

Patriarchy, Intersectionality, and the U.S. Prison System

SECTION ONE

Here's How Prison and Jail Systems Brutalize Women, Especially Mothers

By [Monifa Bandele](#), October 23, 2017

SOURCE: <https://www.aclu.org/blog/womens-rights/women-and-criminal-justice/heres-how-prison-and-jail-systems-brutalize-women>

Considering our nation's merciless criminal justice policies, it comes as no surprise that the United States has the [largest prison population](#) and [highest incarceration rate](#) in the world.

What you may not know, however, is that women are a fast growing demographic of the prison population. There

Women of color are significantly overrepresented in the criminal justice system.

- Black women represent 30% of all incarcerated women in the U.S, although they represent 13% of the female population generally.
- Hispanic women represent 16% of incarcerated women, although they make up only 11% of all women in the U.S.

are currently 219,000 women — [mostly mothers](#) — behind bars in our nation's overlapping criminal justice systems, according to a [new report](#) released last week by the Prison Policy Initiative and the ACLU's Campaign for Smart Justice. To put that in perspective: Only [five percent](#) of the world's female population lives in the U.S., yet [nearly one-third](#) of all the female prisoners in the entire world are here in the United States.

Nationwide, the criminal justice system is failing communities, hurting the economy, and destroying families — and putting women and mothers disproportionately behind bars for drug and property crimes. We've narrowed down some of the most horrific impacts the United States' culture of incarceration has on women and mothers:

1. **Many states still shackle women during labor and delivery.** You read that right. Some women are shackled while being transferred to the hospital and even in their beds while giving birth, making labor and childbirth all the more challenging. Even in states where anti-shackling laws have been put in place, this [inhumane practice continues](#) to occur all too often.
2. **Women are separated from their children.** Eighty percent of women in jails are mothers. Most of them are primary caretakers of their children. Excessive incarceration hurts innocent children the most, causing

them to experience severe feelings of isolation and trauma. And, since the criminal justice system disproportionately locks up people of color, children of color also disproportionately suffer. As a society, we should know better than this. Period.

3. **Economic impact.** This country's pay gap problem — the [yawning gap](#) between the wages of Black women and white men — can have especially onerous implications in the criminal justice system. Economically disadvantaged Black women have fewer resources to make bail, causing them to wind up behind bars for far too long, even for crimes they've only been charged with and often are not found guilty of.

Sixty percent of women in jail, [according to the ACLU's Smart Justice Campaign and the Prison Policy Initiative](#), have not been convicted of a crime and are awaiting trial. That means that poor people are automatically criminalized more often and for longer periods of time. This extra time in jail can lead to a seemingly never ending downward financial spiral. Defendants can lose their jobs, along with access to benefits and even their housing. In short, incarcerating a woman who is poor will only make her poorer.

4. **Too many women in prison are there for drug offenses.** Twenty-five percent of the women in state prisons are [serving nonviolent convictions](#) related to drugs. Strict penalties designed to combat the distribution of illegal drugs have done little to stem the drug trade. Instead, these overly harsh penalties have swept up people experiencing challenges related to drug addiction into an ever-expanding criminal justice system. These folks need treatment and counseling, not jail time.

We must divest from mass incarceration and invest in our families and children instead.

SECTION TWO

Will the Prison Rape Epidemic Ever Have Its Weinstein Moment?

[Natasha Lennard](#) November 21 2017

SOURCE: <https://theintercept.com/2017/11/21/prison-rape-sexual-assault-violence/>

Just one month after the open secret of Harvey Weinstein's predation [was exposed](#), the "Weinstein effect" has become a well-established piece of the media vernacular.

The idea of a "Weinstein effect" is in part predicated on the idea that Weinstein's overdue dethroning presents us with a replicable blueprint for challenging abusers and harassers in positions of power. It's a model that already has had some success in the [media](#) and [entertainment](#) industries, among others. But for one demographic of rape and sexual assault survivors, the renewed and urgent public interest in redressing sexual violence offers no replicable template. The "Weinstein effect" has not, and perhaps cannot, reverberate through prison walls.

