

Bringing the “Invisible Population” to Light: Justice for Incarcerated and Formerly Incarcerated Women

Violence Against Women
1–15

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journals.sagepub.com/home/vaw**Jennifer E. Cobbina-Dungy****Abstract**

Women who are involved in the correctional system are often neglected and overlooked. Although justice-involved women enter the carceral system with high levels of abuse and trauma, many are exposed to State violence from staff or incarcerated individuals. Criminal victimization in prison presents a significant threat to one's well-being. According to international human rights law, preventing and combatting violence against women is the responsibility of the State in all contexts, including prisons. It is imperative that women be treated humanely while under the custody of the State, which increases odds of post-release success. Policy implications and recommendations are discussed.

Keywords

incarcerated women, state violence, abuse, trauma, United Nations

More than 11 million individuals are imprisoned on any given day globally, and 102 countries have prison occupancy levels of over 110% (Penal Reform International, 2020). With more than 2.1 million people incarcerated at a rate of 655 people per 100,000 of the national population, the United States has the highest absolute number of people in prison (Penal Reform International, 2020). Because more men are incarcerated, women's gendered needs are often neglected, dismissed, and overlooked. This is disappointing, given that globally the female incarcerated population of women and girls continues to increase. More than 741,000 women and girls are

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incarcerated throughout the world (Penal Reform International, 2020). Although they make up 7% of the global prison population, women comprise the most rapidly growing segment of the incarcerated population (Belknap, 2015). In particular, the number of women and girls in prison worldwide increased by 53% between 2000 and 2017 (Walmsley, 2017). In the past decade, the female population increased by 105,000, which was specifically evident in Asia (an increase of 50%), Africa (an increase of 24%), and Central and South America (an increase of 19%) (Lenihan, 2020; Penal Reform International, 2020). This rise cannot be explained by global population growth, as the United Nations (UN) figures indicate that the global population rose only by 21% during the same time period. Nor can it be explained by the number of people in prison, as the worldwide male prison population increased 20% since 2000.

Racial/ethnic disparities in US incarceration remain substantial, as African Americans and Latinos represent nearly 60% of the prison population (Mauer, 2013). Although African Americans are still incarcerated at dramatically higher rates than whites, imprisonment rates have been declining for African Americans. From 2000 to 2009, incarceration rates declined 30.7% for Black women while increasing 47.1% and 23.3% for White and Latina women, respectively (Mauer, 2013). Since the phenomenon of declining Black female and increasing white female rates of imprisonment is new, speculations about the reasons for it are not well formulated. However, plausible explanations for differential changes in incarceration rates for Black and white women that have been given include differential involvement in crime, as Black arrest rates declined in violent, property, and drug crimes, while white arrest rates rose for property and drug offenses from 2000 to 2009 (Mauer, 2013). Others point to changes in law enforcement or sentencing practices for prescription drug offenses. Due to the rise of methamphetamine use, which is used disproportionately by whites and Latinos, increased prosecution of white women may serve as a contributing factor (Mauer, 2013). Moreover, changes in drug sentencing policy in some states that have reduced the number of drug incarcerations may disproportionately affect Black women, given they have been so heavily influenced by harsh drug sentencing policies (Greene & Mauer, 2010; Mauer, 2013). Despite these speculations, more research is needed to identify causal factors of changes in incarceration rates by race and gender to fully understand their impact and effects.

Women's profiles and histories are distinguished from those of men. Globally, women comprise a small number of people who offend, as most crimes are committed by men (Belknap, 2015; Walmsley, 2014). Compared to their male counterparts who are more likely to be incarcerated for violent offenses, women are often incarcerated for minor and nonviolent crimes, typically involving drugs and property-related charges (The Sentencing Project, 2020). The typical woman in prison is a racial/ethnic minority, economically marginalized (Morash et al., 2017), a mother of one or more minor children (Maruschak & Bronson, 2021), who has experienced childhood and adult abuse (Scroggins & Malley, 2010; Verona et al., 2016), has serious health problems (Morash, 2010), has histories of mental illness (James & Glaze, 2006; Wilmoth, 2005), and is drug or alcohol dependent (Mumola & Karberg, 2006). Many women

who suffer from child or adult abuse and trauma have mental health disorders such as anxiety, depression, borderline personality disorder, and post-traumatic stress disorder (Lynch et al., 2012; Wilmoth, 2005). Depression remains a common and persistent mental health problem for women worldwide (World Health Organization, 2021), as mental illnesses may cause some women to use drugs as a coping mechanism to deal with the pain of abuse and trauma (Daly, 1998; DeHart, 2008). Although justice-involved women enter the carceral system with high levels of trauma and abuse, unfortunately, many are exposed to State violence from staff or incarcerated individuals while behind prison walls (Briere et al., 2016; Courtney & Maschi, 2013). Violence in prison is of particular concern to incarcerated persons and individuals who have experienced sexual abuse prior to imprisonment (Caravaca et al., 2016). Consequently, criminal victimization in prison presents a significant threat to one's well-being. According to international human rights law, preventing and combatting violence against women is the responsibility of the State in all contexts, including prisons.

