



RESEARCH AND ADVOCACY FOR REFORM

# **Women in the Criminal Justice System**

## **Briefing Sheets**

May 2007



## WOMEN IN THE CRIMINAL JUSTICE SYSTEM: AN OVERVIEW

During the last 20 years, there has been a profound change in the manner in which women are treated within the criminal justice system. This has been a result of more expansive law enforcement efforts, stiffer drug sentencing laws, and post-conviction barriers to reentry that uniquely affect women. In response, the consideration of a gender-specific approach to studying criminal justice policy has moved from a mere footnote to a full-fledged reform movement.

### GROWTH OF WOMEN UNDER CORRECTIONAL SUPERVISION

- More than one million women are currently under the supervision of the criminal justice system in the U.S.<sup>1</sup>
- More than 200,000 of these women are confined in state and federal prisons or local jails.<sup>2</sup>
- Expanding at 4.6% annually between 1995 and 2005, women now account for 7% of the population in state and federal prisons.<sup>3</sup>
- The number of women in prison has increased at nearly double the rate of men since 1985, 404% vs. 209%.<sup>4</sup>
- Women in state prisons in 2003 were more likely than men to be incarcerated for a drug offense (29% vs. 19%) or property offense (30% vs. 20%) and less likely than men to be incarcerated for a violent offense (35% vs. 53%).<sup>5</sup>

### RACE AND ETHNICITY

- Black women represent 30 percent of all females incarcerated under state or federal jurisdiction, and Hispanic women 16 percent.<sup>6</sup>
- In 2005, black women were more than three times as likely as white women to be incarcerated in prison or jail, and Hispanic women 69% more likely.<sup>7</sup>

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<sup>1</sup> This figure includes an estimated 956,200 women on probation and 93,000 on parole in 2005. See Lauren E. Glaze and Thomas P. Bonczar, *Probation and Parole in the United States, 2005*, Bureau of Justice Statistics, November 2006, at 6-8.

<sup>2</sup> Paige M. Harrison and Allen J. Beck, *Prison and Jail Inmates at Midyear 2005*, Bureau of Justice Statistics, May 2006, at 8; Paige M. Harrison and Allen J. Beck, *Prisoners in 2005*, Bureau of Justice Statistics, November 2006, at 4.

<sup>3</sup> *Prisoners in 2005*, at 4.

<sup>4</sup> Data calculated from Jodi M. Brown, Darrell K. Gilliard, Tracy L. Snell, James J. Stephan, and Doris James Wilson, *Correctional Populations in the United States 1994*, Table 1.8, p. 8, June 1996, and *Prisoners in 2005*.

<sup>5</sup> *Prisoners in 2005*, Table 12, at 9

<sup>6</sup> *Ibid.*, Table 10, at 8.

<sup>7</sup> *Ibid.*, Table 11, at 8.

## **FAMILY ISSUES**

- The likelihood that children will have parents who are incarcerated is disproportionately linked to race. In 1999, one of every 14 black children had a parent in prison, compared with one in every 125 white children. Black children are almost 9 times more likely than white children to have a parent in prison and Hispanic children are 3 times more likely.<sup>8</sup>

## **SOCIOECONOMIC ISSUES**

- Nearly half (44%) of women in state prisons in 1998 had not completed high school.<sup>9</sup>
- 60 percent of incarcerated women were not employed full-time when they were arrested, and 37 percent had incomes under \$600 in the month leading up to their arrest, compared with 40 percent and 28 percent of men, respectively.<sup>10</sup> Nearly one-third (30%) of women were receiving welfare benefits prior to their arrest.<sup>11</sup>