“Prisoners do not have access to the media outlets or social media platforms that have helped make sexual assault a national topic of conversation,” said Jesse Lerner-Kinglake, communications director for Just Detention

Some Facts about the Over-Incarceration of Women in the United States

SOURCE: <https://www.aclu.org/other/facts-about-over-incarceration-women-united-states>

With more than one million women behind bars or under the control of the criminal justice system, women are the fastest growing segment of the incarcerated population increasing at nearly double the rate of men since 1985.

- Nationally, there are more than 8x as many women incarcerated in state and federal prisons and local jails as there were in 1980, increasing in number from 12,300 in 1980 to 182,271 by 2002.
- Expanding at 4.6% annually between 1995 and 2005, women now account for 7% of the population in state and federal prisons.
- Between 1977 and 2004, New Jersey's female prison population grew by 717% with an average annual percent change of 8.8% per year.
- Throughout the period from 1977 to 2004, New Jersey's female imprisonment rate was 33 female prisoners per 100,000 female residents.
- In 1977 there were 180 total female sentenced prisoners in New Jersey
- In 2004 there were 1,470 total female sentenced prisoners in New Jersey

The male to female imprisonment ration indicates the number of male inmates to every female inmate

- In 1977, across the states, there were an average of 26 male prisoners for every female prisoner; New Jersey's 1977 ration was higher than average with 29 male prisoners for every female prisoner
- In 2004, New Jersey's male to female imprisonment ration (17:1) remained higher than the average across states

Over the past 20 years the war on drugs has caused significant rise in the number of women incarcerated and their access to adequate drug treatment.

- 40% of criminal convictions leading to incarceration of women in 2000 were for drug crimes
- 34% were for other non-violent crimes such as burglary, larceny, and fraud
- 18% of women in prison have been convicted because of violent conduct
- 7% were for public order offenses such as drunk driving, liquor law violations and vagrancy

Many women in prison have experienced physical or sexual trauma at the hands of men.

- 92% of all women in California prisons had been “battered and abused” in their lifetimes.
- It appears that no such study has even been conducted in the State of New Jersey.

Women of color are significantly overrepresented in the criminal justice system.

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Among female state prisoners, two-thirds are mothers of a minor child.

- Over 1.5 million children have a parent in prison
- More than 8.3 million children have a parent under correctional supervision and more than one in five of these children is under five years old.

International, a human rights organization that seeks to end sexual abuse in prisons, jails, and detention centers. “And even if an incarcerated survivor had an opportunity to speak on the record to, say, a Ronan Farrow” — who wrote the New Yorker story about Weinstein — “about his or her plight, it would likely lead to swift and severe retaliation from corrections staff.” He noted that, while journalists and social media platforms should be looking for ways to make incarcerated people’s stories public, “the barriers facing inmates are especially great.” A national conversation about structurally enabled sexual violence in this country needs to address prisons and detention centers. According to a 2012 Justice Department [report](#), an estimated 200,000-plus people are sexually abused in U.S. detention centers every year, with nearly

[half](#) of all reported instances citing prison guards or staff as the alleged abuser (these are only the reported cases in a context of notoriously underreported incidents). Only about 10 percent of allegations were even followed by an

investigation; only 1 percent of prison staff found to have engaged in sexual misconduct were subjected to criminal conviction.

This low number is especially disturbing given that under law, any and all sex between corrections officers and the incarcerated people they oversee is [considered rape](#). But the letter of the law's recognition of the coercive power dynamic between a prison guard and a prisoner has little relevance in a system in which that very power imbalance keeps victims silenced, ignored, and routinely disbelieved. (The New York City Correction Officers' Benevolent Association declined to comment on the issue, and the New York State Correctional Officers & Police Benevolent Association did not respond to my requests for comment.)

