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## Mass Incarceration: Triple Jeopardy for Women in a "Color-Blind" and Gender-Neutral Justice System

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## Introduction

As often as it has been repeated, it remains an astounding statistic. One of every 100 adults in America is behind the bars of a federal, state or county prison or jail. While we may be aware of these facts, the wide and damaging net of mass incarceration and the attendant costs to individuals, families, communities, taxpayers and our national identity are less well recognized. In a recent article in the *New Yorker*, Adam Gopnik wrote, “Mass incarceration on a scale almost unexampled in human history is a fundamental fact of our country today—perhaps the fundamental fact, as slavery was the fundamental fact of 1850” (Gopnik 2012). Gopnik goes on to report that there are more people under the grip of correctional supervision than there were under the yoke of slavery in the period before the Civil War. Our American correctional system is atypical among industrialized nations not only for the large numbers of inmates it holds, but also for its failure to rehabilitate, the conditions of confinement, and the length of sentences served by its inmates.

The incarceration of black males has received most attention from scholars and critics of criminal policies, yet these policies have had enormous impacts on women, as well, as we will explore in this article. In fact, mass incarceration has hit particular communities and particular populations with a vengeance. In fact, one could question the purposes of a system, which has had such a debilitating effect on individuals, families and communities who are poor and of color, in such disproportionate numbers, with minimal social benefits. Mass incarceration has also, one could argue, had a negative effect on an over-burdened criminal justice system itself, ensnaring more and more citizens in systems that remove them from the economic and social mainstream at enormous costs to taxpayers, human capital, public safety and other ends.

The wider the net cast by the criminal justice system, the more complex the problems faced by the police, courts and corrections. Because corrections is increasingly the end point of criminal justice involvement, social problems unaddressed by other social systems, find their way to our nation’s prisons and jails. Contemporary prisons are highly developed systems addressing, not always well, problems of health, mental health, histories of poor nutrition, low education, poverty, histories of abuse and neglect, threats of violence, substance abuse and others. America’s prison complex serves populations from the very young who are waived into adult prisons from juvenile courts and extends into the aging population, where prisons are creating gerontological services to deal with assisted living needs of elderly populations.

A recent conversation with the retiring head of prison rehabilitation services at a northeastern correctional department surfaced the complications of designing systems of incarceration that have become in some states both increasingly powerful systems of control and default systems of care for marginalized men and women. Four decades ago, this system had been placed under federal court trusteeship after the conditions of confinement were declared by the federal court to constitute cruel and unusual punishment (*Palmigiano v. Garrahy* 1977). In the mid-1970s, when this landmark case was heard, the size of the incarcerated population numbered around 500 men and 18 women. Fast forwarding to the second decade of the twenty-first century finds a population of 3800 inmates, 250 of them women in a well-managed organization with community partners, educational programs, laws against sex with inmates, internal systems to investigate harassment and sexual assault and other innovations. In progressive prisons (some would object to that characterizations) one can find good quality pre-natal care for women, mental health services, follow up in the community for HIV/AIDS positive patients, support for victims of domestic violence, and in some cases, so-called gender responsive programming.

Reform minded administrators and advocates have long called for systems of care and confinement that recognize that women inmates present challenges that are different from those posed by men. While it has long been the rule that women account for a small percentage of the prison population, (5% - 8%) and it has long been the case that policies for managing male inmates are generally applied to women, there have been reforms based on the premise that women offenders represent a population quite different from the male prisoners. Prisons may afford the opportunity to improve the lives of women, providing them with social support and with opportunities to develop healthy relationships with their children. Correctional institutions can also provide women with respites from abusive relationships, relief from struggles with homelessness on the street, access to substance abuse treatment and to prison health care, which in some cases, is better than that afforded in the community. Prisons do provide some women with opportunities to desist from crime and turn their lives around (Cox 2011). That said, few would argue that prisons represent the ideal setting within which to provide these services to this population. Conditions of confinement, often brutalizing, infantilizing, demeaning and debilitating, work against delivery of programs that are effective and whose results are long lasting.

Traditionally, women offenders have been neglected by both scholars and administrators. Literature that was purported to explain the etiology of crime and the development of criminals was in truth oriented to the patterns and characteristics of male crime. Yet, with the significant increases in women behind bars, we have seen increased interest in the female offender. Women occupy a unique position in the criminal justice system and are triply disadvantaged by low socioeconomic class, gender and race. The deeper their involvement and entrenchment in the system, the more their criminal histories serve as another crippling disadvantage.

In this article, we will trace the growth in the number women inmates in our nations' prisons and jails, identify sources of the imprisonment boom, assess the collateral costs of mass imprisonment, understand sentencing protocols and "reforms", take a look at prison management and propose recommendations for a path forward.

### **Theories that address women and crime**

Research suggests that women are less involved than men in the criminal justice system at every stage of processing. With the exception of few crimes, like prostitution and some property crimes, women are less likely to be arrested, convicted and incarcerated than are men. These differences have been long standing. Several theories have been advanced to suggest why this is the case. Early scholarship suggested that fewer women found their way into the criminal justice system, specifically prison, because of chivalry or paternalism. The criminal justice system, populated by men at the point of law making, policing, courts, probation, and corrections saw women as less dangerous than the typical male offender. Judges were hesitant, according to the chivalry hypothesis, to send women to prison or to punish them too severely. Women were seen as needing the protection of men or perhaps, not quite as culpable as men for their crimes because of diminished capacity or a lack of rational thinking and planning.

Otto Pollack (1950) suggested that true nature and extent of women's criminality was hidden because of their limited responsibilities in society, that, in fact, women were more deviant offenders and better skilled at concealing their crimes. Other scholars have suggested that because of paternalism aimed at honoring the mothering and family responsibilities of women, judges and other officials in the criminal justice system were less likely to send women to prison because of their caretaking responsibilities. Others contended that quite the opposite was the case—that judges were not hesitant to send women to prison who violated what the judge

considered the norms of what a good woman or a good mother should be. In this instance, white women inmates who reflect conventional models of mothering receive selective chivalry from court officials (Farnworth and Teske 1995) while others receive harsher treatment. Visher (1983) suggests that police officers reserve chivalrous treatment for middle and upper class women whom officers see reflecting traditional female gender stereotypes. Women offenders, who aren't seen as embodying these conventions, are on the receiving end of severe punishments and more aggressive law enforcement and criminal processing, despite their status as caregivers. Accordingly, judges who assign offending mothers long sentences argue that these women should have considered the impact on their children before committing a crime that could result in imprisonment.

One active stream of research has explored whether gender convergence—the proposed increasing similarities in male and female criminality—has characterized crime patterns. “Masculinization” and emancipation theories suggest that as women entered domains previously dominated by men, they would have more opportunities for and more temptations and/or seduction to crimes. This line of theorizing suggests that as women’s life chances and experiences grow closer to those of males, that patterns of criminality would follow. As women move into occupational fields, previously dominated by men and into broader social spaces, their crime rates should follow. Adler (1975) argued that this would lead to an increase in all types of crime as opposed to Simon (1975) who contended that the emancipation of women would lead to an increase in white-collar crimes where women would find opportunities for crime at work. In their review of theories that purported to explain the closing gap in the crimes committed by men and women, Steffensmeier and Allan (1996) dismissed the gender equality hypothesis, arguing that even with the increases in property and drug related crime committed by women, patterns of crime reflect gendered patterns of social organization and relationships. Women and men confront different opportunity structures in crime. Some crime requires physical strength and the presentation of “macho” qualities. Men and women differ, as well, in terms of their motives for crime, their criminal behaviors, and their vocabularies for rationalization for breaking the law. Despite some improvements in the lives of some women, patterns of offending have changed little. “[R]esearch suggests that the core elements of gender roles and relationships have changed little, if at all” (Steffensmeier and Allen 1996, 482). The link between the so-called emancipation of women and their purported increased participation in crime is suspect.

For the most part, researchers have not found evidence of gender convergence. While women's crimes have been increasing, this is the result of more activated arrests, especially for drugs and drug-related crime. The structure of crime and criminality makes it difficult for even the most adept criminal to be successful at his work; this is doubly the case for women. Women tend to lead shorter criminal careers, tend to be involved in petty property crimes, and generally lack the connections through male networks that would support their ascendance in criminal lifestyles. Some researchers have suggested that drug markets have opened up opportunities for women to engage in lucrative criminal careers. However, research (Maher and Daly 1996) with street-level women drug dealers has pointed to the narrowed opportunities for women in urban drug markets. The nature of drug distribution, the preferences of male traffickers to deal with other men, the reliance on violence and the threat of violence to discipline sales and trafficking—all mitigate against “good” opportunities for women in these criminal enterprises. Women may be used for low level work, to serve as lookouts to buy drugs for new users, to run drugs, to serve as decoys; however, few women ascend to the rank of the manager of a drug distribution enterprise where the financial rewards are lucrative and the risk of arrest reduced. Also, women's crimes tend to be less violent, less rewarding, less specialized, and less a part of a rewarding criminal lifestyle. Despite the greater emancipation of women, there is little support for the premise that greater freedom for women has led to greater crime.

