

# The Incarceration of Women in California

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## I. California's Incarcerated Women

WOMEN'S NEEDS IN California prisons continue to escalate, yet remain largely unaddressed despite the best reform efforts of advocates and the California Department of Corrections and Rehabilitation ("CDCR"). The Female Offender Programs and Services Division ("FOPS") of the CDCR and the Gender-Responsive Strategies Commission have expanded gender-responsive programming despite the political divide between the Legislature and the Administration. The California prison system needs broad reform aimed toward providing female offenders the support structure necessary to maximize their opportunities for success.

With reform as a goal and with national and California foundation support, the National Council on Crime and Delinquency ("NCCD") conducted an intensive examination of the characteristics of women incarcerated in California with specific attention given to health care and the availability of community-based alternatives to incarceration. This Article summarizes this research, assesses alternatives, and makes recommendations that have the potential for vast improvements in how California treats women in custody.

### A. Rise of Incarceration

For the better part of the twentieth century, the nation's incarceration rate remained fairly stable.<sup>1</sup> Over the past twenty-five years, however, state prison populations exploded.<sup>2</sup> This national prison

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1. Marie Gottschalk, *Black Flower: Prisons and the Future of Incarceration*, 582 ANNALS AM. ACAD. POL. & SOC. SCI. 195, 197 (2002).

2. See OFFENDER INFO. SERVS., CAL. DEP'T OF CORR. & REHAB., CALIFORNIA PRISONERS AND PAROLEES 2004, at 20 tbl.8 (2005), available at [http://www.cdcr.ca.gov/Reports\\_Re](http://www.cdcr.ca.gov/Reports_Re)

population increase is overwhelmingly due to “tough on crime” policies, legislation enacted as part of the war on drugs, and changes in the economy, social services, education, and employment opportunities.<sup>3</sup> In addition, public policy over the last twenty-five years has emphasized punishment and deterrence in lieu of reform and rehabilitation.<sup>4</sup>

Specifically, female incarceration has increased dramatically and disproportionately in recent decades. The number of women in California prisons rose from 1232 in 1979<sup>5</sup> to 11,416 in 2007.<sup>6</sup> The increase in women’s incarceration rate has outpaced that for men each year since the mid-1980s.<sup>7</sup> While the total number of California male prisoners grew 866% from 21,400 to 160,028 between 1979 and 2007, the number of female prisoners grew 892% during the same period.<sup>8</sup> In jails the difference is even more pronounced. The total number of men in California jails increased by 11% between 2001 and 2006, less than half the 21% increase for women in the same period.<sup>9</sup>

Women are particularly vulnerable to policy changes because they are more likely than men to be incarcerated for drug-related or

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search/Offender\_Information\_Services\_Branch/Annual/CalPris/CALPRISd2004.pdf [hereinafter CDCR 2004 REPORT]; OFFENDER INFO. SERVS., CAL. DEP’T OF CORR. & REHAB., Historical Trends 1985–2005, at 1, available at [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Annual/HIST2/HIST2d2005.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/HIST2/HIST2d2005.pdf); see also ANGELA WOLF, NAT’L COUNCIL ON CRIME & DELINQUENCY, REDUCING THE INCARCERATION OF WOMEN 1 (2006), available at [http://www.nccd-crc.org/nccd/pubs/2006\\_WIP\\_special\\_report.pdf](http://www.nccd-crc.org/nccd/pubs/2006_WIP_special_report.pdf).

3. See WOLF, *supra* note 2, at 1.

4. See Rosemary Gardner & Candace Kruttschnitt, *A Brief History of Doing Time: The California Institution for Women in the 1960s and 1990s*, 38 LAW & SOC’Y REV. 267, 268, 270 (2004).

5. *Offender Info. Servs.*, CAL. DEP’T OF CORR., CALIFORNIA PRISONERS 1979, at 7 tbl.2 (1980), available at [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Annual/CalPris/CALPRISd1979.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd1979.pdf).

6. *Offender Info. Servs., Cal. Dep’t of Corr. & Rehab.*, CALIFORNIA PRISONERS AND PAROLEES 2007, at 8 tbl.2C (2008), available at [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Annual/CalPris/CALPRISd2007.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd2007.pdf) [hereinafter CDCR 2007 REPORT].

7. See sources cited *supra* note 2.

8. OFFENDER INFO. SERVS., CAL. DEP’T OF CORR. & REHAB., CALIFORNIA PRISONERS AND PAROLEES 2005, at 20 tbl.8 (2006), available at [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Annual/CalPris/CALPRISd2005.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd2005.pdf); CDCR 2007 REPORT, *supra* note 6, at 15 tbl.7.

9. FACILITIES STANDARDS & OPERATIONS DIV., CORR. STANDARDS AUTH., JAIL PROFILE SURVEY: 2006, 4TH QUARTER SURVEY RESULTS (2007), available at [http://www.cdcr.ca.gov/Divisions\\_Boards/CSA/FSO/Docs/JPS%20Docs/2006\\_jps\\_Q4\\_full\\_report.pdf](http://www.cdcr.ca.gov/Divisions_Boards/CSA/FSO/Docs/JPS%20Docs/2006_jps_Q4_full_report.pdf) (Average Daily Population table); FACILITIES STANDARDS & OPERATIONS DIV., CORR. STANDARDS AUTH., JAIL PROFILE SURVEY: 2001 4TH QUARTER REPORT (2002), available at [http://www.cdcr.ca.gov/Divisions\\_Boards/CSA/FSO/Docs/JPS%20Docs/2001\\_jps\\_Q4\\_adp\\_m\\_f.pdf](http://www.cdcr.ca.gov/Divisions_Boards/CSA/FSO/Docs/JPS%20Docs/2001_jps_Q4_adp_m_f.pdf) (Average Daily Population table).

petty, nonviolent property crimes, and these types of arrests drive women's high rates of incarceration.<sup>10</sup> In 2006, 87% of women versus 70% of men admitted to state prison were convicted of nonviolent property crimes.<sup>11</sup> Before the advent of mandatory minimums for drug crimes, such crimes would not have warranted imprisonment, but now they more often result in prison time.<sup>12</sup> While felony drug offenses accounted for just 13% of women in prison in 1980, the proportion was 30% in 2006 and was as high as 43% from 1997 to 2000.<sup>13</sup> The proportion of men in prison for drug offenses also rose from 9% in 1980 to 20% in 2006, but drug offenses do not account for the high percentage of men in prison that they do for women.<sup>14</sup> California's Determinate Sentencing Law radically reduced judicial discretion, in particular because it includes mandatory minimum sentences which preclude courts from considering mitigating circumstances.<sup>15</sup> For example, women convicted of violent crimes are often defending themselves against violent attacks from intimate partners,<sup>16</sup> but the courts do not typically consider this factor in sentencing decisions.<sup>17</sup> Partly as a result of sentencing laws, the population of women in California prisons has grown to be the largest in the nation, second only to Texas.<sup>18</sup>

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10. See BARBARA OWEN & BARBARA BLOOM, PROFILING THE NEEDS OF CALIFORNIA'S FEMALE PRISONERS 6 (1995), available at <http://www.nicic.org/pubs/1995/012451.pdf>.

11. See OFFENDER INFO. SERVS., CAL. DEP'T OF CORR. & REHAB., CALIFORNIA PRISONERS AND PAROLEES 2006, at 43 tbl.29 (2007), available at [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Annual/CalPris/CALPRISd2006.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd2006.pdf) [hereinafter CDCR 2006 REPORT].

12. WOLF, *supra* note 2, at 2.

13. OFFENDER INFO. SERVS., DEP'T OF CORR. & REHAB., CALIFORNIA PRISONERS 2001, § 2 tbl.13 (2001), available at [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Annual/CalPris/CALPRISd2001.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd2001.pdf); CDCR 2006 REPORT, *supra* note 11, at 21; YOUTH & ADULT CORR. AGENCY, CAL. DEP'T OF CORR. & REHAB., CALIFORNIA PRISONERS 1980, at 22 tbl.7a (1980), available at [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Annual/CalPris/CALPRISd1980.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd1980.pdf).

14. OFFENDER INFO. SERVS., CAL. DEP'T OF CORR. & REHAB., CALIFORNIA PRISONERS 1980, at 22 tbl.7A (2005), available at [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Annual/CalPris/CALPRISd1980.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd1980.pdf); CDCR 2006 REPORT, *supra* note 11, at 21.

15. See CAL. PENAL CODE § 1170 (West 2004 & Supp. 2008).

16. See Myrna S. Raeder, *Gender and Sentencing: Single Moms, Battered Women, and Other Sex-Based Anomalies in the Gender-Free World of the Federal Sentencing Guidelines*, 20 PEPP. L. REV. 905, 971-72 (1993).

