

the WOMEN'S
FOUNDATION
of CALIFORNIA



Bias Behind Bars:
Decreasing Disproportionate Rates of
Incarcerated Women in California and
Nationwide for Low-Level Offenses

OCTOBER 2014

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About the Women’s Foundation of California

The Women’s Foundation of California works toward a just and equitable California, in which all people and communities, in every region of the state, thrive. For 35 years, the Foundation has been not just a grantmaker but also a relentless advocate for social change. As a publicly supported foundation, we raise every dollar that we use for strategic grantmaking, public policy, workforce development and women’s leadership development. We have built a dynamic network comprised of dedicated donor activists, leaders and grassroots organizations working throughout the state. With the help of our supporters, we strive to make California a model for the nation—a place where equity and economic security is realized by all women and families in the state. For more information, visit www.womensfoundca.org.

Acknowledgements

Special thanks to researcher and writer Jolene Forman (M.Sc., Criminal Justice Policy, The London School of Economics and Political Science; J.D., University of California Berkeley, School of Law)

Overview

A new analysis of data regarding California's massive prison system underscores an emerging—and troubling—body of research nationally: Girls and women are disproportionately incarcerated in state prison for low-level, petty crimes. Even more troubling are the profound ripple effects this has on the stability of families and entire communities.

These problems are national in scope, but a new review of statistics from the California Department of Corrections and Rehabilitation reveals telling numbers about this overlooked trend. This report highlights some examples of unequal treatment of women within the criminal justice system. We call attention to the fact that:

1. There are gender differences in treatment within the criminal justice system;
2. The long-term impacts of a felony conviction differ between men and women; and
3. Women's histories of abuse prior to incarceration impact their experiences while incarcerated and after release.

As policymakers and the general public work to reform criminal justice systems (particularly to modernize approaches to holding people accountable for nonviolent offenses), it is critical for women's needs and circumstances to inform the changes underway.

Trends related to gender must be considered in any criminal justice reform efforts, and institutional practices within the criminal justice system and post-release must take into account the ways in which the needs of men and women differ. We also share stories of three formerly incarcerated California women who have overcome the odds to rebuild their lives.

Key Facts

- Nationally—but especially in California—women have been incarcerated for nonviolent, poverty-related offenses at disproportionate rates compared to men. For example, in California, women are:
 - » Three times more likely to be in prison for forgery or fraud; and
 - » Twice as likely to be incarcerated for petty theft.
- Nationally, women are 63% more likely than men to be in prison or jail for simple drug possession.
- The vast majority of incarcerated women (85 to 90%) have experienced physical or sexual abuse, which is important to understand and address through trauma and other types of counseling (as well as victims compensation and other services), if we are to improve rehabilitation outcomes post-release.
- A disproportionate number of women in prison were primary caregivers for minor children: 62% of women in state prisons have minor children as compared with 51% of men. Those mothers are more likely than incarcerated fathers to have lived with their children prior to incarceration (64% versus 47%).

- Because women are more likely than men to be convicted of drug felonies, they have more difficulty accessing public benefits and housing.
- Despite the low risk women with criminal records pose to public safety, women with criminal records face greater barriers to employment than men. For example, a 2001–2006 study of four diverse states found that approximately 61% of men had secured employment post-release compared to only 37% of formerly incarcerated women.