A competing understanding that seeks to explain changes in female criminality is the economic marginalization theory. This theory suggests that any narrowing gap between men and women's crime rates is due to the increasing financial instability of women. The participation of women in crime, as measured by arrests for larceny, forgery and embezzlement, has increased since 1960 to 1997 with some fluctuations over that period. At the beginning of that period, women accounted for 15% - 20% of all arrests; at the end of that period, their contribution to arrests had climbed to 32.9% of larcenies, 34.7% of forgeries and 45% of embezzlements. Heimer (2000) also found increases in women's participation in violent crime, with the exception of murder. It is clear that economic marginalization as measured by poverty, unemployment, enrollment in welfare, and related factors characterize these women offenders. Factors that correlate with male offending—“age, race, family disruption, unemployment, and employment in marginal or low-paying jobs” (Heimer 2000, 452)—also correlate with female offending. Further, many female offenders live in neighborhoods with concentrated poverty, and

increasingly, with concentrated incarceration. These areas are also communities with high rates of drug use, with accompanying property crimes and crimes of violence, associated with trafficking and distribution of drugs. A history of abuse further marginalizes these women. The rise in single parent families and the disappearance of marriageable men means that women are increasingly responsible for supporting their children without the support of a male partner. A fraying social safety net further makes economic and social support fragmented and unpredictable. Heimer predicts “if the trends in economic marginalization continue over the next few years...the rising percentage of [female] arrests should continue into the next century” (Heimer 2000, 469). This suggests that criminality among women is not attributable to their greater participation in a social world, previously dominated by men. Instead, the social strains of poverty, low-level employment, the need to support children and family and related factors contribute to women’s increased criminality.

It is clear that women’s pathways to crime are different than are men’s. It can be argued that women face a different structure of criminal opportunity. If there is a glass ceiling in the legitimate world, there are certainly obstacles to success for women in the world of crime. Women’s entry to crime may be accelerated and promoted by histories of abuse and exploitation, drug use, family connections to crime through kin and other networks, and the involvements of male partners in criminal enterprises (Miller 1987). Many women who become involved in crime and drug use can trace their entry to relational components—individuals in their family, nuclear, blended and extended networks—where paths to crimes and drugs are part and parcel of intimate relationships and strategies for survival (Gilfus 1992). Living in poor neighborhoods makes it likely that marginalized women will be recruited into criminal networks, where they may combine legitimate and illegal enterprises to patch together a subsistence living.

The idea of “blurred boundaries” which refers to the connection between women’s victimization and their criminality (Huebner, DeJong and Cobbina 2009) also provides important insight into the role of victimization in paths to crime. Ritchie’s research on women criminals in a New York correctional institution identified the brutalization these women faced as victims of abuse, creating paths to offending. Using life-history methodology, Richie chronicles gender entrapment—the ways in which the circumstances of women’s lives lead them into law-breaking. Early victimization and dependence and emotional vulnerability lead women into compromising, illegal activity, some of these violent crimes (Richie 1996).

### The recent prison boom:

#### A response to crime or a war on the poor?

As shown below, in Figure I<sup>1</sup>, for most of the twentieth century, the population behind bars remained relatively stable, with a small increase in population around 1940 and a small but steady increase from 1970 to 1980. The real explosion in the population behind bars began in 1980 and has continued unabated until 2009 (Sabol, West and Cooper 2009). We will explore the forces which have led to the explosion in correctional populations later in this article.

FIGURE I

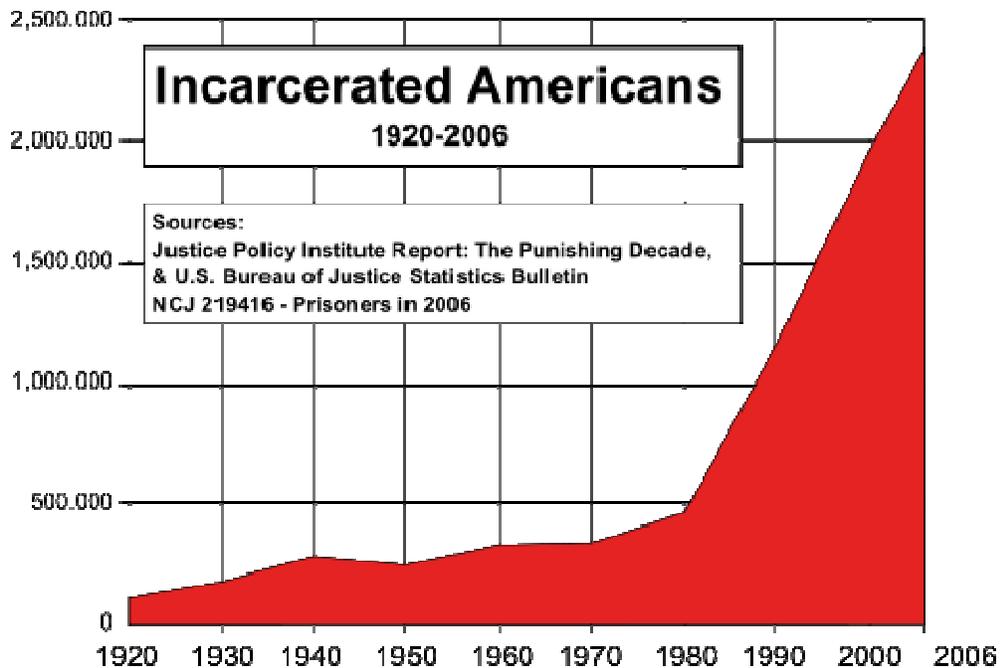


Figure II<sup>2</sup> shows the growth in the population of women sentenced to serve time in state and federal prisons and jails. We see, like the population at large, significant growth in the

<sup>1</sup> W. J. Sobel, H. Couture and P. M. Harrison, *Prisoners in 2006*, Bureau of Justice Statistics, (Washington, D.C.: Department of Justice, 2007).

numbers of women behind bars. At the beginning of the study period shown in Figure II, approximately 11,000 women were behind bars compared to the male population of 275,000. By the end of the period, nearly 100,000 women were behind bars, an increase of 750% (Frost, Greene and Pranis, *The Punitiveness Report: Hard Hit: The Growth in the Imprisonment of Women 2006*, Sobel, Couture and Harrison 2007).

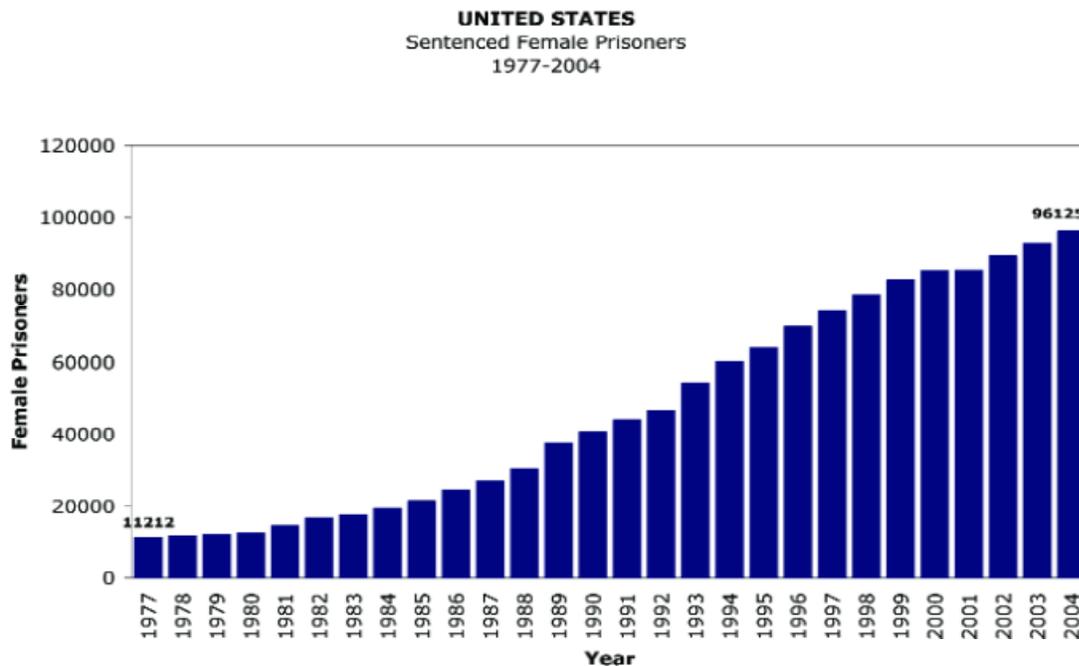
The number of women serving sentences of more than a year grew by 757 percent between 1977 and 2004—nearly twice the 388 percent increase in the male prison population. Although the size of the gap varies, female prison populations have risen more quickly than male populations in all 50 states. The trend has also been persistent, with median annual growth rates for women exceeding growth rates for men in 22 of the last 27 years, including each of the past 11 years (Frost, Greene and Pranis, *The Punitiveness Report: Hard Hit: The Growth in the Imprisonment of Women 2006*).