17. See *id.*

18. LITTLE HOOVER COMM'N, BREAKING THE BARRIERS FOR WOMEN ON PAROLE 5 (2004), available at <http://www.lhc.ca.gov/lhcdir/177/report177.pdf>.

## B. Female Prisoners

Incarcerated women are characteristically women of color, poor, unemployed, unmarried, mothers of young children, and survivors of physical and sexual abuse.<sup>19</sup> Imprisoned women also tend to have a fragmented family history, with other family members involved with the criminal justice system, significant substance abuse issues, and multiple physical and mental health problems.<sup>20</sup> Women go to prison often with an already severe complex of problems, which, without adequate treatment, the harsh conditions of prison tend to exacerbate. Several of these problems are detailed below.

### 1. Socioeconomics

The great majority of incarcerated women were struggling financially prior to their arrest. Nearly one-fifth of mothers in state prisons across the country were homeless within the year prior to their arrest.<sup>21</sup> Educationally, most incarcerated women at best achieved a high school diploma or GED.<sup>22</sup> Without an education, these women have few opportunities to participate in the legitimate work force. The statistics show only 40% of women held a full-time job prior to arrest compared to 60% of men.<sup>23</sup> Of the jobs women did hold, most were low skill with low pay and almost 40% yielded incomes of less than \$600 a month.<sup>24</sup>

### 2. Physical and Sexual Abuse

Women in prison typically experience some form of abuse in their lifetime, which includes sexual assault, domestic violence, and sexual, physical, or psychological abuse. Fifty-seven percent of women report physical or sexual abuse before imprisonment versus only 16% percent of men reporting such abuse.<sup>25</sup> By and large, these women receive little treatment or support to help them cope with their

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19. BARBARA BLOOM, BARBARA OWEN & STEPHANIE COVINGTON, U.S. DEP'T OF JUSTICE, GENDER-RESPONSIVE STRATEGIES 17 (2003), available at [www.nicic.org/pubs/2003/018017.pdf](http://www.nicic.org/pubs/2003/018017.pdf).

20. *Id.*

21. CHRISTOPHER J. MUMOLA, U.S. DEP'T OF JUSTICE, INCARCERATED PARENTS AND THEIR CHILDREN 9 (2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/iptc.pdf>.

22. Barbara Bloom, Barbara Owen & Stephanie Covington, *Women Offenders and the Gendered Effects of Public Policy*, 21 REV. POL'Y RES. 31, 33 (2004).

23. LAWRENCE A. GREENFIELD & TRACY A. SNELL, U.S. DEP'T OF JUSTICE, WOMEN OFFENDERS 8 (1999), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/wo.pdf>.

24. *See id.* at 8.

25. LITTLE HOOVER COMM'N, *supra* note 18, at vii, 15.

trauma.<sup>26</sup> As such, abuse translates to high rates of mental health problems among incarcerated women. This physical and psychological abuse may also contribute to problems with drug addiction, as women struggle to deal with the life trauma.

### 3. Drug Abuse

Generally, women in prison report high rates of substance abuse.<sup>27</sup> Compared to men, women are less likely to use drugs for pleasure.<sup>28</sup> Instead, women use drugs to “self medicate” depression or stress, to numb themselves from the emotional pain of abuse,<sup>29</sup> or as a means to escape from conditions of poverty that create emotional stress.<sup>30</sup>

### 4. Children Left Behind

Incarcerated women in California are more likely than men to live with their children as a single parent prior to arrest.<sup>31</sup> Thus, a mother’s incarceration immediately affects her children. While the vast majority of incarcerated men’s children can simply continue to live with their non-incarcerated mothers, incarcerated women’s children are more likely to end up living with other family relatives, particularly grandparents, and more likely to end up in foster care.<sup>32</sup>

## C. Female Offenses

The most common offenses committed by women are forgery, fraud, nonviolent property offenses, and drug offenses.<sup>33</sup> Of the ten most common crimes committed by women, only two—grand larceny and aggravated assault—are Part 1 felonies.<sup>34</sup> The chart below highlights the difference in types of crimes committed by males and females in California prisons.<sup>35</sup>

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26. *Id.* at 17.

27. See GREENFIELD & SNELL, *supra* note 23, at 8.

28. JOANNE BELKNAP, *THE INVISIBLE WOMAN: GENDER, CRIME AND JUSTICE* 104 (2001).

29. *Id.*

30. *Id.*

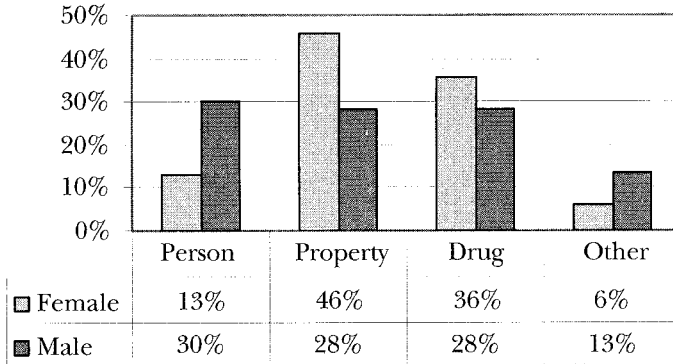
31. M. ANNE POWELL & CLARE NOLAN, *CALIFORNIA STATE PRISONERS WITH CHILDREN: FINDINGS FROM THE 1997 SURVEY OF INMATES IN STATE AND FEDERAL CORRECTIONAL FACILITIES* 11 (2003), available at <http://www.library.ca.gov/crb/CRBSearch.aspx>.

32. *Id.* at 24.

33. CDCR 2006 REPORT, *supra* note 11, at 41.

34. Lori B. Girschick, *The Importance of Using a Gendered Analysis to Understand Women in Prison*, 4 J. OKLA. CRIM. JUST. RES. CONSORTIUM (1998).

35. CDCR 2006 REPORT, *supra* note 11, at 43.

**Fig 1.**

Source: CDCR, 2007.

Female prisoners are less than half as likely as male prisoners to have committed a crime against a person.<sup>36</sup> The largest portion of incarcerated women are in prison for nonviolent property crimes.<sup>37</sup> In 2006, property crimes represented 46% of new felony admissions to prison.<sup>38</sup> Approximately 36% of women admitted to prison were convicted for drug offenses.<sup>39</sup> Women's drug offenses are typically low level and reflect women's attempt at economic survival.<sup>40</sup> Just 13% of women admitted to prison in 2006 were convicted of a crime against a person.<sup>41</sup> In murder cases, 60% of women murdered an intimate partner or family member compared to 20% of men.<sup>42</sup> Many times this intimate partner was an abuser of the offender.<sup>43</sup>

## 1. Parole and Parole Violations

Given the nonviolent nature of most female crime, women's sentences are relatively short compared to men's before release into the community. Without adequate community programming and parole policies, the likelihood of parole failure is high. Fifty-one percent of the women committed to California prisons in 2004 were parolees returned to custody.<sup>44</sup> The state charged a quarter of these with a new

36. *Id.*

37. *See id.* at 41.

38. *Id.*

39. *Id.* at 42.

40. *See* MEDA CHESNEY-LIND, *THE FEMALE OFFENDER* 177 (1997).

41. CDCR 2006 REPORT, *supra* note 11, at 41.

42. GREENFIELD & SNELL, *supra* note 23, at 4.

43. *See* OWEN & BLOOM, *supra* note 10, at 12.

44. CDCR 2004 REPORT, *supra* note 2, at 10 tbl.4c.

crime and sentenced them to a new term, while the remainder returned for parole violations.<sup>45</sup> In 1998, more than half the women returned to prison for parole violations returned for drug offenses.<sup>46</sup> California prisons are not addressing the issues facing women, especially substance abuse problems, which lead to technical violations and future crimes.

## 2. High Recidivism Rates

Unfortunately, 39% of California women return to prison within three years of their release.<sup>47</sup> In fact, California ranks forty-ninth among the states in the percentage of women parolees who successfully complete parole.<sup>48</sup> Such high recidivism rates are very costly and contribute to a variety of negative social consequences such as continued separation from children, disruption of all aspects of life, and negative health outcomes.<sup>49</sup>

Reasons for the high rates of parole revocation and recidivism are complex. For one, the increase in women in California prisons has not corresponded with an increase in services to adequately meet women's basic needs, which would increase their chances of successful entry back into the community. Women come into prison with a lifetime of unmet needs in health care, education, and vocational training.<sup>50</sup> The experience of incarceration exacerbates these issues in potentially dangerous ways—especially with regard to health care. The prison's neglect of women's mental and physical health directly implicates the success of their parole, directly affects their children, and directly affects the health of their communities.