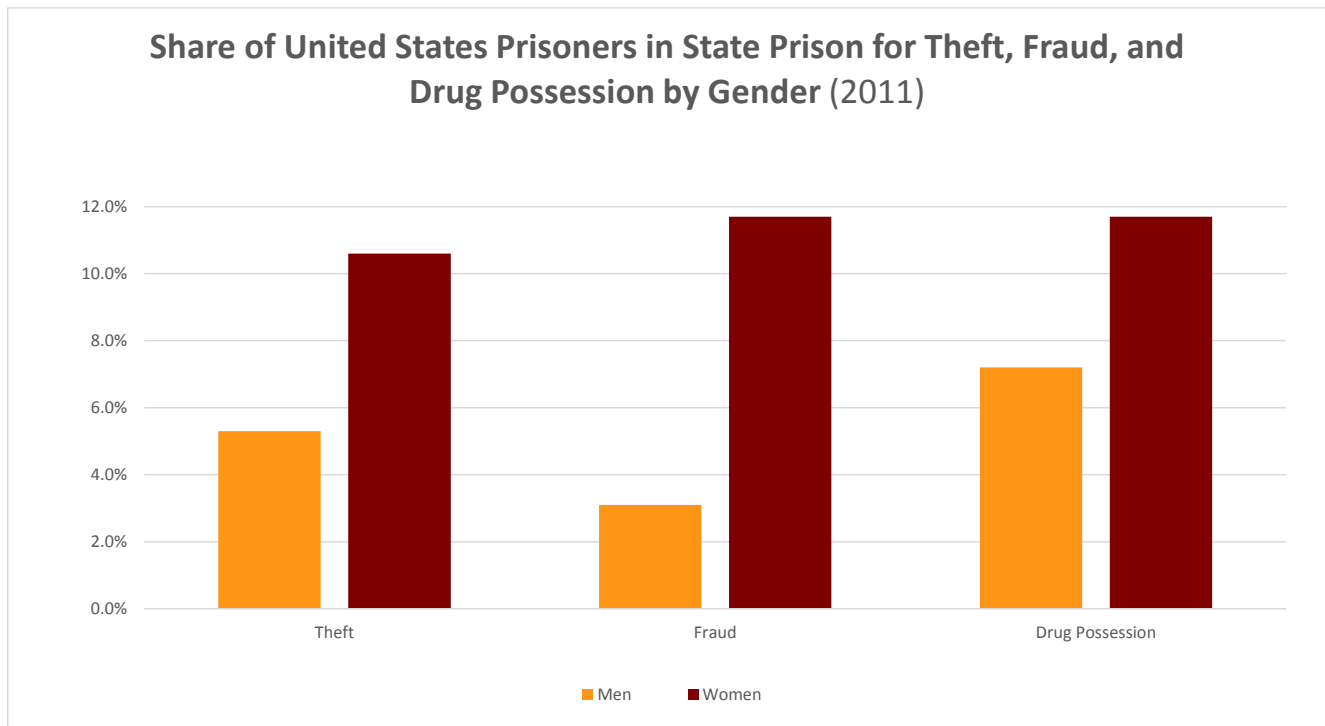
Data Limitations

Criminal justice data, when it exists, varies by state, county, and nationwide. In this report, we cite California and national data for comparative purposes and/or in cases when one or the other did not exist. Often California criminal justice statistics mirror national trends, making it possible to better understand trends that may happen nationally despite a lack of data.

Women Overrepresented for Nonviolent Offenses

As an increasing number of criminologists and policymakers call into question our high rates of incarcerating people for nonviolent offenses, women should be at the forefront

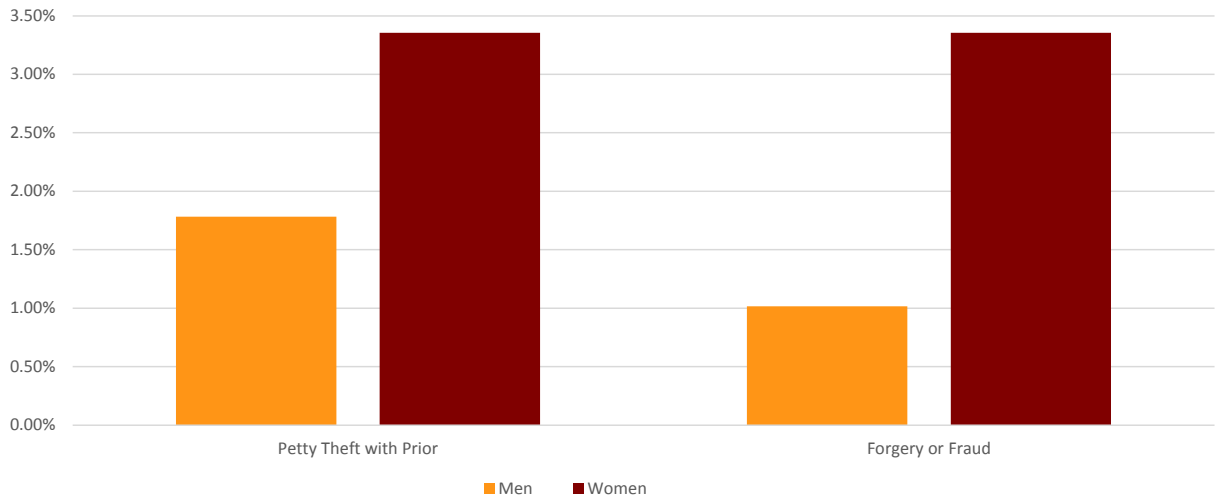
of these discussions. Nationally, women are disproportionately incarcerated for nonviolent property and petty drug crimes that are typically related to histories of poverty.¹



