



Overlooked: Women and Jails in an Era of Reform

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From the Director

Since 1970, the number of women held in local jails—facilities that form the front door to incarceration in the United States—has grown exponentially, outpacing rates of growth for men. Yet surprisingly little research has explored why so many more women wind up in jail today. The research that does exist suggests that the experiences women have in jail often deepen the disadvantages that contributed to their incarceration in the first place—trauma, behavioral and physical health needs, single-parenthood, and poverty.

Spurred by overcrowding, escalating expenses, and increasing evidence of jail's harmful impact on individuals and communities, policymakers and justice-system officials have begun a national discussion about curbing jail overuse. Jurisdictions around the country are designing and using a variety of approaches to divert people away from jail based upon the understanding that it frequently fails to address the root causes that brought them into contact with the justice system. But virtually all of these alternative responses stem from research on men in jail.

With little data and scant examination of just who the women in jail are and how they got there, it is not surprising that recent innovations to craft smarter, more targeted use of jails do not account

for the realities of women's lives. Moreover, without accounting for gender, programs and practices drawn from studies about what works for men can have unintended negative consequences for the women who also experience these programs and practices.

At this critical moment in jail and local justice system reform, Vera has taken stock of the existing research on women in jail to begin to reframe the conversation to include them. After drawing a profile of women in U.S. jails, this report—released by Vera and the Safety and Justice Challenge—sheds light on the particular challenges these women face and the ways the current system can exacerbate them. The gaps in research on these challenges underscore the urgent need for expanded data-collection about women caught up in the justice system as the basis for future evidence-based analysis and policymaking. After all, before communities can broaden efforts to reform their use of jails effectively for women as well as men, they must have the information that allows them to understand who these women are and what works to put them and their families on a better path. Using this information to build upon the existing foundation for reform, communities can craft programs and practices that will stem the flow of women cycling through the nation's local jails.



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About this report

This report is one of a series that the Vera Institute of Justice (Vera) is releasing with the Safety and Justice Challenge—the John D. and Catherine T. MacArthur Foundation’s initiative to reduce over-incarceration by changing the way America thinks about and uses jails. The initiative is supporting a network of competitively selected local jurisdictions committed to finding ways to safely reduce jail incarceration. Other publications in the series to date include [Incarceration’s Front Door: The Misuse of Jails in America](#) and [The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration](#), as well as a multimedia storytelling project, [The Human Toll of Jail](#).

Through the Safety and Justice Challenge, our own office in New Orleans, and direct partnerships with jurisdictions nationwide, Vera is providing expert information and technical assistance to support local efforts to stem the flow of people into jail, including using alternatives to arrest and prosecution for minor offenses, recalibrating the use of bail, and addressing fines and fees that also trap people in jail. For more information about Vera’s work to reduce the use of jails, contact Nancy Fishman, project director at Vera’s Center on Sentencing and Corrections, at nfishman@vera.org. For more information about the Safety and Justice Challenge, visit www.safetyandjusticechallenge.org.

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Introduction

Over the past four decades, there has been a nearly five-fold increase in the number of people in U.S. jails: the approximately 3,000 county or municipality-run detention facilities that primarily hold people arrested but not yet convicted of a crime.¹ (See “What is jail?” p. 8.) From just 157,000 people held on any given day in 1970, the jail population rose to 745,000 people by 2014.² Intended to house those deemed to be a danger to society or a flight risk before trial, jails have become massive warehouses primarily for those too poor to post even low amounts of bail or too sick for existing community resources to manage. With more than 11 million admissions annually, the role jails play as a principal driver of mass incarceration is receiving increasing attention from policymakers and the public.³

Despite this scrutiny, one aspect of this growth has received little attention: the precipitous rise in the number of women in jail. Although they generally fare better than men in pretrial decisions, the number of women incarcerated in jails is growing at a faster rate than any other correctional population.⁴ Since 1970, the number of women in jail nationwide has increased 14-fold—from under 8,000 to nearly 110,000—and now accounts for approximately half of all women behind bars in the United States.⁵ Once a rarity, women are now held in jails in nearly every county—a stark contrast to 1970, when almost three-quarters of counties held *not a single woman* in jail.⁶



In 1970, **73 percent** of counties across the U.S. reported **zero women** in their jails.

Surprisingly, small counties (those with 250,000 people or fewer in 2014) have been the main engine of this growth, with the number of women in small county jails increasing 31-fold from 1970 to 2014.⁷ Since 2000, jail incarceration rates for women in small counties have increased from 79 per 100,000 women to 140 per 100,000 women. In contrast, mid-sized counties' jail incarceration rates for women only grew from 80 to 88 per 100,000 women, while rates in large counties actually decreased from 76 to 71 per 100,000 women within that same timeframe. (See Figure 1, p. 8.) Today, nearly half of all

jailed women are in small counties.⁸

Despite these alarming trends, there isn't a complete picture to explain why women are increasingly incarcerated in U.S. jails. Available research is scarce, dated, and limited in scope.⁹ Nevertheless, research about women in the criminal justice system more generally provides clues about who these women are, and why they end up in jail. Like men in jail, they are disproportionately people of color, overwhelmingly poor and low-income, survivors of violence and trauma, and have high rates of physical and mental illness and substance use.¹⁰ Nearly 80 percent of women in jails are mothers, but unlike incarcerated men, they are, by and large, single parents, solely responsible for their young children.¹¹ The majority are charged with lower-level offenses—mostly property and drug-related—and tend to have less extensive criminal histories than their male counterparts.¹²


Once incarcerated, women must grapple with systems, practices, and policies that are designed for the majority of the incarcerated population: men. With limited resources, jails are often ill equipped to address the challenges women face when they enter the justice system, which can have serious and lasting public safety and community health implications.¹³ As a result, many women return to their families and communities far worse off than when they entered the jailhouse door. As U.S. Attorney General Loretta Lynch said in her remarks at the White House Women and the Criminal Justice System Convening on March 30, 2016, "Put simply, we know that when we incarcerate a woman we often are truly incarcerating a family, in terms of the far-reaching effect on her children, her community, and her entire family network."¹⁴

Although some jurisdictions have begun to focus on the particularly destabilizing effect jail incarceration has for women, their families, and their communities, women frequently remain an afterthought in discussions about jail reform. As interest in rolling back the misuse and overuse of jail increases, the roots and trajectory of growth in jail incarceration of women demand further study.

The growing number of women in U.S. jails

Between 1970 and 2014, the number of women in jails increased from under 8,000 to nearly 110,000. In small counties, the number increased from approximately 1,700 to 51,600.

 = 1,000 women in jail

 Women in jail in small counties

1970



2014



What is jail?

Jails are county or municipality run confinement facilities that primarily hold people who are charged with committing a criminal offense and awaiting the resolution of their cases—and are therefore legally presumed innocent. In 2014, nearly two-thirds of those in jail were unconvicted.^a Administered by the local sheriff or corrections agency, jails also hold a smaller number of other people, including:

- > people sentenced to a short sentence, usually for a year or less;
- > people sentenced to longer periods of confinement awaiting transfer to prison, or assigned to serve their sentence in jail because of prison overcrowding;
- > people accused of violating terms of their probation or parole; and
- > people held at the request of the federal government pending resolution of a federal criminal charge or immigration hearing.^b

Figure 1

Jail incarceration rates in small and large counties, 2000–2014



Source: Vera Institute of Justice analysis of the Bureau of Justice Statistics Census of Jails and Annual Survey of Jails.

This report—aimed at inspiring conversations about how to stop growing numbers of women cycling through U.S. jails—examines the existing research on how women come to and experience incarceration’s front door and its lasting consequences. It identifies shared characteristics among the women typically detained in jails, and explores how those factors become interwoven with the direct and collateral consequences of even a short stay in jail to make incarceration particularly difficult for women and their families. While men in jail commonly face many of these challenges as well, this report underscores areas

that affect women in jail to an even greater extent, making comparisons where rates among women diverge from those for men. These include trauma, physical and behavioral health disorders, single-parenting, and poverty. After looking at the effects of increasingly punitive attitudes, policies, and legislation around low-level offenses in recent years on the rapid rise in the number of women in jails, the report explores opportunities at key points in the criminal justice process to redirect women caught up in the justice system toward healthier, more stable, and productive lives in their communities.

A portrait of women in jail

Like men, the majority of women in jail are charged with non-violent crimes.¹⁵ According to the latest available national data, which are now more than a decade old, 32 percent of women in jail are there for property offenses, 29 percent for drug offenses, and nearly 21 percent for public order offenses.¹⁶ Most of these women are there on low-level charges.¹⁷ In a survey from Davidson County, Tennessee, for example, 77 percent of women were booked into jail on misdemeanor charges, with the most common charge being failure to appear after receiving a citation.¹⁸ A similar survey from the Tulsa County, Oklahoma jail found that the most serious charge for 58 percent of women was a municipal or misdemeanor offense.¹⁹ Other, more recent local studies have found a considerable proportion of women are in jail not for committing a new criminal offense, but rather for breaking the rules of their supervision in the community—such as failing a drug test or missing a scheduled appointment with a probation or parole officer. For example, probation or parole violators accounted for one-fifth of women in jail in Baltimore and one-quarter of women in jail in Washington, DC.²⁰

Women often become involved with the justice system as a result of efforts to cope with life challenges such as poverty, unemployment, and significant physical or behavioral health struggles, including those related to past histories of trauma, mental illness, or substance use. More than half of women in jails report having a current medical problem—compared to 35 percent of men.²¹ Approximately two-thirds of jailed women report having a chronic condition—compared to half of men in jails and 27 percent of people in the general population.²² Among a sample of nearly 500 women in jails across various regions of the country, 82 percent had

Why are women in jails?

The vast majority (82 percent) of women are in jail for nonviolent offenses.



experienced drug or alcohol abuse or dependence in their lifetime.²³ Older research shows that at the time of the offense, incarcerated women were more likely than men to have been using drugs.²⁴ Additionally, 60 percent of women in jail did not have full-time employment prior to their arrest—in contrast to incarcerated men, 40 percent of whom lacked full-time employment.²⁵ And nearly 30 percent of incarcerated women receive public assistance, compared to just under 8 percent of men.²⁶



Lack of employment among women in jail

Six out of 10 women in jail did not have full-time employment prior to their arrest.

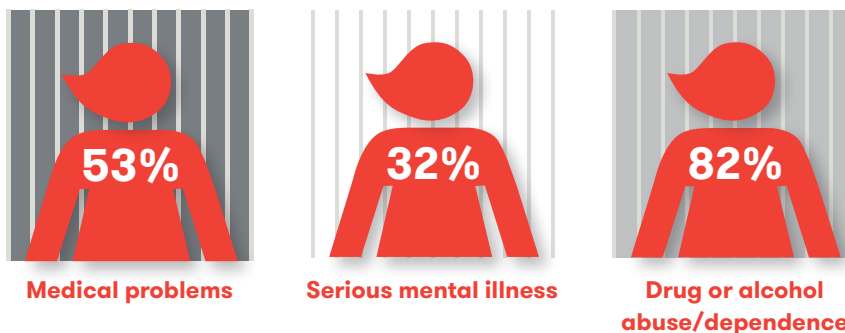
■ Unemployed prior to arrest □ Employed prior to arrest



One of the most significant underlying issues women in jail grapple with is mental illness. Serious mental illness (SMI)—including major depression, bipolar disorder, and schizophrenia—affects an estimated 32 percent of women in jails, a rate more than double that of jailed men and more than six times that of women in the general public.²⁷ According to the Bureau of Justice Statistics (BJS), 75 percent of women in jails reported having had symptoms of a mental health disorder in the past 12 months.²⁸ Jailed women also report very high rates of victimization—including childhood sexual abuse, sexual assault, and intimate partner violence—and almost a third had experienced post-traumatic stress disorder (PTSD) in the past 12 months.²⁹

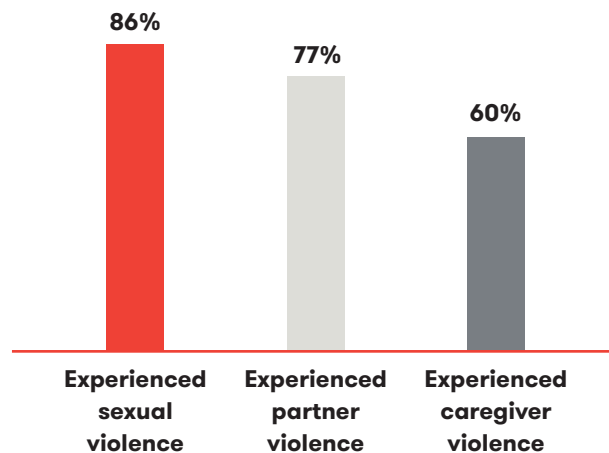


Prevalence of health issues among women in jail



The extent to which women in jail report having experienced trauma is startling: 86 percent report having experienced sexual violence in their lifetime, 77 percent report partner violence, and 60 percent report caregiver violence (see Figure 2 below).³⁰ Nevertheless, lacking effective screening tools, jail intake staff often fail to detect this trauma unless symptoms are dramatically apparent.³¹ And although women in jail often meet the criteria for multiple mental health disorders—one in five has experienced SMI, PTSD, and substance use disorder in her lifetime—their complex treatment needs may remain unaddressed in detention due to limited mental health resources, risking further deterioration as the result of the volatile jail environment and separation from any community care or support.³²

Figure 2
Prevalence of victimization



Source: Shannon M. Lynch et al., *Women's Pathways to Jail: The Roles and Intersections of Serious Mental Illness and Trauma* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2012), 32.