Of course, it must be noted that beginning with smaller numbers, a small increase in population can appear like a significant increase.

## **FIGURE II**

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<sup>2</sup> Natasha A Frost, Judith Greene and Kevin Pranis, *The Punitiveness Report: Hard Hit: The Growth in the Imprisonment of Women*, (New York: Women's Prison Association, 2006).



### Feeding the beast:

#### The growth in the population behind bars

It is impossible to understand the impact of mass incarceration on women without reviewing the recent history of the factors that have created the incarceration boom for men *and* women. Scholars identify several factors that have led to the massive growth in the incarcerated population. Basically, two factors control the size and composition of prison and jail populations; first is the number of commitments, that is, the number of offenders sentenced on a criminal charge to prison or jail or returned for a violation of probation or parole. The more that judges use incarceration instead of community supervision, like probation and other alternatives to punish offenders, the larger the prison population will grow. The second factor that constitutes the prison population is the length of sentences; the longer those inmates are confined and the less likely they are to achieve early release through parole, the larger the size of the prison population.

The United States is first among nations in the rate of its population behind bars. The U.S. incarcerates more adults per capita than Russia, China, all the nations in Europe, and Japan. The U.S. also holds the dubious distinction for being the leader in juvenile incarceration, as well, with an incarceration rate for juveniles equivalent to 336 juveniles per 100,000 compared to the

rate of South Africa's rate of 69, the nation with the next highest rate. European nations, such as England, France and Germany incarcerate juveniles at the rate of 47, 19 and 23 per 100,000 juveniles, respectively (Mendel 2011). Unfortunately, the path from youth corrections to the adult system is predictable, with a significant proportion of adult inmates having juvenile correctional experiences.

As noted in the Introduction to this article, the incarceration rate in the United States places one in one hundred adults behind bars. However, this number reflects a point-in-time calculation. The statistics are even more startling when calculations of the possibility of being incarcerated are made over the course of a lifetime. Using incarceration data during the period 1974 to 2001, The Sentencing Project calculated that men experienced a 1 in 9 and women a 1 in 56 lifetime chance of imprisonment. Breaking these numbers down by race, critical differences emerged. One in three black men was likely to be imprisoned compared to one in six Hispanic males and one of seventeen white men. The comparable figures for women are one in eighteen black women, one of forty-five Hispanic women and one in 111 white women (The Sentencing Project 2012).

### **Factors leading to the prison boom**

In the decades 1970 through 2010, legislative action on the state and federal level generally increased sentences for offenders, through mandatory minimums sentencing guidelines for drugs and other offenses. "Three-strikes and you're out" provisions sent inmates to prison for life sentences, often without the possibility of parole. In some cases, the individuals sentenced to life long prison sentences were not violent, predatory offenders. The use of parole, that is the granting of early release based on evidence of rehabilitation, was relied on less and less in the decades from 1980 through 2010, meaning that offenders were spending more time behind bars. "Truth-in-sentencing" provisions also reduced the allowance of so-called "good time" provisions which further increased the time served in prison.

When inmates are released after serving long sentences, criminal justice philosophy suggests that these punishments will deter inmates from additional criminality on the streets. However, there is little evidence to argue that this is the case. According to some sources, more than half of prisoners released from jails or prison return to incarceration within three years of their release; more than six out of ten are re-arrested (Langan and Levin 2002). Few scholars or

policy makers would argue against imposing lengthy sentences for the serious, predatory, violent offenders. What some researchers suggest is that the prison boom has captured and incarcerated less dangerous inmates who may have otherwise remained in the community under probation supervision without endangering the community. Instead, these offenders have received long sentences which rather than reducing crime and eventually lowering the incarceration rate has had the opposite effect. As Clear reports, research seems to indicate the opposite of what common sense would leave us to believe; in fact, harsher sentences do not lead to lower recidivism rates (Clear 2007). The use of punitive sentencing may reach a tipping point in communities with concentrated incarceration. As incarceration has become increasingly the sanction of choice for crimes, its deterrent effect has weakened, meaning that the threat of incarceration in these communities no longer looms as a significant deterrent to crime. Because of multiple factors, the community is weakened, leading to more crime creating conditions.

With greater frequency, inmates are returned to prison because of they have violated probation, meaning that they haven't committed another crime, but instead have violated rules of supervision. Probation as a community supervision function changed emphasis from offender support and aid to supervision and regulation in recent decades (Travis 2002). This increasing emphasis on control and detection in probation supervision has led to a significant increase in the numbers of ex-convicts returning to prison on technical violations. In California, this amounted to fifty-seven percent of all prison admissions in 2000 (Travis 2002). The impact of this is a prison system that re-circulates the same inmates and reflects an enormously high rate of failure.

Increasingly, states and local governments are employing private agencies to collect fines and court costs from offenders. Facing budget shortfalls, courts and legislators are increasingly turning to offenders to pay for the costs incurred in running courts and jails. A minor traffic infraction may end up costing an offender several thousands of dollars to cover fines, court costs, daily fees for living in the county jail and other expenses. The key point here is that these offenders are incarcerated not for serious crimes, but instead for failure to pay a debt they owed to the state or county treasury—a movement that harkens back to debtors' prisons (Brommer 2012). A study by the Brennan Center for Criminal Justice documented the impact of burdensome fees and fines on poor defendants and communities.

Many states are imposing new and often onerous ‘user fees’ on individuals with criminal convictions. Yet far from being easy money, these fees impose severe — and often hidden — costs on communities, taxpayers and indigent people convicted of crimes. They create new paths to prison for those unable to pay their debts and make it harder to find employment and housing as well as to meet child support obligations (Bannon, Mitali and Diller 2010, 1).

There are no national data documenting the extent of this problem but there is no doubt that states and local governments are increasingly relying on fines and fees and increasingly incarcerating those who cannot pay them, whether or not the defendants are indigent.

### **A War on Crime and Drugs:**

#### **Casualties and Strategies**

Two important works of recent scholarship examine the roots and branches of mass incarceration. *The New Jim Crow* (Alexander 2012) and *Imprisoning Communities* (Clear 2007) point to the complex nature of the criminal justice system and the societal impact of mass incarceration. *The New Jim Crow* examines the growth of the prison population, focusing mainly on the incarceration of poor black men, primarily from the inner city. Alexander argues that rulings by the U.S. Supreme Court have expanded police powers to stop and frisk, allowing them to conduct pretense stops of whomever they wish, based on a modicum of suspicion. She suggests that this has led to aggressive policing in poor neighborhoods, targeting poor black men and women and paying less attention to white offenders who constitute the majority of drug users and traffickers. The result has been that blacks and Latinos account for seventy-five percent of all those imprisoned for drug offenses despite the fact that drug use among whites exists at a rate equal to or greater than that of blacks and Latinos (Travis 2002). Multiple data sources establish the greater prevalence of drug use among white youth despite the impression by the general public that drug crime is a crime of poor ghetto blacks and Hispanics.

Alexander also addresses the development of policies that support mass incarceration and suggests that the rhetoric that embraces get tough policies argues that these policies are race-

blind. What she suggests is that the criminal justice regime imposes a state of constant control for African Americans—beginning with surveillance on the street with stop and frisk and racial profiling to imprisonment to the extension of control and marginalization through an array of collateral punishments and civil disabilities. She contends that the system operates effectively as a system of racial control, even if its purported end is race-blind justice, a system which she suggests is a re-fashioning of racialized control, as effective and as debilitating as Jim Crow was in the South before the Civil Rights movement.

