisons,” Prison Policy Initiative, Oct. 20, 2015. <https://www.prisonpolicy.org/reports/prisonvisits.html>; Joshua Cochran et al., “Spatial Distance, Community Disadvantage, and Racial and Ethnic Variation in Prison Inmate Access to Social Ties,”

Even when a parent is placed in a facility nearby, other factors may impair a child's relationship with their parent. Children must rely on their caregivers to facilitate contact and accordingly, parent-caregiver disagreements can greatly influence the relationship between mother and child. Visitation policies that disallow physical contact and force children to communicate through a glass wall may make visitation a traumatic or negative experience for children.⁷⁰ Some facilities have taken steps to address these problems by creating child-friendly visitation policies but others have not.⁷¹

Further complicating matters, under the Adoption and Safe Families Act, parental rights may be terminated if a child is in the foster system's care for 15 of 22 months.⁷² Indeed, a 2018 investigative report found that, from 2006 to 2016, 5,000 parents lost their parental rights due solely to their incarceration.⁷³ Thus, women with longer prison sentences or those who fail to reenter society successfully and are quickly reincarcerated are at greater risk of having their parental rights terminated. In some cases, this may not be in the long-term best interest of the child. In others, this may simply put additional pressure on the child welfare system to provide children with adoptive homes.

In all cases, the important role female prisoners play as mothers makes ensuring their restoration and transformation while behind bars, as well as their successful reentry into society, doubly important. Often, their families are counting on them to reassume their duties as a parent, and children are harmed when returning parents fail to live a more productive, healthy life.

Furthermore, it is of key importance to state policymakers. When women are not equipped to succeed upon their release, both the criminal justice and child welfare systems are impacted, further straining state resources. When mothers commit crime and return to prison, both public safety and children suffer—passing on a broken legacy to yet another generation.

V. Recommendations

For these reasons, I urge members of the U.S. Commission on Civil Rights to recognize and promote revisions to state and federal policy in light of the following facts:

- 1) In many jurisdictions, the number of women in prisons has continued to grow. However, many of these women pose low risk to society and are incarcerated for nonviolent offenses.

Journal of Research in Crime and Delinquency 53:2 (2016), pp. 239-40 and 243-44.

<http://journals.sagepub.com/doi/abs/10.1177/0022427815592675>.

⁷⁰ Lindsey Cramer et al., "Parent-Child Visiting Practices in Prisons and Jails," The Urban Institute, April 2017, p. 3. <https://www.urban.org/sites/default/files/publication/89601/parent-child-visiting-practices-in-prisons-and-jails.pdf>.

⁷¹ Per the Bureau of Prison policies laid out in the *Female Offender Manual*, federal prisons are to include "child-friendly materials" within waiting and visitation spaces. See *Female Offender Manual*, p. 12. https://www.bop.gov/policy/progstat/5200.02_cn1.pdf.

⁷² Administration for Children and Families, "Adoption and Safe Families Act (AFSA)," U.S. Dept. of Health and Human Services, 2018. <https://training.cfsportal.acf.hhs.gov/section-2-understanding-child-welfare-system/2999>.

⁷³ Eli Hager and 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>.

Alternatives to incarceration should therefore be better utilized to reduce the number of women in prison and promote public safety. In areas where reforms have been implemented but have not positively impacted the female population, greater analysis should explore the factors that thwart female population decline and successful reentry.

- 2) Imprisoned women often present different needs than imprisoned men and suffer in facilities constructed and equipped for males. While some facilities are beginning to adapt and respond, many lag behind. This places these women's emotional, mental and physical health, and safety at-risk. Jurisdictions should assess the current needs of women in prison and the services available to meet them.
- 3) Imprisoned women present unique challenges and opportunities for correctional staff. Both correctional officers and administration should partake in trauma-informed, gender-responsive training and be provided resources so they are properly equipped to interact with female inmates in a productive manner.
- 4) Women in prison have unique relational needs and are often the primary caretakers of minor children. Barriers to familial connections should be assessed and minimized to the best extent possible in order to promote prosocial relationships and mitigate the harm to children.
- 5) Given the intersection of female incarceration and child foster care involvement, social service and correctional agencies should collaborate to identify and remove barriers to familial reunification and promote successful reentry while ensuring the best interests of children.