As with jail-incarcerated men, women in jail are disproportionately people of color.³³ According to the most recent nationwide data to track both gender and race, approximately two-thirds of women in jail are women of color—44 percent of women were black, 15 percent were Hispanic, and five percent were of other racial/ethnic backgrounds, compared to 36 percent of women who identified as white.³⁴ In recent snapshots of the populations of women in jails in Miami-Dade County and across New Jersey, women of color represented 47 percent and 56 percent of incarcerated women, respectively.³⁵ In many local jurisdictions, the disparities are even starker. For example, 2005 data from Baltimore City Detention Center show that black women comprised 70 percent of the women in jail, compared to white women at 16 percent.³⁶ And in Cook County in 2011, almost 81 percent of the women admitted to jail were women of color.³⁷

Racial and ethnic disparities

Two-thirds of women in jail are women of color—44 percent are black, 15 percent are Hispanic, and five percent are of other racial/ethnic backgrounds—compared to 36 percent of women who identified as white.

■ Women of color ■ White women



Finally, most women in jail are mothers—79 percent have young children and approximately five percent are pregnant when they are incarcerated.³⁸ Most often, they are single mothers.³⁹ Given that many come from communities blighted by high rates of poverty, crime, and low educational attainment, even a short stay in jail may do more than temporarily break up their families.⁴⁰ Without the financial means to support their families for the length of their detention and upon their release, these women are very likely to be separated from their children, especially those who are in foster care, for longer than necessary. For example, a study of mothers in Illinois' Cook County Jail found that when compared to non-incarcerated mothers with children in foster care, those whose children entered foster care upon their incarceration were half as likely to reunite with their children upon release.⁴¹

Gender and the jail experience

For anyone, a stay in jail is bound to be a disruptive experience.⁴² Even spending two days in jail pretrial correlates with a greater risk of negative outcomes for both defendants and public safety as compared to equivalent defendants released within 24 hours.⁴³ People who are temporarily detained pretrial are more likely to be rearrested before trial, fail to appear for court, receive a sentence of imprisonment, get a longer term, and reoffend after completing their sentence.⁴⁴ Beyond these justice-system outcomes, time spent in jail can result in loss of wages, employment, and housing.⁴⁵

For women, however, jail can be especially destabilizing, because most jail environments were not designed with them in mind and do not take into account the particular adversities they have experienced. Given the smaller number of women in jails, it is perhaps not surprising they become “forgotten inmates,” often without equal access to treatment, programs, or services.⁴⁶ As a result, many women leave jail with diminished prospects for physical and behavioral health recovery, with greater parental stress and strain, and even more financially precarious than they were before becoming caught up in the justice system.

Gender bias in jail classification

Many jails use assessment tools to determine where and how people are housed within facilities, as well as the type of programming and other services for which they may be eligible.⁴⁷ The accuracy of these tools in predicting outcomes is generally tested using samples that only, or primarily, include justice-involved men.⁴⁸ Assessing women with a gender-neutral or male-focused assessment tool—often using current charges and criminal history as determinative factors—ignores research showing that women, even those deemed high-risk, generally pose less risk than men.⁴⁹ Because most assessment tools fail to take into account that incarcerated women engage in serious misconduct at lower rates than men, they

imprecisely assign custody levels for women. Specifically, these tools often classify women as higher risk than the real level of threat they pose.⁵⁰ This over-classification bars women from many jail-based educational, vocational, and rehabilitative programs, work assignments, and other privileges, and may make them ineligible for pretrial release programs.⁵¹

Moreover, most assessment tools fail to consider the needs or risk factors most relevant to women adjusting to a correctional setting and correlated to their institutional misconduct.⁵² Researchers have found, for example, that gender-responsive factors including trauma, mental illness, substance abuse, relationship problems, and parental stress either occur with greater frequency among women than men or affect women in unique personal and social ways.⁵³ Furthermore, these tools are rarely designed to assess women's strengths—such as having supportive family members—that can help mediate the impact of these gender-responsive factors.⁵⁴

How jail traumatizes women

Spending time in jail can be a deeply traumatizing experience for women. They are far more likely than men to experience sexual victimization in jail.⁵⁵ Between 2009 and 2011, women represented approximately 13 percent of people held in local jails, but 27 percent of victims of inmate-on-inmate sexual victimization and 67 percent of victims of staff-on-inmate sexual victimization.⁵⁶

Furthermore, standard correctional procedures, such as searches, restraints, and use of solitary confinement, do not take into account the violence, trauma, and mental illness the majority of incarcerated women have experienced outside of jail and can reactivate trauma in women who have suffered abuse.⁵⁷ Undergoing a full-body search for contraband or being supervised by male staff while showering, dressing, or using the bathroom, for example, can trigger painful memories and physical and emotional symptoms of PTSD.⁵⁸

Trauma survivors are likely to perceive the often invasive nature of many daily correctional procedures, and the close quarters in which incarcerated women live, as profoundly threatening, activating the distress that both underlies and accompanies trauma.⁵⁹ In turn, the way survivors typically respond to perceived threats—by fighting, fleeing, or freezing—can lead to punishment, particularly if jail authorities do not know how to detect or respond to the common symptoms of trauma. This may also result in further victimization of trauma survivors, both by staff and other incarcerated people.⁶⁰ (See “PREA and protective custody,” p. 15.)

PREA and protective custody

Standards developed in accordance with the Prison Rape Elimination Act (PREA), a federal law enacted in 2003 to eliminate sexual abuse in confinement, require correctional facilities to screen all incarcerated people for risk of sexual victimization at intake, upon transfer, and when there is a sexually abusive incident.^a Given the prevalence of trauma among incarcerated women, they are more likely to be assessed as high risk for victimization. In an effort to protect them, jail staff may isolate these women, which can itself wind up being especially damaging to their mental health.^b Isolation in a segregation unit (commonly known as solitary confinement) often involves lack of privacy and constant observation, frequently by male officers. It can also limit women's opportunities for participation in rehabilitative, educational, or vocational programs, exercise, and face-to-face mental health interventions and services.^c Knowing this, women may not report sexual abuse for fear of being placed in solitary confinement.

Some jurisdictions have developed ways to house women whom they deem as high risk for victimization without resorting to putting them in solitary confinement. Their decision-making is individualized and informed by a screening process conducted by trained staff and monitored by high-level supervisors. They also use existing staff resources to keep vulnerable people safe.^d For example,

leaders of the **Wyoming** Department of Corrections worked with prison administrators and case managers to design a screening tool and housing matrix specifically for women. After finding that the majority of women qualified for less restrictive custody, they tailored their housing practices accordingly.^e

Similarly, several jurisdictions have made efforts recently to reduce the use of segregated housing for transgender women, the majority of whom are housed in male facilities based solely on their physical anatomy and thus face a disproportionately high risk of sexual abuse.^f For example, the **Denver County** Jail no longer makes automatic housing placements based on anatomy and instead allows transgender people to fill out a "statement of preference form," including preferred name and pronouns.^g After booking, a review board—made up of jail staff members and a community member—makes a housing recommendation. In addition, transgender people are allowed private showers and can request to share cells with other transgender people as well as specify the gender of the officer who will search them if necessary. The U.S. Department of Justice recently clarified the PREA standards regarding transgender people, stating that housing based solely on anatomy violates federal law and that decisions about placement in protective housing should be made on a case-by-case basis.^h

The physical and behavioral health toll

Jails, which are generally county-run and therefore dependent on county-level funding, suffer the consequences of limited resources. They are often overcrowded, have limited resources for health care, and lack providers who are trained to address the distinctive health needs of the growing population of women in their custody.⁶¹ As a result, when women do receive care in jail, it is often both inappropriate and inadequate, leading to undetected illnesses, under or over treatment, and potentially worsening overall health for jailed women.⁶² Stretched resources can result in dangerous outcomes, including overuse of psychotropic drugs to treat all women experiencing symptoms of mental illness, even where such treatment is not warranted, and lack of evidence-based detoxification therapies, increasing the risk of drug- or alcohol-related death.⁶³

Even where appropriate healthcare services are available, they are simply inaccessible for most jailed women. Many jurisdictions, for example, charge people in jail a fee or co-pay for medical services, which

Reproductive health needs

Menstrual hygiene products. Jails often fail to meet even the most basic hygiene needs of the women in their custody. In 2014, the ACLU of Michigan sued the Muskegon County Jail on behalf of eight incarcerated women, asserting that its “inhumane and degrading policies”—including denying women menstrual hygiene products, toilet paper, and clean underwear—violated their constitutional rights.^a The case is still pending. Women in California’s jails report delays in getting necessary menstrual products because they are not immediately available, are only available on certain days or in insufficient amounts, or are provided selectively.^b Recognizing that failure to provide adequate menstrual products causes both health risks and humiliation, policymakers in **New York City** and **Dane County, Wisconsin**, for example, have undertaken efforts to make free supplies readily available to women in jail.^c

Contraceptive care. Although research shows most incarcerated women are interested in beginning contraceptive care either during incarceration or upon release, contraception is not typically available to them.

A survey of women detained at New York City’s Rikers Island jail complex found that, although New York City Department of Health and Mental Hygiene policy requires the facility to offer all jailed women family planning services, they rarely got contraceptive counseling or services during their stay or before release. The authors of the study concluded that when women are offered contraceptive services while in jail, for them to follow up in the community, there must be a network of affordable, accessible clinics and a referral process in place, which is rare.^d Another study in Rhode Island demonstrated a 12-fold increase in women beginning to use contraception when

offered the opportunity while incarcerated as compared with instruction to follow up in the community.^e

Access to abortion. Despite the likelihood that their pregnancies will be high risk—complicated by lack of access to prenatal care and adequate nutrition, substance use, sexually transmitted diseases, and physical and sexual abuse—incarcerated pregnant women are not consistently provided with information on their options or access to termination services.^f Although the U.S. Supreme Court held in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 877 (1992), that any regulation restricting abortion access cannot “plac[e] a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus,” in practice, the ability of a pregnant woman who is incarcerated to access an abortion varies widely depending on the jurisdiction and facility in which she is housed.^g Even when courts grant relief to an incarcerated woman in the face of policies that prevent access to abortion, that relief sometimes comes too late—beyond the legal limit for an abortion—which can lead to significant, irreversible medical and emotional consequences for women who did not wish to carry their pregnancies to term.^h

can be particularly burdensome for women, who typically come to jail with little ability to pay and with a greater number of—and often more acute—health and mental health challenges.⁶⁴ Delays in processing treatment requests may further hinder access to care, with potentially long-term medical consequences, especially in the context of chronic or infectious diseases, mental health disorders, or a life-threatening emergency.⁶⁵ A survey of women in the county jail in Santa Clara, California, found it took approximately 30 days for women to see a doctor after submitting a medical request.⁶⁶ (For more information, see “Reproductive health needs,” above, and “Pregnancy and childbirth in jail,” p. 17.)