Clear argues along the same lines citing a body of research that suggests weak causal relationships between crime rates and incarceration rates. The rate of incarceration has climbed for decades despite a decline in the rate of crime. While some theorists may argue that severe sentencing and long terms of incarceration have deterrent effects, the opposite is the case. In fact, Clear argues that mass incarceration increases the recidivism rate. While incarcerating a few people in a community may have a deterrent effect, incarcerating significant numbers weakens the community, not only because it empties communities of their members but because it weakens the respect for the criminal justice system and its agents in the community.

Neither author specifically addresses the issue of the incarceration of women, except to refer to so-called collateral damage due to incarceration. The aim in each book is to create a coherent analysis of the links between crime rates and incarceration and to show the impact of mass incarceration strategies on individuals, communities, and families. However, the implications for women are clear.

Reintegrating offenders into communities presents challenges both to inmates and the communities to which they return. This is especially the case for communities that experience a high concentration of incarceration. Research by Rose, Clear and Ryder (2002) investigated how high levels of incarceration undermined the networks of relationships that are especially critical to informal systems of social control. In this research, groups of residents and ex-offenders were surveyed to understand how each group perceived the challenges of incarceration in their neighborhoods. Residents supported the removal of dangerous offenders from their neighborhoods, those who created problems for family members and signaled the deterioration of public spaces. Most respondents, however, highlighted the high costs of incarceration for community members, which included financial strain, social stigma, along with the loss of positive identity and significant relationships. Tracy Meares notes that women express conflicted

feelings about crime control in their neighborhoods. On one hand, they are anxious about the lure of drug trafficking and the dangers of drug violence for their sons and daughters and support measures that address these issues. On the other hand, they understand that targeted law enforcement in their communities may sweep their children, particularly their sons, into “a felony conviction---a mark that can ensure economic and social marginalization” (Meares 1997, 161).

Financial hardships suffered by the loss of family members extend not only to the household but beyond as property assets in areas of high concentration of unemployment and high rates of incarceration lose value. The loss of social status suffered by those individuals who are incarcerated is extended to their family members, as well, who are stigmatized by others in their communities, as well as by social agencies and business owners. Landlords may be unwilling to rent apartments to families whose head of household has a criminal record or who has just been released from prison. The loss of identity is key, especially with regards to providing role models for children. Finally, in terms of relationships, the absence of a parent or parent is deeply destabilizing for children. They suffer from problems in schools, anxiety, depression, acting-out and other problems. The undermining of these relationships undermines informal social control—the ways in which community members exert influence over each other. Other researchers have noted the impact of mass incarceration on the absence of black men as marital partners, certainly a destabilizing force in communities (Alexander 2012).

Importantly, the impact of incarceration is suffered not only by the offender; those effects spill into families and communities. As researchers note,

incarceration reduces the human capital of non-offending residents. Single parents (usually mothers) in the community become more stressed and burdened, and they have more difficulty getting and keeping jobs. Children sometimes go hungry, attend school sporadically, are disciplined less frequently and sometimes engage in crime. For these children, the result is attenuated skills and diminished life chances (Rose, Clear and Ryder 2002, 176).

Another important impact of concentrated incarceration is the sense of oppression felt by these community members—the sense that the criminal justice system is unfair, racist, that it

targets the neighborhood and its residents in ways that unjustly police, harass, prosecute and incarcerate the residents. The impact of this perception is the undermining of faith in the legitimacy of the criminal justice system and an increasing conviction that the system represents an outside force, like an occupying authority. It is important to note here that without community support of law enforcement, controlling crime in neighborhoods presents great challenges to police.

### **Women in the web of the criminal justice system:**

#### **Getting tough on women**

Although women are less likely to be the target of aggressive policing and street surveillance, there is data that suggests women are caught in these policies when they live in high crime communities or ones identified by law enforcement as such. The widespread use of so-called stop and frisk policing in high crime neighborhoods has become controversial in some cities. In these sweeps, police officers may stop neighborhood residents without any suspicion that they have committed a crime. The argument here is that extra surveillance powers allows officers to defuse potential crimes and intercept drugs and guns that could be employed in serious crimes. Recent reports in New York City suggest that these street sweeps target community residents with low arrest yields, depriving residents of due process protection with meager benefits for community safety. Not only are young men targeted, increasingly young women are stopped, frisked and searched in public places, with concomitant embarrassment and humiliation. In street encounters, male officers are authorized to frisk and pat-down women searching for weapons and drugs. No distinction is made in stop and frisks between men and women. Officers are directed to focus on “the waistband, armpit, collar and groin areas” without accounting for gender differences between the officer and the suspect. Stops and frisks of women represent a very small percentage of all searches conducted in New York City, less than seven percent; the yield of weapons is approximately .13 percent (Ruderman 2012).

Addressing this issue is complicated because stop and frisk procedures do not constitute a full search, which requires suspicion on the part of the officer and which, if an individual is arrested and booked at the station, would require a full search by an officer of the same gender as the suspect. Alexander (2012) and others have called for reform of stop and frisk procedures. In New York City, responding to federal lawsuits and public demand, the use of stop and frisk

procedures has fallen by more than 30% over recent months. Little reform can be expected in affording women more protection during these procedures.

**Sentencing reform and gender-neutrality:  
when gender doesn't count**

To understand how women have fared in the incarceration boom, we need to examine the experience of states and the federal government in conducting the war on crimes and the war on drugs. First, we will examine so-called gender neutral sentencing in the federal system. Federal sentencing guidelines specifically prohibit the use of sex or gender in sentencing. As Raeder (1993) explains, laws that were designed to reduce sentencing disparities between races and classes have created negative consequences for women and their families. Women sentenced under federal gender-neutral regimes are more likely to be first-time offenders (62% in the federal system) compared to 28% in the state systems. These women are overwhelmingly charged with drug-related offenses, carrying long minimum sentences. As Raeder notes,

Ironically, such legislated gender equality appears to have backfired against women, since the current male-based sentencing model defies any attempt to develop a rational sentencing policy for nonviolent female offenders...Instead, women have been shoehorned into a punitive pro-prison model for sentencing males who are assumed to be violent and/or major drug dealers (M. Raeder 1995, 1).

As Raeder argues, suggesting that gender doesn't count in sentencing denies the unique role women and men play in crime and in the families they inhabit. Women are typically caretakers of children. They typically take on a role in crime that is less aggressive and when charged with conspiracy in drug and other crime, their contribution to the crime is often the result of gender-related pressures and coercion.

Family considerations would appear to play a legitimate role in the placement of a sentence within the guideline range. Since more women have sole or primary childcare responsibilities than the equivalent male offender, why assume that any perceived leniency is an affront to equality while should be stamped out, rather than a concern

about the welfare of children whose caretakers are typically their mothers. If more men provided childcare, they too would benefit from this factor. The break is given not for being female, but for being a caregiver (M. Raeder 1995, 3).

As a result, women in the federal system receive longer sentences and more likely to be incarcerated than their sisters in state prison. Accordingly, women make up 15% of the federal prison population and approximately 6% of the state prison population. Once again, this is not necessarily due to an increase in female criminality; it is due the differences in state and federal sentencing practices. This presents another point in the criminal justice where women offenders are assumed to be like the dominant male offender, despite evidence to the contrary.

### **The impact of states' policies**

In the fifty states, we can see wide ranging disparities in how states decide who will serve time in prison and for how long. To track prison populations, we can examine the size of the population behind bars and under correctional supervision, as well as changes in growth, and incarceration rates by state and by region. Variation among states' incarceration rates is significant. Oklahoma incarcerates 129 out of every 100,000 women compared to the rate of 11 per 100,000 women, a rate shared by Massachusetts and Rhode Island which is the lowest in the nation. Nationally, the mountain states had the highest incarceration rates for women since 2000 followed by the South, while the northeast and the Midwest incarcerated fewer women per capita. States also differ in the percent of women in the inmate population, ranging from 3.2% in Rhode Island to 12.2% in Montana with an average of 7% nationally. Nationally, the number of women behind bars has increased by over 750% from 1977 to 2004. However, the growth in the population behind bars is by no means even across the states. States like North Carolina experienced a growth rate of 282% (still significant, of course) while Montana's female inmate population grew by 23550% (Frost, Greene and Pranis, 2006).