## II. Health Issues of Incarcerated Women

Drug use, risky sex behavior, inadequate health care, poverty, and histories of physical and sexual abuse put women at risk for a number of physical and mental health issues.<sup>51</sup> Incarcerated women rarely receive adequate health care before entering the prison system. Unfor-

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45. *Id.*

46. Elizabeth A. Hall, Dana M. Baldwin & Michel L. Prendergast, *Women on Parole: Barriers to Success After Substance Abuse Treatment*, 60 HUM. ORG. 225, 226 (2001).

47. PATRICK A. LANGAN & DAVID J. LEVIN, U.S. DEP'T OF JUSTICE, *RECIDIVISM OF PRISONERS RELEASED IN 1994*, at 7 (2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf>.

48. LITTLE HOOVER COMM'N, *supra* note 18, at ii.

49. *See generally id.*

50. *See id.* at 26–27.

51. *See id.*

tunately, prisons typically ignore these health issues, during imprisonment and after release, which exacerbates the problem.<sup>52</sup> This section summarizes research including intensive interviews with stakeholders conducted as part of the Women in Prison Project.<sup>53</sup> Stakeholders include representatives from local jails, health care providers, community leaders, formerly incarcerated women, and their families. Unless otherwise indicated, the information below comes directly from the stakeholder interviews.<sup>54</sup>

### A. Institutional Barriers

Incarcerated women face many institutional obstacles in accessing health care. The interviews provided numerous such examples. For one, women must fill out a form, detailing their symptoms to schedule a non-emergency appointment.<sup>55</sup> Those with low literacy levels and poor writing skills are often unable to communicate the scope or nature of their symptoms, increasing the risk of potentially dangerous time delays and an incorrect assessment of their condition. "Sick call" is an attempt to provide an inmate with quicker, same-day treatment for pressing medical issues.<sup>56</sup> In order to access "sick call," however, women must go to the medical department, sign in, and wait for hours outside, regardless of weather conditions, to receive treatment.<sup>57</sup> To receive emergency care, a woman must convince a guard with little or no medical training of the seriousness of her condition.<sup>58</sup> The guard, in turn, must convince medical staff that the prisoner requires immediate medical attention. Unfortunately, because staff tend to doubt the veracity of women's stories, they often ignore pleas for medical attention.<sup>59</sup>

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52. See generally Nancy Stoller, *Improving Access to Health Care for California's Women Prisoners* (Oct. 2000) (unpublished working paper), available at <http://www.ucop.edu/cpac/documents/stollerpaper.pdf>.

53. For a description of the methodology used in this research, see NAT'L COUNCIL ON CRIME & DELINQUENCY, *THE SPIRAL OF RISK: HEALTH CARE PROVISION TO INCARCERATED WOMEN 9-10* (2006), available at [http://www.nccd-crc.org/nccd/pubs/2006\\_spiral\\_of\\_risk.pdf](http://www.nccd-crc.org/nccd/pubs/2006_spiral_of_risk.pdf).

54. *Id.* app. A.

55. *Id.* at 11.

56. *Id.*

57. LEGAL SERVS. FOR PRISONERS WITH CHILDREN, *ACCESS TO MEDICAL CARE IN CALIFORNIA'S WOMEN'S PRISONS* (2007), available at <http://www.prisonerswithchildren.org/pubs/barriers.pdf>.

58. NAT'L COUNCIL ON CRIME & DELINQUENCY, *supra* note 53, at 12.

59. *Id.*



In addition, incarcerated women often complain of delays in receiving their medication.<sup>60</sup> In fact, women with medical problems requiring daily medication, such as heart disease, often experience delays for days at a time.<sup>61</sup> In addition, pain medication is notoriously difficult to obtain, even for women recovering from surgery or suffering from a terminal disease.<sup>62</sup> Furthermore, women are not allowed to keep a variety of highly controlled medications, referred to as “Hot Meds,” in their cells.<sup>63</sup> Thus, women with prescriptions for “Hot Meds” are forced to stand in long lines two or three times a day, depending on their regimen, to receive their medicine.<sup>64</sup> This practice makes it very difficult for women to follow their medication regimen, which can have drastic effects for serious illnesses, such as HIV/AIDS, that require very complicated and precise drug regimens.<sup>65</sup>

There is also an economic barrier to health care. Women in the CDCR must pay a five dollar co-pay for each medical visit, excluding emergency care and follow-up services.<sup>66</sup> For women with no real financial income and a host of other expenses, this charge is a heavy burden. Consequently, some women avoid reporting health problems, especially at the earlier stage, and allow their medical conditions to worsen; in the end, they require more expensive treatment.<sup>67</sup>

## B. Reproductive Health

Incarcerated women are especially at risk for reproductive health problems due to histories of sexual abuse, high rates of sex work, and prior limited access to health care services and education. An estimated 10% of women who enter jails and prisons are pregnant<sup>68</sup> and another 13% are postpartum.<sup>69</sup> Many of these are considered high-risk pregnancies; in one study of prenatal care for incarcerated women, results indicated that 53.7% of pregnant women had drug abuse

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60. *Id.* at 15.

61. *Id.*

62. *Id.*

63. *Id.* at 11.

64. *Id.*

65. See DEP'T OF HEALTH & HUMAN SERVICES, GUIDELINES FOR THE USE OF ANTIRETROVIRAL AGENTS IN HIV-1-INFECTED ADULTS AND ADOLESCENTS (2008), available at <http://aidsinfo.nih.gov/contentfiles/AdultandAdolescentGL.pdf>.

66. *Id.* at 12.

67. *Id.*

68. See *Sisters Behind Bars: Inside the Women's Prisons of California*, REVOLUTIONARY WORKER, June 15, 1997, available at <http://revcom.us/a/v19/910-19/911/prison.htm>.

69. *Behind Bars: Keeping Mother and Child Together*, N.Y. TIMES, Sept. 23, 1990, at 34.

problems, 66% smoked, and many others had other medical problems.<sup>70</sup>

Additionally, there is no routine administration of mammograms, Pap smears, or STD screening.<sup>71</sup> Without early detection, treatable conditions can have extremely serious outcomes, such as miscarriage or infertility, or lead to life-threatening disease, such as cancer.<sup>72</sup> Moreover, women report rough handling by male staff, disregard of symptoms, lack of follow-through on abnormal test results, and transportation to labor and delivery in shackles.<sup>73</sup>

### C. Infectious Disease

Incarceration facilities often perpetuate physical health problems due to lack of appropriate sanitation and overcrowding.<sup>74</sup> Hepatitis C, HIV/AIDS, staphylococcus infections, and sexually transmitted diseases were cited by interviewed stakeholders as the most prevalent infectious diseases in women's prisons.<sup>75</sup> In fact, up to 40% of prisoners in California are positive for Hepatitis C.<sup>76</sup> Except for tuberculosis, there is no system-wide prevention, treatment, or counseling protocols to deal with particular infectious diseases.<sup>77</sup> Prisoners affected by HIV and Hepatitis C are further disadvantaged because they cannot access newer, generally more effective experimental treatments widely used in community settings.<sup>78</sup> These inadequacies in prison health care for women have consequences beyond individual women as they often leave prison and return to their communities with untreated and sometimes new infectious diseases.

### D. Mental Health

Mental health treatment constitutes the largest unmet need in incarcerated women's health care service provision. Incarcerated women have high rates of depression, anxiety, post-traumatic stress disorder,

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70. See Marian Knight & Emma Plugge, *Risk Factors for Adverse Perinatal Outcomes in Imprisoned Pregnant Women: A Systematic Review*, 5 BMC PUB. HEALTH 111 (2005), available at <http://www.biomedcentral.com/content/pdf/1471-2458-5-111.pdf>.

71. NAT'L COUNCIL ON CRIME & DELINQUENCY, *supra* note 53, at 14.

72. *Id.*

73. *Id.*

74. *Id.* at 15.

75. *Id.*

76. Shaya Tayfee Mohajer, *Prisoners with Hepatitis C Sue California Prisons*, ASSOCIATED PRESS, July 8, 2008, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2008/07/08/state/n110808D83.DTL>.

77. NAT'L COUNCIL ON CRIME & DELINQUENCY, *supra* note 53, at 15.

78. *Id.*

der, and substance abuse.<sup>79</sup> Almost a third of incarcerated women report mental health problems, and the actual number may be even higher.<sup>80</sup> Instead of addressing women's multitude of underlying issues, mental health treatment often consists of prescribing medication.<sup>81</sup>

### E. Continuity of Care

There is no continuity of care for incarcerated women. Once released to their home communities, usually many miles distant from the prison, women are not directed to community resources that will allow them to access health care.<sup>82</sup> Rather, they are taken off their medications, are no longer allowed access to their medical histories, and do not receive notification of abnormal test results that surface even a day after release.<sup>83</sup> Even women with serious health issues or who are pregnant are left without care.<sup>84</sup>

### F. Missed Opportunity to Break Cycles of Despair

When women are imprisoned for minor and nonviolent crimes, which is an increasingly regular occurrence, the women and their families and communities suffer unchecked cycles of despair.<sup>85</sup> The missed opportunity for education and vocational training impacts a woman's ability to break free of pre-incarceration cycles of poverty and related crime. In addition, neglected mental health issues directly impact a woman's ability to function in the community after release, and for family reunification, substance use, and recidivism.<sup>86</sup> Thus, inadequate health maintenance reproductive health care may especially affect their long-term health as well as that of their children.<sup>87</sup> Lack of treatment for transmittable diseases may impact the health of the larger community.<sup>88</sup>

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79. *Id.* at 13.