Pregnancy and childbirth in jail

Gynecological and obstetric health care. Among women who were pregnant at admission to jail, less than half had received an obstetric exam since admission, and roughly one-third had received other pregnancy care, compared to 94 percent and 54 percent, respectively, of women in state prisons.^a Prisons tend to have more health-related resources than jails, and the typically longer prison stays allow time for health exams. At the time of their arrest and incarceration, many pregnant women have had no prenatal care and need considerable treatment for pregnancy-related physical and behavioral health issues to see them safely through their pregnancies.^b If jails fail to provide them with prenatal care, these women are at increased risk of miscarriages, stillbirths, and ectopic pregnancies. While few jurisdictions mandate jails to report on prenatal care provided to women in their custody, Texas enacted a law in 2015 requiring county sheriffs to collect and report prenatal care data, as well as any use of segregation or restraints for pregnant women.^c

Shackling. The practice of shackling a pregnant woman carries with it the risk of injury to both her and the fetus, through falls, dangerous levels of pressure, and restriction of circulation and fetal movement, as well as interference with medical evaluations and care.^d There are no documented escape attempts among pregnant women who were not shackled, which raises questions about the institutional concerns that are usually offered to justify shackling practices.^e While the Federal Bureau of Prisons, the U.S. Marshall Service, and approximately 21 states prohibit shackling during labor and delivery except when there is a security or flight risk, most jurisdictions do not regulate the shackling of pregnant women.^f

Postpartum separation. The majority of women who give birth while in custody are allowed between 24 and 48 hours with their newborns before handing them over to a

chosen caregiver, foster care agency, or adoptive parent.^g Yet separation from her baby can be deeply traumatizing for a mother in the postpartum period, typically described as the six weeks after birth. Contact with a newborn can enhance mother-child bonding and positively affect the mother's well-being.^h The American College of Obstetricians and Gynecologists (ACOG) and the American Public Health Association strongly recommend that jails allow women time to connect with their infants after delivery by having longer postpartum hospital stays, diversion programs, and in-custody nursery programs.ⁱ

Some jails have established nursery programs that allow mothers and their infants to live together for a period in a designated facility or unit, where the mothers receive parenting support. For example, the **Cook County Sheriff's Office** partners with a community-based organization to run the MOM's Program, a 24-bed off-site behavioral health treatment program for pregnant and postpartum women and their infants and children up to preschool age.^j Studies show that incarcerated women who participate in nursery programs have lower rates of misconduct and recidivism than those who do not participate, and their children experience no adverse effects from being in a jail facility.^k Such programs can nurture mother-child bonds during the child's earliest and most critical stages of development and have the added benefit of allowing the mother to breastfeed if she chooses.^l

Weakened family ties

For jailed women with children, separation is a major source of stress during incarceration. Typically, they face challenges just staying in touch as well as planning for reuniting when they are released. Because so many women in jail are single parents, their incarceration aggravates already strained finances and support systems.⁶⁷ Research on women in prison has linked these parental stresses to incarcerated women's misconduct and reoffending after release.⁶⁸

Although visitation can help sustain the connection between an incarcerated mother and her children—and correlates with a decrease in violence and reduced recidivism—jails do not often have policies or programs that encourage visits.⁶⁹ Limited jail visitation hours—often when children are at school and caregivers are working—and fees or surcharges for phone and video calls make contact between incarcerated mothers and their children difficult.⁷⁰ During visits, the jail environment and the strictures on visits—typically through a glass partition—diminish the quality of contact.⁷¹

When a mother leaves jail, she often faces problems reuniting with her children. In some cases, a caregiver may expect the mother to resume her parenting responsibilities immediately.⁷² In other cases, caregivers, child protection agencies, and family court judges may be reluctant to return children to their mother’s custody. Strict timelines and preconditions for reunification, as established by the 1997 Adoption and Safe Families Act (ASFA), can create complications for mothers whose children have been placed under family court jurisdiction and in foster care.⁷³ Although a woman’s stay in jail might be short, it may be impossible for her to meet criteria for regaining custody—such as attending treatment and securing housing and employment—within the prescribed timeline once she is released.⁷⁴ (See “Parenting and reunification,” below.)

Parenting and reunification

Many women struggle when they try to reunify with their children after forced separation during jail incarceration. Some jurisdictions have established jail programs that help incarcerated mothers maintain healthy connections with their children and reduce the toll incarceration takes on families.

Parenting support. Some jails offer services such as parenting classes and behavioral therapy that help mothers prepare for reunification. In **San Francisco, California**, for example, the nonprofit organization Community Works provides services to parents while they are in jail and after their release. Community Works provides cognitive-behavioral parental education, therapeutic services for parents and children, contact visits in family-friendly rooms, assistance for caregivers in arranging visits, and family reentry circles based on a restorative justice model. A staff member also works with child protective services in cases where mothers are being monitored by the agency, identifying appropriate family-focused jail services and providing the agency with progress updates, which improve the chances that mothers will reunite with their children upon release.^a

Meaningful visitation. Maintaining regular, meaningful child visits can have a positive impact on an incarcerated mother’s well-being.^b Some jails provide programs and facilities that encourage reliable and accessible visitation between mother and child. The Sheriff’s Office in **Cook County, Illinois**, allows participants in the Women’s Residential Program (WRP) to schedule hour-long, weekly contact visits with their children after they complete a four-week parenting skills course. WRP is a 160-bed inpatient substance use and mental health treatment program in a therapeutic community setting within the jail.^c The Family Support Program in **Allegheny County, Pennsylvania**, also focuses on improving parent-child relationships during the parent’s time in jail. The program, which was created by the Jail Collaboration, a partnership among probation, human and health services, program providers, and jail administration, offers participants free, coached phone calls with their children, during which staff members support parents if a conflict or difficult situation arises, and contact visits in child-friendly rooms.^d

The downward financial spiral of justice system involvement

Criminal justice involvement is now widely recognized as both a consequence and cause of poverty.⁷⁵ Anyone who spends more than a few days in jail, for example, is at risk of losing existing employment and may face diminished employment and earning potential, especially if supervision or programming requirements interfere with work hours. On top of this disadvantage, justice involvement—even when charges are ultimately dismissed—can carry significant costs given the many fines, fees, or surcharges that jails, courts, and other criminal justice agencies



Nearly half of all single black and Hispanic women possess **zero or negative net wealth.**

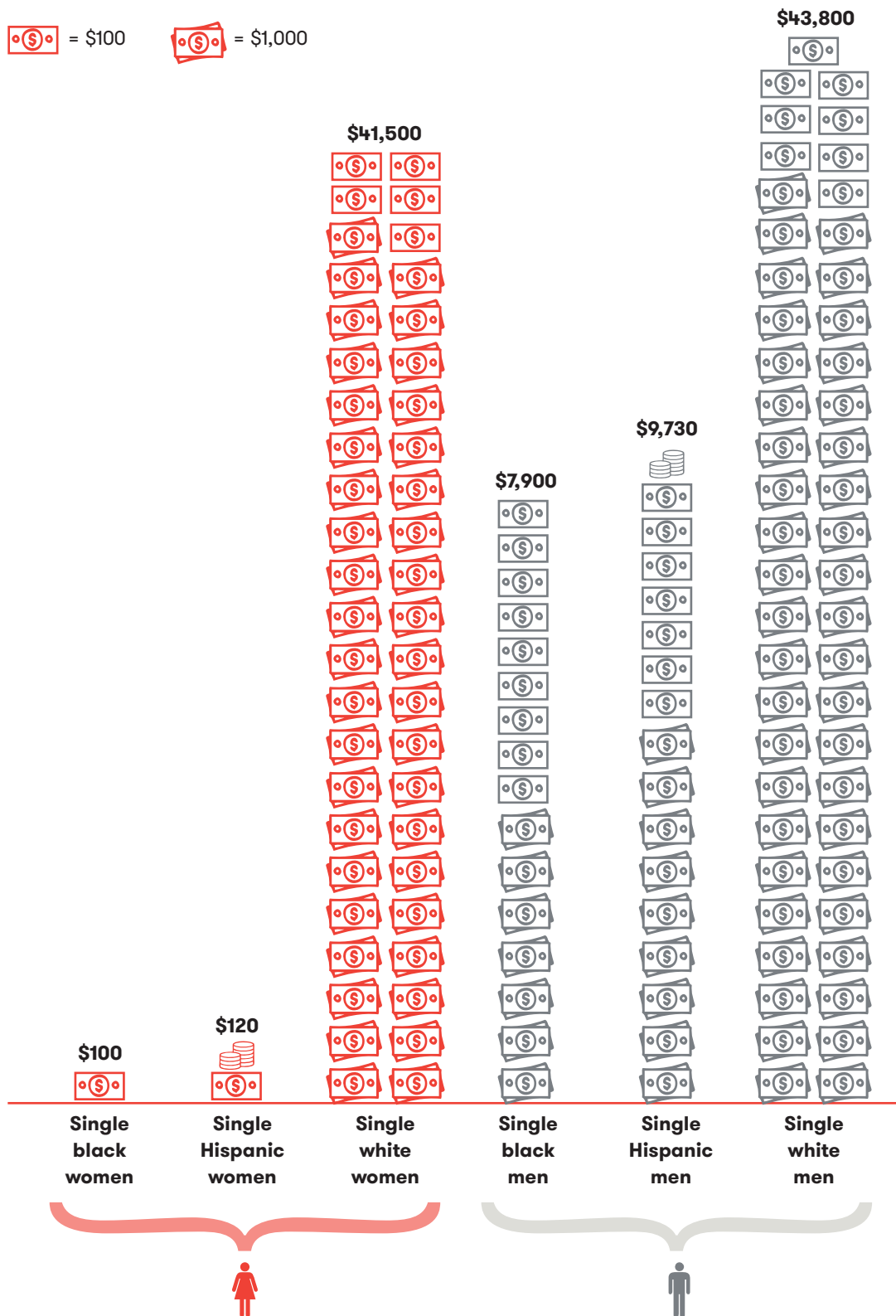
often charge defendants. These include judicially set bail—often without regard to a defendant’s ability to pay—and nonrefundable fees charged by bail bond companies; public defender application fees, which can range from \$10 to \$480, or reimbursement fees for representation, which can be thousands of dollars; and supervision, programming, and electronic monitoring fees for those released on pretrial supervision.⁷⁶ Even

when jurisdictions offer payment plans, there can be surcharges and high interest rates.⁷⁷ In total, these fines and fees can reach tens of thousands of dollars.⁷⁸ Imposition of fines and fees is more common in cases involving misdemeanors, infractions, and other less serious crimes than in felony cases, and thus may have a disproportionate impact on women.⁷⁹

Because many women who enter jail are already in a precarious financial condition, involvement with the justice system can push them and their families into even deeper financial crisis or, worse, provide a direct pathway back to jail for failure to pay off onerous criminal justice debt.⁸⁰ For black and Hispanic women, who face the greatest wealth disadvantage, these outcomes are especially likely (see Figure 3, p. 20). Nearly half of all single black and Hispanic women have zero or negative net wealth, and black women are five times more likely to live in poverty, five times more likely to receive public assistance, and three times more likely to be unemployed than white women.⁸¹ For these women, a jail stay can complicate even their most basic survival efforts, including suspension or termination of public assistance, such as food stamps or Medicaid, with profound consequences for them and their families.⁸²

Figure 3

Median net worth by race/ethnicity and gender



Source: Mariko Lin Chang, *Lifting as We Climb: Women of Color, Wealth, and America's Future* (Oakland, CA: Insight Center for Community Economic Development, 2010), 7-8.

Curbing women’s jail incarceration: What drives growth and how to reverse the trend

As policymakers and practitioners begin efforts to stop the misuse of U.S. jails, it is critical to try to understand why increasing numbers of women wind up there, and to explore what, if any, policy or practice reforms can slow this growth. Given the accelerated rise in women’s jail incarceration rates since the 1970s, coupled with the negative and often counter-productive effects of incarceration on women, their families, and communities, reform efforts must include a focus on this overlooked segment of the jail population.

Reducing the number of women entering jail, however, will be complicated. First, the cycling of so many people—both men and women—through jails, often for minor offenses, is a result of choices by autonomous decision-makers at each phase of the justice system whose actions can be difficult to align in pursuit of reduced jail incarceration. These include:

- > police who choose to arrest, release, or book people into jail;
- > prosecutors who determine whether to charge or divert arrested people;
- > judges or other judicial officers who decide to hold or release arrested people pending case resolution;
- > court actors, such as clerks, prosecutors, defense counsel, or judges, whose action or inaction can accelerate or delay case processing and outcomes; and
- > community corrections agencies that decide how to respond to alleged violations of community supervision conditions.

Any strategy to limit jail detention that addresses only one of these decision points is likely to fall short. For example, focusing only on

reducing the pretrial population—by instituting a pretrial risk assessment tool or establishing a pretrial services program—risks ignoring other potential drivers of jail admissions and detention, such as an increase in the number of people revoked from community supervision.

Second, most current efforts to reduce jail populations still largely ignore the important distinctions between the risk factors and treatment needs of women and men. The sparse body of research looking at how women fare at each decision point reflects policymakers' inattention to the patterns of women's offending and victimization and their potential routes away from justice system involvement. As a result, few jurisdictions have specific programs and practices designed to reduce the flow of women into jail and prevent their deeper involvement in the criminal justice system.