"We need to remember that sexual violence has been part of the prison system since it started, but this has been unnoticed and unhighlighted," Victoria Law, an Intercept [contributor](#) and author of "[Resistance Behind Bars: The Struggles of Incarcerated Women](#)," told me. Survivors attempting to report predators in powerful positions can always expect negative consequences, Law explained, but in prisons the challenges are unique. "In these cases," she said, referring to assaults by prison officials, "the person you're trying to speak out against has the keys to your freedom."

Fear and threat of retaliation undergirds the prevalence of sexual violence in prisons and detention, as does the popular belief that incarcerated people should not be trusted or believed. Retaliation can take many forms in detention. There's the threat of further violence, as well as possible interference into "all the little things that make life behind bars bearable," said Law. "There's a very lengthy process once you file a complaint, and once you have, you might notice that your mail comes up missing, or your cell is suddenly subjected to searches — which means they turn everything upside down, throw your belongings on the floor, or maybe your mom comes to visit and has to wait for hours."

When incarcerated people do try to speak out, the attackers rarely suffer consequences. Law pointed me to New York City Board of Corrections statistics, announced in a [September meeting](#), which found that of 828 reports of sexual assault in New York City jails last year, 786 had yet to be investigated as of a few months ago. "Prisoners have no place to run or hide from a rapist," wrote Lovisa Stannow, executive director of JDI, in a recent Los Angeles Times [op-ed](#). "There are limits to the parallels between sexual abuse that happens in the workplace and in detention," she noted; these assaults are frequently set in "a tiny, windowless room far away from anyone who is willing to keep you safe."

[Prison rape also complicates the way we talk about power, gender, and the role of men in our discussions of sexual violence.](#)

LGBTQ individuals, particularly transgender women in male prison populations, are especially vulnerable to sexual assault and victimization in prison. In the name of their safety, these victims are often isolated or placed in solitary confinement, which, as Law told me, only "ensures physical safety and the expense of mental safety." Meanwhile, women are 30 times more likely to become a victim of sexual assault in prison compared to on the outside, according to the Bureau of Justice Statistics [cited in](#) The Nation in 2015. But prison rape also complicates the way we talk about power, gender, and the role of men in our discussions of sexual violence.

When the #MeToo social media [campaign](#) took off in the wake of the Weinstein revelations, there was some debate as to whether the hashtag should be used by straight, cisgender men to talk about their histories of sexual victimization. An understandable desire surfaced: to emphasize the stories of those most at risk, namely cis and trans women and other non-straight, non-cis people.

Prison presents a different demographic of survivors. Most victims of the prison rape epidemic are men, simply because most incarcerated people are men. That there is sexual violence among this mostly male population should

come as no surprise. As Law put it, “Sexual assault is not about sex, it’s about power and domination. And in prison, there’s a lot of power and domination and violence.”

The “[Weinstein effect](#)” is provoking crucial discussions about systematic and structural factors that contribute to sexual violence. The need to undo patriarchal hierarchies is clear, but when it comes to addressing the problem in prisons, the oppressive forces are built into the carceral state itself. We might imagine — or try to imagine — a way to produce movies, media, and entertainment free from a system of domination and patriarchal hierarchy. But we might have trouble imagining a system of caging and segregating humans that would not be predicated on structural oppressions. Since the carceral state will not crumble overnight, however, reform is urgently needed.

“There are clear policy solutions that, if adopted, can reduce sexual abuse dramatically. These include setting up safe ways for inmates to report; giving them access to rape crisis services in the community; and teaching staff to treat prisoners with respect (and that there will consequences if they don’t),” Lerner-Kinglake said, noting that JDI believes that good policies could end prison rape. “Fortunately, there is a roadmap for putting these policies in place: the Prison Rape Elimination Act standards.”

PREA was first passed in 2003 but has since had a spotty record of implementation, overseen by a [flawed audits](#). It was only in 2015 that all 50 states officially [committed](#) to PREA compliance. The act mandates that detention facilities train staff on prevention, educate incarcerated people about their rights, and provide them with multiple channels for reporting abuse. Under the standards, facilities must screen new arrivals for known risk factors, such as prior victimization, and offer incarcerated people access to community rape crisis services.