80. *Id.* at 12.

81. Kathleen Auerhahn & Elizabeth Dermody Leonard, *Docile Bodies? Chemical Restraints and the Female Inmate*, 90 J. CRIM. L. & CRIMINOLOGY 599, 604 (2000).

82. NAT'L COUNCIL ON CRIME & DELINQUENCY, *supra* note 53, at 17.

83. *Id.*

84. ACTION COMM. FOR WOMEN IN PRISON, CAL. CRIMINAL JUSTICE CONSORTIUM, SURVEY OF MEDICAL CARE PROVIDED TO WOMEN IN CALIFORNIA PRISONS 10-13 (2003).

85. See BARBARA BLOOM ET AL., NAT'L COUNCIL ON CRIME & DELINQUENCY, COMMUNITY BASED CORRECTIONAL PROGRAMMING FOR WOMEN OFFENDERS IN CALIFORNIA 32-33 (2005) (on file with author).

86. NAT'L COUNCIL ON CRIME & DELINQUENCY, *supra* note 53, at 12.

87. *Id.* at 13-15.

88. *Id.* at 15.

### III. Alternatives to Incarceration: Community-Based Correctional Programs for Women

Given the limited security risk posed by women, particularly those incarcerated for nonviolent crimes, and the negative effects of female incarceration, it appears that a strategy of community-based incarceration would be an appropriate alternative to current mega-prisons designed for violent men. Community-based incarceration would give women the opportunity to focus on their underlying issues (like drug addiction or histories of abuse) in an environment tailored to their needs and in a facility located closer to their families and communities, with adequate health care that continues upon release. To gain a better sense of alternatives to incarceration, the NCCD conducted a statewide survey of existing community-based correctional programs that serve female offenders in California as part of the Women in Prison Project.<sup>89</sup>

For the survey, “community-based correctional programs” were defined as programs operated outside of prisons and jails by public and private agencies to serve women (and in some cases, their children) exclusively. NCCD identified such programs based on current literature and programs suggested by advocates for incarcerated women and contacted each suggested program to verify that the program met the selection criteria. Researchers selected a total of nineteen suitable community-based correctional programs serving women offenders. Detailed interviews aimed at gathering information on individual program’s clients, referral services, treatment services, funding sources, and programming were conducted with the nineteen program directors or assistant program directors. Although the number of programs surveyed is relatively small, the researchers are confident that the survey methodology identified a majority of the community-based correctional programs serving women offenders.

#### A. Available Community-Based Correctional Programs

At the time of the survey, there were fewer than 1000 beds in alternative programs available to women offenders in California.<sup>90</sup> This number has increased somewhat since.<sup>91</sup> Three primary provid-

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89. See BLOOM ET AL., *supra* note 85, at 6–8, 43–44.

90. *Id.* at 2.

91. See NAT’L COUNCIL ON CRIME & DELINQUENCY, TASK FORCE ON CALIFORNIA PRISON OVERCROWDING 1, 6 (2006), available at [http://www.nccd-crc.org/nccd/pubs/2006\\_ca\\_task\\_force.pdf](http://www.nccd-crc.org/nccd/pubs/2006_ca_task_force.pdf).

ers were under contract with the CDCR: Mental Health Systems, Phoenix House, and Walden House.<sup>92</sup>

The Drug Treatment Furlough (“DTF”) is a residential community-based substance abuse program for non-serious, nonviolent women offenders who have 120 days left before parole release.<sup>93</sup> At the time of the survey, there were eighty women offenders participating in DTF programs.<sup>94</sup> The program sites are primarily located in Southern California.<sup>95</sup> DTF programs are funded by the CDCR Division of Addiction and Recovery Services (“DARS”), formerly the Office of Substance Abuse Programs, and have strict eligibility requirements for participation.<sup>96</sup> Participants must have completed an in-prison substance abuse program and cannot be convicted of either a sex offense or a violent felony.<sup>97</sup> DTF programs offer a therapeutic community to deal with addiction, treatment, and reentry on an individual basis.<sup>98</sup> DTF programs generally offer services including residential housing, individual or group counseling, relapse prevention and reentry preparation, twelve-step classes, and job training courses.<sup>99</sup>

The Female Offender Treatment and Employment Program (“FOTEP”) provides residential substance abuse treatment for female parolees, primarily women who have participated in prison-based drug treatment programs.<sup>100</sup> There are approximately 400 FOTEP beds available in California.<sup>101</sup> The target population of the FOTEP is female offenders with therapeutic community alcohol and/or drug abuse treatment programs completed during their incarceration.<sup>102</sup> The FOTEP offers cognitive skills development, education and life skills classes, family reunification, employment placement assistance, vocational training, and after-care placement in affordable housing.<sup>103</sup> Importantly, the FOTEP also provides intensive training and substance abuse counseling services for female parolees in order to facilitate successful reintegration into the community.<sup>104</sup> Unique to the

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92. BLOOM ET AL., *supra* note 85, at 9.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.* at 10.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

FOTEP is the allowance for participating women to have their children reside with them while participating in the program.<sup>105</sup> Passed in 1998, Senate Bill 491 established the FOTEP.<sup>106</sup> Participation in the program is determined on a case-by-case basis.<sup>107</sup> The average length of stay varies and the FOTEP annually serves nearly 1000 women statewide.<sup>108</sup>

Two programs serve pregnant and parenting women offenders and their children: the Family Foundations Programs (“FFP”), located in San Diego, Santa Fe Springs, and Fresno,<sup>109</sup> and the Community Prisoner Mother Program (“CPMP”), which has sites in Oakland, Bakersfield, and Pomona.<sup>110</sup> At the time of the survey, these programs served a total of 140 women.<sup>111</sup>

The FFP is an alternative sentencing program authorized by The Pregnant and Parenting Women’s Alternative Sentencing Program Act of 1994.<sup>112</sup> Under the FFP, women serve twelve months regardless of the length of their sentence.<sup>113</sup> The CDCR administers the FFP, and each facility typically houses between 35 and 40 women and children.<sup>114</sup> The target population is nonviolent, substance-abusing, pregnant, or parenting women offenders (with children six years of age or younger) sentenced to state prison.<sup>115</sup> Participants must not have served a prior prison term nor had a felony conviction, must have a sentence of no more than thirty-six months, and must be pregnant and/or have primary custody of one or more children.<sup>116</sup> Also, the Department of Social Services must approve the child’s placement with the mother.<sup>117</sup>

Established in 1980, the CPMP allows inmates who meet eligibility requirements to move out of prison and settle into a community-based facility for the remainder of their prison term.<sup>118</sup> The CPMP requires

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105. *Id.*

106. S.B. 491, 1998 Reg. Sess. (Cal. 1998).

107. BLOOM ET AL., *supra* note 85, at 10.

108. *Id.*

109. *Id.*; see Press Release, Cal. Dep’t of Corr. & Rehab., CDCR Awards Contract for New Fresno Family Foundations Program (May 4, 2007), available at [http://www.cdcr.ca.gov/News/2007\\_Press\\_Releases/Press20070504.html](http://www.cdcr.ca.gov/News/2007_Press_Releases/Press20070504.html).

110. BLOOM ET AL., *supra* note 85, at 10.

111. *Id.*

112. *Id.* at 11.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

that participants have at least ninety days and no more than five years remaining on their sentence, while the average stay in the CPMP is nine months.<sup>119</sup> The CPMP provides a positive environment for mother and child in the least restrictive alternative to incarceration, consistent with public safety.<sup>120</sup> Programs provide educational, emotional, self-esteem, and employment skills support for mother/child bonding, family reunification, and independent living.<sup>121</sup>

Much like the FFP, CPMP participants must have no violent crime conviction and must be a fit primary caretaker of a child six years of age or under.<sup>122</sup> Both the FFP and the CPMP have approximately seventy treatment slots available for women offenders in California.<sup>123</sup> A key difference between the CPMP and the FFP is the length of time that participants spend with their children.<sup>124</sup> Women in the CPMP may serve a substantial part of their prison term away from their children, while women in the FFP may live with their children for the entire sentencing period.<sup>125</sup>

The Leo Chesney Community Correctional Facility ("CCF") can house up to 220 low-level, nonviolent female offenders and is the only facility of its kind in California designated for women.<sup>126</sup> Services include basic education, GED preparation and testing, college-level courses, substance abuse and addiction support groups through Alcoholics Anonymous/Narcotics Anonymous, and vocational training in culinary arts, carpentry, and landscaping.<sup>127</sup> On average, CCF participants stay 6 months in the program, but no longer than 18 months.<sup>128</sup>

In addition to the above-mentioned programs under contract with the CDCR, several grassroots programs operated by formerly incarcerated women provide residential services to women coming out of prison and to those on parole.<sup>129</sup> For example, A New Way of Life, a grassroots organization located in Los Angeles, has succeeded in transforming the lives of over 120 women since 1998.<sup>130</sup> A New Way of

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119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* at 11-12.