However, some existing strategies—though not necessarily focused on women specifically—may offer guidance in crafting a way forward. There are already system responses that, if expanded and brought to scale, can reduce the number of women in jail. These include:

- > making policy choices that move away from enforcing or prosecuting low-level crimes;
- > assigning defense counsel at the earliest stages of a case;
- > expanding use of release on recognizance; and
- > creating special court parts that deal exclusively with bail review or disposition of certain cases.

Some jurisdictions across the country have begun to explore practices to divert people from the justice system at various decision points. Because many of these off-ramp strategies are designed for people with the risk factors that are most prevalent among women caught up in the justice system—substance abuse, trauma, and mental health—they could be instructive. And in a few places, policymakers have begun to address the costs and consequences of the uptick in women's jail incarceration rates head-on.

To begin the discussion about how to reduce the number of women in jail and improve outcomes for those involved in the justice system, the next section will examine the factors that contribute to their jail incarceration at four system points—arrest, charge, bail and pretrial release, and sentencing. This section also gives examples of policies, practices, and programs that hold the promise of reducing the rising number of women in jail.

Broken windows policing and women's arrest risk

Beginning in the 1990s, shifts in police policy and enforcement practices nationwide contributed to the escalation of arrests of women. One especially significant change was the embrace of “broken windows” policing by many departments.⁸³ The policing practices that stemmed from the broken windows theory stressed responses to quality-of-life and other low-level offenses—such as petty theft, disorderly conduct, public intoxication, loitering, or vagrancy—as a way of preventing more serious crimes.⁸⁴

The shifts in policing priorities toward lower-level offenses converged with the dramatic escalation in the criminalization and enforcement of drug offenses throughout the 1980s and 1990s as a result of the ongoing national “War on Drugs.” These changes involved an increasingly elastic interpretation of criminal offenses, such as conspiracy—or working together to commit an illegal act—as well as the lowering of thresholds separating minor and serious offenses (for example, by reducing the dollar or drug amount that triggers a felony charge).⁸⁵ The result was a further widening of the justice system's net.

While the increased focus on minor offenses stemming from these policies expanded both men's and women's risk of arrest, there have been clear gendered impacts in practice that magnified the likelihood of arrests of women. This is primarily because women are more likely to be involved in minor offenses like simple drug possession—the type of activity targeted by both drug law enforcement and broken windows policing.⁸⁶

As a result, the number of women arrested, as a proportion of total arrests, increased from 11 percent in 1960 to 26 percent in 2014 (see Figure 4, p. 24).⁸⁷ And according to the most recent data that recorded gender, the vast majority of arrests that led to jail detention have been for drug offenses, public order offenses, or property offenses, such as larceny/theft.⁸⁸ Between 1980 and 2009, for example, the arrest rate for drug possession or use tripled for women—while the arrest rate for men doubled.⁸⁹ By the early 2000s, 50 percent of women in jails were in custody on public order or drug charges.⁹⁰ Today, arrest rates for women remain highest for “other-except-traffic” offenses (a category that includes criminal mischief, local ordinance violations, public disorder, and harassment); substance use, such as drug possession and

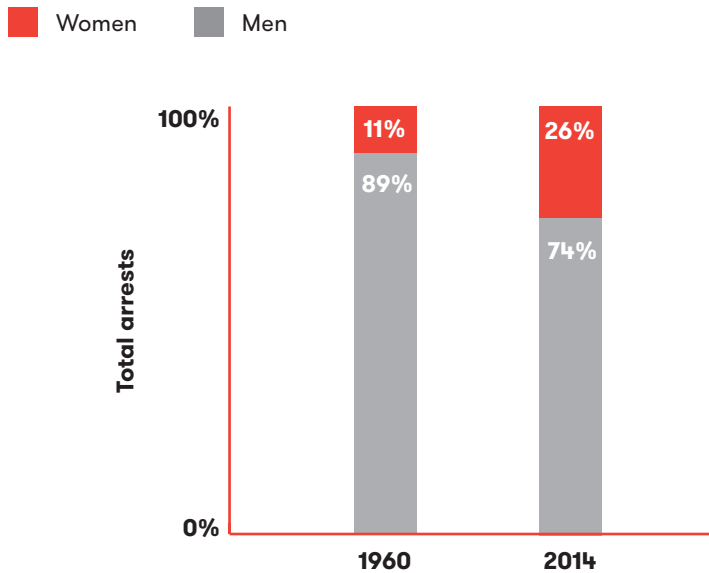
Drug arrest rates, 1980–2009



Between 1980 and 2009, the arrest rate for drug possession or use tripled for women, while the rate for men doubled.

driving while under the influence (DUI); minor property crimes, such as shoplifting; and simple assault, such as threats or minor attacks like biting, shoving, hitting, or kicking.⁹¹

Figure 4
Proportion of arrests by sex, 1960 and 2014



Source: Federal Bureau of Investigation, "2014 Crime in the United States: Table 33 – Ten-Year Arrest Trends by Sex, 2005-2014," <https://perma.cc/TH7F-53AD> and Federal Bureau of Investigation, *Crime in the United States: Uniform Crime Reports – 1960* (Washington, DC: U.S. Government Printing Office, 1961), 94, 100.

As national crime rates have declined over the past two decades, law enforcement agencies are more willing to explore approaches that help people who come into contact with the police get treatment or other services rather than a jail stay. In some communities, for example, police departments have set up diversion programs, designed to refer people whose behavior may indicate trauma, substance use, or mental health problems—issues prevalent among justice-involved women—to treatment. In other jurisdictions, officers may respond to calls for assistance by contacting a mobile crisis team from the public mental health system or other specially trained law enforcement officers to help address the crisis.⁹² These approaches help make treatment more accessible, and may also avert the short- and long-term disruption to women's lives from even a short stay in jail and the collateral consequences of a conviction. (See "In lieu of custodial arrest," p. 25.)

In lieu of custodial arrest

Law enforcement agencies across the country are evaluating how their practices have contributed to the dramatic growth of the number of people in jail and are crafting solutions to deploy their limited resources more strategically while maintaining public safety. Some jurisdictions have turned to alternatives to arrest or taking someone into custody after arrest.

Decline to arrest. Shifting focus away from arresting people accused of minor offenses to more serious ones has the potential to prevent women from becoming caught up in the justice system. For example, in 2007, the **Baltimore, Maryland** Police Department adopted a policy of not arresting people for low-level, quality-of-life crimes, such as misdemeanor drug and nuisance offenses. As a result, in 2010, the number of women in jail in Baltimore had declined 15 percent as compared with the number in 2005.^a

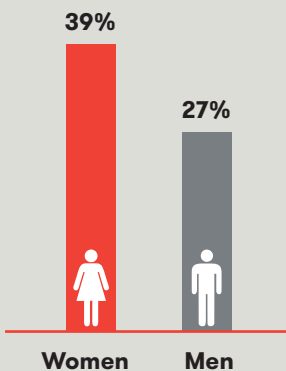
Cite and release practices. Police departments have reduced the number of arrests for low-level offenses such as petty theft, driving with a suspended license, and possession of marijuana—and thus reserved use of jails for those detained for public safety reasons—by issuing citations in lieu of arrest. The citation is a written order requiring the person to appear in court on a specific date.^b In **New York City**, police officers take people arrested for certain non-felony offenses to the precinct, where they get a desk appearance ticket

(DAT). They are then released with instructions to appear in court at a later date rather than remaining in custody. Women are more likely than men to get a DAT in lieu of custodial arrest. In 2012, for example, the DAT issuance rate for women was 39 percent, compared to 27 percent for men; women comprised 15 percent of total custodial arrests (see Figure 5).^c

Figure 5

Issuance rates of desk appearance tickets, 2012

In **New York City**, issuance rates of desk appearance tickets in lieu of custodial arrest in non-felony cases are higher for women than for men.



Pre-arrest crisis intervention. Law enforcement agencies often serve as the de facto responders for people experiencing mental health crises.^d In recent years, however, many jurisdictions have adopted strategies to direct people suffering crises and dealing with trauma toward services, rather than criminalizing their problems. This intervention can be particularly beneficial for women, given their higher rates of mental illness. The **Memphis, Tennessee** Crisis Intervention Team (CIT) model is a pre-arrest diversion strategy in which specially trained officers who encounter someone exhibiting symptoms of crisis decide whether to make an arrest or a referral to community-based treatment.^e An assessment of CIT practices in **Akron, Ohio**, found that over a six-year period, 25 percent of CIT calls resulted in transport to emergency services; 31 percent resulted in transport to a hospital or community-treatment facility; 32 percent resulted in no police transport; and just 3 percent resulted in arrest.^f

In **Tulsa, Oklahoma**, Family and Children's Services offers 24-hour telephone and mobile crisis services to people experiencing severe emotional, behavioral, and psychiatric emergencies.^g The Community Outreach Psychiatric Emergency Services (COPES) team partners with law enforcement, EMTs, firefighters, and community members who have called for crisis assistance. COPES staff gather information about the person in crisis to assess whether she or he can safely stay in the community with a safety plan and resources or should have a mental health evaluation. Between July 2014 and June 2016, COPES responded to 10,347 calls, 3,880 of which were for women in crisis. Of those women, just 130 (3 percent) were taken to jail.^h

Pre-booking diversion. Criminal justice and community stakeholders in **King County, Washington**, created the Law Enforcement Assisted Diversion (LEAD) program to offer a pre-booking diversion opportunity for low-level offenses related to substance use, mental illness, and poverty. Though not specifically created for women, women constituted 34 percent of the participants during the program's evaluation.ⁱ Officers are trained to identify eligible people and refer them to a case management process after arrest but prior to booking them into jail. A recent assessment of the program found 80 percent of participants were homeless, reflecting the complications of finding safe, affordable long-term housing for criminal justice system-involved people.^j Participants diverted to LEAD case management services were 58 percent less likely to be re-arrested than those who had been arrested and booked for similar offenses.^k

Prostitution diversion programs: Stigmatizing victims?

At the time of this publication, among the 40 largest jurisdictions (those with one million residents or more in 2014) in the United States, at least 73 percent (29) have had or currently have programs or services affiliated with the criminal justice system that address prostitution and are generally, though not exclusively, developed for women, either through pilot projects, one-time initiatives, or consistently available programming.

Those jurisdictions are Los Angeles, Sacramento, Alameda County, and San Bernardino County, CA; Philadelphia and Allegheny County, PA; Salt Lake County, UT; Pima County and Maricopa County, AZ; Hillsborough County, Palm Beach County, and Broward County, FL; Dallas County, Harris County, Travis County, Tarrant County, and Bexar County, TX; Cook County, IL; King County, WA; St. Louis County, MO; Mecklenburg County, NC; Suffolk County, Nassau County, and New York City, NY; Hennepin County, MN; Wayne County, MI; Franklin County, OH; Clark County, NV; and Middlesex County, MA. The diversion programs are overseen by different agencies, varying by jurisdiction. In some cases, the program is court-run, and in others, law enforcement or the prosecutor's office runs the program.

Although prostitution accounts for a larger percentage of women's total arrests as compared to men's, it is not a

primary driver of women's incarceration. In 2014, prostitution arrests accounted for less than 1 percent of the total arrests for women nationwide.^a There is some debate among advocates for sex workers, criminal justice experts, and justice system professionals about whether declining prostitution arrest rates are the result of policing strategies, targeted diversion and programming efforts, changes in the types of crimes women commit, or an overall drop in crime.^b

While many prostitution diversion programs are well-intentioned, some experts argue that they may in fact bring more women into contact with the justice system, often disproportionately women of color and transgender women.^c To initiate the referral process, some jurisdictions use tactics similar to drug stings. Officers do targeted sweeps of neighborhoods where they believe people are engaging in prostitution and may make arrests based on subjective characteristics or observed circumstances: standing or walking in a particular area, asking for or accepting a ride to a destination, or carrying condoms.^d Critics of this practice say that it is senseless to treat prostitution defendants as victims *and* offenders, with the provision of services and treatment predicated upon arrest and threat of incarceration. An arrest record may make it more challenging for women to find other forms of work and leave the sex trade, perpetuating the cycle of disadvantage.^e

Why charging practices for low-level offenses disparately affect women

For most low-level, non-violent offenses—the kinds of offenses with which the vast majority of arrested women are typically charged—prosecutors offer standard and quick plea offers at arraignment, or shortly thereafter, such as a suspended, “time-served,” or community-based sentence that may include community service or out-patient treatment.⁹³ These dispositions require minimal resource outlay, are likely to be accepted by defendants, and secure convictions or other outcomes that align with prosecutors' objectives.⁹⁴ In some cases, accepting these types of plea offers and pleading guilty may be the fastest way for women to secure release from jail, even though they risk increased exposure to potentially wider punishment, including a pathway back to jail if they fail to follow the terms or conditions of release.⁹⁵ (See “How community-based sentences undermine women's outcomes,” p. 32.)