“If we want to think about this problem holistically, one way to do it is to reduce the number of people sent to prisons and detention centers in the first place.”

Prison Rape Elimination Act, 2003

The Prison Rape Elimination Act (PREA) was passed in 2003 with unanimous support from both parties in Congress. The purpose of the act was to “provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape.” (Prison Rape Elimination Act, 2003). In addition to creating a mandate for significant research from the Bureau of Justice Statistics and through the National Institute of Justice, funding through the Bureau of Justice Assistance and the National Institute of Corrections supported major efforts in many state correctional, juvenile detention, community corrections, and jail systems.

A number of states take PREA commitments seriously. In New York state, the Department of Corrections inspects all its facilities every three years for evidence of sexual assault and meets all national standards under PREA. The same department has since 2015 shown new prisoners [orientation](#) videos on how to identify and avoid predators behind bars — a preventative effort that serves as a striking

illustration that sexual assault remains a problem that each new inmate must navigate.

Last year, a former prison warden and member of the New York City Board of Correction, Gerard Bryant, publicly [stated](#), “As long as we are going to have prisons, we are going to have sexual abuse in prisons. That’s the reality.” It might be the sort of sentiment that groups like Just Detention International are working tirelessly against; it could promote apathy by presenting a problem as truly intractable. But at the same time, Bryant’s comment offered an inadvertent recognition that the patriarchal, structural oppressions informing prison life are more inherent than incidental. “If we want to think about this problem holistically,” Law noted, “one way to do it is to reduce the number of people sent to prisons and detention centers in the first place.”

SECTION THREE

86 percent of women in jail are sexual-violence survivors

When speaking of mass incarceration, men are usually the default, it's time that changed

[Rachel Leah](#) November 11, 2017

SOURCE: <https://www.salon.com/2017/11/11/86-percent-of-women-in-jail-are-sexual-violence-survivors/>

According to a recent study, 86 percent of women who have spent time in jail report that they had been sexually assaulted at some point in their lives. As well, while women represented just 13 percent of the jail population between 2009 and 2011, they represented 67 percent of the victims of staff-on-inmate sexual victimization. Sexual violence is so pronounced among jailed and incarcerated women that Sen. Cory Booker, (D-NJ,) [labeled](#) the overarching phenomenon as "a survivor-of-sexual-trauma to prisoner pipeline."

These numbers come from the Vera Institute of Justice, which authored a survey last year titled "[Overlooked: Women and Jails in an Era of Reform](#)." Given the rising numbers of incarcerated women, specifically in local jails, and the lack of research on them, the Institute wanted to examine who those women were and what adversities they faced. Other findings were equally as alarming as those above.

Two thirds of the women in jail are of color, and the majority of that population is also low-income.

Further, nearly 80 percent of the incarcerated are mothers, most of them raising a child without a partner. Eighty-two percent were incarcerated for nonviolent offenses, while 32 percent have serious mental illness and 82 percent suffer from drug or alcohol addiction. Finally, 77 percent of those polled were victims of partner violence and another 60 percent experienced caregiver violence.

First Lady of New York City Chirlane McCray, who works with women at [Rikers Island](#), added that in addition to the prevalence of sexual assault, abuse and trauma present in the lives of the majority of incarcerated women, "women are often trapped in a lower-paid status," she told Salon on a recent episode of "Salon Talks."

This economic reality is often what inspires the crimes that end up landing these women in local jails in the first place. Laurie Garduque, the criminal justice director of the MacArthur Foundation, which co-published the survey, told Salon that many women end up in jail because of "crimes of poverty." During the survey, she encountered women who were jailed for reasons like unpaid parking tickets, stealing discount clothes for their children and for failing to show up to court.

"A lot of people are there because they haven't paid their fines and fees, haven't paid their child support, have outstanding bench warrants," she added. Beyond that, many are forced to stay in jail awaiting pre-trial because they have no resources to pay cash bail.

The survey found that in 2012, 36 percent of women were being held in a pre-trial unit in Massachusetts because they could not afford bail amounts of less than \$500. Given that Black and Latina women live at low-income rates disproportionate to the white population, they are also the cohorts most impacted by the cash bail system.