This article briefly reviews the literature on the pathways women take to prison. This is followed by a discussion of the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders, and a discussion of violence and trauma in prison. This study also examines how violence and trauma in prison affect the reentry process, and focuses attention on how collateral consequences may be worse for women who have been imprisoned. Finally, in the last section of the article, policy recommendations are presented to better meet the needs of incarcerated and formerly incarcerated women.

Pathways to Prison

Women follow distinct pathways into crime. At both the domestic and international levels, many women's offending trajectories are precipitated by childhood and adult victimization experiences, such as a history of gender-based violence, neglect, trauma, and familial estrangement (Beichner & Rabe-Hemp, 2014; DeHart et al., 2014). Evidence suggests a link between histories of physical and/or sexual abuse and their delinquency, addiction, and criminality (Richie et al., 2000; Widom & White, 1997). Unfortunately, many girls and women resort to substance abuse and running away to cope with abuse and trauma that they have experienced, which are likely to facilitate contact with the criminal legal system.

Others enter crime because of severe economic marginalization. According to this hypothesis, the feminization of poverty—a trend of increasing inequality in living standards between women and men due to the rising gender gap in poverty—explains women's criminality. The majority of the 1.5 billion people living on less than \$1 per day are women, and they earn slightly more than 50% of what men make worldwide (UN Women, 2000). Evidence shows that women's criminality is closely linked to poverty. Justice-involved women are likely to experience unemployment, low wages when employed, reduced welfare payments, financial difficulties, and homelessness (Hunnicuttt & Broidy, 2004). The lack of economic opportunities and denial of

access to economic resources push some women to engage in economic crimes for survival, as many are unable to ensure a sustainable livelihood (Daly, 1996). Moreover, many women receive a prison sentence because of their inability to pay fines for minor offenses or afford bail (Penal Reform International, 2021).

In addition, the financial difficulties faced by many justice-involved women are complicated by their role as primary caregiver to dependent children. The worldwide increase in imprisonment rates over the past several decades has resulted in a growing number of children facing parental incarceration. The fact that so many women are primary caregivers to dependent children is an intergenerational problem, as studies show that when a mother is incarcerated, the odds that her children, especially her daughters, will experience arrest, conviction, and incarceration as adults significantly increases (Burgess-Proctor et al., 2016). Children are often the hidden victims of mother's incarceration because it is not uncommon for a woman to lose custody of her child after a short term of imprisonment (Penal Reform International, 2021). International studies show that children of incarcerated mothers experience multiple risk factors such as poverty, repeated shifting of households, and out-of-home placement. Maternal imprisonment has consequences for children's well-being, as these children have elevated levels of behavioral problems, insecure relationships with their mothers and caregivers, risk of school failure, and delinquency (Hissel et al., 2011; Poehlmann et al., 2008). Overall, the literature shows that abuse, trauma, addiction, and lack of income often drive many women into crime, resulting in their contact with the correctional system.

The UN Rules for the Treatment of Prisoners and Noncustodial Sanctions for Women Offenders

It is well established that the criminal legal system routinely overlooks the needs of women and girls. Most correctional institutions and their regimes are designed for the dominant male population. Despite the global increase of women in prison, their needs are typically unacknowledged and unmet (Lenihan, 2020; Penal Reform International, 2020).

To address the specific needs and experiences of justice-involved women, in 2010 the UN General Assembly adopted the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (also known as the *Bangkok Rules*; United Nations Secretariat, 2010). The Bangkok Rules were the first international human rights standard that established standards reflecting the specific characteristics and needs of justice-involved women, including women awaiting trial, those imprisoned following a conviction, and those under "protective custody" by the state (Fernandez & Nougier, 2021). The Bangkok Rules were developed to support and complement the 1955 Standard Minimum Rules for the Treatment of Prisoners (United Nations, 1955) and the 1991 UN Standard Minimum Rules for Non-Custodial Measures (*Tokyo Rules*; United Nations General Assembly, 1991). The Bangkok Rules established the foundation for intentional efforts to protect and

support the needs of imprisoned women by establishing 70 Rules to guide policy-makers, legislators, sentencing authorities, and prison officials to reduce the imprisonment of women and ensure gender-sensitive treatment for incarcerated women (Penal Reform International, 2021). By unanimously voting for the Bangkok Rules, 193 countries acknowledged that women and girls in the criminal legal system have gender-specific needs and characteristics that must be protected and met (Penal Reform International, 2013).