The impact of drug enforcement policies in states has significant impacts on the size of the female population behind bars. In New York, where drug laws are particularly draconian, over 90% of the increase in the population of incarcerated women between 1986 and 1995 was due to drug offenses. This compares a figure of 26% in Minnesota where judges are afforded more discretion in determining whether an offender will be sentenced to prison and for how long

(Mauer, Potler and Wolf 1999). Women sentenced for drug crimes typically play minor and insignificant roles in trafficking and distributing drugs and have little power in plea bargaining when they are negotiating for reduced sentences. The peripheral nature of their roles means that they have little to “give up” in exchange for a lighter sentence.

States also report significantly varying statistics for recidivism rates. In a recent report by the Pew Center on the States, Michigan reported a 31% rate of return to prison over a three-year period while Minnesota reported a comparable rate of 61% with a national figure of 43% (Pew Center on the States 2011). These differences suggest that state laws, policies and practices make significant differences in size and the composition of the population behind bars, that this phenomenon is not dependent solely on the crime rate. Policies governing who is incarcerated, how long they stay, which inmates return to prison and upon what basis are key factors in recidivism. In fact, a low rate of return to prison may reflect a high incarceration rate. If a state incarcerates offenders who could otherwise been placed on probation, these ex-inmates present low risk to return to prison after incarceration since they were low-risk in the first place. The converse argument is also the case. If the state incarcerates only the most serious, high-risk offenders, it experiences a low incarceration rate but may experience a high recidivism rate since the inmates it imprisons are higher risk. As we will see below, targeted policies can make significant differences in lowering incarceration and re-incarceration rates.

### **Collateral damage and the imprisonment of women**

As discussed above, the impact of incarceration does not simply rest on the individual offender, as he or she serves a sentence in jail or prison. Offenders are members of families and communities and play multiple roles in addition to their role as an offender. When offenders are incarcerated, the impact is felt in the community. Some researchers argue that this impact on the community is greater when women are incarcerated than when men are sentenced to prison.

Because over 90 percent of prisoners are men, the social effects of concentrated incarceration are easily seen when a lot of men go to prison from a particular place. But the smaller number of women who cycle in and out of prison from these same neighborhoods does not mean that their *impact* (emphasis in original) is as small as their numbers. The role women play in their social networks, social capital, and informal

social controls, especially in very poor urban neighborhoods, is thought to be more important, per person, than men. Thus, those much smaller levels of incarceration for women seem to produce the same destabilizing results as for men, with an equivalent pattern of increased crime (Clear 2007, 10)

Research by George, LaLonde and Schuble (2005) found that incarcerating a woman has more disruptive impacts on communities than does imprisoning a man because women are central to community functioning. They found that as women were incarcerated, drug crime rose in the study neighborhood. The irony with the increased incarceration of women in that while women typically pose less of a threat or danger to public safety, incarcerating them poses a much larger loss to the community of family and community support.

Claiming that the war on drugs is a war on poor women and their children, Levy-Pounds (2006) argues that drug-sentencing regimens have had a disparate negative impact on poor women of color. Women with minor roles in drug commerce have been swept into convictions that suggest they are major players in drug trafficking. This, according to many researchers, demonstrates a major misunderstanding of the role these women play in their households, often the victim of violence or the threat of it and typically having little knowledge of the “business” of trafficking. The patterns of drug enforcement target women of color, specifically when crack-cocaine laws become the focus of law enforcement, targeting mothers. Companion laws in the child welfare system make it increasingly difficult for this population to reunify their families after incarceration pushing more minority children into foster care. Finally, collateral penalties, such as life-time bars from welfare programs, public housing and others effectively marginalize women and their families, not only when these women are in prison but well into the future when they are attempt to reenter the mainstream as rehabilitated individuals.

Levy Pounds also contends that the Adoption and Safe Families Act has disproportionately affected poor women and their children due to strict limits and guidelines for reducing foster care drift and for placing children in permanent homes. If children are in foster care for more than fifteen months in a twenty-two month period, the state is compelled to begin procedures to terminate parental rights. The sheer difficulty of making provisions to reunify with children from a prison cell is often underestimated. Lack of visitation, lack of cooperation from children’s caretakers and foster parents, and lack of access to drug treatment in prison and

treatment that accommodates children after incarceration—all seriously undermine inmate mothers attempt to reunify with their children after incarceration. By denying ex-inmates access to food stamps, public assistance, and public housing and by saddling these inmates with the stigma of imprisonment and few avenues to financial self-support, “her chances of returning to prison and her inability to care for her children will be substantially greater (Levy-Pounds 2006, 494)” than if programs were provided that afforded a chance to turns one’s life around.

### **Women as inmates and victims**

It is clear that the vast numbers on women in prison represent poor, marginalized groups, typically from poor neighborhoods. Many have experienced physical, mental, emotional, and sexual abuse and violence. Most also exhibit an array of health, substance abuse, mental health and similar problems. The Bureau of Justice Statistics reported that 73% of female inmates in state prisons suffered from a mental health problem compared to 55% of the comparable male population. Women inmates were also more likely to have been diagnosed with a serious mental illness by a mental health professional (23% vs. 8%) than male inmates and more likely to be on psychotropic medication (39% vs. 16%). Mental illness among women was also related to a greater likelihood of rule violations and injuries, multiple incarcerations, the commission of a crime of violence, substance abuse, homelessness, past physical and sexual abuse and abuse of drugs or alcohol by the inmate’s parents as compared to women inmates without a mental health problem (James and Glaze 2006).

Inmate mothers are more likely to report experiencing homelessness, physical or sexual abuse, mental and physical illness compared to inmate fathers (Glaze and Maruschak 2010). Finally, most are mothers, typically of two children and tend to be the primary caregivers for their children prior to incarceration, although many also shared child rearing with other family members and relations. Women inmates are frequently members of families and kin networks that engage in a combination of legitimate and illegitimate pursuits to support their families and children (Miller 1987).

### **What kinds of crime do women commit?**

As noted above, both men and women have been caught in the effects of public policies that criminalize behaviors and that assign punitive responses to these crimes. Compared to men,

women are more likely to be serving time in prison for property crime (29% vs. 20%), drug offenses (31.5% vs. 21%) or fraud (10.5% vs. 2%), and less likely to be serving a sentence for crimes of violence (33% vs. 52%) (Bureau of Justice Statistics 2006). Overwhelmingly, women are arrested for non-index crimes, those not counted in the well-known FBI Uniform Crime Report. As Luke writes, “Most incarcerated mothers are in prison for crimes unrelated to their parenting” (Luke 2002, 24) yet imprisonment has significant impacts on their relationship with their children, as we will see below.

In addition to the population behind bars, a significant number of women are under correctional supervision, on probation or parole. Of the nearly five million individuals under correctional supervision, women account 24% of state and federal offenders on probation and 12% of those on parole. Interestingly, 35% of those on probation for federal offenses are women (Glaze and Bonczar 2011). This figure has decreased since the 1980s when nearly 65% of women felony defendants received probation for federal offenses; the change due to federal sentencing guidelines (Bloom, Owen and Covington 2004) which increasingly has placed women behind bars instead in lieu of probation.

### **Women in prison:**

#### **The disadvantages of female gender in a man’s world**

The pains and punishments associated with imprisonment are multiple—for men and for women. Among these are the separation from family and friends, the loss of civil rights and the freedom to move as one pleases, the loss of status and the imposition of the inmate label and the taking on of prison life with its regime of control and surveillance of all activities. For women, the loss of relationships is especially significant. Surviving in prison—emotionally, physically and psychically—often rests on motives related to children. Inmate mothers may choose to be on good behavior because disciplinary actions may push them to lose visiting privileges or change classification. The mere fact that mothers are in prison suggests to correctional officials and others that they are “bad” mothers, more interested in crime and drugs, than in the welfare of their children (Enos 2002). These labels are defended by identity construction and reconstruction, as inmate mothers consider their past behaviors and plan for better relationships in the future. Some employ their status as mothers as a motive for change (Shamai and Kochal 2008). There is no doubt that incarceration has an impact on what we can call, inmate mothering

careers, the long-term care-taking relationship between mothers and their children, whether mothers share that responsibility with others, assume responsibilities formerly performed by other caregivers when they are released, lose their rights to their children or maintain their status as the child's sole caretaker before and after release (Enos 2002). However, the lack of services afforded to women in prison is a long-standing problem.

As long ago as 1980, the Comptroller General of the United States reported to the U.S. Congress on that state of women in state and federal correctional institutions.

Women in correctional institutions are not provided comparable services, educational programs or facilities as men prisoners. Inequities are most prevalent in State institutions, but they also exist in Federal and local correctional systems (General Accounting Office 1980).