## **PHYSICAL AND MENTAL HEALTH ISSUES**

- Women in state prison in 1998 were more likely to report using drugs at the time of their offense than men (40% vs. 32%), and nearly one-third reported that they had committed their offense to obtain money to buy drugs.<sup>12</sup>
- More than half (57%) of women incarcerated under state jurisdiction reported that they had experienced either sexual or physical abuse before their admission to prison.<sup>13</sup>
- Nearly three-quarters (73.1%) of women in state prison in 2005 had a mental health problem, compared to 55% of men in prison.<sup>14</sup>
- Women in prison are considerably more likely than men to have been diagnosed with a mental illness. In state prisons in 1998, 23.6% of women were identified as mentally ill, compared to 15.8% of men, while in federal prisons the proportions were 12.5% of women and 7% of men.<sup>15</sup>
- In 2004, one of every 42 (2.4%) women in prison was diagnosed as HIV positive, compared to 1 of every 59 (1.7%) men. In New York, one of every seven inmates is diagnosed as HIV positive.<sup>16</sup>

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<sup>8</sup> Christopher J. Mumola, *Incarcerated Parents and Their Children*, Bureau of Justice Statistics, August 2000, at 2.

<sup>9</sup> Lawrence A. Greenfeld and Tracy L. Snell, *Women Offenders*, Bureau of Justice Statistics, December 1999, at 7.

<sup>10</sup> *Ibid.*, at 8.

<sup>11</sup> *Ibid.*, at 7-8.

<sup>12</sup> *Ibid.*, at 8-9.

<sup>13</sup> *Ibid.*, at 8.

<sup>14</sup> Doris J. James and Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates*, Bureau of Justice Statistics, September 2006, at 4.

<sup>15</sup> Paula M. Ditton, *Mental Health and Treatment of Inmates and Probationers*, Bureau of Justice Statistics, July 1999, at 3.

<sup>16</sup> Laura M. Maruschack, *HIV in Prisons, 2004*, Bureau of Justice Statistics, November 2006, Table 2, at 3.

**WOMEN IN THE CRIMINAL JUSTICE SYSTEM:  
INVOLVEMENT IN CRIME**

The growing rate of women's incarceration calls for a critical evaluation of the social impact of our nation's increasing reliance on correctional facilities to deal with women's involvement in crime. Increasing arrests for property and public order offenses are partly responsible for women's incarceration rate outpacing that of men.<sup>1</sup> The "war on drugs," however, has been most influential in the nationwide expansion of the prison population, having a particularly devastating impact on women over the past 25 years. Women are now more likely than men to serve time for drug offenses and are subject to increasingly punitive law enforcement and sentencing practices,<sup>2</sup> despite the fact that women are less likely than men to play a central role in the drug trade.<sup>3</sup> Additionally, women's higher proportion of incarceration for property crimes than men's reflects the extreme economic disadvantages that many women face prior to incarceration. There is an increasing need for further consideration of the nature of women's involvement in crime in order to respond appropriately to the personal and structural causes of their criminal behavior rather than relying solely on punitive responses.

- Women incarcerated in state prisons were less likely than men to have been convicted of a violent offense (35% vs. 53%).<sup>4</sup>
- Women incarcerated in state prisons were more likely than men to have been convicted of a property or drug crime (59% vs. 40%).<sup>5</sup>
- One in three female offenders in state prisons is incarcerated for a violent offense, but female violent offenders are twice as likely as men to have victimized someone they knew.<sup>6</sup>
- From 1986 to 1996, despite the fact that the rate at which women used drugs actually declined substantially,<sup>7</sup> the number of women incarcerated in state facilities for drug offenses increased by 888%, compared to a rise of 129% for non-drug offenses.
- Overall, drug offenses constituted half (49%) of the increased number of women in state prisons between 1986 and 1996.<sup>8</sup>

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<sup>1</sup> Lawrence A. Greenfeld and Tracy L. Snell, *Women Offenders*, Bureau of Justice Statistics, December 1999, rev. 10/3/00; Joanne Belknap, *Access to Programs and Health Care for Incarcerated Women*, Federal Probation, Vol. 60, No. 4, December 1996, at 34.

<sup>2</sup> Patricia Allard, *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses*, The Sentencing Project, February 2002, at 25; Marc Mauer, Cathy Potler, and Richard Wolf, *Gender and Justice: Women, Drugs, and Sentencing Policy*, The Sentencing Project, November 1999, at 7.