124. *Id.* at 12.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

Life was founded as a sober living home for paroled women in the Watts area of Los Angeles.<sup>131</sup> In 2002, the program recognized the need for these individuals to be reunited with their children and opened a second home to house women with children.<sup>132</sup>

Time for Change Foundation, located in San Bernardino, provides reentry services to formerly incarcerated women who are homeless, recovering from physical and sexual abuse, or recovering from substance abuse.<sup>133</sup> Time for Change provides these services in conjunction with a sober living environment conducive to the establishment of a healthy, drug-free, crime-free, and positive lifestyle.<sup>134</sup>

## B. Capacity of Community Correctional Programs

In 2006, Governor Schwarzenegger proposed the release of approximately 4000 women.<sup>135</sup> Thus, the existing 1000 beds are insufficient to cover the possibility of a large-scale release of nonviolent women. Furthermore, the existing treatment beds are clearly underutilized—a capacity analysis of the DTF programs found there are currently 176 beds for female DTFs, but at the time of our survey, only 80 were filled.<sup>136</sup> This underutilization is due to CDCR eligibility criteria and institutional endorsement policies.<sup>137</sup> Furthermore, the available beds only target women with very specific needs. For example, at the time of the study, there were only 140 beds available for pregnant and parenting women offenders, though these two groups comprise a majority of the female prisoner population.<sup>138</sup>

## IV. Policy Recommendations

Major shifts in policy and practice are needed to achieve an effective, humane, fair, and economically sound correctional system for female offenders. A fundamental requisite to this achievement is decarceration—moving women from high-security environments far from their homes and families, into settings that will encourage positive change. Within the context of the overarching goal, however, we understand the importance of addressing the immediate needs of wo-

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131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. California Office of the Governor, Facilities for Women, <http://gov.ca.gov/index.php?fact-sheet/1080/> (last visited Nov. 10, 2008).

136. BLOOM ET AL., *supra* note 85, at 30.

137. *Id.* at 29.

138. *Id.* at 30.



men inside California prisons. Thus, improving services geared towards life inside prison *and* reentry is critical to an effective reform of California's women's prisons.

### A. Develop and Implement Gender-Responsive Programming

The National Institute of Corrections report, *Gender-Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders*, documents the need for a new vision for the criminal justice system that recognizes the behavioral and social differences between female and male offenders.<sup>139</sup> This new version specifically implicates gender-responsive policy and practice.<sup>140</sup>

In clinical work the practitioner must know who the client is and what she brings into the treatment setting.<sup>141</sup> Because women have unique histories, needs, and pathways to crime, gender-responsive programming is essential at every level of the system. It should be noted the department has achieved some limited progress in this regard, particularly in recognizing that gender-responsive programming is critical to reform.<sup>142</sup>

Barbara Owen and Barbara Bloom found that parenting and substance abuse classes garnered the most attention among inmates in women's prisons.<sup>143</sup> Access to programs that are basic to women's life circumstances are a sound strategy toward breaking the cycle of incarceration. Women also require access to classes that accept women's identities and unique pathways. Women's programs must work to raise women's low self-esteem and ameliorate the effects of trauma, such as programs that specifically target battered women or survivors of incest. Prisons also need more educational programs and employment-training programs, especially for male-dominated fields that generate more income and better benefits, and are typically less present in women's prisons.<sup>144</sup> Women's prisons must encourage more

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139. BARBARA BLOOM ET AL., *GENDER-RESPONSIVE STRATEGIES: RESEARCH, PRACTICE AND GUIDING PRINCIPLES FOR WOMEN OFFENDERS*, at iii-iv (2003), available at <http://www.nicic.org/pubs/2003/018017.pdf>.

140. BLOOM, OWEN & COVINGTON, *supra* note 19, at iii.

141. Stephanie S. Covington & Barbara E. Bloom, *Gender-Responsive Treatment and Services in Correctional Settings*, in *INSIDE AND OUT: WOMEN, THERAPY AND PRISON 2* (Elaine Leeder ed., 2006).

142. Rod Hickman, Secretary, Cal. Dep't of Corr. & Rehab., Testimony at the California Senate Oversight Hearing (Feb. 2, 2006), available at [http://web.archive.org/web/20080125205202/http://www.cdcr.ca.gov/About\\_CDCR/Secretary\\_Speeches/02022006.html](http://web.archive.org/web/20080125205202/http://www.cdcr.ca.gov/About_CDCR/Secretary_Speeches/02022006.html).

143. OWEN & BLOOM, *supra* note 10, at 45.

144. *Id.* at 38.

family-oriented programs. Prisoners deserve to be near their children and have as many opportunities to see their families as possible, especially during holidays and special occasions. Additionally, prisons must expand programs for pregnant women and women with very young children so that incarcerated mothers can bond with their children.<sup>145</sup>

## B. Gender-Responsive Risks and Needs Assessment

There is a range of risk/needs instruments available to corrections administrators for assessing prisoners, but none is designed with sensitivity to the reality of the lives of women prisoners.<sup>146</sup> The CDCR must develop a gender-responsive risk/needs tool for assessing women at CDCR women's reception centers or at the county jail. The CDCR should then use this tool to determine appropriate community program placement and appropriate in-prison programming and placement.

## C. Treatment and Services Based on Women's Competencies and Strengths

In a traditional treatment model, the therapist typically approaches assessment with a problem focus: What is missing or wrong with the client?<sup>147</sup> Women prisoners may not benefit from this traditional model, because many women already struggle with a poor sense of self, in part because of the stigma attached to their addictions, their parenting histories, their trauma, or their prison records.<sup>148</sup> The traditional treatment model may add another problem to a woman's list of perceived failures and contribute to her poor sense of self.

Instead, a strength-based (asset) model of treatment is a better treatment model for women in prison. This model shifts the focus from targeting problems to identifying the multiple issues a woman must contend with and the strategies she uses to cope.<sup>149</sup> Experts refer to this model as assessing a woman's "level of burden."<sup>150</sup> In using an asset model, the therapist helps the client see the strengths and skills she already has that will aid her healing.<sup>151</sup>

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145. James Austin & Patricia L. Hardyman, *The Risks and Needs of the Returning Prisoner Population*, 21 REV. POL'Y RES. 13, 27 (2004).

146. BLOOM ET AL., *supra* note 85, at 34.

147. *Id.* at 17.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

#### D. Women-Only Groups, Especially for Primary Treatment

Early pioneering research indicated group dynamics differ between all-female groups and mixed female-male groups.<sup>152</sup> This research concluded that single and mixed-sex groups are appropriate for women at different stages of their lives and at different stages of their treatment.<sup>153</sup> For instance, women-only groups most effectively aid women in the early stage of addiction recovery and also women who are sexual abuse survivors.<sup>154</sup> A single-sex group is preferable when a woman needs to share and integrate her experiences, ideas, and feelings and to create a sense of self (as in early recovery).<sup>155</sup> When the woman's experience has been validated, when she empathizes more with herself and feels more empowered (as in later recovery), a mixed group may take her to the next stage of development.<sup>156</sup> Although mixed groups may have their place in later recovery, it is important that primary treatment for addiction and trauma use all-female groups with a female facilitator.<sup>157</sup>

#### E. Individual Treatment Plans and Coordinated Case Management That Address Comprehensive Services

As previously stated, women deal with a number of issues, including children, trauma, substance abuse, and mental health, as well as economic difficulties. The Center for Substance Abuse Treatment, a federal agency, identified seventeen critical areas of focus for women's treatment,<sup>158</sup> which underscore the complexity of women's treatment,

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152. Teresa Bernardez, *Women's Groups*, in HANDBOOK OF SHORT-TERM THERAPY GROUPS 120 (Max Rosenbaum ed., 1983); Teresa Bernardez-Bonesatti, *Women's Groups: A Feminist Perspective on the Treatment of Women*, in CHANGING APPROACHES TO THE PSYCHOTHERAPIES 59-63 (Henry H. Grayson & Clemens Loew eds., 1978); Barbara J. Graham & Marsha M. Linehan, *Group Treatment for the Homeless and Chronic Alcoholic Woman*, in *Women's Therapy Groups: Paradigms of Feminist Treatment* 186 (Claire M. Brody ed., 1987); Elizabeth Aries, *Interaction Patterns and Themes of Male, Female, and Mixed Groups*, SMALL GROUP BEHAV., Feb. 1976, at 1, 10-11.