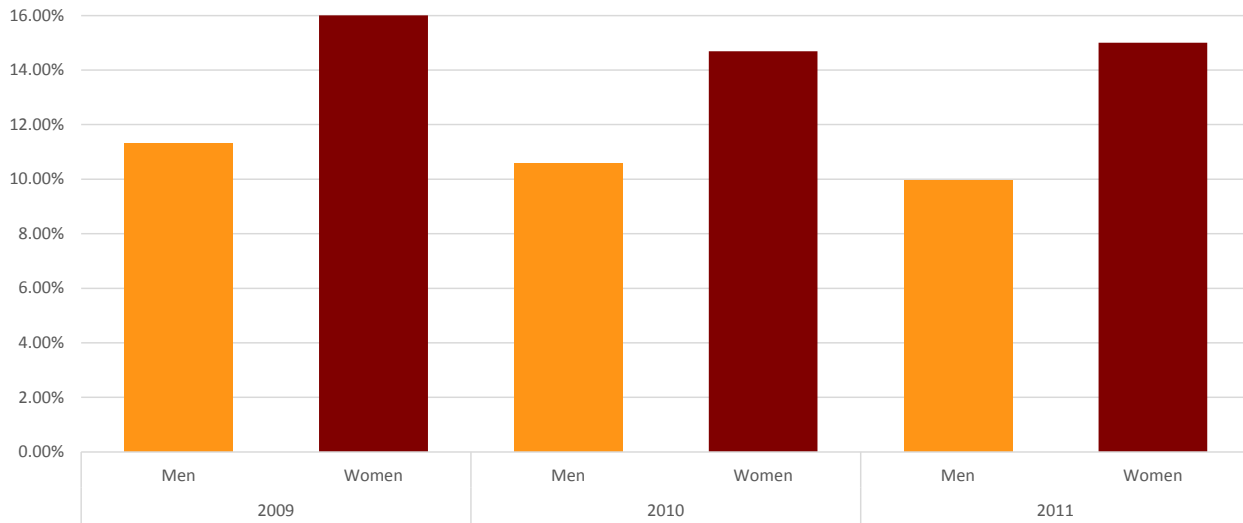
These trends are especially apparent in California, where women are more likely to be arrested for many low-level drug crimes and property offenses, such as petty theft and forgery.² Incarcerated women in California are nearly two times more likely to be in prison for petty theft with a prior conviction and three times more likely to be in prison for petty forgery or fraud.³ Additionally,

women in California have historically been sent to state prison at higher rates for receiving stolen property and simple drug possession.⁴ Since 2011, under Public Safety Realignment, California has given counties more responsibility for local justice populations, meaning those same dynamics now may be playing out within county jails.⁵

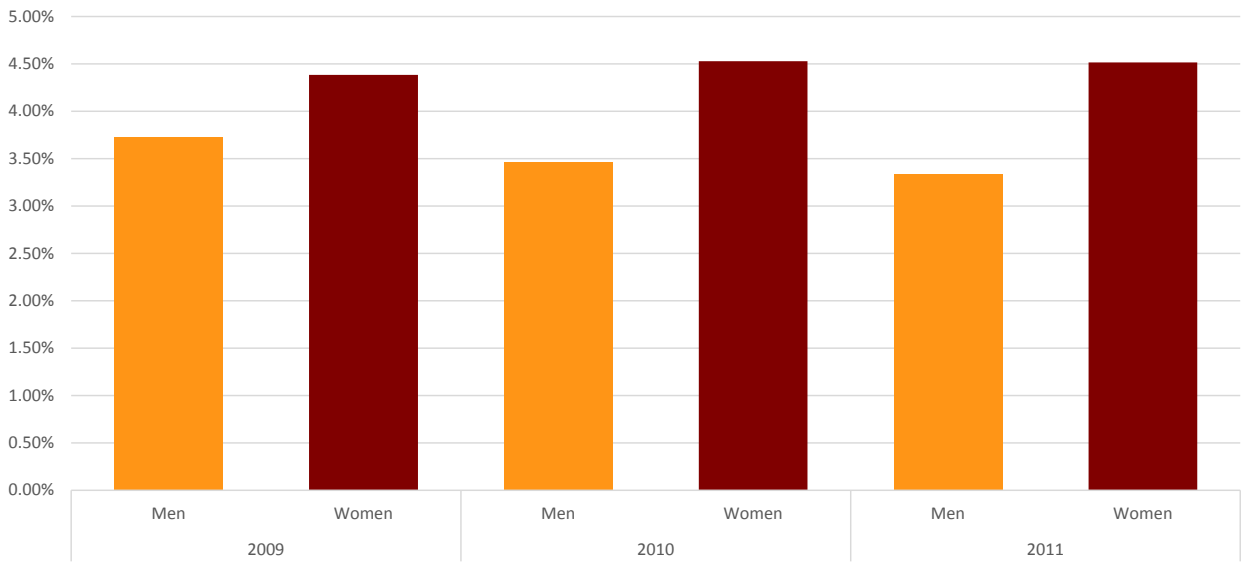
Share of California State Prisoners in State Prison for Petty Theft with a Prior and Forgery/Fraud by Gender (2013)