<sup>3</sup> Lenora Lapidus, Namita Luthra, Anjuli Verma, Deborah Small, Patricia Allard, and Kirsten Levingston, *Caught in the Net: The Impact of Drug Policies on Women and Families*, American Civil Liberties Union, Break the Chains: Communities of Color and the War on Drugs, the Brennan Center at NYU School of Law, 2005, at 11.

<sup>4</sup> Paige M. Harrison and Allen J. Beck, *Prisoners in 2005*, Bureau of Justice Statistics, November 2006, Table 13, at 9.

<sup>5</sup> Ibid.

<sup>6</sup> Tracy L. Snell, *Women in Prison*, Bureau of Justice Statistics, March 1994, at 3.

<sup>7</sup> Mauer et al., *supra* note 2, at 7.

<sup>8</sup> Ibid. at 2.



## WOMEN IN THE CRIMINAL JUSTICE SYSTEM: MOTHERS IN PRISON

Over 1.5 million children have a parent in prison,<sup>1</sup> more than 8.3 million children have a parent under correctional supervision,<sup>2</sup> and more than one in five of these children is under five years old.<sup>3</sup> Among female state prisoners, two-thirds are mothers of a minor child.<sup>4</sup> For many women incarceration may last for a significant part of their child's formative years, and in some cases lead to a loss of parental rights.

### WHO CARES FOR CHILDREN OF INCARCERATED MOTHERS?

- 28% of mothers report that their children live with their fathers while they are incarcerated.<sup>5</sup>
- Nine out of ten mothers report that their children live with a grandparent, other relative, or a friend of the mother.
- 10% of women have children living in a foster home or agency; women in prison are five times more likely than men to report having children removed from their immediate families and placed in a foster home or other agency.<sup>6</sup>
- A 1997 survey found that only 6 of 38 responding state child welfare agencies had enacted policies or created programs to address the needs of children with incarcerated parents.<sup>7</sup>

### CHALLENGES TO MAINTAINING FAMILIAL BONDS

- A majority of parents in state and federal prisons are held over 100 miles from their prior residence; in federal prisons 43% of parents are held over 500 miles away from their last home.<sup>8</sup>
- Over half of female prisoners have never had a visit from their children.<sup>9</sup>
- One in three mothers has never spoken with her children by phone while incarcerated.<sup>10</sup>

### LOSING PARENTAL RIGHTS

- The Adoption and Safe Families Act of 1997 (ASFA) was passed “to reduce long-term stays in foster care by facilitating quick termination of parental rights and speedy adoption.”<sup>11</sup>
- States are authorized to initiate termination of parental rights when a child has been living under foster care for 15 of the last 22 months.
- More than 60% of mothers in prison are expected to serve more than 24 months on their current sentence.<sup>12</sup>

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<sup>1</sup> Christopher J. Mumola, *Incarcerated Parents and Their Children*, Bureau of Justice Statistics, August 2000.

<sup>2</sup> Women in Prison Project, Correctional Association of New York, *Imprisonment and Families Fact Sheet*, May 2007.

<sup>3</sup> Mumola, *supra* note 1, at 2.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.* at 3.

<sup>6</sup> *Ibid.*

<sup>7</sup> Lenora Lapidus, Namita Luthra, Anjali Verma, Deborah Small, Patricia Allard, and Kirsten Levingston, *Caught in the Net: The Impact of Drug Policies on Women and Families*, American Civil Liberties Union, Break the Chains: Communities of Color and the War on Drugs, the Brennan Center at NYU School of Law, 2005, at 54.

<sup>8</sup> Mumola, *supra* note 1, at 5.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Lapidus et al., *supra* note 7, at 55.

<sup>12</sup> Mumola, *supra* note 1, at 6.

## **WOMEN IN THE CRIMINAL JUSTICE SYSTEM: INADEQUACIES IN PRISON SERVICES**

Quality comprehensive services and programs in prisons and jails contribute to successful rehabilitation, promote good behavior and help reduce rates of recidivism after release from confinement. The most common services offered during incarceration include substance abuse treatment, education, and health services. The availability and quality of these services, however, often do not match the needs of women in prison.

### **DRUG TREATMENT**

- 60% of women in state prison have a history of drug dependence.<sup>1</sup>
- During incarceration only 1 in 5 women in state prisons with a history of substance abuse and 1 in 8 women in federal prisons<sup>2</sup> receives treatment for substance abuse.