When women face more complex charges, such as those involving

other defendants, their typically peripheral roles put them at a decided disadvantage. For example, if their alleged participation was minor, trivial, impromptu, or uninformed—such as a carrier or small-scale seller of drugs in a drug conspiracy case—they have less leverage to negotiate a favorable plea deal because they have little information about others' crimes or contacts to trade for a lesser sentence.⁹⁶ While some women are co-equal or independent actors in criminal activity, even women with minimal or no involvement or knowledge have been increasingly swept into the justice system as the result of the wide application of certain charges, such as conspiracy and accomplice liability.⁹⁷ Complicity law, for example, recognizes no difference between “major” or “minor” accomplices, and accomplices, if found guilty, are not held to a separate, lesser offense of “aiding and abetting,” but are treated like the principal actor in terms of guilt and punishment.⁹⁸ As a result, women and other lower-level participants can face the same sentences as their more significantly involved counterparts, for instance, by simply taking a phone message or allowing a partner or family member to keep items at their home.⁹⁹

Typically, prosecutors come to know defendants solely through their criminal history or the facts of an individual case and may not see or understand the factors underlying a defendant's involvement with the justice system. Recently, however, some jurisdictions have begun to develop strategies that take a more individualized approach to case screening. For example, prosecutor offices are re-evaluating how they handle certain cases, declining to prosecute low-level offenses (such as minor drug or public order offenses), or relying more on alternatives to prosecution, such as problem-solving courts and prosecution-led diversion programs. (See “Alternatives to prosecution,” p. 28.) These alternatives allow for the early identification of defendants suitable for diversion, especially those whose underlying conditions contribute to their justice-system involvement—such as mental illness, substance abuse, or homelessness. To be effective, such diversion programs must include partnerships with community-based service and treatment providers that allow prosecutors to refer women to appropriate services.

Alternatives to prosecution

When jurisdictions establish policies and programs that allow for alternatives to traditional prosecution, women caught up in the justice system stand to benefit. Such approaches generally focus on less serious offenses and often aim to connect people to services and treatment in the community. People in these programs potentially avoid a criminal conviction and its collateral consequences.

Decline to prosecute. Some jurisdictions have instituted policies to decline to prosecute certain low-level offenses. In October 2014, the City of **Philadelphia** decriminalized possession of small amounts of marijuana. During its first year in effect, the new law resulted in police officers issuing 1,012 civil citations, compared to 3,686 arrests made during the previous year for the same infractions.^a Following this reform, the city recently passed legislation that converted criminal summonses for certain low-level offenses, such as disorderly conduct and failure to disperse, into civil citations and fines.^b

Prosecutorial diversion. Prosecutors have wide discretion to accept or dismiss cases. In many instances, prosecutors reroute some types of low-risk cases from the criminal justice process into diversion programs to ease overloaded court dockets and the pressures of jail overcrowding. In other instances, they identify higher-risk defendants whose criminal behaviors might be better influenced by targeted services, such as substance abuse or mental health treatment, than a custodial sentence. For example, the **Milwaukee** County District Attorney's Office has created multiple prosecutorial diversion programs. While the diversion program is open to eligible defendants who are determined to be low-risk, the Deferred Prosecution Agreement (DPA) program serves eligible defendants found to be at medium- to high-risk of reoffense. A defendant always has counsel present when deciding whether to enter into a diversion or deferred prosecution agreement. A diversion agreement may include restitution payment and refraining from committing another crime for the diversion term. Those who successfully meet the conditions of their agreement will not be subject to a criminal charge, while those who fail will be prosecuted. Participants in the DPA program enter a guilty plea and sign an agreement, and the judgment of conviction is deferred. Conditions can include cognitive behavioral therapy, substance use or mental health treatment, restitution payment, and drug testing, and must be directly connected to the defendant's actuarial needs and case management. Those who are not successful in the program will be sentenced on the charges as pled. When a defendant successfully completes the DPA program, the charges are either dismissed or reduced, depending on the

signed agreement. A diversion agreement generally lasts six months, while a DPA lasts for at least six months.^c

Problem-solving courts. Started in 1989, more than 3,000 problem-solving courts, which tend to focus on justice-involved people with specific challenges such as substance abuse, mental illness, and homelessness, now exist across the United States.^d Using specially designed case management procedures, these courts—in collaboration with other criminal justice and social services agencies—aim to address the underlying causes of offending while holding participants accountable. Although the **Brooklyn** Treatment Court (BTC) in New York was not designed specifically for women, one of its areas of focus has been to provide needed services to ensure women involved with the justice system have the tools to be as successful in treatment as their male counterparts. BTC approaches all participants as if they have experienced trauma. It trains all court staff—case managers, the judge, defense counsel, the prosecutor, court reporters, and clerks—and treatment team members in trauma-informed care. A specially assigned assistant district attorney (ADA) reviews cases of defendants charged with non-violent substance abuse-related felonies to determine their legal eligibility. If deemed eligible, a potential participant undergoes a second screening by clinical staff that includes addiction and trauma assessments. The BTC team then develops a treatment plan for the participant, which can include residential or outpatient treatment with a community-based provider and regular case management meetings. The participant initially enters a guilty plea; upon successful completion of the treatment plan, the court voids the plea and dismisses the charges. As of 2016, approximately 35 to 40 percent of active participants are women.^e

The **Red Hook** Community Justice Center (RHCJC), also located in Brooklyn, NY, serves as a multi-jurisdictional problem-solving court for misdemeanors and certain low-level felonies that would traditionally go to criminal court. On-site clinical staff, trained in trauma-informed care, use strengths-based assessments to refer people to appropriate services, including gender-specific programming for women, who make up about 10 percent of defendants referred each year. The center works with participants on individualized programs ranging from community restitution projects and on-site short-term psycho-educational groups to long-term substance abuse or mental health treatment, while also conducting trials for defendants who choose to fight the charges against them. Access to social services at RHCJC does not require a guilty plea and is available to the entire community, regardless of justice system involvement.^f

Pretrial release and supervision practices ignore the realities of women’s lives

The most recent available data suggest that women generally receive greater leniency than men when judges, magistrates, or bail commissioners make pretrial custody and release decisions. On average, women were released on their own recognizance (ROR) at higher rates; were denied release less often; and when bail was set, amounts were lower for women than for men.¹⁰⁰ This may be because women have less extensive criminal histories, and their alleged offenses typically pose less of a public safety risk than those of men.¹⁰¹ There is speculation, too, that judicial system decision-makers view women as more integral to family life, primarily in caring for children, and are therefore more willing to release them.¹⁰²

When judicial officers do set financial bail for women, however, women are less likely to be able to afford it.¹⁰³ Their inability to post a cash bond is a result of the wide range of social barriers many women involved with the justice system face, but is also rooted in systemic income inequality. In 2014, all women typically earned 79 cents for every dollar all men earned, and this gap was much larger for women of color, with black women earning 63 cents and Hispanic women earning 54 cents to every dollar white men earned.¹⁰⁴ As a result, with judicial officers increasingly imposing cash bail as a condition of release over time—an ostensibly gender-neutral policy—it is unsurprising that more and more women are

What is risk assessment?

In the criminal justice system, risk assessment instruments measure the likelihood that a person will commit another offense. Needs assessments identify a person’s criminogenic needs—that is, personal challenges and circumstances known to predict criminal activity if they do not change, such as anti-social attitudes or low educational achievement.

Today’s assessment tools measure static (those things that can’t be changed, such as age or criminal history) and dynamic (those that can change, such as drug addiction or anti-social peers) risk factors, criminogenic needs, and strengths present in a person’s behavior, life, or history. There is a variety of assessment tools available for different purposes. Some are proprietary while others are available at no cost. Whatever tool is used in whatever context, states and counties must validate them by applying them to data from their own populations.

Assessment tools are used to some degree in all states and in many counties at a number of decision points in the criminal justice process and in a variety of settings. Judges and releasing authorities use information from assessment tools to guide decisions regarding pretrial release or detention and release on parole; corrections agencies use them for placement within correctional facilities, assignment to supervision level or to specialized caseloads, and for recommendations regarding conditions of release. Because the most accurate tools evaluate the person’s dynamic risk factors and needs, they should be re-administered routinely to determine whether current supervision or custody levels and programming are still appropriate.

* Adapted from Peggy McGarry et al., *The Potential of Community Corrections to Improve Safety and Reduce Incarceration* (New York: Vera Institute of Justice, 2013), 16

unable to pay their way out of jail.¹⁰⁵ For example, in 2012, 36 percent of women detained in a pretrial unit in Massachusetts were there because they could not afford bail amounts of less than \$500.¹⁰⁶ Across three facilities—Framingham, Suffolk County House of Correction, and Western Massachusetts Women’s Correctional Center—83, 88, and 77 percent, respectively, of women detained pretrial were held on bail amounts less than \$2,000. The range of pretrial length of stay for those women was 60 to 77 days.¹⁰⁷

Recognizing that cash bail unjustly disadvantages the poor, some jurisdictions have embraced alternatives, including pretrial risk assessment and expanded use of ROR or unsecured bonds, which do not require defendants to deposit any money upon release. Other strategies have included review hearings after a defendant has been in jail because of inability to post bond for a set amount of days—generally less than a week—and pretrial supervision programs for those determined to be higher risk.

While some of these alternatives—such as expanded use of ROR—are likely to affect women positively, others designed with only men in mind may produce negative outcomes. For example, women can experience disadvantages in pretrial systems that rely on risk assessment tools, which identify the likelihood of a defendant’s failure to appear for scheduled court appearances or the public safety risk of releasing the defendant pretrial.¹⁰⁸ (See “What is risk assessment?” p. 29.) These assessments are frequently validated on samples largely, or exclusively, comprised of justice-involved men, and typically only consider static factors—such as the current offense and prior criminal behavior.¹⁰⁹ As discussed previously, because women generally pose minimal risk to community safety, assessing their level of risk using factors that are predictive of men’s dangerousness can result in over-classification.¹¹⁰ (See “Gender bias in jail classification,” p. 13.) Moreover, most pretrial risk assessment tools do not consider women’s specific needs that might contribute to pretrial failure when left unaddressed, such as histories of abuse, substance use, mental illness, and economic challenges.¹¹¹

In the absence of tools to assess women’s risk factors and needs accurately, pretrial agencies lack the resources for planning gender-responsive pretrial supervision and release conditions—a formula for women’s failure when they return to the community from jail.¹¹² Gender-neutral pretrial programs often miss the unique obligations and challenges women face in caring for young children, for example, and may conflict with a woman’s ability to parent her children.¹¹³ Women who are sole caretakers and lack the resources to get childcare may have trouble complying with conditions of pretrial release such as attending classes,

regular court appearances, or appointments with supervision officers.¹¹⁴

To avoid these pitfalls, some pretrial agencies have begun to use additional assessments to identify defendants' specific needs, although very few use instruments designed to assess women's particular circumstances.¹¹⁵ For women with greater needs, well-designed, gender-responsive pretrial supervision presents an opportunity to begin integrated case management that continues throughout their involvement with the criminal justice system and uses a multidisciplinary strategy to connect them to services and resources in the community.¹¹⁶

Alternative pretrial strategies

Currently, jurisdictions are undertaking efforts to reduce the number of people held in jail because they are unable to post cash bail. While there are smaller changes in pretrial decision-making that can begin to address the number of women detained on low-level charges and low bail amounts—such as early bail determinations and bail review hearings—others are more sweeping, including the implementation of gender-responsive pretrial risk assessment tools and robust pretrial services programs.

Early bail determinations and bail review hearings.