Despite this, recent evidence reveals that 55 countries have been in violation of the Bangkok Rules (Van Hout et al., 2021). In their legal realist assessment, Van Hout and colleagues (2021) found that women in prison faced continued systemic failures to protect them from custodial violence. They concluded that 1) the invisible nature of incarcerated women; 2) the victimization, normalization, and trivialization of violence under the guise of security; and 3) the lack of awareness and disregard of international rules hindered the full implementation of the Bangkok Rules. Because many countries have failed to fully adopt the Bangkok and Tokyo Rules, many prisons worldwide are overcrowded, fail to protect incarcerated women against violence, rely on indiscriminate detention and solitary confinement, and do not provide imprisoned women with full access to medical care, drug treatment, and mental health supports that are trauma-informed and trauma-responsive (Van Hout et al., 2021).

Although many incarcerated women have experienced prior abuse and trauma, prison is a location where trauma is both experienced and intensified (Cima et al., 2008; Courtney & Maschi, 2013). The threat of violence is a concern among women who are imprisoned (Caravaca Sánchez & Wolff, 2016). The threat of violence combined with the stress of prison (e.g., the lack of privacy, crowds, fights, new rules to abide by, restrictions, harsh physical handling/movement) make it difficult to respond appropriately to the environment of a correctional facility (Pringer & Wagner, 2020), as prisons are structured to maintain order through stringent control of incarcerated people and the environment. The stress of prison is particularly troubling for individuals who have suffered physical and emotional abuse prior to their imprisonment (Martin et al., 2015). As a result of previous abuse and trauma, incarcerated women are more likely to undergo additional triggers while having less privacy to handle their reactions (Pringer & Wagner, 2020). Ironically, the policies and procedures that are intended to maintain security and safety within correctional institutions often retraumatize imprisoned women given that they are constrained in the ability to eliminate or prevent triggers.

Women and Reentry

It is perhaps not surprising that upon release from prison, women have a difficult time getting their lives together and integrating back into the community. Violence and trauma not only serve as a pathway to prison but also reciprocally interact to shape incarcerated people's lived experiences within carceral spaces and reentry (Williams et al., 2019). Most survivors who have been previously incarcerated do not receive the necessary services needed to heal and have unaddressed trauma stemming from

victimization experienced at some point in their lives (Hastings & Kall, 2020). Survivors of crime who have been previously incarcerated may not access victim services due to internalized stigma and shame of having been incarcerated, which can inhibit them from seeking help for trauma. Moreover, some service providers and formerly incarcerated people do not view themselves as trauma survivors, as they may fail to recognize that an individual can embody both identities (Hastings & Kall, 2020). In addition, stigmatization remains a significant barrier to seeking mental health treatment, especially among African Americans (Connor et al., 2010; Gary, 2005). Finally, pressing material needs often create barriers to healing from trauma post-incarceration.

Compared to men, returning women face increased difficulty obtaining employment, securing housing, accessing social services, reunifying with children, and connecting with family (Giordano et al., 2002; Richie, 2001). Many women exiting prison, especially women of color, end up returning to disadvantaged neighborhoods, characterized by high levels of unemployment, poverty, segregation, and crime (Dodge & Progrebin, 2001). Neighborhood contexts affect reentry outcomes for justice-involved individuals, as many women live in unsafe, inaccessible, car-dependent areas where they often rely on social support for help with housing, employment, and childcare (Bohmert, 2016; Morash, 2010; O'Brien & Harm, 2002). Although social support is integral to the success of women returning home from prison, justice-involved women are likely to have social support networks severed while in prison. Social support is often strained and dissolved due to the remote and distant locations of prisons for women (La Vigne, 2005; Travis & Visser, 2005). Moreover, justice-involved women are often unable to reciprocate assistance to others and may find themselves cut off (Offer, 2012). Thus, a fractured social support system can threaten employment and economic success (Bohmert, 2016).

In addition, most women who are released from prison have small homogenous networks that are comprised of more relatives and fewer ties to non-kin (Marsden, 1987; Moore, 1990). As a result, they are less able to rely on networks as instrumental sources in securing employment, making it more difficult to navigate the reentry process. Women of color, especially Black females, are more likely to travel in isolated, small social circles that inhibit them from developing strong networks of social support (Reisig et al., 2002). This is likely the result of returning to structural conditions characterized by joblessness, familial disruption, and lack of resources.