Historical Share of California State Prisoners in State Prison for Drug Possession by Gender (2009-2011)



Historical Share of California State Prisoners in State Prison for Receiving Stolen Property by Gender (2009-2011)

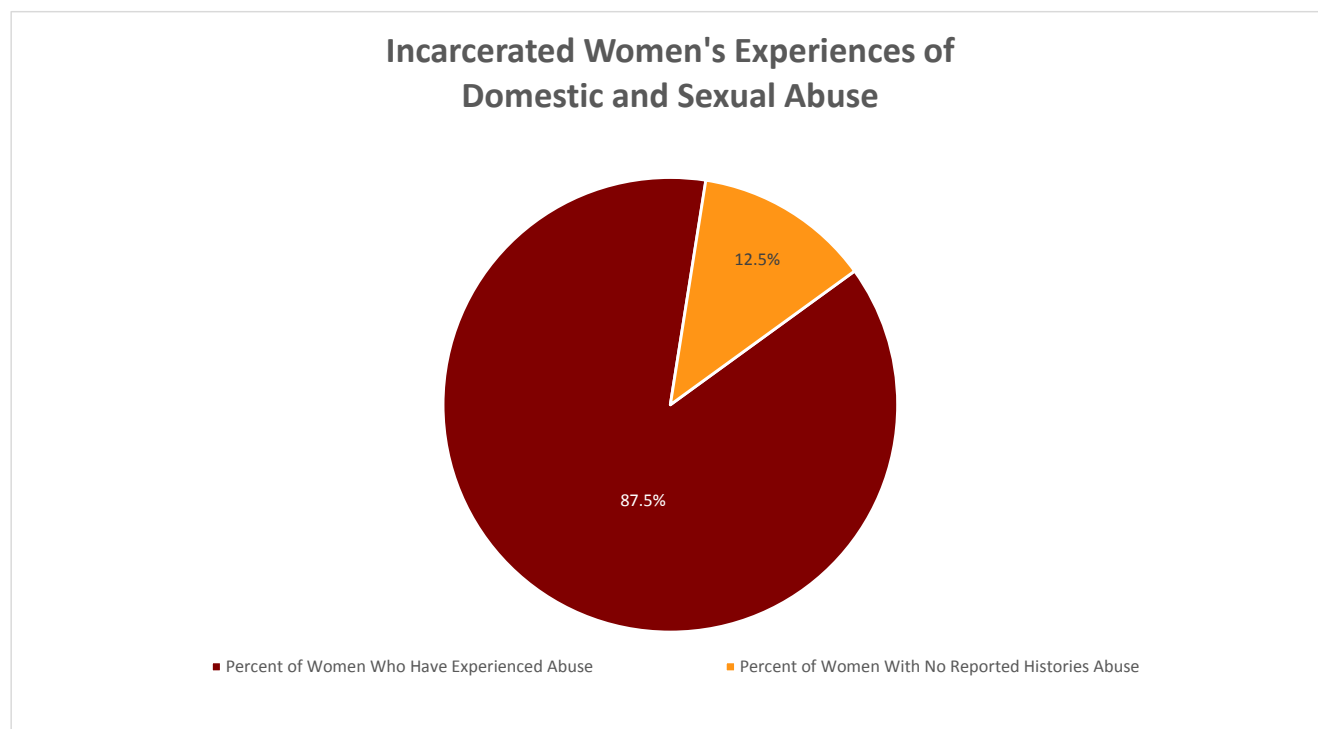


Pre-Realignment, women were between 18% and 35% more likely to be in prison for receiving stolen property than men. Current data is lacking because of different levels of data collection on the county level.

Trauma's Connection to Incarceration

Increasingly, research reveals a correlation between past victimization and future incarceration—especially among women and girls. Several studies show that women report experiencing trauma and victimization prior to

incarceration at much higher rates than men.⁶ A reported 85 to 90% of women in the criminal justice system have a history of domestic or sexual abuse,⁷ the majority of whom suffered the abuse as children.⁸



Similarly, many girls in the juvenile justice system (nationwide) have histories of emotional, physical, and sexual abuse.⁹ These girls are more likely than boys to be arrested for status offenses,¹⁰ such as truancy.¹¹ Another common example of such an offense is running away from home: Six out of 10 youth arrested as runaways are girls, and many are fleeing abusive homes.¹² Rather than receiving counseling, these girls are typically housed in