This report noted that the small size of the female population in prison made it more difficult to properly classify and assign inmates to appropriate institutions and programs. Overwhelmingly, correctional managers are focused on serving and supervising the males in their custody, not the small number of women in their care. Because of their larger populations, male inmates are more likely to be properly classified according to security risk and program needs. Appropriate classification places inmates in facilities that both safeguards public safety and affords appropriate programming. Women inmates, on other hand, are often classified to security levels that are higher than required (let's say at the level of maximum security when lower levels would be more fitting) and are less responsive to programming needs. A series of court decisions set down in the 1970s mandated that women inmates receive programs equivalent to that of males. Whether that would mean providing more services for women or providing fewer for men was left up to the states to decide (Controller General of the United States 1980).

Inventories of prison programs can provide useful insights into what the organizational model of change is that is operative in the institution. In few cases are programs comprehensive or sufficient in size and scope to answer the needs of the female population. This is especially the case for women's prisons where the small size of the population is frequently used as the rationale for minimal programming. A report by the Women's Prison Association found that fewer than half the women in prison received the substance abuse or educational programs they

needed; one in three lacked mental health treatment and training for employment (Women's Prison Association 2003).

A number of lawsuits in addition to those cited above have been filed to afford women equal access to programs and services.

Both the U.S. Congress and the courts have mandated that female offenders be given access to services of the same quality and quantity as those provided for males...However, parity and fairness do not mean simply providing women with copies of men's programs (Covington and Bloom 2003, 7).

As we will review later, women offenders can benefit from programs that address their specific needs. Programs that addresses women's needs may be quite different from those designed for male inmates, such as ones tailored for victims of childhood sexual abuse, domestic violence and the challenges of parenting in prison. This is not to say that these issues do not confront male inmates; it is simply to make the case that the goal in prison programming—rehabilitation—may be the same for men and women, the path to achieve that aim is quite different.

Important decisions related to the medical care afforded to women and to the issue of cross-sex supervision of female inmates have faced the courts. In a 1977 decision (*Todaro v. Ward*, cited in (General Accounting Office 1980, 10), the court ruled that the health care provided to women prisoners violated the constitutional prohibition against cruel and unusual punishment and ordered this to be corrected. In *Forts v. Ward* (cited in (General Accounting Office 1980, 10), the court ruled that because male supervision of women inmates in bathrooms and bedrooms violated the female inmates' right to privacy, that female guards must supervise women in these situations.

The issues identified by the Comptroller General four decades ago continued to challenge correctional administrators as the population of incarcerated women expanded in the decades that followed. The prospect of sexual assault in women's prisons has been, in some institutions, another aspect of punishment. Human Rights Watch and Amnesty International launched investigations into these issues in women's prisons and discovered serious problems in many states. Research has found that as many as one in four women prisoners has experienced sexual

assault while incarcerated (Columbia Human Rights Law Review 2011). Responding to sexual assault in prison is a serious challenge, given the power differentials between inmates and their keepers and given the danger of reprisals for filing a complaint. Supervision by male correctional officers and the powerless status of female inmates can create conditions for exploitation of women prisoners, as seen in cases from Michigan, Georgia and other states (United States General Accounting Office 1999). The passage of the Prison Rape Elimination Act in 2003 was in response to the widespread acknowledgement that sexual abuse of inmates was endemic in institutions (McCampbell and Fisher 2002).

As some have noted, we haven't won the War on Crime but we have taken a lot of prisoners at enormous cost to taxpayers. However, in addition to the sheer costs of imprisoning inmates and the attendant expenses of arresting, adjudicating, and supervising inmates, there are other social, economic and political impacts that should be noted. Some of these are particularly troublesome as they apply to women.

### **The pains of imprisonment and long-lasting effects of incarceration**

Although we tend to view systems of education, mental health, social welfare and criminal justice as separate entities, it is undeniable that they are closely linked. It is the case the criminal justice system is not a separate isolated system with effects that are bounded by law enforcement, courts and corrections but instead one that confers upon its inmates a master status through which other statuses in systems are seen. Involvement with the criminal justice system sets off an array of ancillary changes in offenders' lives and in the lives of their families and communities. The correctional system is increasingly enmeshed and engaged with other systems in child welfare, social welfare, mental health, housing, education, the labor market, economic opportunity and others.

### **Parenting and child welfare**

For purpose of illustration, we can begin with the issue of child welfare. Parental incarceration, in the majority of cases, has significant impacts on children. As of the most recent count, 2.7 million children had parents in prison, representing 120,000 mothers and 1.1 million fathers (The Pew Charitable Trusts 2010). Put another way, one out of every 28 children in the

United States has a parent in prison or jail, a rate four times as high as it was twenty-five years ago. Given the disproportionate incarceration of poor men and women of color, this impact is felt disproportionately by poor minority children. Overall, one in nine black children has a either a mother or father in jail or prison with one in one hundred black children experiencing maternal incarceration.

The children of male inmates are overwhelmingly (88.4%) in the care of their mothers, where most had been prior to the incarceration of their fathers. Another 12.5% live with their grandparents, other relatives (4.7%) or foster care (2.2%). For inmate mothers, the situation is different. Fewer fathers or partners come forward to care of their children (37%), when their mothers are imprisoned. More likely, the children will be placed with grandparents (45%), other relatives (22.85), friends (10.9%) or foster care (11%) (Glaze and Maruschak 2010).

Children of inmate mothers are more likely to experience disruptions in their living status when their mothers are imprisoned, leaving their homes and moving to another location. Some children experience multiple placements, moving from foster home to foster home or among relatives. As Moses writes, “while there are more children affected by a father’s incarceration due to the overwhelming majority of men in prison, a child’s stability appears to be most threatened by a mother’s incarceration” (Moses 2006, 99-100).

If the children are taken into state care, the situation is more complicated. Some research shows that children of incarcerated mothers who enter the care of child welfare agencies are half as likely to reunify with their mothers as are other children in state care and more likely to be adopted than other children in foster care. In fact, children of incarcerated mothers are four times more likely to be trapped in foster care drift, remaining in foster care, until age 18 when state agencies terminate their involvement. This is the least beneficial outcome for children. These children are more likely to have long-term negative life outcomes, including incarceration, unemployment, early pregnancy, dependence on public assistance and others (Moses 2006).

Because states are responsible for implementing federal child welfare laws, there are wide differences in how closely correctional institutions and child welfare departments work with each other on the cases of the children of incarcerated parents. It is clear that the mandates for fulfilling the goals of the child welfare laws are difficult, nearly impossible to fulfill in the correctional setting. Arranging visitation, involving inmates in case planning, maintaining contact with children, complying with case plans, gaining access to treatment while

incarcerated—all present challenges to inmate mothers, child welfare workers, and correctional officials. The lack of communication among states agencies, the lack consistency across states and across caseworkers and the lack of leadership from public officials and advocates has resulted in a policy vacuum (Halperin and Harris 2004). Few state agencies have explicit policies that direct workers on how to best manage cases where mothers are incarcerated. As a result, with over-burdened caseloads and little training to deal with imprisoned parents, caseworkers are not equipped to provide inmate mothers and their children with adequate planning and protections in child welfare. As a result, inmate mothers face a high risk of the termination of their parental rights.

Federal laws that govern child welfare practice push social workers to terminate parental rights, and in some jurisdictions, this may happen early in a women's sentence. In some states, a sentence of more than one year sets the stage for a series of actions by child welfare where this sentence is seen as equivalent to parental abandonment; this may initiate action to terminate parental rights. Few states afford women in situations involved in custody and commitment cases with child welfare access to legal counsel to present their cases. In a recent study of all adoption files in the city of San Francisco, researchers found that fewer than twenty percent of all parents and less than two percent with a history of incarceration attended the hearings in courts where child dependency or termination hearings related to the care and custody of their children were held. The majority lacked representation by attorneys (Simmons and Danker-Feldman 2010). By far, the great majority of parents whose rights had been terminated were African-American, despite the small size of this population in San Francisco. These parents also suffered from substance abuse and criminal records, some charges leading to incarceration. The researchers also note that incarcerating low-risk offenders who are frequently unaware of the impact of their prison sentences on custody rights to their children is policy harmful to children and their families, with little benefit to public safety.

This is not to say that some serial offenders with serious long-term drug histories and records of child neglect or abuse should maintain parental rights; the rights of some parents should be terminated in the best interest of their children. However, the mere fact of incarceration which serves as a trigger for many actions that can undermine families should not be the sole factor in terminating parental rights.