Early bail determinations provide the possibility of release shortly after arrest, potentially allowing eligible people to avoid the collateral consequences of brief periods of incarceration. In **Maryland**, for example, defendants must have bail set by a commissioner within 24 hours, and those not released or unable to post bail are entitled to a further bail hearing before a district court judge either immediately or on the next court business day.^a Bail review hearings allow judges, attorneys, and other system actors to reconsider bail amounts for people unable to afford their initial bond. In **California**, those detained pretrial because they cannot pay bail are entitled to an automatic review within five days of bail being set.^b

Early appointment of counsel. Providing appointed counsel at bail or bail review hearings can make a significant difference. One study found that unrepresented defendants in **Baltimore** who subsequently appeared with counsel at a bail review hearing were released on their own recognizance two and a half times more often than unrepresented defendants (34 percent compared to 13 percent) and had their bail amounts significantly reduced more than four times as often (59 percent compared to 14 percent).^c

Unsecured bonds. While financial bond is the most common form of bail, many jurisdictions' statutes also allow for the use of unsecured bonds.^d An unsecured bond is a personal recognizance bond with a monetary amount set, meaning the defendant is not required to post money prior to pretrial release, but if she fails to appear in court, she will owe the full amount.^e A recent study by the Pretrial Justice Institute found that on average, people released on unsecured bonds were just as likely to appear in court and less likely to have new charges filed against them during their pretrial release.^f

Gender-responsive pretrial strategies. According to the most recent survey of pretrial agencies, only 5 percent used supervision procedures tailored for women.^g Yet a gender-responsive pretrial assessment tool has been developed and validated. Currently used by the **Hamilton County, Ohio** Pretrial and Community Transition Services Department, the Inventory of Need Pretrial Screening Tool focuses on risks and needs specific to women and was found to correlate better with women's outcomes than gender-neutral assessments.^h In addition, Hamilton County has counseling experts to explain available community-based resources to judges, which creates greater awareness about alternatives to pretrial detention and a pipeline to community services.ⁱ Other jurisdictions have also developed pretrial programs to provide services tailored toward women's needs. The **Cook County, Illinois** Sheriff's Office, for example, established a Department of Women's Justice Programs, which includes a furlough program that allows women held pretrial to be released with electronic monitoring to receive outpatient services during the day and care for their families in the evening.^j

How community-based sentences undermine women's outcomes

The sentences women receive are generally community-based, largely because women are far less likely to commit serious or violent offenses and therefore pose less risk to public safety.¹¹⁷ In fact, the vast majority of women caught up in the justice system—nearly 85 percent—were under community supervision in 2013 (more than 962,000 on probation and 102,000 on parole).¹¹⁸ At yearend 2014, women made up a quarter of all people on probation.¹¹⁹

A significant proportion of women, however, do not complete their community supervision successfully.¹²⁰ Violation of the terms of their supervision—which is often for technical reasons, such as a missed appointment or unpaid fines or fees, rather than committing new offenses—may result in increased requirements or additional sanctions. These can include short stays in jail, or worse, the substitution of a custodial sentence in either jail or prison.¹²¹ Women sent to jail for violating supervision conditions can face considerable lengths of stay. In Davidson County, Tennessee, for example, women admitted to jail to serve time for violating probation conditions spent more than two months in jail, on average.¹²²

There are a number of reasons for community supervision failure among women. Supervision conditions—including available treatment or programming—are too-often designed with men in mind or fail to address women's specific risk factors or treatment needs.¹²³ Violations may also result from the challenges of juggling supervision requirements with work and family responsibilities. Moreover, these women often have to navigate multiple agencies and systems—including health care, public assistance, and child welfare—with potentially conflicting expectations and requirements.¹²⁴ Additionally, the payment of fines and fees as a condition of community supervision increases women's risk of failure given their high rates of poverty and low rates of employment.¹²⁵

Jurisdictions exploring alternative approaches to community supervision have identified the need to provide women with more targeted and comprehensive services that address the complex and intersecting disadvantages they experience because of poverty, educational deficits, trauma, mental health problems, substance use, and unhealthy relationships.¹²⁶ Some of those jurisdictions taking a more gender-responsive approach have found that access to effective treatment services is an especially critical part of a woman's recovery. A study of every person discharged from probation in Illinois during November 2000 found,

for example, that women on probation who completed substance abuse treatment were 75 percent less likely to be rearrested, while women who did not complete treatment were three times more likely to be rearrested.¹²⁷ (For more information, see “Gender-responsive supervision and reentry” below.)

Gender-responsive supervision and reentry

The development of strong connections between the criminal justice system and culturally competent, gender-responsive community services and treatment providers can provide alternative methods of accountability that promote recovery and support for women who are returning to their community after incarceration.

Gender-responsive probation. While community supervision is not often tailored to meet women’s specific needs, the National Institute of Corrections initiated the development of the Women’s Offender Case Management (WOCM) model, a gender-responsive supervision model for women.^a For example, at the **Connecticut** Judicial Branch, Court Support Services Division, Adult Probation, a specialized unit supervises women sentenced to probation using the WOCM model. This unit uses a team approach that includes service providers, family and other community supports, and the woman herself to identify her needs and strengths, establish goals, and broker necessary community-based services. To participate, women must be at least 18 years old, newly sentenced to probation for a minimum of 12 months, and score as medium- or high-risk to reoffend.^b

Reentry-focused courts. Reentry-focused courts for women consider drivers of their justice involvement: substance use, mental illness, homelessness, and trauma. Many times, charges are dismissed, deferred, or reduced after successful completion of court-ordered treatment. In **Los Angeles County, California**, the Women’s Reentry Court serves as an alternative to prosecution program for women on parole and probation who are facing new felony charges. In lieu of a prison or jail stay, it provides intensive

mental health and substance abuse treatment services, case management, and employment support specifically for women. Other available services include housing, family reunification, and domestic violence counseling. The program has demonstrated that women deemed high-risk can safely remain in the community.^c In **Cook County, Illinois**, the Women’s Rehabilitation Alternative Probation (WRAP) Drug Treatment Court addresses the needs of women who have been arrested for a new drug possession charge while serving a probation sentence. The program is supervised by a multidisciplinary team, which consists of a judge, prosecutor, defense attorney, and representatives from probation, corrections, and treatment services to support women in their recovery and participation in comprehensive care.^d

Reentry support. Women face specific challenges in returning to their communities from incarceration as a result of high rates of poverty, low rates of employment, and lack of affordable child care.^e In **San Francisco, California**, Cameo House is a residential alternative sentencing program that provides pregnant and parenting women with substance abuse prevention, parenting skills, and reentry services. Women may stay for up to two years in the house while they get help in gaining employment, reunifying with their children, finding permanent housing, and satisfying probation requirements.^f Another program in **Solano County, California**, Women’s Reentry Achievement Program (WRAP), provides pre- and post-release services to jailed mothers assessed as high-risk. WRAP includes intensive case management, peer support, primary care, transportation, employment services, parenting classes, and individual and family counseling.^g

Conclusion

Local jurisdictions should reserve jail incarceration as a last resort for women who are deemed a flight risk or a danger to public safety. Instead, they have allowed jails to become stopgap providers of social services, mental health and substance use assessment and treatment, and temporary housing for women caught up in the justice system—a catchall for those who have slipped through the net of community services, if any exist. Although some policymakers are beginning to engage in more targeted efforts to reduce the number of women who are incarcerated at the local level, the institutional structures of America’s criminal justice system—police departments, prosecutor offices, courts, and jails themselves—still remain largely focused on those who make up the vast majority of people they encounter: men. As this report has documented, however, a foundation for reform exists and can potentially set the stage for further, well-crafted programs and practices to stem the flow of women cycling through the nation’s local jails. First, justice systems—both small and large—and community stakeholders must commit to bringing women into the discussion.

To start, many questions remain about women and jail incarceration. Very few up-to-date studies have continuously or rigorously examined the reasons why increasingly more women end up in jail; nor have they questioned why traditional off-ramp mechanisms—such as gender-neutral arrest or case-processing practices to divert people away from the justice system generally and incarceration specifically—are not always successful in keeping women out of jail. And while discretionary practices of key actors in the justice system such as the police or prosecutors have helped to expand women’s jail populations over time, many of those practices—and the reasons underlying them—are based on internal policies or practices that are difficult to study and thus modify.

As jurisdictions increasingly look to each other for successful jail-reduction strategies, deliberate, data-driven policy development and research into outcomes are ever more critical. To move beyond an almost solely male-focused criminal justice reform landscape into a future in which women are brought more centrally into frame, there is an urgent

need for data-gathering and analysis—including data cross-referencing gender, race, and ethnicity—to track the gendered impact of current system practices and understand problem areas. While each agency within a local system must turn a critical eye to its own practices and how these have contributed to the rising number of women in jail, all agencies must come together in a collaborative effort to integrate and collectively understand that data. Only then can they draw a system-wide picture of women's pathways into jail and evaluate the extent to which existing or proposed reforms will reach women. This process may also encourage policies and practices that are better designed and tailored to meet the specific needs of women involved with the justice system and their families.

Endnotes

- 1 Vera Institute of Justice analysis of the Bureau of Justice Statistics Census of Jails and Annual Survey of Jails.
- 2 Ibid.; see also Todd D. Minton and Zhen Zeng, *Jail Inmates at Midyear 2014* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2015), 3, and Ram Subramanian, Christian Henrichson, and Jacob Kang-Brown, *In Our Own Backyard: Confronting Growth and Disparities in American Jails* (New York: Vera Institute of Justice, 2015), 7-8.
- 3 For annual jail admissions, see Minton and Zeng, 2015, p. 8. For jail population compared to the total number of people incarcerated, see Danielle Kaeble et al., *Correctional Populations in the United States, 2014* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2015), 2. For examples of the growing focus on the role of jails in mass incarceration, see MacArthur Foundation, “20 Diverse Communities Receive MacArthur Support to Reduce Jail Populations, Improve Local Systems, and Model Reforms for the Nation,” press release (Chicago: MacArthur Foundation, April 13, 2016); Peter Wagner and Bernadette Rabuy, *Mass Incarceration: The Whole Pie 2016* (Easthampton, MA: Prison Policy Initiative, 2016); and Tom Dart, “To End Mass Incarceration, Think Local,” *The Wall Street Journal*, May 30, 2016, <http://www.wsj.com/articles/to-end-mass-incarceration-think-local-1464642713>.
- 4 Lauren E. Glaze and Danielle Kaeble, *Correctional Populations in the United States, 2013* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2014), 7. Between 2010 and 2013, for example, the number of men and women decreased across all correctional populations, except for women in jails (up 11 percent) and men on parole (up 2 percent).
- 5 Subramanian, Henrichson, and Kang-Brown, 2015, pp. 12-14. In 2014, there were approximately 106,000 women in prison and 109,000 women in jail. See E. Ann Carson, *Prisoners in 2014* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2015), 5; Minton and Zeng, 2015, p. 3.
- 6 Vera Institute of Justice analysis of the Bureau of Justice Statistics Census of Jails and Annual Survey of Jails.
- 7 Subramanian, Henrichson, and Kang-Brown, 2015, p. 11; Vera Institute of Justice analysis of the Bureau of Justice Statistics Census of Jails and Annual Survey of Jails.
- 8 Vera Institute of Justice analysis of the Bureau of Justice Statistics Census of Jails and Annual Survey of Jails.
- 9 For example, much of the most recent research by the federal government that drills down into specifics about women in jail—such as charges and race and ethnicity—was conducted in the late 1990s and early 2000s. See, e.g., Doris J. James, *Profile of Jail Inmates, 2002* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2004), 4, and Lawrence A. Greenfeld and Tracy L. Snell, *Women Offenders* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2000), 7.
- 10 See Barbara Bloom, Barbara Owen, and Stephanie Covington, *A Theoretical Basis for Gender-Responsive Strategies in Criminal Justice* (Chicago: American Society of Criminology, 2002), 1-2; Greenfeld and Snell, 2000, pp. 7-9; and Shannon M. Lynch et al., *Women’s Pathways to Jail: The Roles and Intersections of Serious Mental Illness and Trauma* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2012), 8.
- 11 Susan W. McCampbell, *The Gender-Responsive Strategies Project: Jail Applications* (Washington, DC: U.S. Department of Justice, National Institute of Corrections, 2005), 4.
- 12 Among women detained pretrial in the jail in Bristol County, Massachusetts, for example, 71 percent were being held for non-violent offenses. See Erika Kates and Helen Levine, *Pretrial Incarcerated Women: An Analysis of Women in Bristol County Jail, Massachusetts* (Bristol, MA: Wellesley Centers for Women, 2013), 2, 5. A survey of women held in the Baltimore City Detention Center indicated 55 percent were facing drug-related charges. See Sally S. Simpson, Jennifer L. Yahner, and Laura Dugan, “Understanding Women’s Pathways to Jail: Analysing the Lives of Incarcerated Women,” *The Australian and New Zealand Journal of Criminology* 41, no. 1 (2008): 84-108. While women admitted to the jail in Cook County, Illinois were more likely to be charged with property crimes than men, they were almost equally likely to be admitted on drug charges, and less likely to be admitted for violent and traffic offenses. See David E. Olson and Sema Taheri, *Population Dynamics and the Characteristics of Inmates in the Cook County Jail* (Chicago: Cook County Sheriff’s Reentry Council, 2012), 4. Additionally, a survey of 346 women in an urban jail in California found 65 percent were incarcerated for minor charges. Patricia J. Kelly et al., “Profile of Women in a County Jail,” *Journal of Psychosocial Nursing and Mental Health Services* 48, no.4 (2010): 38-45. Overall, studies have consistently shown that women are less dangerous than men and are one of the lowest risk groups of all adult correctional populations. See Emily J. Salisbury et al., “Changing Probation Experiences for Female Offenders Based on Women’s Needs and Risk Assessment Project Findings,” *Women, Girls & Criminal Justice* 10, no. 6 (2009): 83-84, 92-95.
- 13 See, e.g., Lindsey Cramer, Cybele Kotonias, and Nancy La Vigne, *Reducing Reliance on Local Jails* (Washington, DC: Urban Institute, 2014); Mark D. Martin, *Beyond Budget Allocation – Sources of Funding and Services* (Washington, DC: U.S. Department of Justice, National Institute of Corrections, 2002); and Tim Brennan and James Austin, *Women in Jail: Classification*