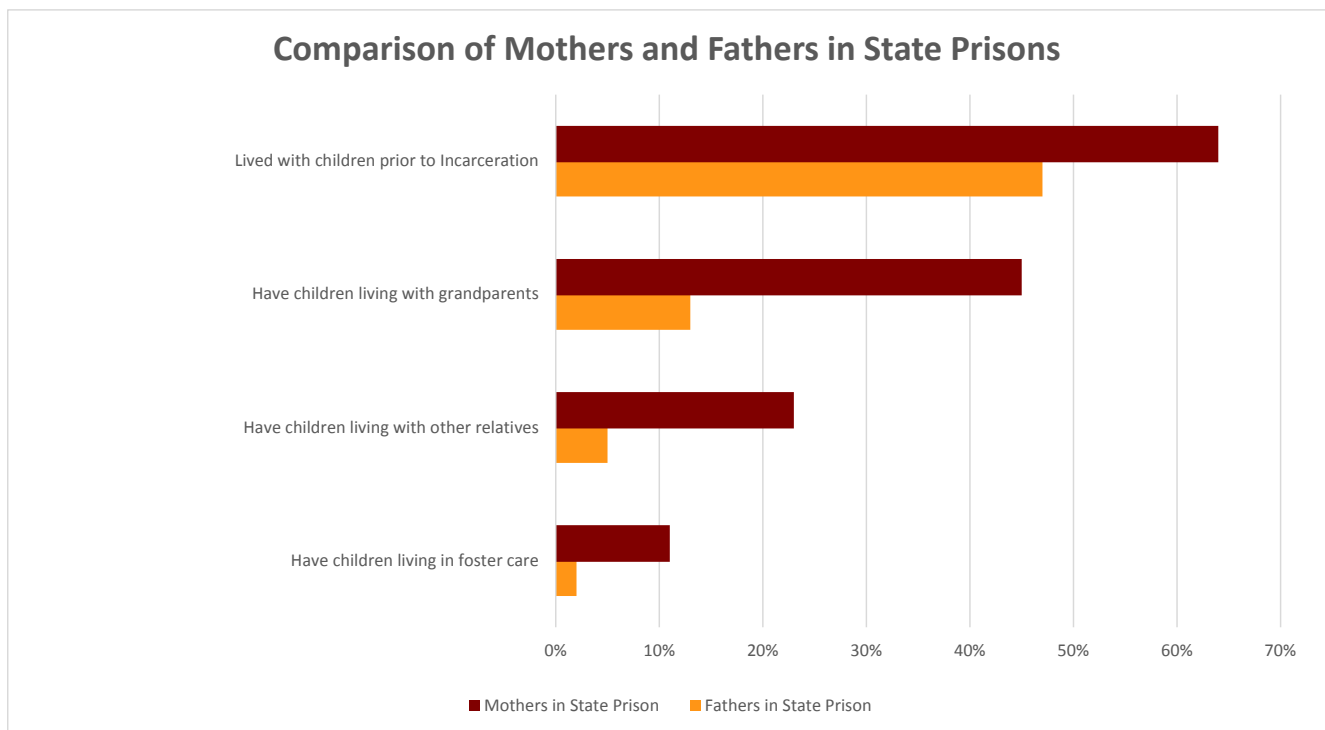
juvenile facilities, a situation that actually *increases* the likelihood they will be incarcerated as adults.¹³ (Data on California specifically is not available.)

Moreover, both the juvenile and criminal justice systems lack “gender-responsive” programming to aid women and girls with rehabilitation.¹⁴ (Gender-responsive programming takes into account the specific needs and histories of women.)

Incarceration's Impact on Children and Families

Perhaps nowhere is the ripple effect of incarceration more apparent or troubling than on the families left behind. A staggering 1.3 million children have mothers who are incarcerated in the United States.¹⁵ Seven out of 10 women in prison are mothers; two thirds are mothers with minor children.¹⁶ Of the mothers in state prisons throughout the United States, 64% lived with their children prior to being incarcerated compared to 47% of fathers in prison.¹⁷

Incarcerated mothers often experience clinical depression and related trauma as a result of being removed from their children.¹⁸ Similarly, children typically suffer emotional and psychological harm because of such separations.¹⁹ Children with incarcerated mothers also are more likely to be placed in the foster care system, drop out of school, and become involved in the criminal justice system.²⁰



Barriers to Housing, Employment, and Stability

Once women are released from prison or jail and, if they are mothers, reunited with their children, difficulties persist as they face barriers that prevent them from effectively reintegrating into society.²¹

Formerly incarcerated women are more likely to be a person of color, disproportionately poor,²² and they have more difficulty obtaining public benefits and finding and maintaining stable housing.²³ Many formerly incarcerated women are dependent on public housing and Section 8 vouchers.²⁴ Prior felony drug convictions often act as barriers to such housing options because the public housing authority may consider criminal histories and records from treatment facilities as indicators of current drug use, thereby arbitrarily barring some women from affordable housing.²⁵ In addition, formerly incarcerated women are especially susceptible to eviction because the public housing authority and Section 8 landlords have the authority to bypass typical grievance and eviction procedures.²⁶