153. BLOOM ET AL., *supra* note 85, at 17.

154. *Id.*

155. *Id.* at 17-18.

156. *Id.* at 18.

157. *Id.*

158. Such areas include low self-esteem, cultural issues, gender discrimination, the causes of addiction, relationships, attachments to unhealthy interpersonal relationships, interpersonal violence, eating disorders, sexuality, parenting, work, grief, appearance, overall health and hygiene, isolation, development of life plans, and child care and custody. PATRICIA A. KASSEBAUM, U.S. DEP'T OF HEALTH & HUMAN SERVS., SUBSTANCE ABUSE TREATMENT FOR WOMEN OFFENDERS 40 (1999), available at <http://tie.samhsa.gov/Taps/Tap23.pdf>.

the need for a comprehensive perspective, and the importance of theoretical integration and collaboration in clinical practice. Women need strategies that address their individual treatment and service needs. Although there are common threads among women, it is important to be sensitive to individual differences and to acknowledge both similarities and differences. Women need a case manager to help them make sense of all the different areas of their life they must address. This administration of services should include a coordinated case management component that begins during initial incarceration or assessment at the county jail and ends upon the women's discharge from parole.

#### F. Integrated Services for Mental Health and Substance Abuse

The concept of integrated treatment for women with co-occurring disorders was originally articulated by Kenneth Minkoff.<sup>159</sup> The Minkoff model emphasizes the need for correspondence between the treatment models for mental illness and addiction.<sup>160</sup> The Minkoff model also stresses the importance of well-coordinated treatment of both disorders, and emphasizes dual recovery treatment goals and the need to employ effective treatment strategies from both the mental health and the substance abuse treatment fields.<sup>161</sup> In the literature of the field of co-occurring disorders, integrated treatment involves a unified approach to meet the needs of a client with multiple disorders.<sup>162</sup>

#### G. Develop Effective Gender-Responsive Services That Foster a Therapeutic Environment

A therapeutic environment's primary characteristic for women is safety.<sup>163</sup> It is essential for women to have a physically and psychologically safe, welcoming, and healing space for their recovery process.<sup>164</sup> Sensitivity to trauma-related issues is critical.<sup>165</sup>

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159. Kenneth Minkoff, *An Integrated Treatment Model for Dual Diagnosis of Psychosis and Addiction*, 40 HOSPITAL & COMMUNITY PSYCHIATRY 1031 (1989) [hereinafter Minkoff, *An Integrated Treatment Model*]; Kenneth Minkoff, *Developing Standards of Care for Individuals With Co-Occurring Psychiatric and Substance Use Disorders*, 52 PSYCHIATRIC SERVICES 597 (2001) [hereinafter Minkoff, *Developing Standards of Care*].

160. Minkoff, *An Integrated Treatment Model*, *supra* note 159, at 1032; Minkoff, *Developing Standards of Care*, *supra* note 159, at 598-99.

161. Minkoff, *Developing Standards of Care*, *supra* note 159, at 597.

162. BLOOM ET AL., *supra* note 85, at 17.

163. *Id.* at 20.

164. BLOOM, OWEN & COVINGTON, *supra* note 19, at 60.

165. *Id.* at 59-60.

## H. Evaluate Programming

Program evaluation is another step in building gender-responsiveness. Evaluation research examines the outcomes associated with different types of services and determines, for example, whether matching women's needs with particular types of interventions or services produces better outcomes.<sup>166</sup> Evaluation is crucial in understanding and improving the effectiveness of community-based correctional programming, as well as in-prison and reentry programs.<sup>167</sup> Thus, the prison system needs a systematic examination of the theoretical and programmatic implications of our knowledge of incarcerated women and women offenders. Evaluation information should be utilized to make adjustments to existing services as well as to inform future efforts. This data is crucial in urging policymakers that gender-responsive community programs are more effective in improving outcomes for women offenders and reducing recidivism. Historically, the effectiveness of correctional treatment programs has been measured by their ability to affect recidivism, but there is insufficient research on correctional program effectiveness in terms of reduction of female recidivism.<sup>168</sup> Much of the research on recidivism is focused on male offenders; little empirical evidence exists suggesting what contributes to women's recidivism or to successful transition after release from prison.<sup>169</sup> Furthermore, the use of recidivism alone is inadequate to fully measure program success.<sup>170</sup>

## I. Improve Health Care Service Delivery to Incarcerated Women

The California prison system should eliminate barriers to care or at the very least reduce them. Translation services should be widely available. Co-pays should be eliminated, as to improve early utilization of services and reduce costs. A nurse should visit women daily if they sign up to receive triage and same-day simple services in their own housing units. If the matter requires more extensive care, the nurse can refer the inmate to the medical unit. This system would eliminate the need for both the sick-call and the co-pay system. Prisons should make available emergency care available to all women who require assistance; these women should not need to convince a correctional officer of their medical needs.

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166. BLOOM ET AL., *supra* note 85, at 21.

167. *See id.*

168. *Id.*

169. *Id.*

170. *Id.*

In fact, the Hampden County Correctional Facility<sup>171</sup> in Massachusetts uses this system with very impressive results. The Hampden County Correctional Facility even encourages correctional officers to alert the medical staff if they are worried about the physical or mental health of any of the women, adding yet another venue for accessing care.<sup>172</sup> The California prison system must increase prevention efforts, including exercise, nutrition, routine screenings, and information. It must also prioritize mental health, which includes allowing adequate time for one-on-one interactions with qualified therapists and creating a safe, confidential environment for such interactions to take place. Reproductive health, particularly prenatal care, routine screenings, and access to feminine hygiene are also of high importance.

Adequate transitional care must include a link between community-based health organizations and incarcerated women, prior to their actual release from prison. This link facilitates the problematic transfer of medical records and helps ensure that women can maintain their health regimens. Before the women are released, they need adequate access to medicine on the outside of prison. This can be particularly difficult as prisoners are barred from accessing any federally funded programs while incarcerated.<sup>173</sup> Therefore, a gap almost always exists between the prisoner's release and the approval of her health benefits.<sup>174</sup> This gap, which ranges from days to months, can significantly obstruct the continuity of care. A released prisoner is more likely to stay on treatment if she has the following at the time of release: (1) medication to cover the gap before medical benefits are obtained; (2) a copy of the prison medical summary; (3) scheduled follow-up appointments; (4) assistance completing applications for medical benefits; and (5) connections to other reentry services such as housing, cash benefits, and treatment for mental health and substance abuse, if necessary.<sup>175</sup>

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171. For more information on this facility, see Hampden County Sheriff's Department and Correctional Center Home Page, <http://hcsdmass.org> (last visited Nov. 10, 2008).

172. See MICHAEL J. ASHE, JR. ET AL., A PUBLIC HEALTH MODEL FOR CORRECTIONAL HEALTH CARE 39-40 (2002), available at <http://www.mphaweb.org/documents/PHModelforCorrectionalHealth.pdf> (explaining that correctional officers may make the initial requests for health care triage on an inmate's behalf, and that officers can request that a clinician see any inmate about whom they have concerns).

173. AMY L. SOLOMON ET AL., URBAN INST., OUTSIDE THE WALLS 53 (2004), available at [http://www.urban.org/UploadedPDF/410911\\_OTWResourceGuide.pdf](http://www.urban.org/UploadedPDF/410911_OTWResourceGuide.pdf) (discussing the health challenges of reentry).

174. *Id.*

175. *Id.* at 5-6.

The California prison system must systemize record-keeping methods and follow-up care. It must also clearly define the roles and responsibilities of staff, improve standards of hiring and gender-aware training, and provide recruitment and retention incentives to ensure they employ a competent and well-intentioned staff. The prison system must also train staff on cultural sensitivity and must make efforts to hire staff representative of the ethnic and racial backgrounds of the inmates.

#### **J. Expand In-Prison Programs and Focus on Reentry**

Many women who qualify for and need department-provided programs do not receive them because of low program capacity.<sup>176</sup> In effect, their time inside prison is wasted. The Little Hoover Commission ("LHC") found the prison system does not use time in prison to prepare inmates for their eventual release.<sup>177</sup> Educational, vocational, and substance abuse programs are all important to ensure that women are ready for life on the outside. As important as the expansion of in-prison programs, however, is the improvement of programs currently in place. These programs must clearly focus on reentry activities, and expert reports must find these programs effective. The same LHC report found the department did not use offenders' information or the growing body of effective correctional practices' evidence to guide its policies.<sup>178</sup> Furthermore, the LHC's 2004 report, which focused specifically on women, found the department randomly assigned female inmates to programs based on availability, as opposed to the match between their needs and the program.<sup>179</sup> For example, several women took baking classes (considered vocational education) simply because it was a fun activity. Though entertainment is certainly appreciated and helpful to mental health, if the department considers a program vocational education, this program must connect the inmate with reentry opportunities.