### **MENTAL HEALTH CARE**

- Nearly 1 in 4 women in prison are diagnosed with a mental illness.<sup>3</sup>
- 12% of women in jails have severe psychiatric disorders,<sup>4</sup> and fewer than 25% of them receive mental health services.<sup>5</sup>

### **EDUCATION**

- 44% of women in state prison have neither graduated from high school nor received a GED.<sup>6</sup>
- 14% of women in state prisons have had some college-level education.<sup>7</sup>
- Half of women in prison participate in educational or vocational programming—only one of every five women takes high school or GED classes.<sup>8</sup>
- Only half of women's correctional facilities offer post-secondary education.<sup>9</sup>

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<sup>1</sup> Christopher J. Mumola and Jennifer C. Karberg, *Drug Use and Dependence, State and Federal Prisoners, 2004*, Bureau of Justice Statistics, October 2006, at 7.

<sup>2</sup> Christopher J. Mumola, *Substance Abuse and Treatment, State and Federal Prisoners, 1997*, Bureau of Justice Statistics, January 1999, rev. 3/11/99; at 13.

<sup>3</sup> Paula M. Ditton, *Mental Health and Treatment of Inmates and Probationers*, Bureau of Justice Statistics, July 1999, at 3.

<sup>4</sup> Susan W. McCampbell, *The Gender-Responsive Strategies Project: Jail Applications*, National Institute of Corrections (April 2005), at 4.

<sup>5</sup> *Ibid.*

<sup>6</sup> Caroline Wolf Harlow, *Education and Correctional Populations*, Bureau of Justice Statistics, January 2003, rev. 4/15/03; at 5.

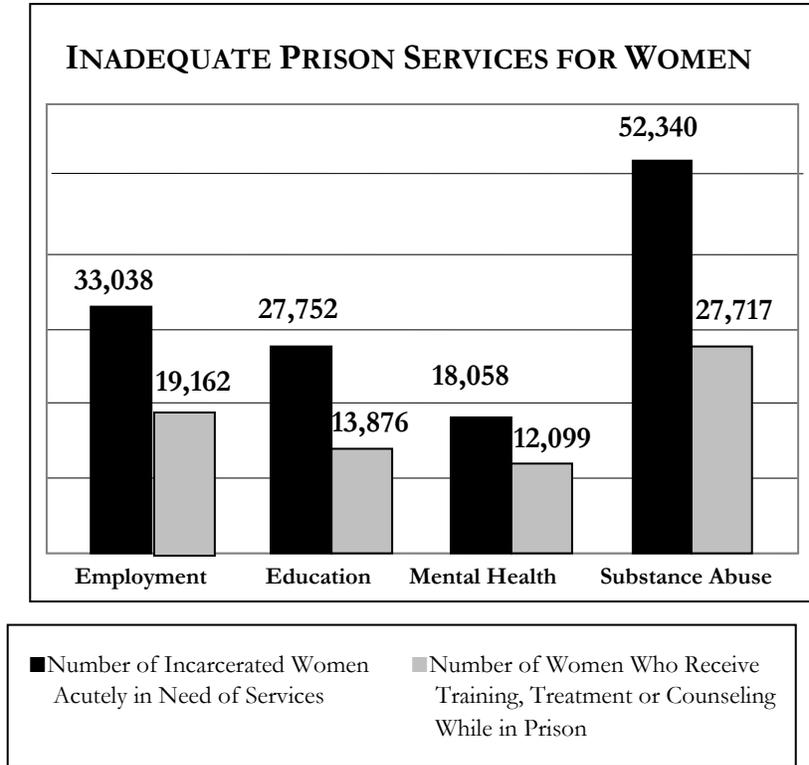
<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Patricia Allard, *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses*, The Sentencing Project, February 2002, at 15.

## EMPLOYMENT

- Half of all women did not work in the month prior to incarceration.<sup>10</sup>
- Less than one in three women is enrolled in a vocational program while in prison.<sup>11</sup>



(Source: *Barriers to Reentry*, Women's Prison Association Focus on Women & Justice, based on data from the 1997 inmate survey.)