Despite the low risk women with criminal records pose to public safety, women have more difficulty than men finding employment after release from jail

or prison.²⁷ This is due to the overrepresentation of women in the fields of retail, childcare, and home health care—all fields where criminal records are of great concern.²⁸ Some states legally bar those with criminal records from working with children and seniors.²⁹ Fields that tend to be male-dominated, such as construction and manufacturing, generally are focused less on employees' backgrounds.³⁰

These collateral consequences are further exacerbated by the higher likelihood of formerly incarcerated women to be lacking education, carrying the responsibilities for young children, and experiencing more health problems.³¹ That includes higher rates of HIV and higher mortality rates from cardiovascular disease along with breast and gynecological-related cancers.³² All told, these barriers to employment, housing, and public assistance result in unstable and impoverished living conditions for formerly incarcerated mothers and their children.

Policy Recommendations

It is disturbingly clear that girls and women are disproportionately incarcerated for low-level, petty felony crimes in California and throughout the country, with devastating consequences for the women themselves, their families, and entire communities. Policymakers should take a number of steps to address this serious problem, including the following:

1. Expand Access to Alternatives to Incarceration for Women Who Commit Non-Serious, Nonviolent Offenses

Examples of these alternatives include:

- Community-based residential programs that offer structure, supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling, and mental health treatment;
- Intensive community supervision;
- Home detention;
- Community service;
- Work training or education in a work-release or work furlough program;
- Required participation in Day Reporting Centers;
- Residential or nonresidential substance abuse treatment programs; and
- Mother-infant care programs.

2. Limit the Use of Felony Convictions for Nonviolent, Non-Serious Offenses

California—along with all US states—should reconsider elevating nonviolent, non-serious crimes to felony status. Given the lifetime consequences faced by those with felony convictions, the felony status should not be used for nonviolent, non-serious crimes. This would be particularly helpful in ensuring that women in the justice system have the ability to reintegrate into society effectively and productively after conviction and sentencing. Because of the unique role women play in families and communities, their ability (or inability) to successfully reintegrate can have an impact on generations of people.

3. Enhance Gender-Responsive Programming Throughout the Justice System

The criminal justice system needs to recognize women as an increasing presence. Programming should reflect the specific needs that women have in order to be rehabilitated and to reintegrate post-conviction and sentencing. This includes a focus on the specific circumstances, needs, and barriers that women face. It also highlights the need for reform of policies and practices, whether those relate to incarceration, community treatment programs, alternatives to incarceration, or otherwise.

Case Study: Robin Keeble

By the time she was 40, Robin had been in and out of jail or prison for 13 years, due primarily to her heroin addiction. During that time, drug treatment either was not available at all or was not open to her because of her record.

While Robin was incarcerated, her mother died, her son was put into foster care, and she lost her housing. Each time she was released, she tried to kick her heroin habit and find a job and place to live, but nothing changed – until the day an Orange County AIDS outreach worker approached her in a park. He wanted to help Robin, who was HIV-positive, find a safe place to sleep and to get clean.

Now 58, Robin has turned her life around, earning a master's degree in public health, establishing programs to help former prisoners, and completing a 15-year career with the same AIDS program that changed her path.

But the road was not easy. Robin lost count of how many times she was denied a job or a place to live because of her record. Once she worked at a discount store for six months until a background check got her fired. Another time she created fake rent receipts just to secure an apartment.

Undaunted, today she serves on the inmate family council at the women's prison in Corona, California, and on the Orange County Re-Entry Partnership. She also founded a network of 400



formerly incarcerated women who are giving back to their communities through volunteering or by starting nonprofits.

“I see a similarity with the HIV world,” Robin said. “AIDS is a deadly disease, so we’ve established programs, well-coordinated between prisons and the outside, to keep it from spreading. If we looked at drug addiction and recidivism the same way—as problems that affect all of us—we’d do more to make sure people got help in prison and once they’ve been released.”

Case Study: Alexis Fernandez



In 2011, Alexis Fernandez was 20 years old, living in Huntington Beach, California, and addicted to drugs. Getting arrested late that year for possession was no big deal, since she had a criminal record since age 15—mostly for drugs.

Doing time in jail was nothing new for Alexis either. Typically, she would sit in jail—with no offer of drug treatment—waiting to get out and return to her friends and lifestyle.

But this latest arrest meant time in a state prison. However, 2011 was also the year that California shifted responsibility for many nonviolent people

like Alexis from state prisons to county jails and probation.

Alexis was given a sentence of jail time, then supervised probation. It was her probation officer that changed her life. During her previous cycles in and out of the system, Alexis never received drug treatment. But her probation officer secured four months of residential “sober living,” which put Alexis on a new path.