#### **K. Decarcerate and Promote Alternatives to Incarceration**

California must begin reform by lowering the number of incarcerated women. To accomplish this goal California can impose shorter sentences and sentence fewer women to prison. First, Califor-

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176. LITTLE HOOVER COMM'N, *supra* note 18, at 16.

177. LITTLE HOOVER COMM'N, *BACK TO THE COMMUNITY: SAFE & SOUND PAROLE POLICIES*, at i (2003).

178. *Id.* at v.

179. LITTLE HOOVER COMM'N, *supra* note 18, at 42.

nia must repeal mandatory minimum, truth-in-sentencing, and three-strikes laws. These laws create lengthy prison terms that harm communities without enhancing public safety.<sup>180</sup> Following the recommendations of Myrna Raeder, who studied federal sentencing guidelines, laws need to be more than just “gender-blind” to generate equality.<sup>181</sup> Beyond eliminating mandatory sentencing laws, California should increase judicial discretion and consider including primary caregiver status and degree of criminal involvement into sentencing schemes. With mostly nonviolent, low-level women who are the primary caregivers of children, public safety does not benefit from excessively punitive sentences.<sup>182</sup> Furthermore, for women’s sentences to be just, they must reflect women’s unique pathways and childcare responsibilities.

Second, women are well suited for community alternatives to incarceration and thus should be sentenced to such alternatives more often. These less restrictive and less dangerous environments can address factors that contribute to crime such as poverty and substance abuse, while helping women retain community and family bonds, instead of just providing deterrence and punishment.

## L. Focus on Community-Based Correctional Programs

### 1. Expand Services

As more women are sentenced to prison, it follows that an increasing number will be eligible for community placement. The CDCR must expand the capacity of its community correctional programs, which in 2005 was at 1000 women.<sup>183</sup> Only 140 total community beds for women with children existed at that time.<sup>184</sup> The CDCR must expand both the Family Foundations and Community Prisoner Mother Programs’ capacity. While research shows smaller programs tend to be more effective, the CDCR must develop some larger, 100- to 200-bed community correctional facilities to meet additional need. The CDCR should design these large facilities with environments conducive to gender-responsive programming and place them in urban areas in order to accommodate children and families. Since a majority of women offenders are committed from and return to the major pop-

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180. Austin & Hardyman, *supra* note 145, at 27.

181. Raeder, *supra* note 16, at 988–90.

182. *Id.* at 930.

183. BLOOM ET AL., *supra* note 85, at 34.

184. *Id.*



ulation centers in Southern California,<sup>185</sup> the CDCR should develop the bulk of the programs in this geographic area.

## **2. Design and Implement a Public Awareness Campaign**

If community-based programs for women cost less and more effectively reduce recidivism rates, while promoting a drug- and crime-free lifestyle, then their viability deserves serious attention from the general public.

To successfully implement these recommendations, the CDCR, through the Female Offender Programs and Services Division and the Office of Community Partnerships, will need to work collaboratively and cooperatively with the Legislature, local communities, treatment providers, previously incarcerated individuals, and other partners. This collaboration will result in an enhanced network of services and partnerships that will expand community placement options and provide continuity in community-based services initiated while the inmate is incarcerated and continued through parole and discharge.

## **3. Reallocate Correctional Resources from Incarceration to Reentry Services**

The state should not immediately start creating new programs. Rather, the state should expand, support, and replicate the many good community-based programs with proven successes (and usually lower costs than state-run programs).<sup>186</sup> At least some of the savings from alternative corrections should be spent to prepare women for reentry. The LHC points to some options for new resources the State can tap into for housing, employment, and substance abuse.<sup>187</sup> For example, the LHC argues that the State could reallocate parole resources from housing parole violators to reimburse local organizations willing to house and provide services to nonviolent women parolees upon release.<sup>188</sup>

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185. CDCR 2004 REPORT, *supra* note 2, at 15.

186. For examples of such programs, see LITTLE HOOVER COMM'N, *supra* note 18 (reporting on women on parole).

187. *Id.* at 56, 62, 64.

188. *Id.* at 56.

#### 4. Focus on Family Reunification

A woman's chance of success after release from prison depends on family reunification and family contact during incarceration.<sup>189</sup> Family contact also helps reduce the negative effects of imprisonment on the children.<sup>190</sup> Thus, corrections agencies should implement policies and procedures that promote positive contacts between incarcerated parents and their children. The State can place parents in institutions closest to their children's residence, expand visiting programs and visiting days, include special visiting areas for minor children, and increase transportation and visitor support services. Furthermore, correctional agencies should consider changing their lucrative telephone contracts with the phone companies, which make it very expensive to communicate with families on the outside.<sup>191</sup> Finally, as part of available adult literacy classes, the program could assist low-literacy women to write letters to their children.

In addition to promoting family contact, some organizations hold interventions with the families of incarcerated mothers to strengthen the returning prisoner's family support network and improve chances of success.<sup>192</sup> The few studies of these interventions show that strengthening the family network improves outcomes for both the returning prisoner and the individual family members.<sup>193</sup> Placing women in community-based correctional facilities close to their homes improves family contact.

#### 5. Reduce Legal Barriers to Reentry

California should immediately repeal or modify the ban on welfare funds for nonviolent drug felons.<sup>194</sup> This will improve housing, employment, cash, and substance abuse treatment opportunities. The State should examine the ban on work opportunities for parolees in various sectors (law, real estate, medicine, nursing, physical therapy,

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189. See generally MEGHAN HOWE, *WOMEN AND REENTRY* 1–2 (2006), available at [http://www.crjustice.org/cji/women\\_reentry\\_11-22-06.pdf](http://www.crjustice.org/cji/women_reentry_11-22-06.pdf).

190. See Leslie Acoca & Myrna S. Raeder, *Severing Family Ties: The Plight of Nonviolent Female Offenders and Their Children*, 11 *STAN. L. & POL'Y REV.* 133, 136 (1999).

191. See Eric Risberg, *Inmate Families Paying High Phone Rates in California Jails*, ASSOCIATED PRESS, Aug. 21, 2004, available at [http://www.usatoday.com/news/nation/2004-08-21-jail-calling\\_x.htm](http://www.usatoday.com/news/nation/2004-08-21-jail-calling_x.htm).

192. JEREMY TRAVIS ET AL., *URBAN INST., FAMILIES LEFT BEHIND: THE HIDDEN COSTS OF INCARCERATION AND REENTRY* 8 (2003), available at [http://www.urban.org/UploadedPDF/310882\\_families\\_left\\_behind.pdf](http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf).

193. *Id.*

194. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 115, 110 Stat. 2105, 2180 (1996).

and education), as well as the ban of former offenders as barbers and beauticians, to see if its community safety purpose justifies the limitations on parolees' opportunities. Furthermore, California should ensure that all incarcerated women leave with proper identification documents. The state should also modify the Adoption and Safe Families Act<sup>195</sup> to account for the particular restrictions of incarcerated women, and should extend the timeline for women to reunify with their children.

## **6. Coordinate Women's Multiple Reentry Needs and Provide Services Through Parole**

Once a woman is released from prison, she must tackle a myriad of issues. She may have to reunite with her children, find housing, enter substance abuse treatment, obtain health care, and find employment, child care, counseling, or vocational training. The state must coordinate these services to avoid completely overwhelming the woman and to make it possible for her to achieve her goals. The LHC found mentoring an effective way to provide such wraparound services.<sup>196</sup>

In addition, different programs must coordinate their own requirements so they do not conflict with each other. For example, the requirements to reunite with a child in foster care can be too rigid for women who cannot be expected to immediately obtain housing, employment, and remain sober within the rigid time frame they impose; some women are in prison longer than the foster care system allows for them to be separated from their child.<sup>197</sup> Furthermore, such planning needs to recognize the particular vulnerability of women recently released from prison and accommodate requirements to target this greater risk. For example, a returning prisoner may be eligible for community-based drug treatment, but the State might refer her to join a waiting list upon her release from prison (a high-risk time for relapse).<sup>198</sup> The State can certainly alleviate a woman's need for immediate services by linking her with mentors or case managers from within the prison walls, who can assist in applying to programs, taking into account their release date. In fact, women are most helped by programs on the inside that are mirrored once they are outside, par-

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195. Adoption and Safe Families Act of 1997, 42 U.S.C.A. § 1305 (West 2008).

196. LITTLE HOOVER COMM'N, *supra* note 18, at 66.

197. *Id.* at 52.