- Issues (Washington, DC: U.S. Department of Justice, National Institute of Corrections, 1997).
- 14 Office of the Attorney General, "Attorney General Loretta E. Lynch Delivers Remarks at the White House Women and the Criminal Justice System Convening," March 30, 2016, <https://perma.cc/2KNR-VSZU>.
- 15 See note 12. See also Barbara Bloom, Barbara Owen, and Stephanie Covington, *Gender Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders* (Washington, DC: U.S. Department of Justice, National Institute of Corrections, 2003), 1-10.
- 16 James, 2004, p. 4.
- 17 Although the data are not broken down by level of offense, information from the FBI's Uniform Crime Report indicates that over 71 percent of arrests of women in 2014 fell into the relatively less serious categories of Larceny/Theft, Fraud, Vandalism, Prostitution, Drug abuse violations, Liquor laws, Drunkenness, Disorderly conduct, and All other offenses (except traffic). See Federal Bureau of Investigation, "2014 Crime in the United States: Table 42 - Arrests by Sex, 2014," <https://perma.cc/FTV6-5XY8>.
- 18 Becki Ney and Teri K. Martin, *Using Jail Exit Surveys to Improve Community Responses to Women Offenders* (Washington, DC: U.S. Department of Justice, National Institute of Corrections, 2005), 16-17.
- 19 *Ibid.*, p. 16.
- 20 Nastassia Walsh, *When More is Less: How a Larger Women's Jail in Baltimore Will Reduce Public Safety and Diminish Resources for Positive Social Investments* (Washington, DC: Justice Policy Institute, 2011), 10; Washington Lawyers' Committee for Civil Rights and Urban Affairs, *D.C. Women in Prison: Continuing Problems and Recommendations for Change* (Washington, DC: Washington Lawyers' Committee for Civil Rights and Urban Affairs, 2016), 19-20. Nationally, 85 percent of women involved in the correctional system are on probation or parole rather than incarcerated, compared to only 66 percent of men. See Glaze and Kaeble, 2014, p. 2.
- 21 Laura M. Maruschak, *Medical Problems of Jail Inmates* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2006), 2.
- 22 Laura M. Maruschak, Marcus Berzofsky, and Jennifer Unangst, *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2015), 4-5.
- 23 Lynch et al., 2012, pp. 14-15.
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- 25 James, 2004, p. 9.
- 26 Greenfeld and Snell, 2000, p. 8.
- 27 Lynch et al., 2012, p. 14; Henry J. Steadman et al., "Prevalence of Serious Mental Illness Among Jail Inmates," *Psychiatric Services* 60, no. 6 (2009): 761-65.
- 28 Doris J. James and Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2006), 4.
- 29 Lynch et al., 2012, pp. 15, 32.
- 30 *Ibid.*, p. 32.
- 31 Instruments jails use at intake to screen people for mental illness frequently assess women inaccurately, often failing to identify those in need of treatment. See Robert L. Trestman et al., "Current and Lifetime Psychiatric Illness Among Inmates Not Identified as Acutely Mentally Ill at Intake in Connecticut's Jails," *Journal of the American Academy of Psychiatry and the Law* 35, no. 4 (2007): 490-500; Henry J. Steadman et al., "Validation of the Brief Jail Mental Health Screen," *Psychiatric Services* 56, no. 7 (2005): 816-22.
- 32 Lynch, 2012, p. 14; Trestman et al., 2007, p. 491.
- 33 Bloom, Owen, and Covington, 2002, p. 2.
- 34 Greenfeld and Snell, 2000, p. 7.
- 35 Miami-Dade County Corrections and Rehabilitation Department, *Daily Jail Population Statistics* (Miami: May 31, 2016), 4; Marie VanNostrand, *New Jersey Jail Population Analysis: Identifying Opportunities to Safely and Responsibly Reduce the Jail Population* (St. Petersburg, FL: Luminosity and Drug Policy Alliance, 2013), 9.
- 36 Rachel McLean, Jacqueline Robarge, and Susan Sherman, *The WINDOW Study, Release from Jail: Moment of Crisis or Window of Opportunity for Female Detainees in Baltimore City?* (Baltimore, MD: Fusion Partnerships, Inc., 2005), 11.
- 37 Olson and Taheri, 2012, p. 4.
- 38 McCampbell, 2005, p. 4; Maruschak, 2006, p. 7.
- 39 McCampbell, 2005, p. 4.
- 40 Daniel Kopf and Bernadette Rabuy, "Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned," *Prison Policy Initiative*, July 9, 2015, <https://perma.cc/D7S4-5GP9>.
- 41 Steve Christian, *Children of Incarcerated Parents* (Washington, DC: National Conference of State Legislatures, 2009), 5; see also

- Marilyn C. Moses, "Correlating Incarcerated Mothers, Foster Care and Mother-Child Reunification," *Corrections Today* 68, no. 6 (2006): 98-100.
- 42 Amy L. Solomon et al., *Life After Lockup: Improving Reentry from Jail to the Community* (Washington, DC: Urban Institute, Justice Policy Center, 2008), 15-24.
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- 44 Ibid., pp. 3,11. For further research on how pretrial detention impacts sentencing outcomes, see Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (New York: The Laura and John Arnold Foundation, 2013).
- 45 Ram Subramanian et al., *Incarceration's Front Door: The Misuse of Jail in America* (New York: Vera Institute of Justice, 2015), 12-13.
- 46 Gail L. Elias and Kenneth Ricci, *Women in Jail: Facility Planning Issues* (Washington, DC: U.S. Department of Justice, National Institute of Corrections, 1997), 2. As of 2006, approximately 86 percent of the nation's jails were authorized to house both men and women; about 13 percent (425) housed only men, and just one percent (32) housed only women. See James Stephan and Georgette Walsh, *Census of Jail Facilities, 2006* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2011), 8.
- 47 See Scott Hoke and Randy Demory, *Inmate Behavior Management: Guide to Meeting Basic Needs* (Washington, DC: U.S. Department of Justice, National Institute of Corrections, 2014), 1.
- 48 Patricia Van Voorhis et al., "Women's Risk Factors and their Contributions to Existing Risk/Needs Assessment: The Current Status of a Gender-Responsive Supplement," *Criminal Justice and Behavior* 37, no. 3 (2010): 261-88.
- 49 Patricia Van Voorhis, "On Behalf of Women Offenders: Women's Place in the Science of Evidence-Based Practice," *Criminology & Public Policy* 11, no. 2 (2012): 111-45.
- 50 Patricia Van Voorhis et al., *Achieving Accurate Pictures of Risk and Identifying Gender Responsive Needs: Two New Assessments for Women Offenders* (Washington, DC: National Institute of Corrections, 2006), 2.
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- 52 Van Voorhis et al., 2010, p. 281.
- 53 Ibid., p. 262.
- 54 Ibid., p. 274.
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- 56 Ibid.
- 57 Barbara E. Bloom, *Meeting the Needs of Women in California's County Justice Systems: A Toolkit for Policymakers and Practitioners* (Oakland, CA: Californians for Safety and Justice, 2015), 9.
- 58 Ibid.
- 59 Alyssa Benedict, *Using Trauma-Informed Practices to Enhance Safety and Security in Women's Correctional Facilities* (Washington, DC: National Resource Center on Justice Involved Women, 2014), 3.
- 60 Substance Abuse and Mental Health Services Administration, *Trauma-Informed Care in Behavioral Health Services: Treatment Improvement Protocol (TIP) 57* (Rockville, MD: SAMHSA, 2014), 7; Benedict, 2014, pp. 2-3.
- 61 Trestman et al., 2007, p. 491; National Commission on Correctional Health Care, *Position Statement: Women's Health Care in Correctional Settings* (Chicago: National Commission on Correctional Health Care, 2014), 1.
- 62 Ibid.
- 63 Incarcerated women have reported that psychotropic drugs actually interfered with their ability to participate in preparing their defense cases. See Elizabeth Leonard, "Convicted Survivors: The Imprisonment of Battered Women who Kill" (PhD diss., State University of New York, 2002). The majority of U.S. jails report that they do not provide any medications for opioid detoxification, and those that do offer such services infrequently follow evidence-based practices. See Shannon Gwin Mitchell et al., "Incarceration and opioid withdrawal: The experiences of methadone patients and out-of-treatment heroin users," *Journal of Psychoactive Drugs* 41, no. 2 (2009): 145-52.
- 64 Courts have typically not found the practice of charging for jail services to be unconstitutional so long as staff do not deny services when someone is unable to pay. See, e.g., *Tillman v.*

- Lebanon County Correctional Facility, 221 F.3d 410, 418 (3d Cir. 2000).
- 65 D.C. Prisoners' Legal Services Project, *From the Inside Out: Talking to Incarcerated Women About Health Care* (Washington, DC: D.C. Prisoners' Legal Services Project and Johns Hopkins Bloomberg School of Public Health, 2005), 8.
- 66 Santa Clara County Commission on the Status of Women, *Female Inmates in Santa Clara County & The Need for a Gender Responsive Protocol* (Santa Clara, CA: County of Santa Clara, 2015), 11.
- 67 Ney, Ramirez, and Van Dieten, 2012, pp. 9-10.
- 68 Patricia Van Voorhis et al., "Implementing the Women's Risk/Needs Assessment (WRNAs): Early Lessons From the Field," *Women, Girls & Criminal Justice* 10, no. 6 (2009): 81-84; Emily M. Wright et al., "Lessons From the NIC/UC Gender-Responsive Classification Project," *Women, Girls & Criminal Justice* 10, no. 6 (2009): 85-96.
- 69 Karen De Claire and Louise Dixon, "The Effects of Prison Visits From Family Members on Prisoners' Well-Being, Prison Rule Breaking, and Recidivism: A Review of Research Since 1991," *Trauma, Violence, & Abuse* (2015):1-15.
- 70 McCampbell, 2005, p. 5; Nancy G. La Vigne, Elizabeth Davies, and Diana Brazzell, *Broken Bonds: Understanding and Addressing the Needs of Children with Incarcerated Parents* (Washington, DC: Urban Institute, 2008), 4-5.
- 71 Ney, Ramirez, and Van Dieten, 2012, p. 10.
- 72 Ibid.
- 73 La Vigne, Davies, and Brazzell, 2008, p. 4.
- 74 Lenora Lapidus et al., *Caught in the Net: The Impact of Drug Policies on Women and Families* (Washington, DC: American Civil Liberties Union, Break the Chains: Communities of Color and the War on Drugs, and The Brennan Center at NYU School of Law, 2005), 56. Recognizing the disproportionate impact ASFA has on incarcerated parents, several states have passed amendments to safeguard their parental rights. In New York, for example, a 2010 amendment gives foster care agencies discretion on a case-by-case basis to delay filing a termination petition in family court if a child's primary caregiver is incarcerated, and they can demonstrate that the continuation of the parent-child relationship is in the best interest of the child. See Julie Smyth, "Dual Punishment: Incarcerated Mothers and Their Children," *Columbia Social Work Review* III (2012): 33-45.
- 75 Alexis Harris, Heather Evans, and Katherine Beckett, "Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States," *American Journal of Sociology* 115, no. 6 (2010): 1753-99.
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- 77 Alicia Bannon, Mitali Nagrecha, and Rebekah Diller, *Criminal Justice Debt: a Barrier to Reentry* (New York: Brennan Center for Justice, 2010), 10.
- 78 See American Civil Liberties Union, *In for a Penny: The Rise of America's New Debtors Prisons* (New York: American Civil Liberties Union, 2010), 6-8.
- 79 Harris, Evans, and Beckett, 2010, p. 1770.
- 80 The Supreme Court held in *Bearden v. Georgia*, 461 U.S. 660, 668-69 (1983), that the use of incarceration for failure to pay a debt is unconstitutional absent evidence that a person willfully refuses despite an ability to pay, and that alternative punitive measures are unavailable. There are, however, no specific guidelines for how judges should evaluate a defendant's ability to pay, which has resulted in inconsistent application of the rule and increased the risk of people returning to custody simply for being poor. In March 2016, the U.S. Department of Justice issued a "Dear Colleague" letter to state and local judges addressing common practices with respect to fines and fees that are unconstitutional, including failure to conduct an indigency determination and using arrest warrants or license suspensions to coerce payment without due process, and suggesting alternatives, such as community service and debt reduction. See U.S. Department of Justice (DOJ), "Justice Department Announces Resources to Assist State and Local Reform of Fine and Fee Practices," press release (Washington, DC: DOJ, March 14, 2016), <https://perma.cc/L5B8-D7GD>.
- 81 Mariko Lin Chang, *Lifting as We Climb: Women of Color, Wealth, and America's Future* (Oakland, CA: Insight Center for Community Economic Development, 2010), 8; Lapidus et al., 2005, p. 30.
- 82 See Anita Cardwell and Meaghan Gilmore, *County Jails and the Affordable Care Act: Enrolling Eligible Individuals in Health Coverage* (Washington, DC: National Association of Counties, 2012), 3.
- 83 These practices were first proposed in James Q. Wilson and George L. Kelling, "Broken Windows: The Police and Neighborhood Safety," *The Atlantic Monthly* 249, no. 3 (1982): 29-38. The authors argued that quality-of-life offenses, such as graffiti or public intoxication, can give residents the impression that crime is on the rise, causing residents to become fearful and lose trust in local law enforcement. The authors also suggested that criminals