Simply, the economic realities for women compounded by the economic realities for people of color, combine to create a system where members of certain at-risk populations awaiting trial, may spend significant time behind bars for minor offenses they were compelled to commit regardless of whether they are convicted or not. "It's really a revolving door," Garduque said. "Even a short stay in jail can be very disruptive for women."

Garduque also emphasized another point. "Over the same period of time where we've seen a growth in incarceration with respect to prisons, we've seen growth and the reliance of jails," she continued. "So they've become transformed, devoted less to protecting public safety and more in line with housing poor people, and people with behavioral health issues, or where other systems have failed them."

Many of these problems only mount once a woman is jailed as "most jail environments were not designed with them in mind and do not take into account the particular adversities they have experienced," the report says. Garduque explained that many jails are not equipped to deal with gynecological issues, pregnancy, menstrual cycles or the fact that the majority of women in jail retain custody of their children.

All of this data points to a striking problem in criminal justice reform. Policymakers tend to address reform in stages, prioritizing some populations and leaving others vastly overlooked. Because women still represent a small percentage of the jail population, "the jails have not focused their time or resources to think about what specifics needs need to be addressed," Garduque said. "That's why jail, in many respects, will make women even worse off."

Overall, though the population of 1.2 million women currently supervised by the criminal justice system in many ways mirrors that of incarcerated men, being that both **disproportionately affect low-income people and people of color**. Yet, reformers rarely include women in the discussion of mass incarceration and criminal justice reform. It's a salient omission given the shifting demographics of those behind bars.

While there has been an overall decline in the number of incarcerated men on a local and state level, the same is not true for incarcerated women. In fact, "the rate of growth for female imprisonment has outpaced men by more than 50% between 1980 and 2014," [the Sentencing Project says](#).

Given that women are the fastest growing jail population in the nation, the MacArthur Foundation's [Safety and Justice Challenge](#) is working with jurisdictions to address the "misuse and overuse of jails" and to reduce jail populations by fostering more equitable justice systems.

The Vera Institute and the MacArthur Foundation see women-specific reforms as the only route forward. "It's much more complicated than it is for men," McCray added.

In an attempt to address this, the foundation selected various jurisdictions with different resources to demonstrate that "regardless of their resources," Garduque said, "if they have the political will, and if they have the knowledge and information, that they can enact the reform to eliminate unnecessary use of jail and still address the issue of racial and economic disparity."

There has been a tentative response to the plight of incarcerated women in Congress as well. In July, Booker proposed a new bill titled "the Dignity for Incarcerated Women Act" cosigned by Democratic Senators Elizabeth Warren, Kamala Harris and Dick Durbin. [According to Slate](#), some of the provisions include a ban on the shackling or placing in solitary confinement of pregnant inmates.

Further, the bill would require prisons to provide free menstrual products for those awaiting trial and bar male guards from supervising female inmates in bathrooms, except during emergencies. Inmates would no longer be charged for calling friends and family members. The bill would also consider the placement of incarcerated women who are mothers in relation to their families, and foster more accessible communication and visitation between mothers and their children in general.

These and other proposed reforms in the Dignity Act fall in line with what the Vera Institute urges. Yet, the Dignity Act would only apply to women in federal prisons. Even with its passage, things would not change for the

individuals in jails and state prisons who make up the overwhelming bulk of incarcerated women in the United States.

Still, the act's passing would be a step forward for many and, perhaps, a motivation for state and local authorities to reconsider and revise their own practices.

Whatever the case, the already dire situation for women behind bars — and quite specifically in jail — erodes further toward the inhuman with every passing day. It's a systematic crisis that, by now, has transcended the legal and the logistical to take on the dimensions of this moral emergency.

"I know there's a lot going on right now," Booker [told Refinery 29](#), referring to the political climate. "But you can always judge the greatness of a society by looking at who it imprisons and how it treats them." By that measure, the United States has much to do in order to claim any kind of greatness.