For the first time, she sobered up and spent her money on a bus pass and food, not drugs. She also participated in reentry programming at the Orange County Day Reporting Center.

“I took advantage of the situation. I didn’t want to go to jail,” Alexis said. “Everything is going really good. I’m doing everything I’m supposed to be doing.”

But her past still haunts her. Despite being a reliable employee for the past year, the food establishment where she works is unable to promote her because of her previous conviction.

Meanwhile she is counseling other women and attending substance abuse meetings weekly. She is ready to move on—if and when her felony conviction allows it.

Case Study: Susan Burton

At 46, Susan Burton had been in and out of California prisons for more than 15 years, all for nonviolent drug possession offenses. She had turned to drugs in grief, after her 5-year-old son was hit and killed by a car. In 1996, as she was released for the sixth time, a guard said: “I’ll see you back in a little while.”

Not this time. She could not forget the degrading experiences of prison: “It angered me that I would be treated so cruel ... caged and chained for a drug charge.” During this time, Susan lost custody of her daughter—and, according to her, her daughter’s respect. She lost her housing and felt her addiction worsen with each prison stint.

It was time for a change. Susan went to a treatment facility, got sober, and, with a friend’s help, found work as a live-in caregiver. She applied to become a licensed home health aide, but her felony record barred her. So she saved enough money to buy a bungalow in Los Angeles and opened it to other women struggling to rebuild their lives after prison. She also saved up enough to launch a nonprofit: **A New Way of Life Reentry Project**.

Today her organization operates five houses where women transitioning from prison can stay for up to two years. The project also operates a free legal clinic (now the largest of its kind in California) to



help former prisoners expunge their records. A New Way of Life has helped more than 600 women rebuild their lives, and 80% have stayed out of prison.

“I knew thousands of women like me who had been negatively impacted by the War on Drugs, who were on a turnstile going in and out of prison, not able to get help,” Susan said in a 2013 documentary. “Imagine: \$70,000 a year to keep us contained, just squandering public funds. They could have sent me to Yale for all those years. I’d have six degrees.”

Notes and Resources

¹ See The Sentencing Project, *Incarcerated Women Fact Sheet* (2012), available at http://sentencingproject.org/doc/publications/cc_Incarcerated_Women_Factsheet_Dec2012final.pdf; Ann Carson & Daniela Golinelli, U.S. Dep't of Justice, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012* 23 tbl.17, 26 (2013), available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4842>; Todd D. Minton & Daniela Golinelli, U.S. Dep't of Justice, *Jail Inmates at Midyear 2013—Statistical Tables 7* tbl.3 (2014), available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4988>; Eugene M. Hyman, *The Scarlet eLetter and Other Roadblocks to Redemption for Female Offenders* 54 SANTA CLARA L. REV. 119, 142 (2014), available at <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=2770&context=lawreview>.

² See Cal. Dep't of Justice, *CJSC Statistics: Arrests* (2014), <https://oag.ca.gov/crime/cjsc/stats/arrests>. Women are more likely than men to be convicted for felonies classified as “Other Drugs,” which include the unauthorized possession of prescription medications. *Id.*; Cal. Dep't of Justice, *Arrest Offense Codes* (2014), https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/stats/arrest_offense_codes.pdf?

³ Cal. Dep't of Corrections and Rehabilitation, *Characteristics of Felon New Admissions and Parole Violators Returned with a New Term* 4-6 (2014), available at http://cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/ACHAR1/ACHAR1d2013.pd.

⁴ *Id.*

⁵ The numbers of women sent to prison has dropped since late 2011 with the implementation of Criminal Justice Realignment (AB 109). *Id.*; A.B. 109, 2011–2012 Leg., Reg. Sess. (Cal. 2011); CAL PENAL CODE §§ 17.5, 1170(h). This, however, does not mean that women are no longer being incarcerated for these offenses at disproportionate rates. Instead, many women are simply serving their sentences in jails instead of prison. See, e.g., Dean Misczynski, *Corrections Realignment: One Year Later*, Public Policy Institute of California, (Aug. 2012) 29, available at http://www.ppic.org/content/pubs/report/R_812DMR.pdf (stating that “[r]ealignment affects female offenders differently than males. Although females make up a small portion of prison inmates (about 5 percent), they are likely to constitute around 13 percent of realignment populations. This is because female inmates who would have gone to state prison are more than twice as likely as males to fall into the low-level offender category subject to realignment. . . . So far, little explicit attention has been given to female prisoners in responding to realignment.”). This is because receiving stolen property and drug possession are realignment-eligible offenses that may be served in local facilities and women are less likely to have prior violent convictions that would precluded from servicing their time locally. See Cal Penal Code §§ 17.5, 1170(h); *CJSC Statistics: Arrests*, *supra* note 2 (showing that women are less likely to be arrested for violent offenses); Carson & Daniela *supra* at 8 tbl. 6 (showing that women are less likely than men to be incarcerated in state or federal prison for violent offenses).