- become emboldened by this decay, which they may perceive as a marker of an ineffective police force, leading to an increase in serious crime. Kelling and Wilson posited “broken windows” as an evocative metaphor of the disarray that may ensue: “If a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken.”
- 84 Ibid. See also Jenny Roberts, “Crashing the Misdemeanor System,” *Washington and Lee Law Review* 70, no. 2 (2013): 1089-1131.
- 85 For example, the *Anti-Drug Abuse Act of 1988* applied the mandatory-minimum sentences originally imposed on drug trafficking offenses to anyone convicted of conspiracy to commit those offenses. Conspiracy law holds each participant equally liable for all the actions of the other participants without proof of knowledge of the actions, or even the existence, of those other participants. See *Salinas v. United States*, 522 U.S. 52, 63-64 (1997) and *Pinkerton v. United States*, 328 U.S. 640, 646-647 (1946). Thus, this provided incentive to police officers to target even peripheral members of a conspiracy with little actual involvement just as heavily as drug kingpins. See Paul Marcus, “Criminal Conspiracy Law: Time to Turn Back From an Ever Expanding, Ever More Troubling Area,” *William and Mary Bill of Rights Journal* 1, no. 1 (1992): 1-45. An example of the increasing conflation between major and minor drug crimes is the *New York State Substance Control Act of 1973*, which essentially eliminated the distinction between small scale sellers and large scale pushers, which made the former subject to heightened penalties. See Spiros A. Tsimbinos, “Is it Time to Change the Rockefeller Drug Laws?” *Journal of Civil Rights and Economic Development* 13, no. 3 (1999): 613-34. See also United States Sentencing Commission, *Special Report to the Congress: Cocaine and Federal Sentencing Policy* (Washington, DC: United States Sentencing Commission, 1995), iii (“[Quantity ratios create] anomalous results by potentially punishing low-level (retail) crack dealers far more severely than their high-level (wholesale) suppliers of the powder cocaine that served as the product for conversion into crack.”).
- 86 See Jennifer Schwartz and Darrell Steffensmeier, “The Nature of Female Offending: Patterns and Explanation,” in *Female Offenders: Critical Perspectives and Effective Interventions*, edited by Ruth Zaplin (Sudbury, MA: Jones and Bartlett Publishers, 2008).
- 87 For 2014 rates, see Federal Bureau of Investigation, “2014 Crime in the United States: Table 33 – Ten-Year Arrest Trends by Sex, 2005-2014,” <https://perma.cc/B475-L4TG>. For the rates in 1960, see Federal Bureau of Investigation, *Crime in the United States: Uniform Crime Reports – 1960* (Washington, DC: U.S. Government Printing Office, 1961), 94, 100; see also Schwartz and Steffensmeier, 2008, p. 46.
- 88 James, 2004, p. 4.
- 89 Howard N. Snyder, *Arrest in the United States, 1980-2009* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2011), 12. In the single year between 1995 and 1996, drug arrests of women increased 95 percent. See Barbara Bloom, Barbara Owen, and Stephanie Covington, “Women Offenders and The Gendered Effects of Public Policy,” *Review of Policy Research* 21, no.1 (2004): 31-48.
- 90 James, 2004, p. 4.
- 91 Federal Bureau of Investigation, “2014 Crime in the United States: Table 42 – Arrests by Sex, 2014,” <https://perma.cc/CQJ5-28F9>. For more on the types of minor assaults most commonly committed by women, see Schwartz and Steffensmeier, 2008, p. 47.
- 92 GAINS Center for Behavioral Health and Justice Transformation, *Creating a Trauma-Informed Criminal Justice System for Women: Why and How* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2011), 3.
- 93 Early and rapid disposition of low-level offenses is an established feature in many jurisdictions. And by and large, prosecutors rarely decline petty and public order cases reflecting prosecutors’ “well-substantiated expectation that these cases are likely to be disposed of summarily and successfully.” See Josh Bowers, “Legal Guilt, Normative Innocence, and the Equitable Decision Not to Prosecute,” *Columbia Law Review* 110, no. 7 (2010): 1655-1726. In New York City’s Criminal Court, for example, between 2004 and 2014 the average proportion of cases disposed of at arraignment was just under 50 percent, almost all of them misdemeanors or other petty offenses. See Lisa Lindsay, *Criminal Court of the City of New York Annual Report 2014* (New York: Office of the Chief Clerk of the New York City Criminal Court, 2015), 30. Of those cases disposed of at arraignment in 2014, 53 percent pled guilty and 47 percent were adjourned in contemplation of dismissal. See Mary T. Phillips and Russell F. Ferri, *Annual Report 2014* (New York: New York City Criminal Justice Agency, 2016), 17-19.
- 94 Misdemeanor charges do not usually require the greater costs generated by their felony counterparts (e.g., felonies often require preliminary hearings, in some places a grand jury indictment, and more extensive discovery costs). Quick plea offers that are likely to be accepted circumvent the need to investigate cases, assess evidence, interview witnesses, file further or revised charges, staff courts, prepare motions and responses, and conduct hearings and trials. See Josh Bowers, “Punishing the Innocent,” *University of Pennsylvania Law Review* 156, no. 5 (2008): 1117-79. If prosecutors’ objectives are that of “nondefeat,” these standard outcomes for low-level offenses make sense because they can still be used to mark, classify, and “supervise” people, even without securing a conviction or imposing a sentence. See Issa Kohler-Hausmann, “Managerial Justice and Mass Misdemeanors,” *Stanford Law Review* 66, no. 3 (2014): 611-93.
- 95 See, e.g., *People v. Llovet*, N.Y.L.J., Apr. 24, 1998 (Kings Cty).

- Crim. Ct.), which found that “many of the pleas of guilty to misdemeanors were by defendants who could achieve their freedom only by pleading guilty. (Plead guilty and get out, maintain your innocence and remain incarcerated in lieu of bail.)” See also Gerard E. Lynch, “Our Administrative System of Criminal Justice,” *Fordham Law Review* 66, no. 6 (1998): 2117-51 (“Pleading guilty at the first opportunity in exchange for a sentence of ‘time [already] served’ is often an offer that cannot be refused.”).
- 96 For research about the unequal gender outcomes in the plea bargaining process, see Josefina Figueira-McDonough, “Gender Differences in Informal Processing: A Look at Charge Bargaining and Sentencing Reduction in Washington, DC,” *Journal of Research in Crime and Delinquency* 22, no. 2 (1985): 101-33. For examples of women being convicted of serious offenses despite playing a minor role, see Lapidus et al., 2005, pp. 11-12, and Phyllis Goldfarb, “Counting the Drug War’s Female Casualties,” *Journal of Gender, Race and Justice* 6, no. 2 (2002): 277-96. In particular, Goldfarb reviews a number of case studies in which women were convicted of drug offenses—often with severe penalties attached—despite playing minor roles such as “riding in a car” while a boyfriend delivers drugs or fielding a phone call and providing a boyfriend’s phone number to an undercover informant working with the Drug Enforcement Administration. See also Eda Katharine Tinto, “The Role of Gender and Relationship in Reforming the Rockefeller Drug Laws,” *New York University Law Review* 76, no. 3 (2001): 906-44. Tinto discusses the case of Leah Bundy who was charged, convicted, and sentenced to 15 years to life for drug possession simply because she was physically close to a bag with drugs at her boyfriend’s apartment. Justice Ellerin, the dissenting judge in that case, opined that “the evidence supported no inference other than that, rather than being a drug dealer herself, [the] defendant was dating a drug dealer. While this may be an inadvisable personal choice, it is not, by itself, evidence of participation in a crime.” See *People v. Bundy*, 654 N.Y.S.2d 108 (App. Div. 1997), *aff’d*, 686 N.E.2d 496 (N.Y. 1997).
- 97 In the United States, a conspirator can be held responsible for crimes committed by her co-conspirators as long as such crimes were in furtherance of the agreement and were reasonably foreseeable. The crimes themselves do not have to have been agreed upon, intended, or even discussed. This rule of liability “permits the government to hold a defendant criminally responsible for all reasonably foreseeable acts of co-conspirators regardless of actual knowledge, intent, or participation. Thus, if the government cannot prove a defendant’s guilt or various substantive charges, it need only convince the jury of the defendant’s guilt of conspiracy to secure convictions on the otherwise unsupportable substantive charges.” See Marcus, 1992, pp. 7-9. The growth of conspiracy cases has in part been attributed to the increased use of this charge in drug prosecutions. *Ibid.*, p. 9. See also Goldfarb, 2002, p. 277 for case studies about women.
- 98 The U.S. Supreme Court affirmed this view in *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 189-90 (2007), stating, “Indeed, every jurisdiction—all States and the Federal Government—has ‘expressly abrogated the distinction’ among principals and aiders and abettors who fall into the second and third categories [second-degree principals and accessories before the fact]. . . . [and therefore] treat [them] similarly.”
- 99 Lapidus et al., 2005, pp. 35-36. Drug sentences are often based on the weight and quantity of the drug, with limited discretion to adjust based on the defendant’s level of involvement. See Goldfarb, 2002, p. 292.
- 100 Much of the research examining gendered experiences of bail is now outdated, and even recent studies have had to rely on older data sets and focus primarily on felony cases, resulting in an incomplete analysis. See, e.g., Tina L. Freiburger and Carly M. Hilinski, “The Impact of Race, Gender, and Age on the Pretrial Decision,” *Criminal Justice Review* 35, no. 3 (2010): 318-34; Jeremy Ball and Lisa Growette Bostaph, “He Versus She: A Gender Specific Analysis of Legal and Extralegal Effects on Pretrial Release for Felony Defendants,” *Women and Criminal Justice* 19, no. 2 (2009): 95-119; Stephen Demuth and Darrell Steffensmeier, “The Impact of Gender and Race-Ethnicity in the Pretrial Release Process,” *Social Problems* 51, no. 2 (2004): 222-42; and George S. Bridges, *A Study on Racial and Ethnic Disparities in Superior Court Bail and Pretrial Detention Practices in Washington* (Olympia, WA: Washington State Minority and Justice Commission, 1997).
- 101 See note 12 and accompanying text. In making pretrial release decisions, judges typically consider a defendant’s prior record and severity of the current charge to assess the level of risk her release poses to the community and the likelihood that she will return to court for future appearances. See Freiburger and Hilinski, 2010, p. 321.
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“What is jail?” p. 8

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- “Pregnancy and childbirth in jail,” p. 17**
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