Moreover, while motherhood can serve as a catalyst to desistance from crime, studies also show that motherhood can compound levels of strain on an already tenuous reentry process (Brown & Bloom, 2009; Kubiak et al., 2012; Leverentz, 2014). Competing obligations of motherhood and gender caretaking roles create disparate economic constraints for women returning home from prison (Belknap, 2015; Wattanaporn & Holtfreter, 2014). Many women who leave prison face financial difficulties that are exacerbated by childcare expenses, which, in turn, also increase poverty and related disadvantages among children. Lack of access to financial support can significantly impact women's ability to successfully navigate the reentry process and result in a higher likelihood of returning to crime as a means of survival. Although

it can be tricky comparing international recidivism rates, because countries often use different terms to measure recidivism and varying lengths of time to re-offense, evidence suggests that 9–35% of women are reconvicted within one to two years (Yukhnenko et al., 2019). Overall, given that women face unique experiences pertaining to victimization, mental health, and substance abuse coupled with their role as primary care provider to their children and returning to impoverished neighborhoods post-release, many struggle to successfully navigate integration into the free world.

Policy Recommendations

As the number of women who have contact with the criminal legal system continues to rise, it is imperative to make sure their needs are met so they can successfully integrate into the community, which only keeps the public safe. Below I make five recommendations to better address the needs and realities of justice-involved women. They include implementing gender-responsive programming, maintaining parental and family contact, healing trauma, increasing formerly incarcerated women's access to benefits post-release, and restoring civil liberties of formerly incarcerated women.

Gender-Responsive Programming

Given the recognized gender differences in etiology, scholars and practitioners have called for gender-responsive programming in prisoner reentry. Gender-responsive programming is designed to account for the unique needs and realities of justice-involved women by intentionally employing gender considerations to affect the design, implementation, and policy results (Bloom, Owen, & Covington, 2003; United Nations Children's Fund, 2017). The principles are based on a quality-of-care framework that places women at the center of programming and service delivery. In addition to considering the unique needs of women, gender-responsiveness entails valuing females' perspective, respecting their experiences, understanding developmental differences between boys and girls, as well as women and men, and empowering girls and women (United Nations Children's Fund, 2017). This gender-responsive programming approach acknowledges that gender makes a difference. It fosters an environment based on safety, respect, and dignity; it promotes healthy connections to children, family, significant others, and the community; it addresses the web of appropriate social services; it addresses economic needs; and it improves coordination between community services (Bloom et al., 2003). Advocates of gender-responsive aftercare programming have emphasized the following areas of needs to women: childcare and parenting skills development; healthcare, mental health counseling, and drug treatment; housing and transportation services, education, employment, and job training services; and social support programs (Scroggins & Malley, 2010). As stated in the Beijing Declaration and Platform for Action, it is vital to take a gender perspective in all economic analysis and planning to address the structural causes of poverty (United Nations, 1995). The tenets of gender-responsive programming are in line with several of the Sustainable Development Goals of the UN, including

promoting decent work and economic growth, reducing inequalities, as well as making cities and communities safe and resilient.

Maintain Parental and Family Contact

Moreover, it is necessary to create opportunities for incarcerated women to stay involved with the caregiving of their family and children. Studies show that parent and family-centered programming have numerous benefits for women and their children. First, women engaged in parenting programs are less likely to engage in prison misconduct compared to those who do not participate (Carlson, 2001). Second, family support is critical to women's success post-release, as women place a greater value on social support post-release and are more likely to reconnect with family (Barrick et al., 2014; Cobbina et al., 2012). Studies reveal that when justice-involved individuals are enrolled in family-centered programming during imprisonment coupled with family support post-release, they are more likely to meet their individual goals and have reduced reoffending rates (Carlson, 2001). Finally, the benefits of reductions in crime are applied to children of incarcerated parents. Children with parents in prison are less likely to engage in delinquent behavior when family bonds are developed and maintained during a period of incarceration (Hairston, 1991). When mothers of dependent children are incarcerated, especially those who served as the primary caregiver, it sets in motion a cascade of instability for the children. Thus, strengthening familial relationships can serve as an important component of transitioning back to the free world. Preferably, developing family relationships would begin in prison with regular contact via phone or in-person visitation. Prisons should provide free video and phone services to incarcerated women and should not ban in-person visits for nonsafety reasons. Moreover, during imprisonment, mothers can be supported and trained in their parenting and co-parenting skills. It is important that policymakers, prison staff, and management facilitate this process by providing increased contact opportunities between mothers and their loved ones.