198. TRAVIS ET AL., *supra* note 192, at 9.

ticularly for aftercare components of substance abuse programs.<sup>199</sup> For example, a program designed to teach a woman some cosmetology is not enough; this training must be followed with more training on the outside, and followed with help obtaining a cosmetology license, and finding work in the field. Correctional associations with community organizations can also meet many of these needs. Community programs should link to in-prison programs to provide continuity of care so as to meet women's basic needs upon release, such as subsistence, shelter, and health care.

Regardless of how California decides to make parole decisions, parole fails to prevent parolee crime and protect communities.<sup>200</sup> California must decide to help parolees survive reentry. Most re-offending takes place soon after release from prison.<sup>201</sup> Thus, parole should be "front-loaded," meaning the state provides more monitoring and more access to services to parolees in their first year of community supervision, than to those who have successfully completed a year or two of supervision in the community. Similarly, the state should supervise more serious and violent offenders versus those that pose minor security risks. Woman parolees should be screened for—and receive—treatment needs, such as substance abuse, physical and mental health, employment, and reunification with children. Especially for women, parole programs must incorporate the family and the offenders' unique pathways. Another possible reform is "goal-parole," a model where parolees are rewarded by shorter parole sentences for good behavior on parole.<sup>202</sup>

## M. Promote Successful Parole

### 1. Change the Structure of Release Decisions

California must restructure not only its prison system, but also its parole system. After incarceration, most felons in California are automatically released and enrolled in parole.<sup>203</sup> Although scholars, experts, and advocates rightly criticized the discretionary parole board during the indeterminate sentencing era for being too coercive and discriminatory, many correctional scholars now recommend a return

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199. See, e.g., BLOOM ET AL., *supra* note 85.

200. LITTLE HOOVER COMM'N, *supra* note 177, at 56–58; LITTLE HOOVER COMM'N, *supra* note 18, at 6.

201. See NAT'L COUNCIL ON CRIME & DELINQUENCY, *supra* note 91, at 7 (noting that over two-thirds of California's parolees return to prison within two years).

202. JOAN PETERSILIA, WHEN PRISONERS COME HOME 212 (2003).

203. LITTLE HOOVER COMM'N, *supra* note 177, at 55.

back to indeterminate forms of sentencing and discretionary releases.<sup>204</sup> These scholars argue that determinate sentences discourage offenders from trying to rehabilitate themselves and prevent the state from restraining the most violent and serious offenders.<sup>205</sup> The compromise is risk-based discretion.<sup>206</sup> Risk-based discretion proposes more indeterminate sentences and asks the parole board to use rational, offense, and risk-based predictions to make parole decisions.<sup>207</sup> This suggestion remains controversial, however, and the public must continue to question the ethics and legality of imprisoning people for possible future crimes and the myriad of other injustices that brought about the downfall of most indeterminate sentences. The public should also question risk-based discretion because many offenders with a high risk of re-offending are minor drug users who pose little threat to communities.<sup>208</sup>

## 2. Change Parole Supervision Policies

In addition to changing the structure of release decisions, California should change policies determining who is placed on parole supervision. Instead of placing all felons released after determinate sentences on parole, the parole board should decide who is best suited for community supervision. The problem lies, however, in the State's decision of whom exactly they should place on parole. A national evaluation of parole policies revealed women, offenders with minor criminal histories, and offenders incarcerated for minor violations are most likely to benefit from parole.<sup>209</sup> In some cases, mandatory releases and automatic parolees show a higher rate of recidivism than those released without parole, probably because of the enhanced surveillance while on parole.<sup>210</sup> In general, the Urban Institute found that parole was only marginally effective for the majority of the parolee population.<sup>211</sup> Since minor offenders are the most likely

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204. See LITTLE HOOVER COMM'N, *supra* note 177, at 14.

205. See generally JOAN PETERSILIA, CAL. POLICY RESEARCH CTR., CHALLENGES OF PRISONER REENTRY AND PAROLE IN CALIFORNIA (2000).

206. PETERSILIA, *supra* note 202, at 187-91.

207. *Id.*

208. See NAT'L COUNCIL ON CRIME & DELINQUENCY, *supra* note 91, at 9-10. In 2008, approximately 67,000 parolees will be administratively returned to prison without a conviction for a new offense. *Id.* at 9. About 44,000 of these will be for drug usage, drug possession, and minor traffic violations. *Id.*

209. See AMY L. SOLOMON ET AL., URBAN INST., DOES PAROLE WORK?, at 2 (2005) (noting that women show less of a trend towards recidivism).

210. *Id.* at 14.

211. See generally *id.*

to benefit from parole,<sup>212</sup> it seems unwise to release them without parole, yet neither should violent offenders be released without surveillance. Instead of trying to reduce the numbers of people on parole, California should work towards a well-reasoned and comprehensive reform of its parole system.

### 3. Provide Parole Violators Alternatives to Incarceration

Most released inmates will fail parole and will be returned to custody.<sup>213</sup> Every year, California spends \$900 million to house these parole violators, who spend an average of five months in prison.<sup>214</sup> Primarily, California must embrace alternative sanctions for parole violators.<sup>215</sup> Yet for low-level, nonviolent female parole violators, prison sentences are completely inappropriate.<sup>216</sup> Furthermore, housing women in prison is incredibly costly—much more expensive than many community-based facilities that can provide counseling and job training.<sup>217</sup> For fewer taxpayer dollars, these community programs address women's underlying sources of offending without placing the community at risk by cycling women in and out of prisons.<sup>218</sup> A prisoner's length of stay in prison does not correlate with future recidivism; thus, shortening parole violation sentences places no additional risk to communities.<sup>219</sup> Also, for the few women who may require prison time after violating parole, shorter prison sentences can be implemented. These practices would save the State much-needed funds and minimize the damage a prison stay does to a woman's ties to her social world.

### 4. Consider Reentry Court and Adopt a Strength-Based Model

California could also adopt the reentry court concept, whereby parole violations are handled in a special reentry court modeled after the successful drug courts.<sup>220</sup> The reentry court uses a judge as a powerful case manager who ties together the offender's reentry plan and community support services.<sup>221</sup> The judge can swiftly and effectively

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212. See SOLOMON ET AL., *supra* note 209, at 11.

213. LITTLE HOOVER COMM'N, *supra* note 177, at 7.

214. *Id.* at ii.

215. *Id.* at 5.

216. *Id.* at xi, 2.

217. *Id.* at 28–30.

218. *Id.*

219. Austin & Hardyman, *supra* note 145, at 15.

220. PETERSILIA, *supra* note 202, at 204–06.

221. *Id.*

sanction the offender when she fails to meet a requirement and can reward the offender when she succeeds.<sup>222</sup> The idea is the offender will respond more positively to a judge than an overburdened parole agent, and that frequent in-court appearances and immediate sanctions will help the offender stay crime-free.<sup>223</sup>

Shadd Maruna and Thomas P. LeBel argue that the reentry court can be a new and effective addition to the criminal justice system, if it adopts a narrative different from “risk-based” and “need-based” models that focus on an offender’s deficits.<sup>224</sup> They argue that the modern parole system suffers because it tries to combine the threat of punishment with the appeal of rehabilitation.<sup>225</sup> This “carrot-and-stick” approach to corrections encourages parolee passivity and does little to reduce recidivism.<sup>226</sup> Instead, Maruna and LeBel suggest restorative reentry, a strength-based narrative, which focuses on strengthening the positive aspects of an offender’s situation and heightening the contributions an offender can make to society.<sup>227</sup> This approach encourages offenders to re-cast their personal narrative so they see themselves as worthy, helpful members of society.<sup>228</sup> Considering that incarcerated and paroled women are often caretakers who could actively contribute to their community’s well-being, this approach is especially appropriate for women.<sup>229</sup> Finally, with the help of the court, when a woman has made her amends, she can have her felon status revoked and the rights of citizenship returned.<sup>230</sup>

## Conclusion

The sentencing policies and penal attitudes in California’s correctional system have resulted in unnecessary burdens to the community and state budget that, without reform, will only intensify over time. By decarcerating women who pose little threat to public safety, and by moving them to community-based settings that promote rehabilitation, California can reduce its overwhelming incarceration costs. For all women involved in the justice system, rehabilitative services

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222. *Id.*

223. *Id.*

224. Shadd Maruna & Thomas P. LeBel, *Welcome Home? Examining the “Reentry Court” Concept from a Strengths-Based Perspective*, 4 W. CRIMINOLOGY REV. 91, 93 (2003).

225. *Id.* at 93–95.

226. *Id.* at 96.

227. *Id.* at 97.

228. *Id.* at 99.

229. *Id.*

230. *Id.* at 101.

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that address substance abuse and assist women in achieving emotional and economic well-being are critical to an effective reform process. Utilizing the above strategies for change will be an important step towards an effective, humane, fair, and economically sound correctional system for female offenders.