Research by Wakefield and Wildeman (2011) points to the long-term impact of parental incarceration on children, especially those who are African American. Incarceration of a parent exacerbates already existing poor outcomes for children who live in communities with concentrated disadvantage. With incarceration falling particularly on African American households, these long-term disadvantages will fall to the next generation, in what Wakefield and Wildeman call the “intergenerational transmission of racial inequality” (Wakefield and Wildeman 2011, 795). In other words, long-term effects on children represent the unanticipated and invisible consequences of mass incarceration. Mass incarceration is estimated by the researchers to account for a substantial difference (25-45% for internalizing behaviors and 14-26% for externalizing behaviors) between blacks and whites in the childhood well-being. Although Wakefield and Wildeman’s research focuses on fathers, it can be assumed that maternal incarceration has similar, if not more serious impacts on children.

While former inmates may wish to reunite with their children after imprisonment and provide them with care and support, economic strain and other collateral costs of incarceration may make this nearly impossible. Important to note here is that not all mother-child relationships are equal; some mothers are the sole caregiver before prison; others share this responsibility with other family members and fictive kin; others have not cared for their children just prior to incarceration. Given these differences, we can expect that the relationship between mothers and their children will take a variety of forms after imprisonment (Enos 2002).

### **Women and health**

In a study of the impact of incarceration on health, Lee and Wildeman (2011) examined the impact of the mass incarceration of African American men on the chronic health problems faced by African American women.

Although risks of imprisonment are much higher for African American women than they are for white women, mass imprisonment is most consequential for African American women not because of their own elevated risks of imprisonment but because of the elevated risk of imprisonment of the men attached to them; their partners, parents, siblings, extended family, and friends (Lee and Wildeman 2011, n.p.).

These impacts include the loss of economic status, disruption of family functioning and negative effects on stress and mental health. The stressors associated with incarceration of family members are at least in part determinative of the significant and troublesome disparities in black and white rates of cardiovascular disease, diabetes and obesity. Given the long-term impacts of incarceration, these health disparities are likely to continue. “African American female offenders...have the triple burden of being a member of three disadvantaged groups: black, female, and criminal” (Cox 2011).

### **Economic well-being**

The fiscal impacts of incarceration are not just those borne by taxpayers in state and federal budgets (estimated by Pew to be more than \$50 billion dollars a year) for room and board, custody and control in prisons and jails; the costs of incarceration are spread widely and deeply into some communities (The Pew Charitable Trusts 2010). Research by the Pew Foundation examined the relationship between incarceration and economic mobility and suggests that the effects of incarceration are profound and long lasting.

Hidden behind the growing crowd of men and women behind bars in America is another often overlooked population—their children. Inadvertent victims of their parents’ crimes, children of inmates weather a host of repercussions, from emotional and psychological trauma of separation to an increased risk of juvenile delinquency (The Pew Charitable Trusts 2010, 21).

A recent report by the Pew Foundation as part of their series on economic mobility contends that an episode of incarceration affects an individual’s lifetime earnings. Ex-offenders earn less, work less, and provide less support to their families, with costs borne by the families of offenders and by the larger communities of which they are members. When incarceration hits a family, we can expect higher rates of family disruption, the creation of single-parent family, increases in births to young, single adults and other impacts (Clear 2007). Incarceration also limits the marital careers and fortunes of men and, by extension, their potential partners. The absence of male partners may, in many cases, be associated with negative behaviors of children, including poor performance in school, juvenile delinquency, early involvement in sex, domestic

violence and others (Western 2006). Other collateral effects are unexpected. Researchers have found that the absence of parent-age males in communities due to incarceration reduces the number of potential partners for women. The lack of available partners and potential male role models makes competition for men high, pushing some women into staying with partners who may be abusive or who may be able to raise demands for unsafe sex with multiple partners (Clear 2007, 104).

### **Women and recidivism**

Women inmates also differ from their male counterparts in their rates of recidivism, defined as rate of re-involvement with the criminal justice system—arrest, conviction, and confinement—after release from incarceration, typically over the period of several years. Some estimates suggest that “58% of the incarcerated women are rearrested, 38% are reconvicted and 30% are returned to prison” a rate that is less than for male prisoners (Huebner, DeJong and Cobbina 2009, 226).

In a study that followed female inmates for eight years after release, Huebner, DeJong and Cobbina (2009) found that 47% of the population returned to prison. Interestingly, more than half of these re-incarcerated women returned due to a technical violation and the rest due to the commission of a new crime, overwhelmingly (92%) a property or drug crime, which some scholars refer to as survival crimes. The likelihood of recidivism was determined to be related to drug dependency, even more so for women of color who are more likely to be returning to communities with concentrated incarceration.

Deschenes, Owen and Crow (2007) examined recidivism data from the Bureau of Justice comparing women in state prison to their male counterparts. They found that women typically served shorter sentences (13 months) compared to men (20 months.) Female inmates are less likely than males to specialize or concentrate their crimes in certain offenses and were less likely to have had either prior convictions or prior sentences to prison. The strongest predictors of recidivism for women are the number of prior arrests and the age at release from prison. The chance of re-incarceration is highest for women who are imprisoned for drug and property crimes and lowest for those incarcerated for a crime of violence. As we will see below, these gender differences between male and female offenders suggest reforms in addressing both re-entry and gender responsive programming.

In the study cited above, the presence of dependent children was not related to success after incarceration. In this study, the researchers found no impact on recidivism of women's participation in institutional programming or participation in programs. The authors suggest that these programs may be inappropriate or insensitive to the needs of women or that the programs were of poor quality and low duration.

### **Other collateral effects of sentencing policies**

Aligned with draconian sentencing for drug crimes, legislators have also imposed penalties for offenders that affected eligibility for employment, public assistance and food stamps, voting, criminal records, public housing, drivers' licenses and student loans. Earlier versions of these laws imposed lifetime disbarment from food stamps, public housing, and student loans for offenders found guilty of drug offenses. These penalties hit women offenders particularly hard, especially if they are low income and heads of households, in care of children.

In terms of employment, most states allow employers to deny workers with criminal records employment, even if the only record they have is an arrest without a conviction. Even if they are hired, these individuals, employers can discharge men and women with criminal records at will due to business necessity (Legal Action Center 2004). In some states, offenders are barred from certain professions, such as health care and education or any publicly supported employment. Other states, which may require licensing for an individual before he or she may practice cosmetology, pharmacy, embalming, law, real estate and many others can base the denial of a license based on an arrest record which can be considered to violate good moral character (Saxonhouse 2004).

The effect of a criminal record, even for a minor offense, may echo throughout an individual's career. According to a recent report, 65 million adults, one of every four adults, has an arrest record (Rodriguez and Emsellem 2011). In most cases, an arrest will not lead to a conviction. According to the Bureau of Justice Statistics, just one of three individuals arrested on a felony charge will be convicted for that offense (Bureau of Justice Statistics 2008). Some improvements have been made in reforming the access to and use of criminal records. However, despite some improvements in easing re-integration into communities, there remain major obstacles. The use of criminal records by a series of agencies, even at arrest, remains a significant obstacle for returning inmates. Arrest records are often inaccurate. An arrest may not

result in a conviction. In many states, there is no end date for holding and sharing records and an old conviction will remain on the books, even though the ex-offender has committed no additional offences. Expungement of such records is very difficult.

With respect to access to public assistance programs, states have the option of adopting the federal lifetime ban on food stamps for offenders with drug convictions. Some states have adopted the ban in its entirety while others have added conditions, such as waiving the ban if the offender has remained crime free for a period of years (Bureau of Justice Statistics 2008).

Felony disenfranchisement is another penalty of incarceration, affecting millions of voters, many of them members of minority groups. The number of disenfranchised voters is estimated at six million, one million of these African Americans, approximately five percent of the African American adult population. The impact of state policies is also important here, with states like Florida, Kentucky and Virginia disenfranchising twenty percent of the voting population and other states like Maine and Vermont imposing no laws restricting voting by felons or former felons (Uggen, Shannon and Manza 2012).

In 1998, Congress imposed a lifetime ban for individuals convicted of drug-related offenses in the eligibility for federal grants, loans or work-study in higher education. This was changed significantly in 2005, imposing ineligibility for those who are convicted of a drug crime while receiving student aid and dropping the whole scale prohibitions for other offenders (Legal Action Center 2009).