<sup>10</sup> Women's Prison Association, *WPA Focus on Women & Justice: Barriers to Reentry*, October 2003.

<sup>11</sup> Harlow, *supra* note 6.

## **WOMEN IN THE CRIMINAL JUSTICE SYSTEM: BARRIERS TO REENTERING THE COMMUNITY**

In addition to the devastating impact of women’s imprisonment on the stability of the family, women also face severely limited access to social resources such as public housing, transitional income, and sustainable employment upon reentering the community. Promoting excessively punitive responses to crime without considering the needs of women only limits their ability to successfully reintegrate into their communities.<sup>1</sup>

As a result of heightened political pressure over the past two decades to “get tough on crime,” it is now unlikely that a prison sentence will be the only form of punishment an offender receives. Since the mid-1990s, various levels of government have increasingly imposed post-conviction penalties, and research suggests that these “collateral consequences of mass imprisonment have had a particularly pernicious impact on women both within the criminal justice system and in the broader community.”<sup>2</sup>

### **SAFE AND AFFORDABLE HOUSING**

- In 1996, the federal government strengthened the 1988 Anti-Drug Abuse Act by adding the “One Strike Initiative,” which authorizes local Public Housing Authorities (PHAs) to evict tenants for drug-related activity, on or off the premises of public housing units.
  - The provision provides authorities with the discretion to evict residents for drug-related activity even in instances in which the tenant did not know, could not foresee, or could not control behavior by other occupants of the unit.<sup>3</sup>
- Also in 1996, the government passed the Housing Opportunity Program Extension Act. Under the law, PHAs may request criminal conviction information from law enforcement to screen applicants for housing or tenants for eviction.<sup>4</sup>
  - PHAs are given broad discretionary power to deny public, Section 8, and other federally assisted housing to anyone who has had any involvement in a drug-related or violent crime, regardless of time passed since the offense.<sup>5</sup>

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<sup>1</sup> Women in Prison Project, *Why Focus on Incarcerated Women?*, Correctional Association of New York, March 2005.

<sup>2</sup> Beth E. Richie, “The Social Impact of Mass Incarceration on Women,” in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, Marc Mauer and Meda Chesney-Lind, eds. (New York: The New Press, 2002), at 137.

<sup>3</sup> See *Department of Housing and Urban Development v. Rucker et al.*, 535 U.S. 125 (2002).

<sup>4</sup> Housing Opportunity Program Extension Act of 1996, PL 104-120, Sec. 9 (1996).

<sup>5</sup> Women’s Prison Association, *WPA Focus on Women & Justice: Barriers to Reentry*, October 2003.

## TRANSITIONAL INCOME

- Section 115 of the federal 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) imposes a lifetime ban on receiving cash assistance and food stamps for people convicted of a drug-related offense but grants states the right to opt out of its provisions.
  - A number of states have chosen to fully or partially opt out of the ban, but those that continue to impose its sanctions are likely to experience long-term social and economic costs resulting from the denial of critical transitional income needed for housing, education, and employment opportunities.
  - In some states, receipt of welfare assistance is dependent on a woman's participation in a drug treatment program.
  - In 1997, less than half the women on welfare who needed treatment were provided with services.<sup>6</sup>

## EMPLOYMENT

- A criminal record significantly hinders a woman's ability to acquire and maintain gainful employment.
  - Only 4 in 10 women are able to find employment in the regular labor market within one year of release.<sup>7</sup>
- Low-income women often need transitional income to increase their access to employment and educational opportunities that will help raise their socioeconomic status.
  - 42% of women were receiving assistance through transfer payments prior to incarceration, including welfare, social security, and unemployment insurance.<sup>8</sup>

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<sup>6</sup> Patricia Allard, *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses*, The Sentencing Project, February 2002, at 25.

<sup>7</sup> Women's Prison Association, *supra* note 5.

<sup>8</sup> Christopher J. Mumola, *Incarcerated Parents and Their Children*, Bureau of Justice Statistics, August 2000, Table 13, at 10.



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