Notes and Resources

⁶ See Hyman, *supra* note 1.

⁷ See, e.g., *Prison Rape Elimination Act of 2003 (PREA)*, American Civil Liberties Union (2011), <https://www.aclu.org/prisoners-rights-womens-rights/prison-rape-elimination-act-2003-prea>; Julie Ajinkya, *The Top 5 Facts About Women in Our Criminal Justice System, Many Face Difficulties During and After Incarceration*, Center for American Progress, available at <http://www.americanprogress.org/issues/women/news/2012/03/07/11219/the-top-5-facts-about-women-in-our-criminal-justice-system/>; See also Hyman, *supra* note 1 at 142 (reporting that 70 percent of incarcerated women have experienced past family violence).

⁸ See Hyman, *supra* note 1 at 142 (reporting that the majority of incarcerated women suffered physical or sexual abuse before the age of 18).

⁹ See Ajinkya, *supra* note 7; *Fact Sheet: Girls and Juvenile Justice*, Act 4 Justice, http://www.act4jj.org/sites/default/files/ckfinder/files/factsheet_29.pdf.

¹⁰ See *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense*, Justice Policy Institute (2009), http://www.justicepolicy.org/images/upload/09_05_rep_costssofconfinement_jj_ps.pdf.

¹¹ See *Fact Sheet*, *supra* note 9.

¹² See Ajinkya, *supra* note 7; See *Fact Sheet*, *supra* note 9.

¹³ *Id.*

¹⁴ Hyman, *supra* note 1 at 143, 145.

¹⁵ See Steve Hsieh, *A Mother's Day 'Week of Action' to #FreeMarissa*, THE NATION, May 9, 2014, available at <http://www.thenation.com/blog/179780/mothers-day-week-action-freemarissa>.

¹⁶ *Id.*; *Incarcerated Women Fact Sheet*, *supra* note 1.

¹⁷ See *Incarcerated Women Fact Sheet*, *supra* note 1 (citing Glaze, L., & Maruschak, L., *Parents in prison and their minor children*, Bureau of Justice Statistics (2008)).

¹⁸ See Hyman, *supra* note 1 at 142 (citing KATHLEEN J. FERRARO, NEITHER ANGELS NOR DEMONS: WOMEN, CRIME, AND VICTIMIZATION 153 (2006)).

¹⁹ See, e.g., *Id.* at 131-32 (citing Denise McKeon, Research Talking Points on Dropout Statistics, NATIONAL EDUC. ASS'N (Feb. 2006), <http://www.nea.org?home/13579.htm>.; *id.* at 142 (citing MEDA CHESNEY-LIND, THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME 158 (2004)).

²⁰ See The Clayman Institute for Gender Research, Women Prisoners, <http://gender.stanford.edu/women-prisoners>; See *Incarcerated Women Fact Sheet*, *supra* note 1; Hyman, *supra* note 1 at 131-32, 142.

²¹ See Ajinkya, *supra* note 7.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 134-35.

²⁵ *Id.*

²⁶ *Id.*

Notes and Resources

²⁷ *Id.*; Hyman, *supra* note 1 at 125; Becki Ney et al. , *Ten Truths That Matter When Working With Justice-Involved Women*, National Resource Center On Justice Involved Women, p. 2 (2012), available at http://cjinvolvedwomen.org/sites/all/documents/Ten_Truths.pdf); See also *Young Women of Color with Criminal Records: A Barrier to Economic Stability for Low-Income Families and Communities*, Community Legal Services of Philadelphia, March, 2014, available at <http://nicic.gov/library/028065>.

²⁸ *Young Women of Color with Criminal Records: A Barrier to Economic Stability for Low-Income Families and Communities*, Community Legal Services of Philadelphia 4 (2014), available at http://clsphila.org/sites/default/files/issues/Young%20Women%20with%20Criminal%20Records%20Report_0.pdf.

²⁹ *Id.*

³⁰ *Young Women of Color with Criminal Records: A Barrier to Economic Stability for Low-Income Families and Communities*, Community Legal Services of Philadelphia 4 (2014), available at http://clsphila.org/sites/default/files/issues/Young%20Women%20with%20Criminal%20Records%20Report_0.pdf.

³¹ *The Scarlet eLetter and Other Roadblock to Redemption for Female Offenders*, Santa Clara Law Review, Vol. 54, Number 1 at 125 (2014). <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=2770&context=lawreview>

³² See *Ten Truths That Matter When Working With Justice-Involved Women*, *supra* note 27, at 5.

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