## **A Final note and Moving Forward**

### **Voices from prison**

In earlier research (Enos 2002), I spent two years observing a parenting program in a women's prison in New England. This work included attending a parenting and visitation program where I worked with the inmates and their children, establishing relationships with both. This was followed by lengthy semi-structured interviews with thirty inmate mothers, representing those with long criminal histories, as well as first-time offenders, those who had parented their children before incarceration and others who shared that responsibility or hadn't lived with their children before incarceration, white, Hispanic and African women, and those involved with child welfare and those without active child welfare cases. These interviews surfaced many of the issues that were discussed above—histories of abuse and neglect, untreated

substance abuse problems, crimes committed for survival and support of children. Importantly, however, other issues were also brought to the fore. Inmate mothers discussed the complications and contradictions of trying to do the right thing and pointed to the work associated with balancing lives as mothers, offenders and drug users. Some observed that, in some cases, the best mothering a woman could do was acknowledging that her children were better served by other caretakers. Many women expressed the conviction that the prison represented to them a place for a new start. They described the prison as a safe place to have a baby, as a place to get clean and as a place to get control over an out of control situation. They also noted the difficulty of prison life, the lack of programming, the contradictory rules governing their daily lives, the lack of privacy and the lack of respect from some of the officers. Despite their histories of abuse, drug use, poverty and trauma, many of the women were hopeful about the future and their successful re-entry into the community and their reunification with their children.

### **Policy considerations to take us forward**

Although women have been the focus of this article, real reform of what some call the “prison-industrial complex” cannot move forward without large-scale changes to sentencing policy and philosophy that addresses **all** offenders. What follows will be recommendations for prison reform that relate to the imprisoned population, male and females; recommendations specific to women follow. Attention to also paid to addressing the effects of the collateral punishments of incarceration.

### **Reforms to the criminal justice system**

Some recent reforms have changed sentencing patterns and practices, allowing for greater discretion by judges in both sentencing and the choices of punishment. For the first time in four decades, the prison population has fallen by 92,000 inmates in the past two years, fueled by the concerns of policy-makers and politicians about expanding costs for prison budgets (Glaze 2011). Initiatives beginning with Bush administration’s Second Chance Act of 2007 and supported by the Obama administration’s initiatives have been directed to enhance services to the estimated 700,000 ex-offenders discharged from prison to communities, each year. Importantly, more than 95% of all jail and prison inmates will eventually return home (Pew Center on the States 2011). Grants issued to state and local governments and nonprofit agencies

were directed to improve employment services, to enhance coordination among agencies, to better deliver individualized discharge planning for inmates and their families and other services—all aimed at improving the post-release success of ex-inmates.

Because some of the offenses that lead women and low-level male offenders back to prison typically present more risk to inmates than to public safety, punishments that present intermediate sanctions may be more effective and less costly than re-incarceration for women. The point here is not to compromise public safety but to use community supervision in ways that enhance community life while supporting inmate re-integration. Increasingly, correctional authorities are relying on risk-assessment instruments to guide practices and policies about punishment and classification. It is important that the special concerns and circumstances of women's lives be considered here to avoid over-incarceration at the point of inmate re-entry. The non-violent nature of much of women's offending, before and after incarceration, points to the need for programs that support economic survival, along with drug and mental health treatment and support (Deschenes, Owen and Crow 2007).

As discussed earlier, gender-neutral sentencing rests on the premise that gender doesn't matter in sentencing, that crimes are crimes and that sentencing considerations should eliminate consideration of the differences in the lives of men and women and the circumstances that lead them to prison. Reforms of sentencing guidelines are needed at the federal level.

For too long women have been boxed in by a guideline structure, which is dominated by premises of dangerous male criminality. It is time that the gender realities, which define the lives of females, are integrated into the assumptions underlying the guidelines. In addition, a uniform approach should be developed for establishing alternatives to imprisonment and programs within prisons to promote family ties (Raeder 1995, 8).

Hessick (2010) argues that efforts directed to lessen racial and gender disparities under the current regime of mass incarceration are likely to prove ineffective. Some movements to reduce disparities between male and female offenders have resulted in longer sentences for women and those directed to reduce disparities between whites and African Americans on crack and powder cocaine sentencing have resulted in proposals to increased sentences for the latter

offense. These measures set reforms back if what are desired are lower sentences and a system that relies on other methods of punishment.

Other reforms are also needed but the record of success is mixed. Some important reforms have been made to restore voting rights to offenders as soon as they have completed their prison sentences. In some states, this is automatic; in others, ex-offenders must follow complicated paths to re-establish their rights to vote (Samuels and Mukami 2004). Some states have set limits on how long a criminal record has to be reported to employers and have made it harder for employers to use criminal records in employment. On the other hand, other states have made it easier than ever for employers and the general public to have access to criminal records for matters, including an arrest without a conviction (Legal Action Center 2009).

### **Changing the prison system**

At the state and federal level, expenditures in the criminal justice system totaled \$228 billion dollars, employing two and one half million staff members in 2007. Corrections alone accounts for 770,000 employees (Kyckelhahn 2011). Reducing the prison population through enhanced good time credits, eliminating mandatory minimum sentencing laws, diverting inmates to community-based programs or through decriminalizing minor offenses could substantially trim the population behind bars. However, given powerful forces that support the so-called prison industrial complex, it is unlikely that without a major rethinking of our criminal justice policies that the prison population will be reduced in any significant form any time soon. Given this unfortunate fact, the existing system should reflect the needs of those incarcerated. Bloom, Owen and Covington (2004) make the argument that a system that addresses the needs and circumstances of female offenders must be structured in a manner that is different from that designed for male offenders. Such a system understands and accommodates the fact that women's paths to crime distinguish them from male offenders, and that their histories and life circumstances before, during and after incarceration are different from their male peers. This is not to say that male offenders do not suffer abuse from partners and parents and that they do not suffer from mental illness or serious drug abuse. It does, however, make the case that these issues are endemic among women offenders. Reforms would also consider that women offenders present lower risks to communities than do males. Once again, this is not to suggest that all male offenders are dangerous. It is important in this argument to clearly state that many

male offenders are also incarcerated when the risk they present to the community or to re-offending is small. However, this is especially the case for many female convicts. So-called gender responsive programming

reflects an understanding of the realities of women's lives and addresses the issues of the participants...These approaches address social (e.g., poverty, race, class, and gender inequality) and cultural factors, as well as therapeutic interventions. These interventions address issues such as abuse, violence, family relationships, substance abuse and co-occurring disorders (Bloom, Owen and Covington 2004, 42).

In addition to more responsive and appropriate programming, the conditions of confinement and control also merit re-appraisal. As noted above, rules and regulations that apply to the male population are typically assigned to the female population whether or not the latter require the same level of security.

The issue of parity is also important to reform and a way forward. Few prisons have programs directed to women inmates that address vocational training and post-secondary education, usually the result of small numbers of potential beneficiaries. As Bloom and others have noted, there is no demand here that women receive the same programs that afforded to men; rather that there is sensitivity to the particular needs of women inmates as mothers, partners, workers and supporters of their children, and families (Bloom, Owen and Covington 2004).

The challenges to parenting and the obstacles to maintaining family life are key here. Research suggests that women especially are responsive to programs that aim to keep family and children together. This is an incentive to reducing recidivism. Multiple researchers have linked attachment to family and children to successful re-integration of women into the community. Women inmates cite the importance of children as sources of support and incentives to change life course (Enos 2002). As discussed above, the impact of the incarceration of their mothers and fathers and other primary caretakers on children is profound. Planning in correctional institutions needs to be more sensitive to the variety of child caring arrangements supported by different ethnic and racial groups. Social services both within the prison and in the community should develop an array of services that match the living situations and caretaking opportunities in these families. Not all incarcerated mothers have been or will be parenting their children; neither will

all lose their children to child welfare. Inmate mothers take on an array of mothering careers, managing caretaking of their children with partners, relatives, and others. These facts need to be recognized as both resources and challenges to enhancing the connections between children, their parents and other caretakers, where appropriate.

Finally, there is no question that mass incarceration has had powerful impacts on individuals, families, communities, institutions and policies. Get-tough on crime policies have set off an array of effects, some unquestionably positive in the removal of dangerous offenders from communities. Other impacts, overwhelmingly negative, have reverberated and will continue to wreck havoc in the lives of individuals, families and community, with long-term corrosive effects on health, economic opportunity, neighborhood safety, and family stability—not only in the present but for generations to come. As poor men and women of color are enmeshed in these complicated and powerful regimes of social control, we can expect to see the profound effects to what Naim (2009) characterizes as our addiction to bad policy. We seem to be unable consider other strategies to manage those in conflict with the law. We fail to see the impacts of our policy on corrupting other governments, on destroying communities here and abroad, and on supporting failed policies that create new generations of poverty, much suffered by poor women of color and their families.

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