Healing Trauma

As has already been mentioned, many incarcerated women have been the victim of sexual and gender-based violence as children and adults. Since victimization and trauma present a considerable threat to women in prison and beyond incarceration, prisons should serve as a venue to recognize and address trauma via trauma-informed care (TIC; Levenson & Willis, 2019). According to the Substance Abuse and Mental Health Services Administration's National Center for Trauma-Informed Care and Alternatives to Seclusion and Restraint, key components of TIC include: 1) recognizing the impact of trauma on multiple areas of life and different paths to recovery, 2) being aware of the signs and symptoms of trauma, 3) structuring policies and practices that account for and are sensitive to people's potential trauma histories, and 4) seeking to prevent retraumatization. Successful TIC practices in prisons require addressing and changing policies and practices that may retraumatize women, as failure to do so can pose a threat to the individual and the correctional facility (Covington & Bloom, 2007; Miller & Najavits, 2012).

In addition, changes to policies and practices require a shift in the culture within an organization. Prisons should educate and train staff, including shift managers and higher-level staff, about the nature of trauma and reframe behaviors in the context of trauma (Miller & Najavits, 2012). Trainings should incorporate role-playing and demonstrations that include trauma-informed practices, such as practicing de-escalation techniques and how to effectively conduct pat-down procedures of incarcerated women when such practices are necessary (Miller & Najavits, 2012). Treatment staff should address underlying histories of trauma, train incarcerated survivors with healthy coping strategies to deal with triggers, and respond to and manage traumatic symptoms that are appropriate within the prison (Benedict, 2010). This is in line with the Beijing Declaration and Platform for Action, which has called for the need to develop supportive programs and train primary health workers to recognize and care for women of all ages who have experienced any form of violence, especially domestic violence, and sexual abuse (United Nations, 1995).

Increase Formerly Incarcerated Women's Access to Benefits Post-Release

It is necessary to increase women's access to needed benefits when they leave prison. Post-release success cannot be understood without taking into consideration the social context in which people return. Studies show that when women lose monetary and housing benefits, their economic risk increases and places them at high risk for reoffending (Morash et al., 2015). A primary motivation for reducing safety net programs is to lessen public expenditures. Ironically, at least in the short run as they affect justice-involved women, the unintended consequences of cutting these programs may be to increase expenditures by hindering integration success, as well as increasing the odds of recidivism and the subsequent high costs of processing within the criminal legal system, control, and future rehabilitation efforts. If correctional efforts are to succeed, then broader social policies must consider income security, affordable housing, welfare reform, living wage employment, childcare availability, and more generally, women's participation in the economic mainstream of society. The reality is that it is ineffective to limit programming to simply pressuring or encouraging women to reduce their economic recidivism risks while social forces and policies maintain these risks (Fitzpatrick & Gomez, 1997; Haney, 2004). This is in line with the Beijing Declaration and Platform for Action, which seeks to help women achieve economic autonomy so they can ensure sustainable livelihoods for themselves and their children (United Nations, 1995).

Restore Civil Liberties of Formerly Incarcerated Women

Finally, it is necessary to restore human and civil rights of formerly incarcerated people. As of 2020, approximately 5.2 million US adults were disenfranchised due to a felony conviction (Uggen et al., 2020). Many women with a felony record are discriminated against and face numerous barriers to reentering society because of

conviction history. This remains true even though they have paid their debt to society. Civil disabilities and collateral restrictions habitually accompany felony convictions, which place harsh limits on the ability to secure a job and engage in civic participation. In the United States, many people with a felony record face employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, as well as exclusion from jury service. All of this is legal in the United States—a country that prides itself on its democracy. And this further contributes to the racial divide polarizing this country, as black and brown people are disproportionately more likely to be stopped, searched, arrested, convicted, and incarcerated for longer periods than whites. These systemic and institutional barriers must be removed. In fact, this is in line with the UN Development Program (2022), which seeks to accelerate structural transformations for sustainable development. They acknowledge the disempowering nature of social, economic, and political exclusion, as it results in ineffective, unaccountable, nontransparent institutions and processes that hamper the ability of states to address persistent structural inequalities.

Overall, many incarcerated and formerly incarcerated women face a host of barriers and challenges. Promising policies such as gender-responsive programming, supporting parental rights and familial contact, addressing trauma, and removing systemic and institutional barriers can improve the lives of those who have contact with the criminal legal system. Not only will it improve their lives, but it will also impact the lives of their families, communities, and society at large. Every effort should be made to meet the needs of women who are impacted by the criminal legal system. The reality is that when we empower them, we will realize a better future for us all.

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